AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

1-7-85
Vol. 50 No. 4
Pages 721-916

federal register

Monday
January 7, 1985

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Anchorage Grounds
Coast Guard

Animal Drugs
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Bridges
Coast Guard

Community Development
Economic Development Administration

Credit
Health and Human Services Department

Endangered and Threatened Wildlife
Fish and Wildlife Service

Excise Taxes
Internal Revenue Service

Explosives
Research and Special Programs Administration

Exports
Animal and Plant Health Inspection Service
International Trade Administration

Fisheries
National Oceanic and Atmospheric Administration

CONTINUED INSIDE

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 Service, General Services 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.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

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.

Selected Subjects

Government Procurement
National Aeronautics and Space Administration
Veterans Administration

Hazardous Waste
Environmental Protection Agency

Housing Standards
Farmers Home Administration

Imports
Animal and Plant Health Inspection Service

Income Taxes
Internal Revenue Service

Labeling
Alcohol, Tobacco and Firearms Bureau

Marketing Agreements
Agricultural Marketing Service

Meat and Poultry Inspection
Food Safety and Inspection Service

Milk Marketing Orders
Agricultural Marketing Orders

Postal Service
Postal Service

Radio
Federal Communications Commission

Securities
Securities and Exchange Commission

Wine
Alcohol, Tobacco and Firearms Bureau

Contents

Federal Register
Vol. 50, No. 4
Monday, January 7, 1985

Agricultural Marketing Service
PROPOSED RULES
835 Kiwifruit grown in California; extension of time
Milk marketing orders:
815 Great Basin

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Food Safety and Inspection Service; Soil Conservation Service.
NOTICES
869 Privacy Act; systems of records

Alcohol, Tobacco and Firearms Bureau
RULES
Alcoholic beverages:
758 Wine bottlers; registry numbers and geographical brand names; and extension of mandatory compliance date
759 Wine labeling and advertising; appellations of origin, etc.

Animal and Plant Health Inspection Service
RULES
Overtime services relating to imports and exports:
721, 722 Work at laboratories, border ports, ocean ports, and airports (2 documents)

Arts and Humanities, National Foundation
NOTICES
Meetings:
901 Artists in Education Advisory Panel
902 Design Arts Advisory Panel (2 documents)
902 Partnership Office Advisory Panel

Centers for Disease Control
NOTICES
Meetings:
890 Immunization Practices Advisory Committee

Civil Rights Commission
NOTICES
915 Meetings; Sunshine Act

Coast Guard
PROPOSED RULES
Anchorage regulations:
859 Florida
Drawbridge operations:
860, 861 Louisiana (2 documents)

Commerce Department
See Economic Development Administration; International Trade Administration; National Oceanic and Atmospheric Administration.

Customs Service
RULES
Customs bonds:
739 Bond structure; revision; correction

Defense Department
See also Defense Nuclear Agency; Navy Department.
NOTICES
874 Agency information collection activities under OMB review
Meetings:
874 Wage Committee

Defense Nuclear Agency
NOTICES
Meetings:
874 Scientific Advisory Group on Effects

Economic Development Administration
RULES
725 Public works and development facilities program; tourism and recreation requirements; exemption; interim

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation petitions:
879 Tenngasco Exchange Corp., et al.

Energy Department
See also Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission.
NOTICES
Meetings:
876 International Energy Agency Industry Advisory Board
877-878 National Petroleum Council (4 documents)
Nuclear Waste Policy Act:
877 West Valley Demonstration Project, New York; project plan availability

Energy Research Office
NOTICES
Meetings:
880 Energy Research Advisory Board

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
765 Georgia
768 Missiouri
766 New Hampshire
764 Ohio
769 Rhode Island
Air quality implementation plans; delayed compliance orders:
772-775 Pennsylvania (5 documents)
Hazardous waste program authorizations:
775 Vermont

PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
865 Indiana; extension of time
862, 863 Maryland (2 documents)

Farmers Home Administration
PROPOSED RULES
Loan and grant programs:
815 Construction and repair; planning and performing site development work

Federal Aviation Administration
RULES
728 Control zones
726–728 Transition areas (4 documents)
NOTICES
Advisory circulars; availability, etc:
913 Turbine engine operating characteristics; evaluation

Federal Communications Commission
RULES
Common carrier services:
782 Customer premises equipment, detariffing procedures, etc. (second computer inquiry); correction
Radio services, special:
783 Private land mobile services; conventional and trunked stations, San Diego, CA
PROPOSED RULES
Radio services, special:
865 Private land mobile services; citizens band communications service, etc.; dismissal of peitition
NOTICES
889 Agency information collection activities under OMB review

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
881 Appalachian Power Co.
881 Arkansas Louisiana Gas Co.
881 Canadianoxy Offshore Production Co.
882, 883 Columbia Gas Transmission Corp. (2 documents)
882 Columbia Gas Transmission Corp. et al.
883 Hamilton Brothers Oil Co.
883 Kansas City Power & Light Co.
884 Louisiana-Nevada Transit Co.
884 National Fuel Gas Supply Corp.
885 Niagara Mohawk Power Corp.
885 Northern Natural Gas Co.
886 Northwest Pipeline Corp.
887 Pacific Power & Light Co. (2 documents)
887 Panhandle Eastern Pipe Line Co.
888 Tennessee Gas Pipeline Co.
888 Trunkline Gas Co.
889 Zenith Natural Gas Co.

Federal Highway Administration
NOTICES
Meetings:
914 National Motor Carrier Advisory Committee

Federal Home Loan Bank Board
NOTICES
889 Agency information collection activities under OMB review

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
890 First Union Bancorp., et al.

Fish and Wildlife Service
RULES
Endangered Species Convention:
811 American alligators; export; Texas 1984–85 harvest seasons

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
739 Gentamicin sulfate, betamethasone valerate topical spray

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
723 Fee increase for inspection services

Health and Human Services Department
See also Centers for Disease Control; Food and Drug Administration.
RULES
776 Letter of credit administration, sanctions applicable
NOTICES
Organization functions, and authority delegations:
890 Inspector General Office

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; Reclamation Bureau.

Internal Revenue Service
RULES
Income and excise taxes:
747 Fringe benefits; use of company cars, etc.; temporary
Income taxes:
740 Industrial development bonds; investments in nonpurpose obligations; temporary
PROPOSED RULES
Income and excise taxes:
836 Fringe benefits; use of company cars, etc.; cross reference
Income taxes:
837 Industrial development bonds; investments in nonpurpose obligations; cross reference

International Trade Administration
RULES
Export licensing:
729 Linear alpha olefins and other acyclic organic compounds; interim
PROPOSED RULES
Export licensing:
835 Commodities list subject to Naval Petroleum Reserves Production Act

NOTICES
Antidumping:
870 Pig iron from Romania, U.S.S.R., and East Germany
871 Export trade certificates of review

Interstate Commerce Commission
NOTICES
Rail carriers:
899 Railroad revenue adequacy standards
899 State intrastate rail rate authority; Wisconsin
Railroad operation, acquisition, construction, etc.:
899 Genesee & Wyoming Railroad Co.
899 Hoosier Rail Development Corp.
Railroad services abandonment:
900 Seaboard System Railroad, Inc.
900 Southern Pacific Transportation Co.

Justice Department
See Prisons Bureau.

Land Management Bureau
NOTICES
Classification of public lands:
895 California
Disclaimer of interest to lands:
893 Arizona
Exchange of public lands for private land:
890 Arizona
Leasing of public lands:
894 California
Oil and gas leases:
893 Wyoming
Opening of public lands:
895 Arizona
Resource management plan and environmental statements, etc.:
892 Monument Resource Area, Idaho
Sale of public lands:
892, 897 Florida (2 documents)
893 Oregon
Withdrawal and reservation of lands:
896 Nevada

Minerals Management Service
PROPOSED RULES
Outer Continental Shelf operations:
838 California; air quality rules; advance notice
NOTICES
Outer Continental Shelf; development operations coordination:
897–898 Champlin Petroleum Co. (3 documents)

National Aeronautics and Space Administration
RULES
784 Acquisition regulations

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
812 Ocean salmon off coasts of Washington, Oregon, and California
NOTICES
Coastal zone management programs:
872 California
Marine Mammal permit applications, etc.:
871 Belfast Zoological Gardens
871 Knie's Kinderzoo
873 Ocean World Associates
873 Oregon Department of Fish and Wildlife
873 West Coast Whale Research Foundation

Navy Department
NOTICES
Environmental statements; availability, etc.:
875 Michigan Transmitter Facility, Republic, MI
Meetings:
875 Chief of Naval Operations Executive Panel Advisory Committee
876 Naval Research Advisory Committee (2 documents)

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
904 Arizona Public Service Co. et al.
903 Duke Power Co.
903 General Electric Co.
904 Pennsylvania Power & Light Co.
Environmental statements; availability, etc.:
902 Carolina Power & Light Co.

Peace Corps
NOTICES
906 Agency information collection activities under OMB review

Pension Benefit Guaranty Corporation
NOTICES
907 Agency information collection activities under OMB review

Postal Service
RULES
International Mail Manual; Express Mail Service:
763 Finland and Saudi Arabia

Prisons Bureau
NOTICES
900 National Institute of Corrections; site selection project

Reclamation Bureau
NOTICES
Sale of public lands:
897 Nevada

Research and Special Program Administration
RULES
Hazardous materials:
798 Explosives; detonating cord classification and detonator packaging

Securities and Exchange Commission
RULES
Securities:
730 National market system securities designation
NOTICES
907 Agency information collection activities under OMB review
Hearings, etc.:
910 Northeast Utilities et al.
911 Texas Federal Savings & Loan Association

Self-regulatory organizations; proposed rule changes:
907 Boston Stock Exchange, Inc.
911 Chicago Board Options Exchange, Inc.
908, 909 Midwest Stock Exchange, Inc. (2 documents)
911 National Association of Securities Dealers, Inc.
Self-regulatory organizations; unlisted trading privileges:
912 Cincinnati Stock Exchange
912 Midwest Stock Exchange, Inc.
912 Philadelphia Stock Exchange, Inc.

Small Business Administration
RULES
Business loan policy:
725 Waiver of charges by fiscal and transfer agent
NOTICES
Applications, etc.:
913 Brentwood Capital Corp.
Disaster loan areas:
913 Texas

Soil Conservation Service
NOTICES
Environmental statements, availability, etc.:
870 South Fork Watershed, KS

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration; Research and Special Programs Administration.

Treasury Department
See Alcohol, Tobacco and Firearms Bureau; Customs Service; Internal Revenue Service.

Veterans Administration
RULES
789 Acquisition regulations

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
354 721
Proposed Rules:
920 835
1136 815
1804 815
1924 815

9 CFR
97 722
307 723
350 723
351 723
354 723
355 723
362 723
381 723

13 CFR
120 725
305 725

14 CFR
71 (5 documents) 726–728

15 CFR
377 729
Proposed Rules:
377 835

17 CFR
240 730

19 CFR
113 739

21 CFR
524 739

26 CFR
1 (2 documents) 740, 747
31 747
54 747
Proposed Rules:
1 (2 documents) 836, 837
31 836
54 836

27 CFR
4 (2 documents) 758, 759

30 CFR
Proposed Rules:
250 838

33 CFR
Proposed Rules:
110 859
117 (2 documents) 860, 861

39 CFR
10 763

40 CFR
52 (5 documents) 764–769
65 (5 documents) 772–775
271 775
Proposed Rules:
52 (3 documents) 862–865

45 CFR
77 776

47 CFR
31 782
90 783
Proposed Rules:
90 865

48 CFR
Ch. 8 789
1803 784
1804 784
1805 784
1812 784
1813 784
1814 784
1815 784
1816 784
1817 784
1825 784
1827 784
1831 784
1832 784
1835 784
1842 784
1844 784
1845 784
1852 784

49 CFR
171 798
172 798
173 798
174 798
175 798
176 798
177 798

50 CFR
23 811
661 812

Rules and Regulations

Federal Register
Vol. 50, No. 4
Monday, January 7, 1985

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 354

[Docket No. 84-367]

Overtime Work at Border Ports, Ocean Ports, and Airports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations which establish charges for overtime work performed by Plant Protection and Quarantine inspectors of the U.S. Department of Agriculture at border ports, sea ports, and airports. The regulations are amended (1) by increasing the hourly rates charged an owner or operator of an aircraft requesting inspection services or quarantine services outside of the regularly established hours of service and (2) by increasing the hourly rates charged a person, firm, or corporation having ownership, custody or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to certain inspection, laboratory testing, certification or quarantine and who requires the services of an employee of Plant Protection and Quarantine on a Sunday or holiday or at any other time outside the regular tour of duty of such employee. These increases are commensurate with salary increases for Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91-656), and Executive Order 12496 dated December 28, 1984.

EFFECTIVE DATE: January 6, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Eggert, Director, National Administrative Planning Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 614, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7250.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Regulatory Flexibility Act and Effective Date

This amendment has been issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Further, based on information compiled by the Department, it has been determined that this amendment will have an effect on the economy of less than $100,000,000; 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.

Also, under the circumstances explained below, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

This document amends the regulations by increasing the hourly rates charged an owner or operator of an aircraft requesting inspection services or quarantine services outside of the regularly established hours of service. The rates are increased by $.84 per hour for work performed outside of the regularly established hours on a Sunday and by $.64 per hour for work performed outside of the regularly established hours on a holiday or any other period.

Also, this document amends the regulations by increasing the hourly rates charged a person, firm, or corporation having ownership, custody or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to certain inspection, laboratory testing, certification or quarantine and who requires the services of an employee of Plant Protection and Quarantine on a Sunday or holiday or at any other time outside the regular tour of duty of such employee. The rates are increaseed by $.20 per hour outside the regular tour of duty on a Sunday and by $.64 per hour outside the regular tour of duty on a holiday or any other period.

Services of an employee of Plant Protection and Quarantine for aircraft services during regularly established hours and other than for aircraft services during a regular tour of duty are still provided free of charge to those requesting the service. Based on information available to the Department, it is estimated that Plant Protection and Quarantine provided an average of 5,140 hours per week of services for which charges were assessed during 1984, and these services were requested by thousands of entities. The number of hours of service for which charges will be imposed is not expected to increase significantly in 1985.

The hourly rate for services of an employee of Plant Protection and Quarantine depends entirely upon facts within the knowledge of the Department of Agriculture. The Department has no alternatives to raising the rates. By law, importers and exporters are required to reimburse the Department for its costs associated with services rendered. Unless the rates are raised, they will not cover the salary increases for Federal employees which begin January 6, 1985.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure on these amendments are impracticable, unnecessary, and contrary to the public interest and good cause is found for making these amendments effective less than 30 days after publication in the **Federal Register.**

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (agriculture), Quarantine, Transportation.

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Therefore, in 7 CFR Part 354, § 354.1(a)(1) is revised to read as follows:

§ 354.1 Overtime work at border ports, sea ports, and airports.

(a)(1) Any person, firm or corporation

having ownership, custody, or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine under this chapter and Subchapter D of Chapter I, Title 49 CFR, who requires the services of an employee of Plant Protection and Quarantine on a Sunday or holiday, or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of Sunday or holiday or overtime service request the Plant Protection and Quarantine inspector in charge to furnish inspection, laboratory testing, certification, or quarantine service during such overtime, or Sunday or holiday period, and shall pay the Government therefor at a rate of $29.12 per work-hour per employee on a Sunday and at the rate of $22.48 per work-hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, or at any time after 5 p.m. or before 8 a.m. on weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspection services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture; and except that owners and operators of aircraft will be provided service without reimbursement during regularly established hours of service on a Sunday or holiday; and except that the overtime rate to be charged owners or operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of the aircraft, for work performed outside of the regularly established hours of service on a Sunday will be $24.52 and for work performed outside of the regularly established hours of service for a holiday or any other period will be $17.28 per hour, which charges exclude administrative overhead costs.

* * * * *

Authority: 64 Stat. 561 (7 U.S.C. 2260); Sec. 15, Pub. L. 94–353, 90 Stat. 882 (49 U.S.C. 1741).

Done at Washington, D.C., this 3rd day of January 1985.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 85–508 Filed 1–4–85; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 97

[Docket No. 84–128]

Overtime Work at Laboratories, Border Ports, Ocean Ports, and Airports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations which establish charges for overtime work performed by Veterinary Services inspectors of the U.S. Department of Agriculture at laboratories, border ports, ocean ports, and airports. The regulations are amended (1) by increasing the hourly rates charged an owner or operator of an aircraft requesting inspection services or quarantine services at an airport outside of the regularly established hours of service and (2) by increasing the hourly rates charged a person, firm, or corporation having ownership, custody or control of animals, animal byproducts, or other commodities subject to certain inspection, laboratory testing, certification or quarantine and who requires the services of an employee of Veterinary Services on a holiday or Sunday or at any other time outside the regular tour of duty of such employee. These increases are commensurate with salary increases for Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91–656), Executive Order 12496 dated December 28, 1984.

EFFECTIVE DATE: January 6, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. J.L. Ellis, Executive Officer, Veterinary Services, APHIS, USDA, Federal Building, Room 857, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8511.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Regulatory Flexibility Act and Effective Date

This amendment has been issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Further, based on information compiled by the Department, it has been determined that this amendment will have an effect on the economy of less than $100,000,000; 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.

Also, under the circumstances explained below, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

This document amends the regulations by increasing the hourly rates charged an owner or operator of an aircraft requesting inspection services or quarantine services at any airport outside of the regularly established hours of service. The rates are increased by $.84 per hour for nonregularly established hours on a Sunday and by $.64 per hour for nonregularly established hours on a holiday or other day.

Also, this document amends the regulations by increasing the hourly rates charged a person, firm, or corporation having ownership, custody or control of animals, animal byproducts, or other commodities subject to certain inspection, laboratory testing, certification or quarantine and who requires the services of an employee of Veterinary Services on a holiday or Sunday or at any other time outside the regular tour of duty of such employee. The rates are increased by $.20 per hour outside the regular tour of duty on a Sunday and by $.64 per hour outside the regular tour of duty on a holiday or any other period.

Services of an employee of Veterinary Services at an airport during regularly established hours and otherwise during a regular tour of duty are still provided free of charge to those requesting the service. Based on information available to the Department, it is estimated that Veterinary Services provided an average of 640 hours per week of services for which charges were assessed during 1984, and these services were requested by thousands of entities. The number of hours of service for which charges will be imposed is not expected to increase significantly in 1985.

The hourly rate for services of an employee of Veterinary Services depend entirely upon facts within the knowledge of the Department of Agriculture. The Department has no alternatives to raising the rates. By law, importers and exporters are required to reimburse the Department for its costs associated with services rendered. Unless the rates are raised, they will not cover the salary increases for Federal employees which begin January 6, 1985.

Accordingly, pursuant to the administrative procedure provisions in 5

U.S.C. 553, it is found upon good cause that notice and other public procedure on these amendments are impracticable, unnecessary, and contrary to the public interest and good cause is found for making these amendments effective less than 30 days after publication in the Federal Register.

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and Livestock Products, Poultry and Poultry Products, Transportation.

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Therefore, in 9 CFR Part 97, the first sentence of § 97.1(a) and the last sentence of § 97.1(b) are revised to read as follows:

§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.

(a) Any person, firm, or corporation having ownership, custody, or control of animals, animal byproducts, or other commodities subject to inspection, laboratory testing, certification, or quarantine under this subchapter and Subchapter G of this Chapter, and who requires the services of an employee of Veterinary Services on a Sunday or holiday, or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of Sunday or holiday or overtime service request the Veterinary Services inspector in charge to furnish inspection, laboratory testing, certification, or quarantine service during such overtime, or Sunday or holiday period, except as provided in paragraph (b) of this section, shall pay the Government therefor at a rate of $29.12 per work-hour per employee on a Sunday and at the rate of $22.48 per work-hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, except as provided in paragraph (b) of this section for inspection or quarantine services requested by an owner or operator of an aircraft at an airport on a Sunday or holiday which are performed within regularly established hours of service, or at any time after 5 p.m. or before 8 a.m. on a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspection services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture.* * *

(b) * * * When services are performed outside of the regularly established hours of service on a holiday or Sunday or any other day, the rate to be charged owners or operators of aircraft shall be $24.52 per hour on a Sunday and $17.28 per hour on a holiday or any other day, which charges exclude administrative overhead costs.

* * * * *

Authority: 64 Stat. 561 (7 U.S.C. 2260); Sec. 15, Pub. L. 94-353, 90 Stat. 882 (49 U.S.C. 1741).

Done at Washington, D.C., this 3rd day of January 1985.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 85-507 Filed 1-4-85; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Parts 307, 350, 351, 354, 355, 362, and 381

[Docket No. 84-026F]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry inspection regulations to increase fees charged by FSIS to provide overtime inspection, identification, certification, or laboratory services to meat and poultry establishments. The fees reflect the increased costs of providing these services due to the increase for salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970.

EFFECTIVE DATE: January 6, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-3367.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule is issued in conformance with Executive Order 12291, and has been determined to be not a "major rule." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or 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.

Effects on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because the fees provided for in this document are not new but merely reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services.

Background

On September 28, 1984, FSIS published a final rule in the **Federal Register** (49 FR 38506) to increase fees charged by FSIS to provide overtime inspection, identification, certification, or laboratory services to meat and poultry establishments. The increases were the result of increased costs of providing these services in fiscal year 1985. The fee increases did not, however, include the increase resulting from a pay raise for Federal employees under the Federal Pay Comparability Act of 1970. Although the pay raise is normally effective at the beginning of each fiscal year, Congress delayed the pay raise until January 1985. As a result, FSIS stated in its September 28, 1984, final rule that when Congress enacts a pay raise, FSIS will engage in further rulemaking prior to raising fees.

Based on the Agency's analysis of the increased costs in providing these services, incurred as a result of a January 1985 pay raise of 3.5 percent for Federal employees, FSIS published a proposed rule in the **Federal Register** on November 30, 1984 (49 FR 47032), to increase the fees relating to such services.

FSIS did not receive any comments in response to the proposed rule. Therefore, the amendments, as proposed, to the Federal meat and poultry products inspection regulations are promulgated herein.

List of Subjects

9 CFR Part 307

Meat inspection, Reimbursable services.

9 CFR Part 350

Meat inspection, Reimbursable services, Voluntary inspection, Certification service.

9 CFR Part 351

Meat inspection, Certification service, Reimbursable services.

9 CFR Part 354

Meat inspection, Reimbursable services.

9 CFR Part 355

Meat inspection, Reimbursable services.

9 CFR Part 362

Poultry products inspection, Reimbursable services.

9 CFR Part 381

Poultry products inspection, Reimbursable services.

PART 381—[AMENDED]

1. The authority citation for § 307.5 reads as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 34 Stat. 1264, as amended; 21 U.S.C. 621; 62 Stat. 334; 21 U.S.C. 695, 7 CFR 2.15(a), 2.92.

2. Section 307.5(a) is revised to read as follows:

§ 307.5 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall pay the Food Safety and Inspection Service $21.72 per hour per Program employee to reimburse the Program for the cost of the inspection service furnished on any holiday as specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

* * * * *

3. The authority citation for § 350.7 reads as follows:

PART 350—[AMENDED]

Authority: 41 Stat. 241, 7 U.S.C. 394; 60 Stat. 1087, as amended, 7 U.S.C. 1622; 60 Stat. 1090, as amended, 7 U.S.C. 1624; 34 Stat. 1264, as amended, 21 U.S.C. 621; 62 Stat. 334, 21 U.S.C. 695; 7 CFR 2.15(a), 2.92.

4. Section 350.7(c) is revised to read as follows:

§ 350.7 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rate of $18.60 per hour for base time, $21.72 per hour for overtime including Saturdays, Sundays, and holidays, and $35.92 per hour for laboratory service, to cover the costs of the service and shall be charged for the time required to render such service. Where appropriate, this time will include but will not be limited to the time required for travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 351—[AMENDED]

5. The authority citation for §§ 351.8 and 351.9 reads as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1264; 7 CFR 2.15(a), 2.92.

6. Section 351.8 is revised to read as follows:

§ 351.8 Charges for surveys for plants.

Applicants for the certification service shall pay the Department for salary costs at the rate of $18.60 per hour for base time, $21.72 per hour for overtime, travel and per diem allowances at rates currently allowed by the Federal Travel Regulations, and other expenses incidental to the initial survey of the rendering plants or storage facilities for which certification service is requested.

7. Section 351.9(a) is revised to read as follows:

§ 351.9 Charges for examinations.

(a) The fees to be charged and collected by the Administrator for examination shall be $18.60 per hour for base time and $21.72 per hour for overtime including Saturdays, Sundays, and holidays, as provided for in § 351.14 and $35.92 per hour for any laboratory service required to determine the eligibility of any technical animal fat for certification under the regulations in this Part. Such fees shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith.

* * * * *

PART 354—[AMENDED]

8. The authority citation for § 354.101 reads as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

9. Section 354.101 (b) and (c) are revised to read as follows:

§ 354.101 On a fee basis.

* * * * *

(b) The charges for inspection service will be based on the time required to perform such services. The hourly rate shall be $18.60 for base time and $21.72 for overtime or holiday work.

(c) Charges for any laboratory analysis or laboratory examination of rabbits under this part related to inspection service shall be $35.92 per hour.

10. The authority citation for § 355.12 reads as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

11. Section 355.12 is revised to read as follows:

§ 355.12 Charge for service.

The fees to be charged and collected by the Administrator shall be $18.60 per hour for base time, $21.72 per hour for overtime, including Saturdays, Sundays, and holidays, and $35.92 per hour for laboratory services to reimburse the Service for the cost of the inspection service furnished.

PART 362—[AMENDED]

12. The authority citation for § 362.5 reads as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

13. Section 362.5(c) is revised to read as follows:

§ 362.5 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rate of $18.60 per hour for base time, $21.72 per hour for overtime including Saturdays, Sundays and holidays, and $35.92 per hour for laboratory service to cover the costs of the service and shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

14. The authority citation for § 381.38 reads as follows:

Authority: 71 Stat. 447, 448, as amended, 21 U.S.C. 463, 468; 7 CFR 2.15(a), 2.92.

15. Section 381.38(a) is revised to read as follows:

§ 381.38 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall pay the Food Safety and Inspection Service $21.72 per hour per Program employee to reimburse the Program for the cost of the inspection service furnished on any holiday specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any

administrative workweek Sunday through Saturday.

* * * * *

Done at Washington, DC, on January 3, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-521 Filed 1-4-85; 8:45 am]

BILLING CODE 3410-DM-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Waiver of Charges by Fiscal and Transfer Agent

AGENCY: Small Business Administration.

ACTION: Notice of waiver.

SUMMARY: Effective immediately the Agency's Fiscal and Transfer Agent (FTA) will eliminate fees for collection, accounting and other services on the guaranteed portions of loans sold on an individual basis into the secondary market: (a) In which such sale is made using SBA Form 1086 (Secondary Participation Guaranty and Certification Agreement) and (b) in which such Form has been signed by SBA on or after January 7, 1985. Effective immediately, the FTA will also waive these same fees on loans previously sold using SBA Form 1084, "Secondary Participation Guaranty Agreement" and converted to the FTA system using SBA Form 1085, "Request for Certification of SBA Form 1084" when Form 1085 is signed by SBA on or after January 7, 1985. The current fee structure is a 1/16% set-up fee and a 1/8% per annum monthly servicing fee. The FTA will retain the right to charge a minimal certificate issuance fee.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Financial Analyst, Room 800C, 1441 L Street, NW Washington, DC 20416, 202/653-5954.

SUPPLEMENTARY INFORMATION: In the supplementary information to a final rule published on November 2, 1984, in the **Federal Register** (49 FR 44091), the Agency stated that the FTA would eliminate charges to the investor for collection, accounting and other services on SBA guaranteed portions of loans sold initially into the secondary market after February 15, 1985, using SBA Form 1086. It has come to the Agency's attention that this change effective several months in the future may be disrupting secondary market sales of SBA guaranteed portions of loans. Accordingly, the FTA has agreed to eliminate such charges to the investor immediately, rather then waiting until the originally scheduled implementation date of February 15, 1985.

(Catalog of Federal Domestic Assistance Programs, 59.012 Small Business Loans)

Dated: December 19, 1984.

James C. Sanders,

Administrator.

[FR Doc. 85-463 Filed 1-4-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 305

Public Works and Development Facilities Program; Specific Types of Projects

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Interim rule.

SUMMARY: This rule amends the Economic Development Administration's (EDA's) Tourism and Recreation regulation to conform to an EDA policy position exempting the Public Works Impact Program (PWIP) projects from the tourism and recreation requirements.

DATES: Effective Date: January 7, 1985. Comments by: March 8, 1985.

ADDRESS: Send comments to the Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Charles W. Coss, Director, Office of Public Works, U.S. Department of Commerce, Economic Development Administration, Room 7019, Washington, D.C. 20230, (202) 377-5265.

SUPPLEMENTARY INFORMATION: EDA is amending its public works and development facilities regulations at 13 CFR 305, Subpart C—Specific Types of Projects—Tourism and Recreation at 13 CFR 305.41 and 305.44. The regulation as now written does not accurately reflect Agency policy. Adequate documentation is required under 13 CFR 305.4 for Public Works Impact Program (PWIP) projects where the justification for projects is not the long term job creation benefit of the project, but special PWIP aspects. Therefore, the amended regulations will relieve applicants from paperwork burdens unrelated to the PWIP objectives.

The General Counsel for the Department of Commerce has determined that because this rule relates to EDA's grants program, it is exempt from the notice and opportunity for comment requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) and no other law requires that notice and opportunity for comment be given.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the APA and other relevant laws.

Since notice and opportunity for comment is not being given for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act (5 U.S.C. 601(2)) and the requirements of that Act do not apply. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be proposed.

Because this rule relieves a restriction, under section 553(d)(1) of the APA (5 U.S.C. 553(d)(1)), it can be and is being made immediately effective upon publication.

However, because the Department is interested in the reactions of those who will benefit from the amendment, this rule is being issued as interim final. Public comments on the interim final rule are invited and should be sent to:

ADDRESS: J. Bonnie Newman, Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230.

Comments received by March 8, 1985, will be considered.

Under Executive Order (E.O.) 12291 the Department must judge whether a regulation is "major" within the meaning of Section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or georgraphic regions; or 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.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

List of Subjects in 13 CFR Part 305

Community development, Community facilities, Grant programs-community development, Indian, and loan programs-community development.

Accordingly, 13 CFR Part 305 is amended as follows:

PART 305—PUBLIC WORKS AND DEVELOPMENT FACILITIES

Subpart C—Specific Types of Projects

Section 305.41 is revised to read as follows:

§ 305.41 Purpose.

The purpose of this subpart is to set forth requirements for certain specific types of public works and development facility projects which EDA may fund under this part. (This applies to all public works projects except as specifically exempted in the following sections.)

Section 305.44 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 305.44 Tourism and recreation.

* * * * *

(b) Tourism and recreation projects, except projects receiving assistance under Title X of the Act, or Public Works Impact Program (PWIP) projects in which the tourism or recreation aspects are incidental to the aspects which meet the criteria set forth in § 305.4 of this part, must meet the following requirements:

* * * * *

Authority: (Section 701, Pub. L. 89-136, 79 Stat. 570) (42 U.S.C. 3211). Sec. 1-105, E.O. 12185, DOC Organization Order 10-4, as amended (40 FR 56702, as amended)

Dated: November 14, 1984.

J. Bonnie Newman,

Assistant Secretary for Economic Development.

[FR Doc. 85-250 Filed 1-4-85; 8:45 a.m.]

BILLING CODE 3510-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-ANM-21]

Establishment of Transition Area, Hailey, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a transition area at Hailey, Idaho, to provide controlled airspace from 1200' above the surface for aircraft executing a new instrument approach procedure to Friedman Memorial Airport, Hailey, Idaho. This action changes the airport status from VFR to IFR.

EFFECTIVE DATE: 0901 GMT, February 14, 1984.

FOR FURTHER INFORMATION CONTACT: Kathy Paul, Airspace & Procedures Branch, ANM-530, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

History

On November 20, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a 1200' transition area at Hailey, Idaho (49 FR 45747).

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 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a 1200' transition area at Hailey, Idaho, to provide controlled airspace for aircraft executing a new instrument approach procedure to Friedman Memorial Airport Hailey, Idaho.

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

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Hailey, Idaho—[New]

"That airspace extending from 1,200 feet above the surface from 43°36'00" N., 114°27'00" W., thence eastbound to 43°36'00" N., 114°00'00" W., thence southbound to 43°17'30" N., 114°00'00" W., thence westbound to 43°17'30" N., 114°27'00" W., thence northbound to the point of beginning; and excluding that airspace overlying V-231 on the east side and V-500 on the south side of the area."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Seattle, Washington, on December 18, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-326 Filed 1-4-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 84-ANM-13]

Establishment of Transition Area, Chouteau, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a transition area at Chouteau, Montana, to provide controlled airspace from 700' above the surface so that aircraft executing a new instrument approach procedure to Chouteau Airport will have exclusive use of that airspace when the visibility is less than 3 miles thereby enhancing the safety of such operations. This action changes the airport status from VFR to IFR.

EFFECTIVE DATE: 0901 GMT, February 14, 1985.

FOR FURTHER INFORMATION CONTACT: Kathy Paul, Airspace & Procedures Branch, ANM-530, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

History

On October 1, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a 700' transition area at Chouteau, Montana (49 FR 38644).

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 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a 700' transition at Chouteau, Montana, to provide controlled airspace so that aircraft executing a new instrument approach procedure to Chouteau Airport will have exclusive use of that airspace when the visibility is less than 3 miles thereby enhancing the safety of such operations.

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 25, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Chouteau, Montana Transition Area—[New]

"That airspace extending upward from 700 feet above the surface within a 9 mile radius of the Chouteau NDB (47°49' 30" N LAT/ 112°09'56" W LONG).

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Seattle, Washington, on December 18, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-325 Filed 1-4-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-ANM-14]

Alteration of Transition Area, Missoula, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the 1200' transition area at Missoula, Montana, to provide additional controlled airspace that will allow high altitude arrivals to transition below 14,500' MSL with uninterrupted descents to the initial approach fix at Missoula. This action is necessary to ensure segregation of aircraft using approach procedures in instrument weather conditions and other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 GMT, February 14, 1985.

FOR FURTHER INFORMATION CONTACT: Kathy Paul, Airspace & Procedures Branch, ANM-530, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

History

On October 25, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the 1200' transition area at Missoula, Montana, to provide additional controlled airspace (49 FR 42946).

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 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the 1200' transition area at Missoula, Montana, to provide additional controlled airspace.

The FAA 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 anitcipated 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 a 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

Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Missoula, Montana—[Amended]

"That airspace extending upward from 700 feet above the surface within a 23.5 mile radius of the Missoula VORTAC (46°54'29" N. Lat/114° 04' 58" W. Long) extending from the Missoula VORTAC 190° radial clockwise to the 290° radial; within 9.5 miles southwest and 5.5 miles northeast of the Missoula VORTAC 312° radial extending from the VORTAC to 38 miles northwest of the VORTAC; within 3 miles each side of the Missoula VORTAC 172° radial extending from the VORTAC to 19.5 miles southeast; and that airspace extending upward from 1,200 feet above the surface within a 13 mile radius of the Missoula VORTAC extending from the 357° radial clockwise to the 072° radial; within a 23.5 mile radius of the Missoula VORTAC extending from the 072° radial clockwise to the 112° radial; within a 57.5 mile radius of the Missoula VORTAC extending from the 112° radial clockwise to the 180° radial; within a 23.5 mile radius of the Missoula VORTAC extending from the 180° radial to the 190° radial; within a 34 mile radius of Missoula VORTAC extending from the Missoula VORTAC 256° radial clockwise to the 357° radial; within 9.5 miles southwest of the Missoula VORTAC 298° radial extending from the 34 mile radius area to 38 miles northwest; and excluding that portion of the Coppertown, Montana 1,200 foot transition area".

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Seattle, Washington, on December 18, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-323 Filed 1-4-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-ANM-23]

Establishment of Transition Area, Polson, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action lowers the base of controlled airspace in the vicinity of Polson, Montana, to 700' above the surface so that aircraft conducting flight under Instrument Flight Rules (IFR) would have exclusive use of that airspace when the visibility is less than 3 miles and thereby enhancing the safety of such operations. This action changes the airport status from VFR to IFR.

EFFECTIVE DATE: 0901 GMT, February 14, 1985.

FOR FURTHER INFORMATION CONTACT: Kathy Paul, Airspace & Procedures Branch, ANM-530, Federal Aviation Administration, 17900 Pacific Highway South, C-68996, Seattle, WA 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

History

On October 25, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to lower the base of controlled airspace in the vicinity of Polson, Montana, to 700' above the surface (49 FR 42947).

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 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The rule

This amendment to Part 71 of the Federal Aviation Regulation lowers the base of controlled airspace in the vicinity of Polson, Montana, to 700' above the surface so that aircraft conducting flight under Instrument Flight Rules (IFR) will have exclusive use of that airspace when the visibility is less than 3 miles thereby enhancing the safety of such operations. This additional controlled airspace is for aircraft executing a new instrument approach procedure to the Polson Airport. This action changes the airport status from VFR to IFR.

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

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Polson Montana—[New]

"That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 47° 49' 30" N., long. 114°12'20" W; to 47° 46' 30" N., 114°04'00"W; to 47°37'00" N., 114°11'30" W., to 47°30'30" N., to 114° 15'00" W; thence to point of beginning."

(Sec. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Seattle, Washington on December 18, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-327 Filed 1-4-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-ANM-16]

Amended Control Zone, Portland, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action would redescribe the Portland Control Zone. The intended effect of the action would reduce the size of controlled airspace designated at Portland, Oregon, to ease the burden imposed by controlled airspace to VFR operations at the Portland-Troutdale Airport.

EFFECTIVE DATE: February 14, 1985.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, Airspace & Procedures Specialist, ANM-534, Federal Aviation Administration, Docket No. 84-ANM-16, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2534.

SUPPLEMENTARY INFORMATION:

History

On October 12, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to redescribe the Portland Control Zone (49 FR NO. 199, page 40042). The present configuration of the Portland Control Zone extension to the east overlays the Portland-Troutdale Airport when the Troutdale Control Zone is not in effect. Due to Troutdale Tower's limited hours of operation, the VFR/IFR status of the Troutdale Airport is determined by the Portland International Airport reported weather for the control zone. This remote governing weather is an unnecessary imposition on the flying public operating at Troutdale Airport where the weather conditions could be substantially different than Portland International Airport. To rectify this problem, this action will reduce the size of the Portland Control Zone by eliminating the control zone extension which overlies Portland-Troutdale Airport.

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 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will reduce the size of the Portland Control Zone to eliminate the extension which overlies the Portland-Troutdale Airport.

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 ..nd air navigation, it is certified that this rule will not have a significant economic impact on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zone, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Portland, Oregon—[Amended]

By deleting the words, "* * * and within 3 miles each side of the 119° and 299° bearing from the "LAKER LOM" and replacing with the words, "* * * and within 2 miles north and 3 miles south of the 299° bearing from the LAKER LOM (lat. 45° 32' 29" N., long. 122° 27' 40" W) extending from the 5-mile radius to the LOM, excluding the portion within the Troutdale, Oregon, Control Zone when it is effective."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Seattle, Washington, on December 18, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-324 Filed 1-4-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 41266-4166]

15 CFR Part 377

Removal of the Short Supply Validated Licensing Requirement on Exports of Linear Alpha Olefins and Other Acyclic Organic Compounds

AGENCY: Office of Industrial Resource Administration, International Trade Administration, Department of Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The International Trade Administration, having solicited and reviewed public comments and consulted with other agencies of the Government, has decided to remove linear alpha olefins and other acyclic organic compounds from the list of refined petroleum products subject to validated licensing for export. This rule implements the decision. As a result, these commodities may now be exported under general license G-NNR, unless they are derived from petroleum produced from a Naval Petroleum Reserve. (In a related issuance published today, ITA is soliciting comment on a proposal to revise the list of commodities currently subject to Naval Petroleum Reserves Production Act requirements.)

DATES: This rule is effective January 7, 1985. Comments must be received by February 6, 1985.

FOR FURTHER INFORMATION CONTACT: John Richards, Director, Office of Industrial Resource Administration, International Trade Administration (Telephone: 202/377-4506).

SUPPLEMENTARY INFORMATION: On June 29, 1984, (49 FR 26751) an advanced notice of proposed rulemaking was published in the **Federal Register** requesting public comment on the removal of the validated licensing requirement for linear alpha olefins and other similar commodities. Fourteen comments were received from the public. All comments supported the removal of the validated licensing requirement of linear alpha olefins. Six of the commenters wrote in support of the removal of the validated licensing requirement on comparable commodities, known collectively as acyclic organic compounds. Most commenters confirmed that linear alpha olefins and comparable commodities do not have likely energy end-uses. They recommend that the validated licensing requirement be lifted.

The International Trade Administration, in consultation with other U.S. agencies, has determined that commodities that are not likely to be used as an energy source should be removed from the list of refined petroleum products that require a validated license for export. As a result, linear alpha olefins and comparable commodities described as acyclic organic compounds are shifted from Commodity Group N to Group Q set out in Supplement No. 2 to Part 377. These commodities are added to the list of hydrocarbons already a part of Group Q. Commodities in Group Q may be exported under General License G-NNR, unless they are derived from petroleum produced from a Naval Petroleum Reserve.

As of the effective date the licensing requirement for these commodities is removed. However, this change does not affect any enforcement actions involving violations of the licensing requirement that may have occurred while it was in effect.

This rule is issued as an interim final rule, but comments will be considered in developing final regulations. It has been determined that a general notice of proposed rulemaking, as set out in Section 553 of the Administrative Procedure Act (5 U.S.C. 553), is unnecessary because the public has had an opportunity to provide comments on this action in response to the advanced notice of proposed rulemaking, and those comments all favor removal of one or more validated licensing requirements. It has also been determined that the requirement of 5 U.S.C. 553(d) for a 30 day delay in effective date is inapplicable to this action because it relieves a restriction (5 U.S.C. 553(d)(1)). In view of the finding that notice and comment are unnecessary, the Regulatory Flexibility Act does not apply (5 U.S.C. 603).

The period for submission of comments will close on February 6, 1985. All comments received before the close of the comment period will be considered by the Department. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured.

All public comments will become a matter of public record, and will be available for public inspection and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning this rule will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001-B, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20230. Records in this facility may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling 202/377-3031.

It has been determined that this action will have no significant impact on the human environment.

ITA has determined that this regulation is not a major rule within the meaning of section 1 of Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises

in domestic or export markets. Therefore, a Regulatory Impact Analysis will not be prepared.

This rule reduces a burden under the Paperwork Reduction Act by eliminating the need for a validated license. The record keeping requirement associated with this rule has been cleared under OMB control no. 0625–0104.

List of Subjects in 15 CFR Part 377

Exports.

Accordingly, the Export Administration Regulations (15 CFR Parts 368—399) are amended as follows:

PART 377—[AMENDED]

1. In Supplement No. 2 to Part 377, Group N is revised to read as follows:

Supplement No. 2 to Part 377 Petroleum and Petroleum Products Subject to Short Supply Licensing Controls

* * * * *

Group N

475.3500 475.6781	Naphthas, but excluding specialty naphthas which are packaged and shipped in drums or containers not exceeding 55 U.S. gallons per container and which will be exported in such drums or containers.	Bbl.

* * * * *

2. In Supplement No. 2 to Part 377, Group Q is amended by revising the entry—

431.0290	Acetylene	Lb.
to read—		
431.0295	Acyclic organic compounds, n.s.p.f.	Lb.

by revising the entry—

431.0290 475.2520 475.2560	High purity hydrocarbons, and blends of hydrocarbons used for engine calibration, fuel certification and other laboratory applications in quantities of 10,000 gallons or less
to read—	
475.2520 475.2560	High purity hydrocarbons, and blends of hydrocarbons used for engine calibration, fuel certification and other laboratory applications in quantities of 10,000 gallons or less

and by inserting an entry reading—

431.0270	Linear alpha olefins (C–6 to C–30 range).	Lb.
after the entry reading—		
431.0260	Tetrapropylene	Lb.

3. Supplement No. 3 to Part 377 is amended by revising the entry—

431.0290	Acetylene, and other hydrocarbons, n.s.p.f.
to read—	
431.0295	Acyclic organic compounds, n.s.p.f. and by inserting
the entry—	
431.0270	Linear alpha olefins (C–6 to C–30 range)
after the entry reading—	
431.0250	Propylene

Authority: Secs. 203, 206, Pub. L. 95–223, as amended (50 U.S.C. 1702, 1704); E.O. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984); Sec. 103, Pub. L. 94–163 as amended (42 U.S.C. 6212); E.O. 11912 of April 13, 1976 (41 FR 15825, as amended); Section 201(10), Pub. L. 94–258 amending 10 U.S.C. 7430.

Dated: January 2, 1985.

John A. Richards,

Director, Office of Industrial Resource Administration.

[FR Doc. 85–330 Filed 1–4–85; 8:45 am]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–21583; File No. S7–787]

Designation of National Market System Securities

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of final rule amendments.

SUMMARY: In response to a petition from the NASD, the Commission is adopting amendments to its rule governing the designation of securities qualified for trading in a national market system. These amendments substantially increase the number of securities that are eligible for designation as National Market System Securities.

EFFECTIVE DATE: January 22, 1985.

FOR FURTHER INFORMATION CONTACT: Andrew E. Feldman, Esq., (202) 272–2388, Room 5190, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Summary

The Securities and Exchange Commission ("Commission") today is adopting amendments to Rule 11Aa2–1 ("Rule")[1] under the Securities Exchange Act of 1934 ("Act"),[2] which establishes procedures by which certain securities are designated as qualified for trading in the National Market System ("NMS Securities"). There are currently 1104 NMS Securities. The principal effects of NMS designation at this time are that designated OTC securities are subject to last sale reporting and firm quote requirements. Six months ago, the Commission proposed amendments to the Rule in response to a petition by the National Association of Securities Dealers, Inc. ("NASD"), and solicited comment thereon. Those amendments would have expanded the Rule's qualification standards, and increased the number of over-the-counter ("OTC") securities eligible for NMS designation.

In the proposal release, the Commission noted that its monitoring of trading in NMS Securities has shown that last-sale reporting had benefited the markets for those securities. The Commission also stated that it preliminarily believed that a substantial expansion of the NMS criteria may be appropriate. The Commission today adopts the amendments proposed by the NASD. These amendments make a total of approximately 2500 OTC securities eligible for NMS designation.

II. Background

Section 11A(a)(2) of the Act directs the Commission "to facilitate the establishment of a national market system," and empowers the Commission to designate by rule "the securities or classes of securities qualified for trading in the national market system."

On February 17, 1981, the Commission adopted the Rule to provide criteria and procedures by which certain securities traded exclusively in the OTC market were to be designated as NMS Securities.[3] The Rule employs a two-tiered approach for NMS designation.[4]

[1] 17 CFR 240.11Aa2–1 *See* Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 13992 ("Rule 11Aa2–1 Adoption Release").

[2] 15 U.S.C. 78a *et seq.*, as amended by the Securities Acts Amendments of 1975 ("1975 Amendments"), Pub. L. 94–29 (June 4, 1975), 89 Stat. 97 (1975), U.S. Code Cong. & Ad. News 97.

[3] For a more extensive discussion of the background of Rule 11Aa2–1, see Securities Exchange Act Release No. 15926 (June 15, 1979), 44 FR 36912, 36912–14 ("Rule 11Aa2–1 Proposal Release").

[4] Only OTC securities for which quotation information is disseminated in the NASD's electronic interdealer quotation system ("NASDAQ") are eligible for designation. The Rule, moreover, provides for the removal of the NMS designation "[i]f such security becomes listed and

Continued

Tier 1, which became effective on April 1, 1982, requires that the most actively traded OTC securities be designated as NMS Securities.[5] Tier 2, which became effective on February 1, 1983, permits certain additional actively traded OTC securities to become NMS designated at the election of the issuer.[6] Under the less stringent Tier 2 criteria, a far larger group of OTC securities are eligible for designation.[7]

The primary effect of designating OTC stocks as NMS Securities at the present time is to require that transactions in such securities be reported in a real-time system in accordance with the Commission's last sale reporting rule,[8] and that quotations for such securities be firm as to the quoted price and size in accordance with the Commission's firm quotation rule.[9] In adopting the Rule, the Commission determined, among other things, that real-time transaction reporting and firm quotations would increase market efficiency and enhance opportunities for public investors to obtain best execution of their orders.[10]

On October 1, 1981, the Commission published for public comment a petition,[11] submitted by the NASD, to relax substantially the Tier 2 designation criteria to allow more issuers of OTC securities to elect NMS status.[12]

On January 7, 1982, the Commission deferred final action on the NASD's 1981 petition to expand the critera for Tier 2 designation.[13] The Commision stated that the deferral would allow an orderly phase-in of Tier 2 securities, and would provide an opportunity to study the effects of transaction reporting on existing NMS Securities before making a final determination on whether to expand the universe of eligible securities.[14]

Also on January 7, 1982, the Commission approved the NASD's "National Market System Securities Designation Plan with Respect to NASDAQ Securities" ("Designation Plan") which had been filed pursuant to the Rule.[15] Accordingly, the NASD designated the first Tier 1 NMS Securities on April 1, 1982.

In response to concerns raised by market makers about the onset of last sale reporting in numerous Tier 2 securities, the Commission, on December 1, 1982, approved an amendment to the Designation Plan to provide for the phasing in of those securities meeting the Tier 2 voluntary designation criteria.[16] The phase-in feature of the Designation Plan provided for the designation of 100 eligible securities per month, and for a halt in designation between February 8, 1983 and April 29, 1983, while the NASD studied the impact of last sale reporting on the markets for NMS Securitie as well as the ability of the NASDAQ system to accommodate the reporting of additional NMS Securities.[17]

The NASD's study concluded that NMS designation does not adversely affect market makers or issuers of NMS Securities. Specifically, the NASD's study determined that last sale reporting had no adverse impact on quotation spreads and intraday price volatility after securities became NMS designated, that NMS designation was a factor in increasing NASDAQ volume, and that there had been no appreciable decline in market marker participation in comparable NMS Securities. Nonetheless, the NASD recommended a reduction in the number of Tier 2 Securities designated each month in order to reduce the impact on market makrers of reporting increasing numbers of OTC securities in a short period of time.[18] On May 20, 1983, the Commission approved an amendment of the Designation Plan that reduced the number of eligible securities to be designated per month from 100 to 50.[19]

On February 10, 1984, the NASD again petitioned the Commission to amend the Rule to increase the number of securities eligible for voluntary designation as NMS Securities.[20] The NASD asserted that the "NASDAQ/National Market System has moved from concept to reality" in the two years since the Commission deferred final action on the NASD's 1981 petition.[21] The NASD also affirmed the findings of the NASD's 1983 NMS Securities study.[22] Accordingly, the

registered, or admitted to unlisted trading privileges, on an exchange." 17 CFR 240.11Aa2-1 (a), (b).

In adopting the Rule, the Commission concluded that imposing NMS qualification criteria upon listed securities was unnecessary at that time because most listed securities already were included in national market system last sale and quotation disclosure facilities, and selection of less than all reported securities as NMS Securities could create unwarranted distinctions among these securities. Nonetheless, the Commission specifically left open whether exchange traded securities should be designated as NMS Securities in the future. *See* Rule 11Aa2-1 Adoption Release, *supra* note 1, 48 FR at 13994, 95.

[5] 17 CFR 240.11Aa2-1(b)(4)(i). The current Tier 1 criteria for mandatory NMS designation require that the issuer of the NASDAQ security must have net tangible assets of at least $2,000,000 and capital and surplus of at least $1,000,000. In addition, there must be at least 500,000 publicly owned shares of stock outstanding with a total market value of at least $5,000,000. Furthermore, the price per share must be $10 or more, the average trading volume per month must be at least 600,000 shares, and there must be at least four NASDAQ market makers in the security.

[6] 17 CFR 240.11Aa2-1(b)(4)(ii). The current Tier 2 criteria for NMS designation require that the issuer have net tangible assets of at least $2,000,000 and capital and surplus of at least $1,000,000. In addition, there must be at least 250,000 publicly owned shares with a market value of at least $3,000,000. Furthermore, the price per share must be $5 or more, the average trading volume per month must total 100,000 shares, and there must be at least four NASDAQ market makers in the security.

[7] There currently are approximately 245 Tier 1 NMS Securities and 859 Tier 2 NMS Securities. An additional 263 OTC securities are eligible for designation under the present NMS Tier 2 criteria.

[8] 17 CFR 240.11Aa3-1.

[9] 17 CFR 240.11Ac1-1.

[10] *See* Rule 11Aa2-1 Adoption Release, *supra* note 1, 46 FR at 13996.

[11] *See* Securities Exchange Act Release No. 18131 (October 1, 1981), 46 FR 49594 ("1981 Petition Proposal Release").

[12] Specifically, the NASD proposed two alternative sets of Tier 2 criteria that it claimed were based generally on the listing standards of the American Stock Exchange, Inc. ("Amex"). (The Amex, however, asserted that these standards were not equivalent to its standards. *See* Letter from Richard O. Scribner, Executive Vice President, Amex, to George Fitzsimmons, Secretary, SEC, (November 18, 1981.)) One set of criteria would cover relatively smaller companies that had a history of earnings, while the other set of criteral would cover relatively larger companies that had a substantial operating history, although their recent operations may not have been profitable. The NASD estimated that a total of approximately 800 additional OTC securities would be eligible for designation under these standards at that time. Letter from S. William Broka, Secretary, NASD, to George A. Fitzsimmons, Secretary, SEC (July 24, 1981) ("1981 NASD Proposal"). The NASD estimates that approximately 500 additional securities would be eligible under these standards now.

[13] Securities Exchange Act Release No. 18397 (January 7, 1982), 47 FR 2079 ("Deferral Release").

[14] Deferral Release, *supra* note 13, 47 FR at 2082.

[15] Securities Exchange Act Release No. 18399 (January 7, 1982), 47 FR 2226. The NASD's Designation Plan generally provides procedures for designating NMS Securities, determining substantial compliance with the designation criteria, and publishing lists of designated securities. The plan also establishes maintenance criteria for NMS Securities, and criteria for terminating or suspending the designation of NMS Securities.

[16] Securities Exchange Act Release No. 19286 (December 1, 1982), 47 FR 55357.

[17] Securities Exchange Act Release No. 19288 (December 1, 1982), 47 FR 55357.

[18] *See* Securities Exchange Act Release No. 19797 (May 20, 1983), 48 FR 24823.

[19] *Id.*

[20] Letter from S. William Broka, Secretary, NASD, to George A. Fitzsimmons, Secretary, SEC (February 10, 1984).

[21] For a discussion of the NASD's 1981 petition, see *supra* notes 11–12 and accompanying text.

[22] The NASD's petition also indicated that market makers have not found last sale reporting as burdensome as they had initially feared, and that securities designated NMS Securities do not appear to have suffered any major decrease in market making or liquidity. For further information on the trading experience of NMS Securities, see Letter from John T. Wall, Executive Vice President, NASD, to Brandon Becker, Assistant Director, SEC (February 10, 1984) ("NASD February 1984 Letter").

NASD's petition proposed that last sale reporting be extended to all NASDAQ National List securities,[23] making its NASDAQ National List standards the Tier 2 designation criteria.[24]

On April 30, 1984, the Commission published the NASD's petition for public comment by proposing Rule amendments that would make the Tier 2 designation criteria identical to the two sets of alternative standards used for determining eligibility for the NASDAQ National List. [25] The first proposed alternative criteria, applicable to newer companies with substantial net income but less extensive assets, would require that an issuer have net income in the previous fiscal year, or in two of the last three fiscal years, of $300,000, and at least 350,000 publicly held shares with a market value of $2,000,000. This alternative also would require a minimum bid price per share of three dollars and a minimum of two NASDAQ market makers in the stock for five business days prior to the application date. The second proposed alternative criteria, applicable to longer-established companies with substantial assets, would require that the issuer have operated for four years, have capital and surplus of $8,000,000 and have at least 800,000 publicly held shares with a market value of $8,000,000. This second alternative also would require a minimum of two NASDAQ market makers for five business days before the application date, but would impose no minimum price per share requirement.[26]

In proposing these amendments to the Rule, the Commission stated that it believed that trade reporting for NMS Securities has enhanced pricing efficiency and opportunities for improved execution of customer orders. While recognizing that NMS transaction reporting needed further improvement, the Commission also stated that it preliminarily believed that a substantial expansion of the range of securities eligible for Tier 2 designation may be appropriate.[27] In this regard, the Commission noted that, whereas the existing Tier 2 standards related both to the issuer and the trading characteristics of the security, the criteria proposed by the NASD focused primarily on issuer characteristics.[28] The Commission noted that the proposed amendments would eliminate the present price per share requirement for the second of its alternatives, eliminate Tier 2's present trading volume requirement, and reduce the market maker requirement.[29] Accordingly, the Commission solicited comment on the broad issue of the expansion of the number of securities eligible for NMS designation, and on the importance of the Rule's current minimum share price, trading volume, and market maker requirements.[30]

III. Comments

The Commission received 347 comments on the proposed amendments. In addition to three comments from the NASD, comments were received from one organization of OTC issuers, 215 OTC issuers, one OTC trading association, 113 broker-dealers, five exchanges, two federal agencies, one professional association, two consultants, four newspapers, one law firm, and two investment advisers. Most commentators focused on the broad issue of whether it was appropriate to expand the number of securities eligible for NMS designation to the level of the NASD's National List, and generally on the importance of retaining minimum bid price, trading volume, and market maker requirements.[31] Other commentators raised concerns regarding the competitive effects of expansion of NMS designation as well as the statutory standards for any such expansion.[32]

The NASD [33] and the vast majority of OTC market participants fully supported the proposed amendments to the Rule.[34] These commentators felt that last sale reporting has benefited securities already designated and that Tier 2 should be extended to National List Stocks. They stated that the benefits presently accruing to Tier 2 issuers, which should also accrue to National List companies, include increased market efficiency, additional exposure,and improved opportunities for best execution.[35] They also said that extending Tier 2 to the National List would not significantly increase the burden of trade reporting on market makers.[36]

The NASD and a limited number of OTC issuers also asserted that National List companies would be pressured to list on an exchange and seek inclusion in the Consolidated Tape [37] if the Tier 2

[23] For purposes of providing the media with information on NASDAQ securities, the NASD indentifies a "National List" of major issues trading in NASDAQ, and an "Additional List" of other active NASDAQ securities. The National List, determined primarily on the basis of issuer financial criteria, currently contains approximately 1,530 issues; the Additional List, determined on the basis of dollar trading volume, contains another 1,000 issues. In November 1980, the NASDA adopted the present National List criteria, reflecting issuer quality, in place of its previous dollar trading volume criteria, to reduce the List's focus on high trading volume and to include more major NASDAQ companies with substantial assets but only moderate trading activity. *See The NASDAQ Securities Fact Book*, 1981.

[24] The NASD's petition is discussed in detail in Securities Exchange Act Release No. 20902 (April 30, 1984), 49 FR 19314, 19316–17 ("1984 Petition Proposal Release"), which published for public comment the NASD's petition proposing amendments to the Rule.

[25] *See* 1984 Petition Proposal Release, *supra* note 24.

[26] 1984 Petition Proposal Release, *supra* note 24, 49 FR at 19317. The NASD also proposed a reduction in the designation Plan's maintenance standards for continued NMS designation. The NASD proposed to reduce the maintenance standard's market maker requirement from three to two, and to eliminate the present $1,000,000 annual dollar trading volume requirement. *Id.*

[27] In the 1984 Petition Proposal Release, the Commission noted that making the Tier 2 designation criteria identical to the National List standards could qualify an additional 1,300–1,350 NASDAQ stocks for the NMS. *See id.* at 19316 n.24. Revised data indicates that an additional 1,164 NASDAQ stocks instead could be qualified for the NMS.

[28] *Id.* at 19318.

[29] 1984 Petition Proposal Release, *supra* note 24, 49 FR at 19318.

[30] *Id.* at 19318–19319.

[31] *See infra* notes 33–51 and accompanying text.

[32] *See infra* notes 52–72 and accompanying text.

[33] Letter from Gordon S. Macklin, President, NASD, to George A. Fitzsimmons, Secretary, SEC (June 14, 1984) ("NASD June Comment").

[34] OTC market participants include issuers, broker-dealers, and their respective organizations. Of the 215 issuers and 113 broker-dealers that commented, 207 issuers and 98 broker-dealers fully supported the NASD's proposal. Of the remaining 8 issuers and 15 broker-dealers, approximately two-thirds generally supported the amendments as proposed, but differed with respect to one or two of the three topics upon which comments were solicited.

The two organizations of issuers and broker-dealers that commented fully supported the NASD's proposal. *See* Letter from Wayne G. English, Vice Chairman, National Association of OTC Companies, to George A. Fitzsimmons, Secretary, SEC (June 5, 1984) ("NAOTC Comment"); Letter from Morton N. Weiss, President, National Security Traders Association, to George A. Fitzsimmons, Secretary, SEC (June 14, 1984) ("NSTA Comment"). Other commentators that supported using National List standards for Tier 2 designation criteria included the U.S. Small Business Administration ("SBA") (see Letter from Frank S. Swain, Chief Counsel for Advocacy, SBA, to George A. Fitzsimmons, Secretary, SEC (June 15, 1984)), two consultants, one law firm, and two investment advisers.

[35] *See, e.g.*, NAOTC Comment, *supra* note 34, at 1.

[36] They noted that, despite the initial misgivings of some members of the trading community, real-time reporting of transactions in NMS Securities has not been unduly burdensome. They believe that existing and planned system enhancements and trade reporting procedure revisions by OTC market makers would make NMS trade reporting more efficient and insure that a substantial expansion of Tier 2 would not significantly increase reporting burdens. *See, e.g.*, NASD June Comment, *supra* note 33, at 2–3; NSTA Comment, *supra* note 34, at 1.

[37] The Consolidated Tape, operated by the Consolidated Tape Association ("CTA"), compiles current last sale reports in certain listed securities from all exchanges and market makers trading such securities and disseminates these reports to vendors on a consolidated basis. The CTA comprises the New York, American, Boston, Cincinnati, Midwest, Pacific, and Philadelphia Stock Exchanges, and the

Continued

criteria were not amended to permit them to be designated NMS Securities.[38] These commentators also argued that, as the number of NMS Securities increases, many newspapers would seek to save space by dropping the NASDAQ National List and only publishing information concerning NMS Securities. As a result they claimed that many investors in non-NMS National List securities would lose their primary source of price information for these securities, and the companies themselves would lose exposure.[39]

The NASD and OTC market participants further contended that the National List's financial tests based on issuer characteristics were a better measure of a security's suitability for NMS trading than the existing Tier 2 criteria. They argued that no other market uses listing criteria based on trading and that these criteria should be deleted.

In particular, they argued that an across-the-board minimum bid price standard was not needed because the two proposed sets of alternative Tier 2 criteria contained adequate safeguards to insure that low-priced, speculative "hot issue" stocks could not be designated NMS Securities.[40] They noted that the first proposed alternative has a three dollar minimum bid price and the second proposed alternative, while it does not have a minimum price requirement, is designed for developing companies of substance and is based primarily on issuer characteristics and not trading markets. Noting that stock exchanges have long used issuer characteristics as the basis for their listing standards, they concluded that issuer characteristics should suffice for Tier 2.[41]

The NASD and OTC market participants similarly asserted that the NMS Tier 2 minimum trading volume requirement should be eliminated.[42] These commentators argued that adding a volume test to the financial criteria would create an unstable Tier 2[43] that would not necessarily contain the highest quality NASDAQ stocks with the greatest degree of national interest.[44] They also observed that none of the exchanges prescribes a minimum volume requirement as a condition to listing.

The NASD and OTC trading community further asserted that the requisite number of market makers for Tier 2 designation should be reduced from four to two.[45] These commentators argued that many NASDAQ companies with two or more market makers have sufficient nationwide investor following and trading activity to be NMS Securities. The most important consideration, they believed, was the quality of the market made rather than the number of market makers. The NASD claimed that, although some National List stocks did not have many market makers, the dealers often were major firms who made deep and liquid markets.[46]

Other commentators, however, including a government agency,[47] five stock exchanges,[48] and a professional association,[49] opposed the NASD's proposal.[50] Nonetheless, these commentators generally indicated support for the NASD's extending last sale reporting requirements to OTC stocks on its own.[51]

NASD. New York Stock Exchange ("NYSE") listed stocks are reported on CTA Tape A; Amex and qualifying regional stocks are reported on CTA Tape B.

[38] *See, e.g.*, Letter from William W. Peacock, Vice President, Commercial Bancshares Inc., to George A. Fitzsimmons, Secretary, SEC (June 18, 1984); Letter from Brian K. Mullaney, Secretary, Consumers Water Company, to George A. Fitzsimmons, Secretary, SEC (May 16, 1984). Although the NASD June Comment did not mention this competitive concern, the NASD, in its petition, argued that National List companies might leave NASDAQ and list on an exchange if they could not obtain NMS designation and the exposure it commands. *See* 1984 Petition Proposal Release, *supra* note 24, 49 FR at 19316.

[39] In an effort to ascertain the effect on newspaper coverage of designating all National List stocks as NMS stocks, the Division of Market Regulation ("Division") sent letters soliciting comments from the financial editors of 34 newspapers. Copies of these letters are contained in Public File No. S7-787.

The Division received four letters in response to this solicitation. *See* Letter from Dan Hinson, Assistant Managing Editor, *Wall Street Journal*, to George A. Fitzsimmons, Secretary, SEC (June 12, 1984); Letter from John M. Lee, Business-Financial Editor, *New York Times*, to Andrew E. Feldman, Attorney, Division of Market Regulation (June 15, 1984); Letter from Ken Gepfert, Executive Business Editor, *Charlotte Observer*, to Andrew E. Feldman, Attorney, Division of Market Regulation (June 21, 1984); Letter from Larry Fortner, Editor, *News Tribune & Herald (Duluth)*, to Andrew E. Feldman, Attorney, Division of Market Regulation (June 19, 1984).

The *Wall Street Journal* and the *New York Times*, the only U.S. newspapers that carry tables for NMS, National List, and part or all of the Additional List, indicated that the adoption of the proposed criteria would not change the number of OTC issues eligible for reporting in their financial pages. The *Charlotte Observer* and the *News Tribune & Herald*, which currently publish only an NMS table, indicated that they would not publish trade reports for all NMS Securities if there were 2,500 of them.

[40] *See, e.g.*, *NASD June Comment*, *supra* note 33, at 3-4; NAOTC Comment, *supra* note 34, at 2; NSTA Comment, *Supra* note 34, at 2.

[41] *See, e.g.*, NASD June Comment, *supra* note 33, at 2. The NASD observed that the Amex's alternative listing standards (see Section 102 of the *Amex Company Guide* do not contain a minimum price requirement, and that several of the regional stock exchanges do not have any bid price test in their listing.

[42] *See, e.g.*, NASD June Comment, *supra* note 33, at 1-2, 4; NAOTC Comment, *supra* note 34, at 2; NSTA Comment, *supra* note 34, at 2.

[43] These commentators cited the experience of the National List from January 1981 to December 1983, when inclusion was based on dollar volume instead of financial criteria. Because of the dollar volume standard, they stated that the composition of the National List shifted in response to changing investor preferences between low-priced speculative issues and longstanding financially strong companies. These commentators believed that the resulting periodic revisions of the National List ignored the underlying characteristics of the issuer, and confused investors.

[44] A number of banks, insurance companies, and other established companies particularly were opposed to a minimum trading volume requirement. These commentators asserted that, although inactive, their stocks were not speculative and often satisfied the current Tier 2 bid price standard and, sometimes, the current market maker criteria as well. They stated that it was unfair to deprive their companies of the advantages of last-sale reporting and investor access to basic price information simply because their securities traded less actively.

See e.g., Letter from William H. Cowie, Jr., President, Union Trust Bancorp., to George A. Fitzsimmons, Secretary, SEC (June 29, 1984); Letter from J. Verne McKenzie, Treasurer, Berkshire Hathaway Inc., to George A. Fitzsimmons, Secretary, SEC (May 29, 1984); Letter from Robert L. Fesler, Executive Vice President and Chief Financial Officer, Merchants National Corporation, to George A. Fitzsimmons, Secretary, SEC (June 4, 1984).

[45] *See, e.g.*, NASD June Comment, *supra* note 33, at 4-5; NAOTC Comment, *supra* note 34, at 2; NSTA Comment, *supra* note 34, at 2.

[46] *See, e.g.*, NSTA Comment *supra* note 34, at 2. *But see infra* note 72.

[47] Letter from James McAfee, Associate Secretary, Board of Governors of the Federal Reserve System, to George A. Fitzsimmons, Secretary, SEC (August 28, 1984) ("FRB Comment").

[48] Letter from Robert J. Birnbaum, President, Amex, to George A. Fitzsimmons, Secretary, SEC (July 16, 1984) ("Amex Comment"); Letter from Charles J. Mohr, Chairman and Chief Executive Officer, Boston Stock Exchange, to George A. Fitzsimmons, Secretary, SEC (August 10, 1984) ("BSE Comment"); Letter from Kenneth I. Rosenblum, President, Midwest Stock Exchange, to George A. Fitzsimmons, Secretary, SEC (August 8, 1984) ("MSE Comment"); Letter from James E. Buck, Secretary, New York Stock Exchange, to George A. Fitzsimmons, Secretary, SEC (July 25, 1984) ("NYSE Comment"); Letter from Nicholas A. Giordano, President, Philadelphia Stock Exchange, to George A. Fitzsimmons, Secretary, SEC (August 7, 1984) ("Phlx Comment").

[49] Letter from Richard M. Phillips, Chairman, Committee on Federal Regulation of Securities, John M. Lifton, Chairman, Subcommittee on Securities Markets and Market Structure, and John T. Buckley, Drafting Committee, Section of Corporation, Banking and Business Law, American Bar Association, to George A. Fitzsimmons, Secretary, SEC (July 16, 1984) ("ABA Comment").

[50] In addition, 2 of 214 issuers and 3 of 113 broker-dealers that commented opposed the proposed amendments to the Rule. These commentators generally indicated that the current Tier 2 criteria, with minor modification in some instances, should be retained.

[51] For further discussion of this issue, see *infra* notes 74-77 and accompanying text.

The Amex, the NYSE, the Boston Stock Exchange, Inc. ("BSE") the Midwest Stock Exchange, Inc. ("MSE"), and the Philadelphia Stock Exchange, Inc. ("Phlx") also opposed extending Tier 2 to the NASD's National List.[52] The Amex comment letter in particular raised a number of questions concerning this action.

The Amex argued that the Commission would violate its mandate from Congress to establish an NMS if it adopted amendments to the Rule eliminating trading characteristics from the designation criteria. Analyzing the 1975 Amendments and their legislative history, the Amex asserted that Congress envisioned that "qualified securities would trade in an NMS of multiple dealer and auction markets linked by communication and data processing facilities." The securities that Congress intended to be qualified for NMS designation, the Amex continued, were those that would benefit from multiple trading in linked markets. The Amex contended that the legislative history of the 1975 Amendments requires the Commission to designate qualified securities based on market characteristics such as trading volume, price, and number of stockholders. To rely exclusively on issuers' characteristics, the Amex concluded, would be inconsistent with the statutory concept of qualified securities.[53]

The NASD responded to the Amex's arguments in a supplemental comment letter.[54] The NASD contended that both the statutory language and legislative history explicitly anticipated the development of direct subsystems of the National Market System. The NASD stated that Congress meant for the NMS to develop by preserving existing competing markets, and by accommodating both dealer and auction trading principles. The NASD also argued that Congress gave the Commission maximum flexibility to define the specific elements of an NMS and its subsystems. That flexibility, the NASD continued, extended to determinations of what constituted qualified securities for trading in an NMS subsystem such as NASDAQ/NMS. Contending that the references to market characteristics in the legislative history applied only to auction-type trading, the NASD stated that the Commission was not required to base the designation criteria for NASDAQ/NMS Tier 2 on tests such as trading volume.[55]

The Amex further argued that the Tier 2 elements of the Rule should be rescinded altogether. The Amex asserted that permitting issuers of qualified securities to choose whether to be designated was contrary to the intent of Congress in enacting the 1975 Amendments. The Amex contended that the legislative history is clear that issuers should not be able to veto NMS designation. Hence, the Amex continued, the Commission improperly gave issuers of the less actively traded OTC securities qualified under Tier 2 veto power over designation by making Tier 2 dependent upon issuer choice.[56]

The NASD responded that Congress meant only for issuers not to be able to veto designation for their securities when mandated by Commission rule, not that voluntary participation in NMS facilities would be inappropriate. In fact, the NASD contended that Congress implicitly endorsed the concept of issuer choice by recognizing that issuers could participate in NMS facilities by listing on an exchange. The choice to "list" on NASDAQ/NMS, the NASD concluded, is identical to the choice to list on an exchange.[57]

The Amex also argued that the Tier 2 designation mechanism should be rescinded because it is misleading and anticompetitive. Stating that Tier 2 simply is a means for bringing the level of market disclosure for OTC securities up to the level that has been available on the stock exchanges for years, the Amex contended that no OTC security can properly be regarded as trading in the NMS unless issuers and investors receive the benefits and protections that would be provided by competition among the various exchanges and OTC markets. NASD efforts to equate transaction reporting of NASDAQ securities with the NMS mandated by Congress, the Amex continued, have created confusion among issuers and investors and have skewed in the NASD's favor the competitive balance that was a fundamental objective of the 1975 Amendments. The Amex, therefore, concluded that Tier 2 designation imposes unfair burdens on the exchanges in competing with the OTC markets.[58]

The NASD responded that there is nothing misleading or anticompetitive about including certain OTC securities in the NASDAQ/NMS subsystem pursuant to Tier 2. The NASD stated that it has only claimed that Tier 1 and Tier 2 are the NASDAQ components of an NMS, not that NASDAQ constitutes the NMS.[59]

The Amex also asserted that Tier 2 designation is unnecessary to bring the advantages of last sale reporting to the OTC market. It argued that the NASD can amend its rules to provide OTC stocks with last sale reporting without NMS designation. If this were done, the Amex noted, decisions involving which stocks should have trade reporting would not be constrained by the qualified securities concept or by formal Commission rulemaking.[60]

The NASD responded that bringing real-time trade reporting to NASDAQ securities was an integral part of the Congressionally-mandated NMS. Moreover, the NASD argued that for it to use its authority under section 15A of the Act to impose transaction reporting for NASDAQ securities, the Commission first would have to amend the Rule and the structure of related rules under Section 11A of the Act. The NASD concluded that this duplicative rulemaking would contravene the intent of Congress, for under the 1975 Amendments the Commission is supposed to regulate directly the distribution of securities information.[61]

---

[52] *See* letters cited *supra* note 48.

[53] Amex Comment, *supra* note 48, at 6–20.

[54] Letter from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to Shirley E. Hollis, Acting Secretary, SEC (September 7, 1984) ("NASD September Comment").

[55] NASD Supplemental Comment, *supra* note 54, at 19–25.

[56] Amex Comment, *supra* note 48, at 22–25.

[57] NASD September Comment, *supra* note 54, at 11–13.

[58] Amex Comment, *supra* note 48, at 25–36. The BSE and MSE similarly argued that NMS designation of OTC stocks allows for unfair competition. These exchanges noted that the NASD had asserted that, unless Tier 2 was expanded to the level of the National List, National List companies would be pressured to list on an exchange in order to be included in the Consolidated Tape and maintain their present level of visibility. The BSE stated that this argument incorrectly presupposes that National List companies would meet the minimum requirements of Tape B eligibility. BSE Comment, *supra* note 48, at 2. Moreover, the MSE asserted that NMS Securities and even National List stocks receive substantially more media exposure than Tape B eligible securities listed exclusively on a regional exchange. The NASD has used this competitive advantage, the MSE continued, to encourage regional delisting. Making National List securities eligible for NMS designation, the MSE concluded, would further enhance the NASD's competitive advantage. MSE Comment, *supra* note 48, at 2–4.

[59] The NASD argued that the label "National Market System Securities" actually avoids confusion because it properly identifies a distinct group of OTC securities which the Commission has designated as NMS Securities. The NASD added that, if the Commission designated exchange-listed securities as NMS Securities, an exchange such as the Amex would be free to refer to its listings as Amex/NMS Securities. NASD September Comment, *supra* note 54, at 13–17.

[60] Amex Comment, *supra* note 48, at 37–46.

[61] NASD September Comment, *supra* note 54, at 17–19.

In addition to arguing for the abolition of Tier 2, the Amex asserted that Tier 1 securities should continue to be designated only if they are promptly included in all NMS facilities and initiatives. The Amex argued that the exchange and OTC markets should be able to compete for volume in Tier 1 securities and that the Commission should favorably consider exchange applications for unlisted trading privileges. The Amex also argued that rules prohibiting trade-throughs and manipulative short sales, and requiring confirmations to break out dealer mark-ups should apply to Tier 1 securities.[62]

The NASD responded that there was no need to consider any of these issues in the current rulemaking proceeding. The NASD maintained that, as the Commission already has deferred these issues, they need not be reexamined before the Commission can approve the proposed amendments to the Rule.[63]

The Amex subsequently elaborated on two of its arguments against extending Tier 2 to the NASD's National List.[64] Asserting that it would be inappropriate to create an NMS subsystem for OTC stocks, the Amex argued that Congress intended for all common stocks to be in the same NMS, regardless of where or how traded.[65] Also asserting that NMS designation gives the NASD a significant competitive advantage over the exchanges in the competition for listings, the Amex argued that the NASD should have to bring OTC stocks into market disclosure facilities without the Rule.[66]

The NASD responded to both arguments.[67] Asserting that Congress apparently contemplated auction and dealer subsystems of an NMS, the NASD argued that Amex's narrow construction of the term "subsystem" is unwarranted and not supported by the statute or its legislative history.[68] The NASD also asserted that there was no evidence that NMS designation for OTC securities placed the exchanges at a competitive disadvantage. The NASD continued that if the exchanges nevertheless thought they were being hurt by NMS designation of OTC securities, they could petition to have the Commission also include their securities within the scope of the Rule.[69]

The Board of Governors of the Federal Reserve System ("FRB") asserted that, in view of an FRB proposal to make all NMS Securities automatically marginable,[70] the proposed amendments to the Rule should not be adopted.[71] The FRB noted that the proposed amendments, combined with the FRB proposal, would extend automatic marginability to a much larger number of OTC securities. The FRB questioned whether all National List securities were suited for margin trading. It stated that Congress intended that marginable securities should have sufficiently deep and liquid markets to insure that marginability would not be likely to increase volatility, and that the FRB traditionally has based margin eligibility standards on the trading characteristics of securities. It concluded that the Tier 2 minimum market maker, share price, and trading volume tests, should be retained.[72]

IV. Discussion

After careful consideration, the Commission has determined to adopt the revised Tier 2 criteria proposed by the NASD, thus expanding the number of securities eligible for designation. The Commission believes that the institution of last sale reporting in the OTC market has been extremely successful and should be expanded through broadening the Tier 2 criteria of the NMS Rule. The Commission also believes that this expansion in Tier 2 criteria is within its discretion under the authority granted in the Act to designate securities qualified for the National Market System, including subsystems thereof. Specifically, the Commission believes that this expansion is justified because it provides additional OTC securities with the benefits of last sale reporting, and is consistent with the Commission's ongoing consideration of whether to include some or all NMS Securities in other NMS initiatives.[73]

A. Last Sale Reporting

Last sale reporting in the OTC market has provided investors with the benefit of more detailed information concerning executions in the OTC market. In addition, last sale reporting has enhanced market efficiency and increased the public exposure of market information concerning NMS issuers. Moreover, comprehensive monitoring of OTC trading indicates that last sale reporting has not had an adverse effect on the markets for NMS Securities.[74] The Commission also notes that issuers of 859 of the approximately 1125 eligible Tier 2 securities have sought designation of their securities, and over 210 issuers of NASDAQ securities not eligible under current Tier 2 criteria have commented in this proceeding in favor of extending last sale reporting to their securities.

The Commission also recognizes that OTC market makers, who historically have had serious reservations about last

[62] Amex Comment, *supra* note 48, at 47–63. For a more complete discussion of unlisted trading privileges in OTC securities, see Securities Exchange Act Release No. 21498 (November 16, 1984), 49 FR 46156.

[63] NASD September Comment, *supra* note 54, at 6–8.

[64] Letter from Alton B. Harris, Coffield Ungaretti Harris & Slavin, to Richard G. Ketchum, Director, Division of Market Regulation (October 23, 1984) ("Amex Supplemental Comment").

[65] *Id.* at 2–5.

[66] *Id.* at 5–8.

[67] Letter from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to Shirley Hollis, Acting Secretary, SEC (November 6, 1984) ("NASD November Comment").

[68] *Id.* at 1–2.

[69] NASD November Comment, *supra* note 67, at 2–3.

[70] The FRB proposed amendments to its margin regulations to provide automatic marginability to all NMS Securities in response to a petition by the NASD. Under previous FRB margin regulations, OTC stocks had to appear on the FRB's Margin List to be eligible for margin. The FRB approved these amendments effective November 13, 1984. *See* Federal Reserve Docket R–0512 (August 30, 1984), 49 FR 35756.

[71] *See* FRB Comment, *supra* note 47, at 2. A committee of the American Bar Association ("ABA") expressed similar views, in addition to arguing that the NASD's petition should be rejected based on the legislative history of the 1975 Amendments. *See* ABA Comment, *supra* note 49, at 3.

[72] FRB Comment, *supra* note 47, at 4. In support of its views, the FRB discussed in detail the importance of standards for market makers, trading volume, and minimum share price in selecting marginable securities. With respect to the number of market makers, the FRB noted that, unlike exchange specialists, NASDAQ market makers have no affirmative obligation to make a continuous market. The FRG stated that, under this system, "a minimum of two market makers does not seem enough to generally ensure a broad liquid market with characteristic small price spreads." *Id.* at 2. With respect to a minimum volume requirement, the FRB stated that Congress mandated that only actively traded OTC stocks be marginable. The FRB also asserted that the argument that there should be no volume criteria for NMS designation because there was none for exchange listing ignored the inherent differences between exchange and OTC markets. *Id.* at 2–3. With respect to a minimum price per share, the FRB stated that such a standard is generally used to classify securities for credit purposes and for exchange listing. Noting that the Commission has uncovered a long history of abuses in connection with very low priced securities, the FRB asserted that a $3 minimum price may be too low for initial margin eligibility. *Id.* at 3–4.

[73] The Commission notes that one effect of extending NMS eligibility to all National List securities is that, under FRB rules, these securities will become eligible for automatic marginability. *See supra* note 70. The Commission has determined to extend NMS eligibility on the basis of the standards in Section 11A of the Act, rather than on the issue of margin eligibility; the Commission notes that if the FRB deems the effect of the Commission's action in terms of margin to be inappropriate, the FRB can readdress its decision to grant automatic marginability to all NMS Securities.

[74] For a discussion of the NASD's monitoring of Tier 1 securities and the initial Tier 2 securities, see *NASDAQ News*, Vol. 8, No. 1, May 1983, at 1 ("NASDAQ News").

sale reporting, widely believe that last sale reporting in the OTC market has been beneficial and should be extended.[75] The Commission believes that this change in attitude toward last sale reporting by market makers, who are most burdened by the requirements of last sale reporting, indicates the value of last sale reporting. It also suggests that the concerns previously expressed regarding the impact of last sale reporting on the liquidity and efficiency of the markets are not as substantial as some orginally believed.[76]

Finally, the Commission notes that even those commentators opposed to the NASD's petition took care to address separately the issues of last sale reporting. These commentators did not question the principle of last sale reporting in the OTC market; rather, they questioned using the NMS Securities designation process as the means of achieving that result.[77] For these reasons the Commission believes that last sale reporting is appropriate for the entire National List, especially if issuers are given the choice as to whether to include their securities in this disclosure system.

B. Statutory Authority

In the 1975 Amendments, Congress directed the Commission "to facilitate the establishment of a national market system for securities (which may include subsystems for particular types of securities with unique trading characteristics)" in accordance with its findings and goals.[78] It further directed the Commission to "designate the securities or classes of securities qualified for trading in the national market system." [79] Although the concept of securities "qualified" for the national market system was central to the scheme of the 1975 Amendments, Congress did not define NMS Securities on the basis of their inclusion in any specific facility or initiative. Rather, Congress delineated securities qualified to be National Market System Securities in terms of the losely defined goals of the national market system.

The 1975 Amendments set forth as goals the availability of quotation and transaction information, the efficient execution of transactions, fair competition between markets, the opportunity for the execution of orders in the best possible market and, where consistent with other goals, the execution of orders without the participation of a dealer.

Recognizing the difficulty of attaining all these goals simultaneously, Congress gave the Commission broad discretion in implementing elements of the NMS mandated by Congress, including designation of NMS Securities, and in achieving the goals expressed by Congress. Congress specifically indicated that, in carrying out these tasks, the Commission should have "broad discretionary powers to oversee the development of a national market system," and "maximum flexibility for working out the details" of the national market system.[80]

Moreover, Congress recognized that these goals and the initiatives to attain them would not apply equally at all times to all securities. Indeed, Congress stated that it was not the goal of the Act "to ignore or eliminate distinctions between exchange markets and over-the-counter markets or other inherent differences or variations in components of a National Market System."[81] Consequently, Congress expressly empowered the Commission to create subsystems of the NMS with respect to securities with unique trading characteristics. It stated that "the SEC would have the power to classify markets, firms, and securities in any manner it deems necessary . . . and to facilitate the development of subsystems within the National Market System."[82] While such a subsystem would be governed by the same goals as apply to the NMS generally, a subsystem could be used to provide flexibility for securities with unique trading characteristics; for example, securities included in an NMS subsystem would not necessarily be included in all NMS initiatives, at least not initially.

The legislative history of the 1975 Amendments also recognized that OTC securities occupied a transitional position among securities in a national market system. It noted that certain OTC stocks were among the stocks that would benefit from trading in a national market system.[83] At the same time, the legislative history acknowledged the differences between OTC and exchange markets, and observed that "securities should trade in a manner most appropriate to their characteristics." [84]

The Commission has proceeded cautiously in setting criteria that designate as NMS Securities only those OTC securities that clearly would appear to benefit from inclusion in national market system facilities. At the same time, it has dealt with these securities separately from listed securities already traded in various NMS facilities,[85] and has proceeded slowly in including OTC securities in NMS initiatives other than transaction and quotation facilities. This caution has been justified in view of the special characteristics of the OTC markets and the unfamiliarity of OTC market makers with transaction reporting; it also is wholly consistent with the evolutionary development of all stages of the national market system.

As part of this evolutionary process, the Commission previously took the position that both issuer quality and trading characteristics should be examined in designating OTC securities as NMS Securities. This cautious approach was based on the OTC market's inexperience with last sale reporting and the desire initially to include as NMS Securities only the more actively traded OTC securities. The Commission now believes that the experience with OTC last sale reporting, coupled with the virtually universal support of commentators, has demonstrated its benefits for a broader class of OTC securities. The Commission also believes that the NASD's standards, combined with issuer election of designation, are sufficient to ensure that only appropriate companies are designated as NASDAQ NMS Securities. This determination is grounded on the Commission's experience with the national market system program for listed securities. This experience has demonstrated that securities, whether or not actively traded, may benefit from national market system initiatives dealing with market linkages, enhanced competition, and increased opportunities for best execution. Therefore, while the Commission initially anticipated that trading characteristic standards might be

[75] *See supra* notes 33–36 and accompanying text.

[76] The NASD's monitoring program noted that on an average few market makers have withdrawn from market making in NMS Securities. *See* NASDAQ News, *supra* note 74, at 3.

[77] *See supra* notes 47–51 and accompanying text.

[78] Section 11A(a)(2) of the Act.

[79] *Id.*

[80] Senate Comm. on Banking, Housing & Urb. Affs., *Report to Accompany S. 249: Securities Acts Amendments of 1975* S. Rep. No. 94–75, 94th Cong., 1st Sess. 7 (Comm. Print 1975) ("Senate Report"), *reprinted in* [1975] U.S. Code Cong. & Ad. News 179, 185.

[81] *Id.*

[82] *Id.*

[83] The Conference Report stated that "the Commission should have the flexibility of establishing subsystems within the national market system which are tailored to the characteristics of the particular types of securities which are to be traded in each subsystem." Committee of Conference, *Conference Report to Accompany S. 249: Securities Acts Amendments of 1975*, H. Conf. Rep. *reprinted in* [1975] U.S. Code Cong. & Ad. News 321, 324.

[84] *See* Senate Report, *supra* note 80, at 16, [1975] U.S. Code Cong. & Ad. News at 194.

[85] *See supra* note 4.

entral to the designation of NMS ecurities, it no longer holds that ssumption.

The Commission also believes that the ier 2 designation standards, which llow issuers to elect to have their ecurities designated as NMS Securities, elp ensure that only appropriate ecurities are designated, and reflect the ommission's cautious approach in this rea. In adopting mandatory Tier 1 tandards, the Commission attempted to nclude those OTC securities which learly belonged in NMS disclosure acilities, in response to Congress' desire hat appropriate stocks be designated as MS Securities regardless of their ssuer's views. In establishing lower Tier standards, the Commission recognized hat some securities subject to these tandards might not be best suited for esignation as NMS Securities, at least n the initial stages of NMS evelopment. Consequently, the ommission allowed issuers, who have strong interest in assuring the best rading conditions for their securities, to lect NMS designation if they believe hat the markets for their securities ould benefit. The Commission ontinues to believe that issuer choice erves a useful function in this area here precise standards are difficult to raw. Moreover, the Commission elieves that, in opposing issuer veto of MS designation for securities clearly uitable for the NMS, Congress did not ar the Commission from relying on ssuer choice as a factor in designating ecurities where securities are less learly suited for NMS designation.[86]

In summary, the statute is silent as to he particular standards which the ommission should employ in esignating NMS Securities. Moreover, he legislative history, while indicating ertain Congressional expectations, oes not mandate the use of any articular standard in the designation rocess. Instead, Congress provided the ommission with the flexibility and iscretion to make its designation eterminations based on the ommission's experience in facilitating he development of a national market ystem. Congress gave the Commission imilar flexibility to employ temporary or permanent NMS subsystems where necessary or appropriate.[87] Given the Congressional desire that the system develop primarily through the interplay of market forces,[88] such flexibility was an absolute necessity. Therefore, the Commission believes that its expansion of Tier 2 criteria to allow designation of all National List securities, and its cautious inclusion of these securities in NMS facilities, is fully consistent with the overall evolutionary development of the NMS and with the Act. It also believes that use of separate Tier 1 and Tier 2 standards and issuer choice in NMS designation is consistent with the Act and within its authority.[89]

C. Other NMS Initiatives

The Commission also is considering including OTC securities designated as NMS Securities in other NMS initiatives. The Commission recognizes that these various initiatives possibly may not be suitable for all OTC securities designated as NMS Securities at this time, but believes it appropriate to consider applying additional NMS initiatives to at least some NMS Securities.

One such initiative is unlisted trading privileges ("UTP"). In conjunction with this release, the Commission has issued a release requesting comment on the issue of granting exchanges UTP in NMS Securities.[90] The Amex, BSE, MSE, and Phlx in their NMS Security comment letters each advocated that the Commission begin granting UTP applications in NMS Securities, so that exchanges could begin trading these securities in competition with OTC market makers. (In addition, the BSE and MSE have filed applications for UTP in certain NMS stocks.) These commentators argued that this competition would be consistent with the statutory goal of enhancing competition between exchange markets and markets other than exchange markets, and could result in enhanced executions for customers.

The Commission's release on UTP requests comment on potential benefits of competition from granting UTP in NMS Securities. It also requests comment on a number of other significant issues, including the competitive implications of granting UTP when exchange members are barred by exchange rules from making competitive OTC markets in most listed stocks, and whether there has been sufficient experience with NMS Securities to reach a conclusion regarding the effects of UTP. If UTP applications are granted in the future, it may be appropriate for the Commission to address additional NMS issues, such as market linkages and price protection.

In addition, the Commission anticipates publishing, in the near future, a release proposing for comment certain changes to Rule 10b–10 under the Act, the customer confirmation rule, to provide disclosure of markups, markdowns, or commission equivalents charged to customers in transactions in NMS Securities. These changes would require broker-dealers trading as principal with customers in NMS Securities to include on the customer confirmations the price at which trades occurred and the markups charged. This disclosure would allow customers to better monitor execution prices and to compare transaction costs between broker-dealers, in furtherance of the statutory goals of efficient execution of transactions and providing the best possible execution for customer orders.

Finally, the Commission anticipates publishing a release requesting comment on broad policy issues with respect to NMS Securities. This release will also request further comment on any possible competitive impact or public misperception resulting from NMS designation.

V. Designation Criteria

The NASD's petition requested that the NMS Rule's Tier 2 designation criteria be amended to use the NASD's

---

[86] In its comment letter, the Amex argues that the Commission should not have adopted Tier 2 criteria giving issuers the option of entering the National Market System. As discussed above, the Commission believes that it has sufficient discretion in facilitating the development of a National Market System to give issuers the ability to designate their securities as NMS Securities. At some later point when the National Market System is better defined and there is more experience with the various National Market System initiatives in which these securities are included, it may be appropriate to revisit the area of issuer choice.

[87] In its supplemental comment, Amex argues that it would be inappropriate to create an NMS subsystem for OTC stocks. *See supra* text accompanying note 65. As discussed above, the Commission believes that Congress granted it sufficient flexibility to create such a subsystem.

[88] Senate Report, *supra* note 60, at 186.

[89] The Commission is concerned, however, about the public perception of the import of NMS designation at this time particularly relative to exchange listing. The Commission emphasizes that Rule 11Aa2–1 has as its sole purpose the identification of NASDAQ securities which would benefit from last sale and firm quotation reporting as well as future NMS initiatives; the Commission has never suggested that NMS designation warrants the quality of these securities.

The Commission also emphasizes that listed securities have been included in the NMS from its inception. All NYSE and Amex securities and many regional listed securities also are included in NMS disclosure facilities. A large number of these securities are included in the Intermarket Trading System ("ITS") linking the exchanges and the OTC markets in listed securities. The Commission, however, chose not to designate listed securities as NMS Securities because those securities had already been included in NMS facilities and initiatives. (*See supra* note 4 In adopting the Rule, there was no intent on the Commission's part to use this initiative as a vehicle to contrast the relative merits of OTC and listed securities.

[90] Securities Exchange Act Release No. 21498 (November 16, 1984), 49 FR 46156.

existing National List criteria. Under these criteria, OTC securities could be designated as NMS Securities at the issuer's election if they satisfy either of two sets of standards.

As described previously,[91] the first alternative standard would require 350,000 publicly held shares with two million dollars in market value, a three dollar minimum bid price, two market makers, and annual net income in the previous year (or in two of the last three fiscal years) of $300,000. The second alternative criteria would require the company to have been operating for four years, to have eight million dollars in capital and surplus, 800,000 publicly held shares with eight million dollars in market value, and two market makers. Both alternatives would eliminate the present Tier 2 criteria of two million dollars in net tangible assets and $100,000 monthly trading volume. They also would reduce the number of market makers required from four to two, and reduce the minimum bid price from five to three dollars for the first alternative and eliminate it for the second alternative.

The issuer assets and capital and surplus standards originally included in Tier 2 were designed to assure that NMS issuers have at least a threshold size.[92] The NASD's proposed criteria, including combinations of capital and surplus, market value, net income, minimum bid price, and years of operation standards build on these standards to ensure that an issuer eligible for NMS designation has an established capital position or is a young but thriving company. After careful consideration of the types of securities that qualify under these standards and comparison of these securities to other reported securities, the Commission regards these alternative standards as sufficient to ensure that securities designated as NMS Securities will benefit from last sale reporting and firm quotation requirements. Accordingly, the Commission has determined to use the NASD's standards as the Tier 2 criteria for eligibility for NMS designation. As discussed previously, the Commission intends to consider what additional NMS facilities or initiatives should be applied to NMS Securities, and at that time will consider whether all or some part of NMS Securities should be included in each initiative.

V. Conclusion

The Commission has adopted amendments to the Rule proposed by the NASD that broaden the Rule's Tier 2 NMS designation criteria. These standards should expand substantially the number of OTC securities eligible for NMS designation. The Commission believes that these criteria, which employ the NASD's present criteria for inclusion in its National List, should ensure that securities eligible for NMS designation have a substantial asset position or public following, and thus will benefit from NMS last sale reporting and firm quotation requirements.

VI. Effective Date

The Commission has determined that these rule amendments should become effective on January 22, 1985, 34 days after public release of these amendments. The Commission finds good cause, pursuant to 5 U.S.C. 553(d)(3), for the rule amendments becoming effective less than thirty days after publication in the **Federal Register** in order that the benefits of last sale reporting may be provided promptly to additional securities and so that the process of designating additional securities as NMS Securities can be begun expeditiously. The Commission has delayed effectiveness of the amendments for 34 days after public release to ensure interested parties have a minimum period of notice of the substance of the amendments before the amendments become effective.

VII. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Act [93] 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 amendments to Rule 11Aa2-1 in light of the standards set forth in Section 23(a) and concludes that adoption of the amendments will not impose any burden of competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes that the amendments will substantially benefit the markets for OTC securities including fostering competition in other markets for such securities, and will further the development of aspects of the NMS, in accordance with the Act. While the Amex and other exchanges have argued that the Tier 2 designation of NMS Securities disadvantages other competing markets, for the reasons discussed at length above [94] the Commission believes that the NMS designation process is appropriately designed to achieve the aims expressed in section 11A of the Act that it does not impose significant competitive burdens on competing markets, and that the competition burdens imposed on other markets are neither unnecessary or inappropriate.

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[95] regarding the amendments to the Rule. The FRFA indicates that the amendments will expand the number of OTC securities eligible for NMS designation from approximately 1,350 to 2,500 and notes that the principal effect of this expansion will be to require broker-dealers to report trades on a real-time basis in these additional securities. The FRFA states that the proposed increase in the number of NMS Securities does not entail significant increases in costs for small broker-dealers, and that any minimal costs resulting from the trade reporting of additional NMS Securities may be offset by benefits to market makers, investors, and the securities markets. Although no commentators specifically referred to the Initial Regulatory Flexibility Analysis in commenting on the proposed changes to the Rule, the FRFA discusses the public comments that raised relevant concerns.

A copy of the FRFA may be obtained by contacting Andrew E. Feldman, (202) 272-2388, 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 recordkeeping requirements, Securities.

VIII. Statutory Basis and Text of the Amendments

Pursuant to the Securities Exchange Act of 1934 and particularly section 11A(a)(2) and 23(a) thereof, 15 U.S.C. 78k-1(a)(2) and 78w(a), the Commission is amending § 240.11Aa2-1 in Chapter II of Title 17 of the Code of Federal Regulations, by revising paragraphs (b)(2)(i) and (b)(4)(ii) and the first sentence of paragraph (b)(2)(iii), adding a new paragraph (b)(4)(iii), and by redesignating current paragraph (b)(4)(iii) as (b)(4)(iv), as follows:

---

[91] *See supra* notes 24-26 and accompanying text.

[92] *See* Rule 11Aa2-1 Adoption Release, *supra* note 1, at 13999.

[93] 15 U.S.C. 78w(a)(2).

[94] *See supra* notes 73-89 and accompanying text.

[95] 5 U.S.C. 601 *et seq.*

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

§ 240.11Aa2-1 Designation of national market system securities.

* * * * *

(b) *Designation criteria.*

* * * * *

(2) * * *

(i) Substantially meets the criteria set forth in paragraph (b)(4)(ii) or (b)(4)(iii) of this section ("Tier 2 criteria");

* * * * *

(iii) Is a warrant to subscribe to a security described in paragraphs (b)(1) or (b)(2)(i) of this section and meets the criteria set forth in paragraph (b)(4)(iv) of this section ("Warrants") shall be designated as national market system securities upon application of the issuer in accordance with the terms of an effective designation plan. * * *

* * * * *

(4) * * *

(ii) *Tier 2 Criteria—Alternative 1.*

(A) The issuer of the security had annual net income of at least $300,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

(B) There are at least 350,000 publicly held shares.

(C) The market value of publicly held shares is at least $2,000,000.

(D) The price per share on each of the five business days prior to the date of application by the issuer is $3 or more.

(E) At least two dealers act as NASDAQ market makers with respect to the security on each of the five business days preceding the date of application by the issuer.

(iii) *Tier 2 Criteria—Alternative 2.*

(A) The issuer of the security has capital and surplus of at least $8,000,000.

(B) There are at least 800,000 publicly held shares.

(C) The market value of publicly held shares is at least $8,000,000.

(D) At least two dealers act as NASDAQ market makers with respect to the security on each of the five business days preceding the date of application by the issuer.

(E) The issuer has a four year operating history.

(iv) *Warrant.* * * *

* * * * *

By the Commission.

John Wheeler,

Secretary

December 18, 1984.

[FR Doc. 85-376 Filed 1-4-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Services

19 CFR Part 113

[T.D. 84-213]

Customs Bond Structure; Revision; Foreign Trade Zones

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule, Correction.

SUMMARY: This document corrects an omission in the regulatory language of a document published in the Federal Register as T.D. 84-213 on October 19, 1984 (49 FR 41152). That document revised the Customs bond structure contained in various parts of the Customs Regulations in 19 CFR Chapter I. In the "Discussion of Comments" portion of the document in item 17 relation to Part 113, Customs Bonds, on page 41158, it was stated that amendments were made to several section of the Customs Regulations to include a provision in the identified bond conditions to provide for liquidated damages for breach of bond conditions not relating to merchandise. Such a provision was necessary because the consequences of default provision of the various proposed bond conditions established the claim for liquidated damages as a multiple of the value of the merchandise involved in the default. If merchandise was not involved in a breach of bond condition there was no provision for liquidated damages. One of the sections indentified for an appropriate amendment was § 113.73, Customs Regulations (19 CFR 113.73), which contains the foreign trade zone operators bond conditions. However, through inadvertance the amendment was not incorporated in the regulatory language. This document corrects that omission.

FOR FURTHER INFORMATION CONTACT: John Holl, Office of Cargo Enforcement and Facilitation (202-566-8151), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Part 113—[AMENDED]

Section 113.73(a)(2), Customs Regulations (19 CFR 113.73(a)(2)), as set forth in T.D. 84-213 in the Federal Register of October 19, 1984, at page 41183, is further amended by adding a sentence at the end of paragraph (a)(2) to read as follows:

§ 113.73 Foreign trade zone operator bond conditions.

(a) * * *

(2) * * * If the principal defaults and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1000 for each default or such other amount as may be authorized by law or regulation. (R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C 66, 1623, 1624)).

Dated: December 31, 1984.

John P. Simpson,

Director, Office of Regulations and Rulings.

[FR Doc. 85-400 Filed 1-4-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Gentamicin Sulfate, Betamethasone Valerate Topical Spray

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering Corp., providing for use of gentamicin sulfate, betamethasone valerate topical spray in dogs for the treatment of infected superficial lesions caused by bacteria susceptible to gentamicin.

EFFECTIVE DATE: January 7, 1985.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Schering Corp., Galloping Hill Rd., Kenilworth, NJ 07033, is sponsor of NADA 132-338 providing for use of gentamicin sulfate, betamethasone valerate topical spray. Each milliliter of spray contains gentamicin sulfate equivalent to 0.57 milligram of gentamicin base and betamethasone valerate equivalent to 0.284 milligram of betamethasone. The spray is recommended for topical use in dogs for the treatment of infected superficial lesions caused by bacteria susceptible to gentamicin. The application is approved, and the regulations are amended accordingly. The basis for the approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21

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

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(ii)(*b*), may be seen in the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 524

Animal drugs, topical.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 524 is amended by adding new § 524.1044f to read as follows:

PART 524—[AMENDED]

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 524.1044f Gentamicin sulfate, betamethasone valerate topical spray.

(a) *Specifications.* Each milliliter of spray contains gentamicin sulfate equivalent to 0.57 milligram of gentamicin base and betamethasone valerate equivalent to 0.284 milligram of betamethasone.

(b) *Sponsor.* See No. 000085 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) The drug is used in dogs in the treatment of infected superficial lesions caused by bacteria sensitive to gentamicin.

(2) For the treatment of infected superficial lesions, the lesion and adjacent area should be properly cleaned before treatment. Excessive hair should be removed. Hold bottle upright 3 to 6 inches from the lesion and depress the sprayer head twice. One actuation of the sprayer delivers 0.7 milliliter of the spray. The drug should be administered with two spray actuations 2 to 4 times daily for 7 days.

(3) If hypersensitivity to any of the components occurs, treatment should be discontinued and appropriate therapy instituted. The antibiotic susceptibility of the pathogenic organism should be determined prior to use of this preparation. Administration of recommended doses beyond 7 days may result in delayed wound healing. Animals treated longer than 7 days should be monitored closely.

(4) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. January 7, 1985.

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

Dated: December 31, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-314 Filed 1-4-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8005]

Income Tax; Taxable Years Beginning After December 31, 1953; Investments in Nonpurpose Obligations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations relating to the tax exempt status of industrial development bonds. These regulations affect all purchasers, governmental issuers, and beneficiaries of tax exempt industrial development bonds. In addition, the text contained in the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective for governmental obligations issued after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Mitchell H. Rapaport of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3740).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations under section 103(c)(6) of the Internal Revenue Code as amended by section 624 of the Tax Reform Act of 1984 (Pub. L. 98-369; 98 Stat. 922). Further, new § 1.103-15AT is added by this document to Part 1 of Title 26 of the Code of Federal Regulations.

Explanation of Provisions

Section 103(c) of the Code provides that arbitrage bonds shall be treated as not described in section 103(a). Section 103(c)(6) of the Code provides additional arbitrage limitations. The requirements of section 103(c)(6) apply to industrial development bonds other than obligations described in section 103(b)(4)(A), relating to projects for residential rental property, and housing program obligations issued under section 11(b) of the Housing Act of 1937. The temporary regulations apply to obligations issued after December 31, 1984.

Section 1.103-15AT places restrictions on investments in nonpurpose obligations. The term "nonpurpose obligation" is defined in § 1.103-15AT(b)(2) as any security or obligation that is acquired with the gross proceeds of an issue and that is not acquired to carry out the governmental purpose of the issue. Thus, for example, acquired obligations in a reasonably required reserve or replacement fund are nonpurpose obligations subject to the requirements of section 103(c)(6) and § 1.103-15AT.

The requirements of section 103(c)(6) and § 1.103-15AT apply to nonpurpose obligations acquired with the gross proceeds of an industrial development bond. The term "gross proceeds" is defined in § 1.103-15AT(b)(6) as including original proceeds, investment proceeds, amounts held in a sinking fund, transferred proceeds, and other amounts received as a result of investing the original proceeds of an issue. In addition, certain funds that replace bond proceeds specifically set out in § 1.103-15AT(b)(6) are gross proceeds of an issue. It is intended that proposed regulations to be issued in the future, which will define the concept of replacement proceeds for all purposes of section 103(c), may expand the categories of replacement proceeds that are gross proceeds.

Section 1.103-15AT(c) limits the amount of nonpurpose obligations with a yield higher than the yield on the issue in which gross proceeds of the issue may be invested. In general, the amount of such investments is limited to 150 percent of the debt service on the issue for the current bond year. Generally, yield is calculated in the manner prescribed by § 1.103-13(c) on the basis of the issue price. Thus, for example,

premiums paid to insure a governmental issue may, in some circumstances, be treated as interest paid on the issue. Section 1.103–15AT(c)(1)(ii) also requires that the amount of nonpurpose obligations with a yield higher than the yield on the issue be reduced as the amount of outstanding obligations is reduced. The maximum nonpurpose investment rule does not apply to investments made during certain temporary periods.

Section 1.103–15AT(c)(4) provides a special rule with respect to variable rate obligations. Generally, § 1.103–15AT(c)(4) provides a mechanism for determining in advance the debt service on variable rate obligations in order to meet the maximum nonpurpose investment rule.

Section 1.103–15AT(d) requires that the issuer of any issue pay to the United States the excess of the aggregate amount earned on all nonpurpose obligations over the amount that would have been earned if such nonpurpose obligations were invested at a rate equal to the yield on the issue, plus any income attributable to such excess. Issuers must pay the required amounts to the United States not less frequently than every 5 years.

Section 1.103–15AT(d)(2) provides that the determination of the amount required to be paid to the United States must be made at least annually. The frequency of this determination is necessitated by section 103(c)(6)(F) and § 1.103–15AT(f), which provide that gross income does not include the amount required to be paid to the United States.

Two special rules are provided with respect to the rebate requirement. First, § 1.103–15AT(d)(4) provides that amounts earned on a bona fide debt service fund need not be taken into account in determining the amount required to be paid to the United States if the gross earnings on such fund for the bond year is less than $100,000. Second, § 1.103–15AT(d)(5) provides that the rebate requirement does not apply where the gross proceeds of an issue (other than amounts contributed to a bona fide debt service fund) are expended for the governmental purpose of the issue within 6 months of the date of issue. If all of the gross proceeds of an issue are initially expended within 6 months of the date of issue but gross proceeds (other than amounts contributed to a bona fide debt service fund) later become available, the issue will not fail to satisfy the rebate requirement if the amount described in § 1.103–15AT(d)(1) with respect to such additional gross proceeds after they become available is paid to the United States in accordance with the requirements of § 1.103–15AT(e).

Section 1.103–15AT(d)(6) provides that an issue does not comply with the rebate requirement if a prohibited payment is made. A prohibited payment is the payment to any other party of an amount that is required to be paid to the United States. The notice of proposed rulemaking cross-referenced in the Proposed Rules section of this issue of the **Federal Register** specifically requests comments on these provisions.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act. (5 U.S.C. Chapter 6.)

Paperwork Reduction Act

The collection of information requirements contained in these regulations has been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–0720.

Drafting Information

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

List of Subjects in 26 CFR 1.61–1 Through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Amendments to the Regulations

PART 1—[AMENDED]

For the reasons set out in the preamble, Part 1 of Title 26 of the Code of Federal Regulations is amended as follows:

New § 1.103–15AT is added following § 1.103–15 to read as follows:

§ 1.103–15AT Investments in nonpurpose obligations.

(a) *In general*—(1) *General rule.* (i) Under section 103(c)(6), any obligation issued after December 31, 1984, that is part of an issue of industrial development bonds (other than an issue described in paragraph (a)(1)(ii) of this section) shall be treated as an obligation that is not described in section 103(a), from the date of issue, unless the issue meets the requirements of section 103(c)(6) (C) and (D) and this section. Thus, for example, if a payment required to be made under paragraph (d) of this section with respect to an issue of obligations is not made in a timely manner, those obligations are not described in section 103(a) as of the date of issue. An issue meets the requirements of this section only if the issue meets the requirements of paragraphs (c) and (d) of this section. Except as otherwise provided in this section, compliance with the requirements of this section is to be determined on the basis of the actual facts, not on the basis of the issuer's reasonable expectations on the date of issue. The requirements of section 103(c)(6) and this section are applicable in addition to the other requirements of section 103(c) and §§ 1.103–13, 1.103–14, and 1.103–15.

(ii) The requirements of section 103(c)(6) and this section do not apply to—

(A) Any obligation described in section 103(b)(4)(A), relating to obligations issued to provide a project for residential rental property, or

(B) Any housing program obligation issued under section 11(b) of the United States Housing Act of 1937.

(2) *Innocent mistake.* An issue will not fail to meet the requirements of this section merely because of an inadvertent, insubstantial error (*e.g.*, in arithmetic) if the error is corrected within a reasonable period of time after the error is discovered or should have been discovered by the exercise of reasonable diligence.

(b) *Definitions.* For purposes of this section the following definitions apply:

(1) *Industrial development bond.* The term "industrial development bond" shall have the meaning given it by section 103(b)(2) and § 1.103–7.

(2) *Nonpurpose obligations.* (i) The term "nonpurpose obligation" means any security (as defined in § 1.103–13(b)(4)(ii)) or any obligation (as defined in § 1.103–13 (b)(4)(iii)) other than an obligation described in section 103(a) in which gross proceeds of an issue are invested and which is not acquired to carry out the governmental purpose of

the issue. See § 1.103–13(b)(4)(iv)(A) for rules defining the governmental purpose of the issue. Thus, for example, acquired obligations (as defined in § 1.103–13(b)(4)(i)) purchased with the gross proceeds of an issue that are invested in a reasonably required reserve or replacement fund are nonpurpose obligations.

(ii) In determining the nonpurpose obligations in which gross proceeds of an issue are invested, nonpurpose obligations not purchased with the gross proceeds of the issue may not be allocated to such proceeds.

(3) *Yield.* Except as otherwise provided in this section, the term "yield" shall have the meaning given it by § 1.103–13(c) except that the yield on the issue shall be determined on the basis of the issue price.

(4) *Issue price.* The term "issue price" shall have the same meaning given it by sections 1273(b) and 1274. Thus, in general, such term means the initial offering price to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the obligations were sold or, if privately placed, the price paid by the first buyer of such obligations or the acquisition cost of the first buyer.

(5) *Debt service.* The term "debt service" on an issue for any bond year means the scheduled amount of interest and amortization of principal payable for that year with respect to the issue. For purposes of determining the debt service on an issue, there shall not be taken into account amounts scheduled with respect to any obligation (or portion thereof) that has been retired before the beginning of the bond year.

(6) *Gross proceeds.* (i) Except as otherwise provided in paragraph (d)(5)(ii), the term "gross proceeds" means:

(A) Original proceeds (as defined in § 1.103–13(b)(2)(i)),

(B) Investment proceeds (as defined in § 1.103–13(b)(2)(ii)),

(C) Transferred proceeds (as defined in § 1.103–14(e)(2)(ii)),

(D) Amounts treated as proceeds of the issue under § 1.103–13(g) (relating to invested sinking funds),

(E) Amounts invested in a reasonably required reserve or replacement fund (as defined in § 1.103–14(d)),

(F) Securities or obligations pledged as security for payment of debt service on an issue by an ultimate obligor (or a related person), the issuer, or by a governmental unit of which the issuer is a part,

(G) Amounts received with respect to acquired purpose obligations (*e.g.*, lease payments, repayments of principal),

(H) Other amounts used to pay debt service on the issue, and

(I) Other amounts received as a result of investing the amounts described in this paragraph (b)(6)(i) with respect to an issue.

For purposes of this section, amounts received from the investment of the gross proceeds of an issue are investment proceeds regardless of whether such amounts are commingled by any person with tax or other revenues.

(ii) The following example illustrates the application of this subparagraph:

Example. On January 30, 1985, State A issues a $5,000,000 issue of industrial development bonds with a term of 30 years at par to finance the acquisition of a manufacturing facility to be leased to X Corporation for 30 years. Issuance costs of $100,000 are paid. A reasonably required reserve fund is funded with $250,000 of the original proceeds. X Corporation makes semiannual lease payments to A in an amount equal to the debt service on the bonds. The amounts received from X are placed in a bona fide debt service fund until such amounts are needed to pay debt service. In January, 1990, X sells its rights under the lease to an unrelated party for $10,000,000. X places $5,000,000 of the sales proceeds in a fund pledged as security for payment of debt service on the issue and invests the fund in a manner such that the amount in the fund will be sufficient to meet the debt service on the bonds. The following amounts are gross proceeds of the issue: $4,900,000 original proceeds, all earnings on the reasonably required reserve fund, all lease payments received from X, all earnings on the bona fide debt service fund, and $5,000,000 of the proceeds from the sale by X of its rights under the lease and the income earned on all of these amounts.

(7) *Variable rate obligation.* The term "variable rate obligation" means any obligation the yield on which, under the terms of the obligation, is adjusted periodically according to a prescribed formula such that the yield over the term of the obligation cannot be determined on the date of issue.

(8) *Issue and date of issue.* The term "issue" shall have the same meaning given it by § 1.103–13(b)(10). The term "date of issue" has the meaning given it by § 1.103–13(b)(6). A loan agreement pursuant to which loan proceeds will be advanced periodically is treated as a single issue the date of issue of which is the first date on which more than a *de minimis* amount of loan proceeds is advanced. An issue that is a "multipurpose issue" (as defined in § 1.103–13(b)(9)) is treated as separate issues for purposes of this section.

(9) *Bond year.* The term "bond year" with respect to an issue means the 1-year period beginning on the day after the expiration of the preceding bond year of such issue. The first bond year of an issue begins on the date of issue and ends 1 year later.

(10) *Related person.* The term "related person" shall have the same meaning given it by section 103(b)(6)(C) and § 1.103–10(e).

(11) *Computation period.* The term "computation period" means each period from the date of issue through the date on which a determination of the amount described in paragraph (d)(1) is made.

(c) *Maximum nonpurpose investments*—(1) *In general.* Except as otherwise provided in this paragraph, an issue meets the requirements of this paragraph only if—

(i) At no time during any bond year, does the aggregate amount of gross proceeds of the issue invested in nonpurpose obligations with a yield higher than the yield on the issue exceed 150 percent of the debt service on the issue for such bond year, and

(ii) The aggregate amount of gross proceeds of the issue invested in nonpurpose obligations with a yield higher than the yield on the issue is promptly and appropriately reduced as the amount of outstanding obligations of the issue is reduced.

For purposes of paragraph (c)(1)(ii), the aggregate amount invested in nonpurpose obligations with a yield higher than the yield on the issue will be considered promptly and appropriately reduced if, beginning in the first bond year ending after the expiration of the temporary period for original proceeds described in paragraph (c)(2)(i), that amount is reduced within 30 days of any redemption of obligations resulting in a reduction in annual debt service so that after such reduction the issue complies with the requirements of paragraph (c)(1)(i).

(2) *Temporary periods.* For purposes of this paragraph, the aggregate amount of gross proceeds of an issue invested in nonpurpose obligations will be determined without regard to gross proceeds of such issue while such amounts are:

(i) Invested for the initial temporary period provided in § 1.103–14 (b)(1) until needed for accrued interest or for the governmental purpose of the issue,

(ii) Contributed to a bona fide debt service fund (as defined in § 1.103–13 (b)(12)) and invested for no longer than the temporary period provided in § 1.103–14 (b)(10),

(iii) Invested during the temporary period described in § 1.103–14 (b)(8) or § 1.103–14 (b)(12), relating to amounts treated as proceeds of an issue,

(iv) Invested during the temporary period described in § 1.103–14 (b)(9), relating to earnings on amounts treated as proceeds,

(v) Invested during the temporary period described in § 1.103–14 (b)(6), relating to investment proceeds,

(vi) Invested during the temporary period provided in § 1.103–14 (e)(3), relating to refunding issues, or

(vii) Deposited in a revolving fund (as defined in § 1.103–14 (b)(11)).

(3) *Valuation of nonpurpose obligations.* For purposes of this paragraph, in determining the aggregate amount of gross proceeds of an issue invested in nonpurpose obligations, each nonpurpose obligation in which gross proceeds of an issue are invested, including an obligation or security that was not a nonpurpose obligation when acquired but that becomes a nonpurpose obligation with respect to an issue (*e.g.*, obligations pledged as security for the issue), shall be valued as if acquired for its fair market value at the time such obligation or security becomes a nonpurpose obligation of such issue. In addition, the yield on such nonpurpose obligation shall be determined based on such fair market value. The issuer must value nonpurpose obligations as described above on the date acquired and need not revalue such obligations unless the bond indenture or related documents require such obligations to be revalued according to their fair market value.

(4) *Variable rate obligations.* (i) For purposes of this paragraph, the yield and the debt service on an issue containing a variable rate obligation will be determined by assuming that the rate of interest on such obligation will be—

(A) For the first bond year, the initial rate of interest for such obligation as determined under the prescribed formula on the date of issue (without regard to any fixed rate initially applicable to such obligation), and

(B) For any subsequent bond year, the weighted average rate of interest for such obligation during the preceding bond year.

The determination of debt service on an issue must be made on the first day of each bond year. An issue containing variable rate obligations will not be treated as failing to satisfy the requirements of paragraph (c)(1)(i) if, after the expiration of the temporary period for original proceeds described in paragraph (c)(2)(i), the nonpurpose obligations with a yield higher than the yield on the issue in excess of 150 percent of the debt service on the issue are disposed of within 30 days of the annual determination of the debt service on the issue and within 30 days of any redemption of obligations resulting in a reduction in annual debt service.

(ii) For purposes of this paragraph, the yield on a nonpurpose obligation that is a variable rate obligation shall be determined on the date the nonpurpose obligation is acquired and on the first day of each bond year by assuming that the rate of interest will be the weighted average rate of interest for such obligation during the preceding 1 year period (or portion thereof in which the obligation was outstanding). With respect to a nonpurpose obligation purchased on its date of issue, the yield for the first bond year shall be determined by assuming that the rate of interest will be the initial rate of interest for such obligation as determined under the prescribed formula on the date of issue (without regard to any fixed rate initially applicable to such obligation).

(iii) The following examples illustrate the application of this paragraph (c)(4):

Example (1). On March 1, 1987, County X issues a $5,000,000 issue of industrial development bonds with a term of 30 years. The obligations comprising the issue are variable rate obligations the interest on which is adjusted every 30 days according to a formula prescribed in the bond indenture such that the yield of the obligations over their terms cannot be determined on the date of issue. County X immediately loans the original proceeds of the issue to Corporation W. A reasonably required reserve fund is funded with $500,000 of the original proceeds. All of the proceeds allocated to the reserve fund are used to acquire nonpurpose obligations earning 8 percent. No other nonpurpose obligations are acquired. On March 1, 1987, the yield on the County X obligations is 7 percent. During the first bond year (*i.e.*, March 1, 1987, through February 29, 1988) and the second bond year, no principal payments are scheduled to be made. Interest payments on the issue are scheduled for September 1, 1987, and March 1, 1988. Regardless of the actual rate of interest on the issue during the first bond year, both County X and Corporation W must assume, for purposes of paragraph (c), that the rate of interest will be 7 percent throughout the first bond year. Thus, the debt service on the issue for the first bond year is assumed to be $350,000. During the first bond year up to $525,000 (*i.e.*, 150 percent of $350,000) of the gross proceeds of the issue may be invested in nonpurpose obligations with a yield in excess of 7 percent. Since only $500,000 of the gross proceeds of the issue are invested in nonpurpose obligations with a yield in excess of 7 percent, the issue meets the requirements of paragraph (c)(1)(i) during the first bond year.

Example (2). The facts are the same as in example (1), except that during the first bond year the weighted average rate at which interest was earned was 6 percent. The issue does not fail to meet the requirements of paragraph (c)(1)(i) for the first bond year. The determination of the debt service on the issue for the second bond year must be based on the weighted average interest rate at which interest was paid during the first bond year. Thus, it is assumed that the scheduled amount of interest to be paid during the second bond year is $300,000. In order to comply with the requirements of paragraph (c)(1)(i) during the second bond year, $50,000 worth of nonpurpose obligations must be disposed of within 30 days of the end of the first bond year.

(5) *No disposition in case of loss.* (i) Nonpurpose obligations subject to the maximum investment rule of paragraph (c)(1) need not be sold or disposed of if the sale or disposition would result in the realization of a loss for Federal income tax purposes that exceeds the amount that would be paid to the United States pursuant to paragraph (d) (but for such sale or disposition) at the time of such sale or disposition (not including amounts that had been previously paid to the United States) if a payment under paragraph (d) were due at such time.

(ii) Paragraph (c)(5)(i) shall not apply to the extent that other nonpurpose obligations acquired with the gross proceeds of the issue may be sold or disposed of without incurring a loss in excess of the amount that would be paid to the United States pursuant to paragraph (d) (but for such sale or disposition) at the time of such sale or disposition if a payment under paragraph (d) were due at such time. In addition, with respect to any nonpurpose obligation that (under the rule described in paragraph (c)(5)(i)) need not be sold or disposed of, paragraph (c)(5)(i) shall cease to apply 30 days after the last day of the first computation period ending thereafter on which the obligation can be sold or disposed of without incurring a loss in excess of the amount that would be paid to the United States pursuant to paragraph (d) (but for such sale or disposition) if a payment under paragraph (d) were due at such time. For purposes of this paragraph (c)(5), nonpurpose obligations in which gross proceeds of an issue are invested will not be treated as a single issue of obligations. Thus, for example, if an issuer uses the proceeds of an issue to acquire 2 blocks of nonpurpose obligations (such as, for example, United States Treasury obligations) at different times, or with different interest rates or maturity periods for each block, the 2 blocks of nonpurpose obligations will be treated as separate nonpurpose obligations for purposes of this paragraph (c)(5).

(iii) The following examples illustrate the application of this paragraph (c)(5):

Example (1). On January 1, 1986, X issued an issue of industrial development bonds. A reasonably required reserve fund is funded with a portion of the gross proceeds of the issue, and such proceeds are invested at the same time in identical obligations of the United States Treasury (in $5,000 denominations) with a yield higher than the yield on the issue. These obligations were purchased on January 1, 1986, for $1,000,000 (fair market value). On January 1, 1991, it is determined that, due to the redemption of obligations resulting in a reduction in annual debt service, the maximum amount of gross proceeds that may be invested in nonpurpose obligations with a yield higher than the yield on the issue is $800,000. Therefore, $200,000 of the Treasury obligations must be disposed of. X has not made any payments to the United States under paragraph (d). On January 1, 1991, X determines that, under this paragraph (d), it must pay to the United States $30,000. On January 1, 1991, Treasury obligations held in the reasonably required reserve fund that were acquired for $200,000 can be sold for only $160,000. Thus, a sale of these obligations in order to satisfy the requirements of paragraph (c)(1) will result in the realization of a loss for Federal income tax purposes in excess of the amount required to be paid to the United States. Under paragraph (c)(5), X need not sell any of the nonpurpose obligations, since such a sale would result in a loss in excess of the amount that is required to be paid to the United States.

Example (2). On March 15, 1987, Z issues an issue of industrial development bonds. On March 15, 1987, a reasonably required reserve fund is funded with a portion of the gross proceeds of the issue, and such proceeds are invested in (i) identical obligations of the United States Treasury (in $5,000 denominations) with a yield higher than the yield on the issue, which were purchased at the same time for $300,000 (par) and (ii) other identical nonpurpose obligations with a yield higher than the yield on the issue which were purchased at the same time for $250,000 (par). Both the Treasury obligations and the other nonpurpose obligations were acquired at a cost equal to their fair market value. On March 15, 1997, it is determined that, due to redemption of obligations resulting in a reduction in annual debt service, the maximum amount of gross proceeds that may be invested in nonpurpose obligations with a yield higher than the yield on the issue is $300,000. Z has not made a payment under paragraph (d) within the preceding 5 years. Z determines that, under paragraph (d), it must pay to the United States $50,000. At this time the Treasury obligations can be sold for 80 percent of par and the other nonpurpose obligations for 92 percent of par. If all of the Treasury obligations are sold to comply with the maximum nonpurpose investment rule, a loss in excess of the amont required to be paid to the United States would be realized. Therefore, Z is not required to dispose of any of the Treasury obligations. Z must, however, dispose of the other nonpurpose obligations. Although Z will realize a loss on this sale, the amount of the loss is not in excess of the amount that Z is required to pay to the United States.

(d) *Rebate requirement*—(1) *In general.* Except as otherwise provided in this paragraph, an issue meets the requirements of this paragraph only if an amount equal to the sum of—

(i) The excess of—

(A) The aggregate amount earned from the date of issue on all nonpurpose obligations in which gross proceeds of the issue are invested (other than amounts attributable to an excess described in this paragraph (d)(1)(i)), over

(B) The amount that would have been earned if the yield on such nonpurpose obligations (other than amounts attributable to an excess described in this paragraph (d)(1)(i)) had been equal to the yield on the issue, plus

(ii) Any income attributable to the excess described in paragarph (d)(1)(i), is calculated in accordance with the requirements of this paragraph and is paid to the United States in accordance with the requirements of paragraph (e) by the issuer or a person acting on behalf of the issuer.

(2) *Calculation of rebate amount.* (i) In determining the amount described in paragraph (d)(1)(i)(A), except as otherwise provided in paragraph (d)(2)(ii), the aggregate amount earned on nonpurpose obligations shall include all income realized under Federal income tax accounting principles (whether or not the person earning such income is subject to Federal income tax) with respect to such obligations and with respect to the reinvestment of investment receipts from such obligations (without regard to the transaction costs incurred in acquiring, carrying, selling, or redeeming such obligations). Such income shall include, for example, gain or loss realized on the disposition of such obligations (without regard to when such gains are taken into account under section 453) and income under section 1272. In addition, if any nonpurpose obligation is retained after retirement of an issue, any unrealized gain or loss as of the date of retirement of that issue must be taken into account in calculating the aggregate amount earned on nonpurpose obligations.

(ii) In determining the amount described in paragraph (d)(1)(i), an obligation or security shall be treated as acquired for its fair market value at the time it becomes a nonpurpose obligation, so that gain or loss on the disposition of such an obligation or security shall be computed with reference to such fair market value as its adjusted basis.

(iii) In determining the amount described in paragraph (d)(1)(i)(B), the yield on an issue shall be determined based on the actual yield of such issue during the period between the date of issue and the date the computation is made (with adjustments for discount or premium).

(iv) In determining the amount described in paragraph (d)(1)(ii), all income attributable to the excess described in paragraph (d)(1)(i) must be taken into account, whether or not that income exceeds the yield on the issue, and may not be treated as "negative arbitrage."

(v) The following examples illustrate the application of this paragraph (d)(2):

Example (1). On December 1, 1985, Authority T issues a $1,000,000 issue of industrial development bonds described in section 103(b)(4)(C) the proceeds of which will be loaned to Corporation F. F owns United States Treasury obligations that will be pledged as collateral for the Authority T issue. Under the terms of the pledge, F cannot dispose of any of the Treasury obligations while T's bonds are outstanding except to pay bondholders. Thus, the bondholders are reasonably assured that this collateral will be available if needed to pay debt service, even if T or F encounter financial difficulties. F acquired the pledged securities several years earlier at their par value ($1,000,000). If the Treasury obligations were sold by F on December 1, 1985, for their fair market value, the securities would sell at 80 percent of their par value ($800,000). For purposes of this section, the Treasury obligations pledged by F are treated as acquired at a cost equal to $800,000. Thus, the amount described in paragraph (d)(1)(i)(B) with respect to the gross proceeds of the issue invested in the Treasury obligations is equal to the amount that would have been earned if $800,000 had been invested at a rate equal to the yield on the issue. In addition, if the Treasury obligations are later sold for $800,000 the loss realized by F does not reduce the amount required to be paid to the United States under this paragraph (d).

Example (2). On December 1, 1985, Authority TT issues a $5,000,000 issue of fixed rate industrial development bonds described in section 103(b)(4)(C), the proceeds of which will be loaned to Corporation FF. The yield on the issue is 9 percent. FF owns $500,000 of United States Treasury obligations. These United States Treasury obligations will be pledged as collateral for the issue. Gross proceeds of the issue are not invested in any other nonpurpose obligations. FF acquired the pledged securities several years before the date of issue at 100 percent of par value, and their yield based on the original purchase price is 8 percent. If the United States Treasury obligations were sold by FF on December 1, 1985, for their fair market value, such obligations would sell at 80 percent of their par value. For purposes of paragraph (d), the United States Treasury obligations pledged by FF are treated as acquired at a cost equal to 80 percent of their par value. FF computes the amount described in paragraph

(d) at the close of each bond year. The amount earned on the United States Treasury obligations during the first computation period, December 1, 1985, through November 30, 1986, is $40,000. The amount that would have been earned during this period if $400,000 (80 percent of $500,000) had been invested at the yield on the issue is $36,000. The amount described in paragraph (d)(1)(i) is $4,000.

(3) *Frequency of determinations.* Determinations of the amounts described in paragraph (d)(1) shall be made at least every year and upon retirement of the last obligation of the issue. For example, if at the end of the first bond year the earnings on nonpurpose obligations exceed the amount that would have been earned if the yield on such obligations has been equal to the yield on the issue, such excess constitutes an excess described in paragraph (d)(1)(i). In the following year, all income attributable to such excess must be taken into account. Records of the determinations required by this paragraph must be retained by the issuer or a person acting on behalf of the issuer until 6 years after the retirement of the last obligation of the issue.

(4) *Special rule for bona fide debt service fund.* (i) Except as otherwise provided in this paragraph (d)(4), in determining the amounts described in paragraph (d)(1) (i) and (ii), any amount earned on a bona fide debt service fund (as defined in § 1.103–13(b)(12)) and amounts earned on such amounts, if allocated to the bona fide debt service fund, shall not be taken into account if the gross earnings on such fund for the bond year is less than $100,000. For purposes of this paragraph (d)(4), the term "gross earnings" means the aggregate amount earned on the nonpurpose obligations in which the gross proceeds contributed to the bona fide debt service fund are invested, including amounts earned on such amounts if allocated to the bona fide debt service fund. Nevertheless, the issuer may elect to take into account such aggregate amounts earned on a bona fide debt service fund for this purpose by making an irrevocable election on the date of issue in the bond indenture or a related document. Absent such an election, such amount may not be taken into account in determining the amount required to be paid to the United States.

(ii) If more than one bona fide debt service fund is established for an issue, all such funds are treated as a single fund for purposes of this paragraph (d)(4). A bona fide debt service fund for two or more issues is treated as consisting of separate bona fide debt service funds for each issue, and the portion of the bona fide debt service fund allocable to each issue is to be determined in the manner prescribed in § 1.103–13(g)(6).

(5) *Temporary investments.* (i) Notwithstanding the other requirements of this paragraph (d), an issue shall be treated as meeting the requirements of section 103(c)(6)(D) and this paragraph (d) if the gross proceeds of the issue are expended for the governmental purpose for which the issue was issued within 6 months after the date of issue. Whether proceeds are expended for the governmental purpose for which the issue was issued is to be determined by the ultimate use of such proceeds. For purposes of this paragraph (d)(5), gross proceeds used to redeem outstanding obligations of the issue are considered to be expended for the governmental purpose for which the obligations were issued. For purposes of this paragraph (d)(5), if gross proceeds of an issue cease to be proceeds of that issue under § 1.103–14(e)(2)(ii) (transferred proceeds) due to the refunding of that issue, they are not considered expended for the governmental purpose for which the issue being refunded was issued; both the prior issue and the refunding issue may, however, be treated as meeting the requirements of this paragraph (d) pursuant to this paragraph (d)(5)(i) if the gross proceeds of such issues are expended for the governmental purposes of such issues within 6 months of the appropriate dates of issue as determined in paragraph (d)(5)(iii).

(ii) For purposes of this paragraph (d)(5), gross proceeds in a bona fide debt service fund shall not be considered gross proceeds. Thus, an issue may be treated as meeting the requirements of this paragraph (d) pursuant to paragraph (d)(5)(i) even though a bona fide debt service fund is maintained for the issue throughout its term. This paragraph (d)(5)(ii) does not apply to gross proceeds in any other fund.

(iii) For purposes of this paragraph (d)(5), in order for transferred proceeds to be considered expended within 6 months after the date of issue, such proceeds must be expended for the governmental purpose for which the prior issue was issued not later than 6 months after the date of issue of the prior issue or, in the case of a series of refunding issues, 6 months after the date of issue of the original issue to provide the facility being financed. With respect to a multipurpose issue, the preceding sentence shall only apply to the portion of the issue treated as a refunding issue.

(iv) If, during the 6-month period following the date of issue, all of the gross proceeds of the issue available during that period are expended for the governmental purpose of the issue and it is not anticipated that any other gross proceeds will arise during the remainder of the term of the issue, that gross proceeds actually become available following the end of the initial 6-month period will not, in itself, cause the issue to fail to satisfy the requirements of paragraph (d)(1). The preceding sentence will apply only if the amount described in paragraph (d)(1) earned with respect to the gross proceeds that arise following the end of the initial 6-month period is paid to the United States in accordance with the requirements of paragraph (e); no payment will be required with respect to gross proceeds expended during the 6-month period following the date of issue. For example, if the gross proceeds of an issue are expended for the governmental purpose of the issue within 6 months of the date of issue but subsequently the facility is sold and the sale proceeds are placed in a fund that will be used to pay principal and interest on the issue, the issue will be considered to meet the requirements of paragraph (d)(1) if the amounts described in paragraph (d)(1) earned with respect to the sale proceeds are paid to the United States in accordance with the requirements of paragraph (e).

(v) The following examples illustrate the application of this paragraph (d)(5):

Example (1). On August 1, 1985, County C issues industrial development bonds to provide an airport as described in section 103(b)(4)(D). On August 1, 1985, County C loans the proceeds of the issue to Corporation L, a non-exempt entity that will have the airport constructed and use the completed facility in its trade or business. Prior to February 2, 1986, L does not expend all of the gross proceeds of the issue for purposes of constructing the airport. The gross proceeds of the issue have not been expended for the governmental purpose for which the bonds were issued within 6 months of the date of issue because, in determining whether the proceeds were expended for the governmental purpose within 6 months of the date of issue, the ultimate use of such proceeds must be examined. Thus, regardless of the fact that County C loaned the gross proceeds to L within 6 months of the date of issue, the gross proceeds were not used to construct the airport until after February 1, 1986.

Example (2). On December 29, 1984, State B issues a $5,000,000 issue of short-term bond anticipation notes to construct a pollution control facility, as described in section 103(b)(4)(F). The original proceeds of the issue are placed in a construction fund and are to be disbursed over the next 3 years as necessary to pay the costs of construction. On June 30, 1985, B issues a $5,000,000 issue of obligations the proceeds of which are to be

used to refund the December 29, 1984, issue. On June 30, 1985, State B uses the proceeds of the refunding issue to discharge the portion of the prior issue then outstanding. As of June 30, 1985, the proceeds of the December 29, 1984, issue become proceeds of the June 30, 1985, issue. On June 30, 1985, $2,000,000 remains in the construction fund. The June 30, 1985, refunding issue does not qualify for the temporary investment exception to the rebate requirement since all of the gross proceeds of the issue were not expended within 6 months of the date of issue of the prior issue.

Example (3). The facts are the same as in Example (2) except that the December 29, 1984, issue is refunded on March 1, 1985; within 6 months of December 29, 1984, the gross proceeds of the March 1, 1985, issue is expended on construction of the pollution control facility. The March 1, 1985, issue qualifies for the temporary investment exception to the rebate requirement, provided that no additional gross proceeds arise.

(6) *Prohibited payments*—(i) *In general.* An issue does not meet the requirements of this paragraph (d) if a prohibited payment is made. A prohibited payment is the payment, or agreement to pay, to a party other than the United States an amount that is required to be paid to the United States by entering into a transaction that reduces the amount described in paragraph (d)(1) (i)(A) or (ii) because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the yield on the issue not been relevant to either party. For example, if any nonpurpose obligation is purchased by an ultimate obligor (or a related person), the issuer, or by a governmental unit of which the issuer is a part, for an amount in excess of the fair market value of such obligation, the excess shall be treated as a prohibited payment. Whether a nonpurpose obligation for which there is an established market is purchased or sold for an amount in excess of its fair market value shall be determined in accordance with § 1.103–13(c)(1)(iii)(B). The purchase of a United States Treasury obligation directly from the United States Treasury shall be treated as acquired for an amount not in excess of its fair market value.

(ii) *Certificates of deposit.* The purchase or sale of a certificate of deposit issued by a commercial bank will not result in a prohibited payment if the price at which it is purchased or sold is the bona fide bid price quoted by a dealer who maintains an active secondary market in such certificates of deposit. If there is no active secondary market in such certificates of deposit, the purchase or sale of a certificate of deposit will not result in a prohibited payment if the certificate of deposit has a yield: (A) As high or higher than the yield on comparable obligations trade on an active secondary market, as certified by a dealer who maintains such a market, and (B) as high or higher than the yield available on comparable obligations offered by the United States Treasury. The certification described in the preceding sentence must be executed by a dealer who maintains an active secondary market in comparable certificates of deposit and must be based on actual trades adjusted to reflect the size and term of that certificate of deposit and the stability and reputation of the person issuing the certificate of deposit.

(iii) *Investment contracts.* Nonpurpose obligations purchased or sold pursuant to an investment contract (*e.g.*, an agreement to deposit gross proceeds with a particular bank, with the deposits to bear interest at an agreed rate) will not result in a prohibited payment if (A) at least 3 bids on the investment contract from persons other than those with an interest in the issue (*e.g.*, underwriters) are received, (B) a certification is provided by the person whose bid is accepted stating that, based on that person's reasonable expectations on the date that the contract is entered into, nonpurpose obligations will not be purchased pursuant to the investment contract at a price in excess of thier fair market value or sold pursuant to the investment contract at a price less than their fair market value, (C) the yield on the investment contract is at least equal to the yield offered under the highest bid received from a noninterested party, and (D) the yield on the investment contract is at least equal to the yield offered on similar obligations under similar investment contracts (*e.g.*, the yield on investment contracts entered into by issuers of qualified mortgage bonds).

(e) *Payments*—(1) *In general.* The amount required to be paid to the United States under paragraph (d)(1) shall be paid in installments. The first payment with respect to an issue must be made not later than 30 days after the end of the fifth bond year of such issue; each subsequent payment must be made not later than 5 years after the preceding payment was due. Each installment must be in an amount that ensures that at least 90 percent of the amount described in paragraph (d)(1) with respect to the issue as of the close of the computation period will have been paid to the United States. Not later than 30 days after the retirement of the last obligation of the issue, the issuer shall pay 100 percent of the aggregate amount described in paragraph (d)(1) with respect to the issue not therefore paid to the United States. If an issue is refunded within 6 months of the date of issue and the issuer reasonably anticipates that the prior issue will qualify for the temporary investments exception to the rebate requirement, the aggregate amount described in paragraph (d)(1) required to be paid to the United States, if any, shall not be due until 30 days after the expiration of the 6-month period following the appropriate dates of issue of the prior issue.

(2) *Place for payments.* Each payment of an installment of the amount required to be paid to the United States under paragraph (d)(1) shall be filed with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255. Each payment shall be accompanied by a copy of the Form 8038 filed with respect to the issue and a statement summarizing the issuer's determination of the amount required to be paid to the United States.

(3) *Recovery of payments.* If during any computation period the aggregate amount earned on nonpurpose obligations in which gross proceeds of the issue are invested is less than the amount that would have been earned if the yield on such obligations had been equal to the yield on the issue, the issuer may not recover such deficit from an excess previously paid to the United States.

(4) *Examples.* The following examples illustrate the application of this paragraph (e):

Example (1). On January 1, 1985, Authority P issues a $10,000,000 issue of industrial development bonds to provide an airport as described in section 103 (b)(4)(D) and the regulations thereunder. No election is made to take earnings on the bona fide debt service fund into account in determining the amount required to be paid to the United States. The issue consists of variable rate obligations the interest on which is adjusted every 7 days according to an index prescribed in the bond indenture such that the yield over the term of the issue cannot be determined on the date of issue. P immediately loans the original proceeds of the issue ($9,900,000) to Corporation Z, the intended owner of the airport. In accordance with § 1.103–14 (b), Z places $8,800,000 of the original proceeds in a construction fund and invests those proceeds in nonpurpose obligations. The remainder of the original proceeds ($1,100,000) is used to fund a reasonably required reserve fund and is invested in nonpurpose obligations. A bona fide debt service fund, as defined in § 1.103–13(b)(12), will be maintained for the issue. On December 31, 1989, Z calculates that the aggregate amount earned on all nonpurpose obligations (other than nonpurpose obligations acquired with gross proceeds in the bona fide debt service fund and other than reinvestments of nonpurpose obligation receipts) is $1,200,000. The amount that would have been earned if the yield on all nonpurpose obligations (other than

reinvestment of nonpurpose obligation receipts) in which gross proceeds of the issue were invested had been equal to the yield on the issue is $1,000,000. The reinvestment of nonpurpose obligation receipts produced an additional $100,000 of income. During each of the years 1985 through 1988, the gross earnings on the bona fide debt service fund did not exceed $100,000. During 1989, however, the gross earnings on the bona fide debt service fund were $135,000. The amount that would have been earned if the nonpurpose obligations in which the gross proceeds in the bona fide debt service fund were invested during 1989 (other than reinvestment of nonpurpose obligation receipts) had been invested at a rate equal to the yield on the issue is $110,000. Thus, as of December 31, 1989, the amount described in paragraph (d)(1) (other than amounts that need not be taken into account under paragraph (d)(4)) is $325,000. In accordance with the requirements of paragraph (d) and (e), on January 15, 1990, Z pays $292,500 to the United States. As of January 15, 1990, Z has satisfied the requirements of section 103 (c)(6)(D) and paragraph (d).

Example (2). The facts are the same as in Example (1). During the period January 1, 1990, through December 31, 1994, interest rates increase significantly. As of December 31, 1994, the amount described in paragraph (d)(1) for the period January 1, 1985, through December 31, 1994 (other than amounts that need not be taken into account under paragraph (d)(4), is $260,000. Since Z has previously paid to the United States an amount in excess of $234,000 (90 percent of $260,000), Z need not make any payments to the United States on December 31, 1994, in order to comply with paragraph (d).

(f) *Exemption from gross income of sum rebated*—(1) *In general.* For all purposes of the Internal Revenue Code, gross income does not include the amount required to be paid to the United States under paragraph (d) of this section. The preceding sentence does not apply, however, to any amounts described in paragraph (d) that, by reason of paragraph (d) (4) or (5), are not required to be paid to the United States. Thus, for example, where the gross earnings on a bona fide debt service fund in any bond year is less than $100,000, such amount must be included in gross income. Notwithstanding any other provision of the Internal Revenue Code, no deduction shall be allowed for any amount paid to the United States under paragraph (d).

(2) *Calculation of exemption.* The determination of the amount excluded from gross income shall be made on an annual basis and must take into account the amounts excluded from or included in gross income during prior years. If the amount excluded from gross income is determined to exceed the amount required to be paid to the United States under paragraph (d), the excess must be included in gross income for the taxable year in which the revised determination is required to be made.

(3) *Example.* The following example illustrates the provisions of this paragraph:

Example. On January 1, 1986, Authority Q issues industrial development bonds to provide a facility described in section 103(b)(4)(E). The facility will be constructed and owned by M Corporation. Authority Q immediately loans the original proceeds of the issue to M. M is a calendar year taxpayer. For calendar year 1986 M determines that the amount that it would be required to pay to the United States under paragraph (d) is $25,000. M does not include this amount in gross income for calendar year 1986. M determines that as of December 31, 1987, the total amount that it would be required to pay to the United States under paragraph (d) is $20,000; this amount is based on a computation of the amount described in paragraph (d) for the period January 1, 1986, through December 31, 1987. The determination of the amount to be excluded from (or included in) M's gross income for calendar year 1987 must take into account the amount excluded from gross income for calendar year 1986. For calendar years 1986 and 1987, M should have excluded a total of $20,000 from gross income. Since M excluded $25,000 from gross income for calendar year 1986, M must include $5,000 in its gross income for 1987.

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

This Treasury decision is issued under the authority contained in sections 103 (c) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 922, 26 U.S.C. 103 (c); 68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: December 31, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85-328 Filed 1-2-85; 11:35 am]

BILLING CODE 4830-01-M

---

26 CFR Parts 1, 31, and 54

[T.D. 8004]

Taxation of Fringe Benefits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations concerning the treatment of taxable and nontaxable fringe benefits. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations affect any person providing or receiving fringe benefits. The regulations provide these persons with the guidance necessary to comply with the law. In addition, the text of the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the Proposed Rules section of this issue of the Federal Register.

DATES: The regulations are effective as of January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (202) 566-3918 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the treatment of taxable and nontaxable fringe benefits. Sections 61, 3121, 3231, 3306, 3401, 3501 of the Internal Revenue Code of 1954 (Code) were amended, and sections 132 and 4977 were added to the Code, by section 531 of the Tax Reform Act of 1984 (98 Stat. 877). The temporary regulations will remain in effect until superseded by final regulations on this subject.

Summary of Provisions

Due to the January 1, 1985, effective date of section 531 of the Tax Reform Act of 1984, there is need for immediate guidance regarding the amendments to the Code so that persons affected can make preparations to comply with the law. Therefore, these regulations have been drafted in question and answer format in order to facilitate their timely publication. No inference should be drawn, however, regarding issues not raised herein or regarding the inclusion of certain questions, and not others, in these regulations.

Section 61

Section 61 (a) (1), as amended, provides that, unless specifically excluded by some other section of the Code, gross income includes compensation for services, including fringe benefits. The regulations provide examples of includible and excludable fringe benefits, rules for determining in whose gross income the value of a fringe benefit is to be included, and general rules for determining the fair market value of a fringe benefit.

In addition, the regulations provide optional special valuation rules for employer-provided automobiles, use of employer-provided automobiles for commuting, flights on employer-provided airplanes, and free or discounted flights on commercial airlines. When properly applied, employers and employees may rely on these special valuation rules for purposes of income inclusion, withholding, and reporting in lieu of determining the actual fair market value of the fringe benefit.

Under the special rule for valuing the availability of employer-provided automobiles, Annual Lease Values and Daily Lease Values are provided to determine the amount includible in gross income. The Annual Lease Value, determined according to a table set forth in the regulations, is an estimate of the annual cost of leasing an automobile based on a four-year lease. The Daily Lease Value, determined by reference to the applicable Annual Lease Value, is an estimate of the daily cost of renting an automobile based on a day-to-day rental. The amount of the Annual Lease Value or the Daily Lease Value that is actually included in income depends on whether, and to what extent, such amount is subject to a statutory exclusion such as the working condition fringe exclusion (discussed below).

Under the special rules for valuing the use of employer-provided automobiles for commuting, an employer or employee may, under certain circumstances, value the commuting use of the automobile at $4.00 per day for each day of use.

Under the special rule for valuing flights on employer-provided airplanes, multiples of the applicable Standard Industry Fare Level (SIFL) rates may be used to determine the amount includible in gross income. The multiples and the SIFL rates are provided in the regulations. The multiples are intended to approximate commercial airline fares of, depending on the circumstances, 100 percent of coach and 300 percent of first class. The amount that is actually included in gross income depends on whether, and to what extent, such amount is subject to a statutory exclusion such as the working condition fringe exclusion (discussed below).

Under the special rule for valuing flights on commercial airlines, 50 percent of the actual carrier's highest unrestricted coach fare may be used as the value of the flight. This rule may be applied with respect to an individual, such as a parent of an airline employee, the value of whose flight is generally includible in the airline employee's income.

The special rules may be used by both employers and employees. Generally, neither the employer not the employee is bound by the other's use of the special rules. If the special rules are used, however, there are certain consistency requirements that apply to the person using them.

Section 132

Section 132, as added to the Code, provides that certain fringe benefits are excludable from gross income if they qualify as no-additional-cost services, qualified employee discounts, working condition fringes, or de minimis fringes. The regulations provide guidance relating to the definition and application of the working condition fringe exclusion, the application of the line of business restriction for purposes of the no-additional-cost service and qualified employees discount exclusions, and rules relating to discriminatory fringe benefit plans and the definition of a highly compensated employee.

The working condition fringe exclusion applies to any property or service provided to an employee to the extent that, if the employee paid for such property or service, the payment would be allowable as a deduction under section 162 or 167. The regulations provide examples describing the application of the working condition fringe exclusion to the availability of employer-provided automobiles and flights on employer-provided airplanes.

In general, if the use of an automobile is provided to an employee, the amount of the working condition fringe is determined by multiplying the fair market value of the availability of the automobile (Annual Lease Value or Daily Lease Value under the special rules described above) by a fraction, the numerator of which is the employee's business-use mileage and the denominator of which is the empolyee's total mileage. If an employee flies on the employer's airplane primarily for business reasons, the value of the employee's flight would be excludable as a working condition fringe.

The regulations also address the application of the working condition fringe to employer-provided automobiles and flights on employer-provided airplanes when business-oriented security concerns exist. In general, only the value, if any, of the automobile or flight on the airplane directly attributable to the business-oriented security concerns will qualify for the working condition exclusion.

The regulations provide rules concerning the nondiscrimination rules of section 132. In particular, the regulations define a highly compensated employee, for purposes of certain fringe benefit exclusions, as any employee who has compensation greater than the compensation of 90 percent of all employees employed by the employer. In addition, any employee who has compensation of $50,000 or more is a highly compensated employee and any employee who has compensation of $20,000 or less is generally not a highly compensated employee.

The regulations also provide guidance relating to the line of business restriction applicable to no-additional-cost services and qualified employee discounts. In general, such fringe benefits are not excludable pursuant to section 132 if the property or service being provided is not a property or service offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is performing services.

Income and Employment Tax Withholding

Sections 3121, 3231, 3306, 3401, and 3501, as amended, generally provide that fringe benefits that are not otherwise specifically excluded from gross income pursuant to the applicable section are includible in wages and compensation for purposes of income and employment tax withholding and for purposes of employment taxes. In general, the regulations provide that employers may deem any noncash fringe benefit provided in a calendar quarter as provided no later than the last day of the calendar quarter. A special rule applies with respect to noncash fringe benefits provided in the first calendar quarter of 1985, i.e., employers may deem any benefit provided in the first calendar quarter as provided in the second calendar quarter of 1985. The employer may treat the payment of any noncash fringe benefit as a payment of supplemental wages. Consequently, it is subject to withholding at a flat 20 percent rate.

Section 4977

Section 4977, as added to the Code, provides an elective grandfather rule that allows employers under certain circumstances to treat employees of all lines of business which were in existence on January 1, 1984, as employees of one of those lines of business for purposes of the exclusions for no-additional-cost services and qualified employee discounts.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as

defined in Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexbility Act does not apply and a Regulatory Impact Analysis is not required for this rule.

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

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB. Control number [1545-0907].

Drafting Information

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

List of Subjects

26 CFR 1.61-1—1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad Retirement, Social Security, Unemployment taxes, Withholding.

26 CFR Part 54

Excise taxes, Pensions.

Adoption of Amendment to the Regulations

Accordingly, 26 CFR Parts 1, 31, and 54 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The following new § 1.61-2T is added after § 1.61-2 to read as follows:

§ 1.61-2 Questions and answers relating to the taxation of fringe benefits (Temporary).

The following questions and answers relate to the taxation of fringe benefits pursuant to section 61(a)(1) of the Internal Revenue Code of 1954, as amended by section 531(c) of the Tax Reform Act of 1984 (98 Stat. 885):

In General

Q-1: Section 61(a)(1) provides that fringe benefits are includible in gross income unless specifically excluded pursuant to another section of the Code. What are examples of such fringe benefits?

A-1: Examples of such fringe benefits are: an employer-provided automobile; a flight on an employer-provided airplane; an employer-provided free or discounted commercial airline flight; an employer-provided vacation; an employer-provided discount on property or services; an employer-provided membership in a country club or other social club; and an employer-provided ticket to an entertainment event.

A fringe benefit may be excluded from gross income, however, pursuant to a specific statutory provision of the Code, such as section 132(a) (3) and (4) excluding working condition fringes and de minimis fringes. See also § 1.132-1T.

Q-2: How do the rules of section 61 and the regulations thereunder operate if the tax treatment of a particular fringe benefit is specifically addressed in another section of the Code?

A-2: If the tax treatment of a particular fringe benefit is specifically addressed in another Code section, that section governs the treatment of the fringe benefit, and section 61 and the regulations thereunder apply only to the extent that they are not inconsistent with such other section of the Code.

Many fringe benefits specifically addressed in other sections of the Code are excluded from gross income only to the extent that they do not exceed specific dollar or percentage limits, or only if certain other requirements are met. If the limits are exceeded or the requirements are not met, some or all of the fringe benefit may be includible in gross income (see also Q/A-7 of this section).

Q-3: In whose gross income is the value of a fringe benefit includible?

A-3: A fringe benefit provided to any person in connection with the performance of services by such person is includible in such person's gross income. Refraining from the performance of services (such as pursuant to a covenant not to compete) is deemed to be the performance of services for purposes of this section.

If a fringe benefit is provided to any person in connection with the performance of services by another person, the fringe benefit is considered for tax purposes to have been provided to the person who performs the services, not the person who receives the fringe benefit. Any reference in this section to the "recipient" of a fringe benefit is a reference to the person performing the services in connection with which the fringe benefit is provided.

Q-4: When is this section effective?

A-4: This section is effective as of January 1, 1985. No inference may be drawn from the promulgation or terms of this section concerning the application of law in effect prior to January 1, 1985.

Valuation of Taxable Fringe Benefits—In General

Q-5: What amount must the recipient of a fringe benefit include in gross income?

A-5: The recipient of a fringe benefit must include in gross income the amount by which the fair market value of the fringe benefit exceeds the sum of (a) the amount, if any, paid for the benefit, and (b) the amount, if any, specifically excluded from gross income by some other section of the Code. The fair market value of a fringe benefit is determined on the basis of all the facts and circumstances.

Q-6: Is the recipient's subjective perception of the value of a fringe benefit relevant to the determination of the fair market value of the fringe benefit?

A-6: No. The fair market value of a fringe benefit is determined on the basis of objective facts and circumstances.

Q-7: Is the cost incurred by an employer (or other provider of a fringe benefit) in providing a fringe benefit determinative of the fair market value of the fringe benefit?

A-7: No. The fair market value of a fringe benefit must be determined without regard to whether such amount is equivalent to the cost incurred by the employer (or other provider of a fringe benefit) in providing such fringe benefit. However, if a statutory exclusion phrased in terms of employer cost applies to the provision of a fringe benefit, section 61 does not require the inclusion in the recipient's gross income of the difference between the fair market value and excludable cost of that fringe benefit. For example, section 129 provides an exclusion from an employee's gross income for amounts paid or incurred by an employer to provide dependent care assistance to employees. Even if the fair market value of the dependent care assistance

exceeds the employer's cost, the excess is not subject to inclusion under section 61. If the statutory cost exclusion is a limited amount, however, then the fair market value of the fringe benefit attributable to any excess cost is subject to inclusion.

Q–8: What amount may an employer deduct as compensation paid to an employee when a fringe benefit is provided to an employee?

A–8: The amount an employer may deduct as compensation paid to an employee is determined under section 162 and the regulations thereunder. In particular, see § 1.162–25T.

Valuation of Taxable Fringe Benefits—Special Rules

Q–9: Are there any special rules that taxpayers may use to value certain commonly provided fringe benefits?

A–9: Yes. There are special rules for valuing employer-provided automobiles (Q/A–11 through Q/A–19 of this section), use of employer-provided automobiles for commuting (Q/A–20a through Q/A–22c of this section), flights on employer-provided airplanes (Q/A–23 through Q/A–29 of this section), and free or discounted flights on commercial airplines (Q/A–30 through Q/A–34 of this section). The special rules for valuation may be used in connection with the provision of a fringe benefit to or on behalf of any person properly taxed on account thereof, and, except as otherwise provided in Q/A–9 through Q/A–34, any reference in Q/A–9 through Q/A–34 to "employee" includes a reference to any such person, as applicable.

The special rules may be used by the employer or employee for income, employment tax, and reporting purposes. Neither the employer nor the employee is bound by the other's use of a special rule. If a special rule is used, however, certain consistency requirements apply to the employer and to the employee. See Q/A–19, 22, 28, and 34 of this section.

Q–10: For purposes of Q/A–9 through Q/A–34, except as otherwise provided therein, does the term "employer" include all employers treated as a single employer under section 414 (b), (c), or (m)?

A–10: Yes.

Valuation of the Availability of Employer-Provided Automobiles

Q–11: For purposes of Q/A–11 through Q/A–19 of this section, what does the term "automobile" mean?

A–11: The term "automobile" means any four-wheeled vehicle which is manufactured primarily for use on public streets, roads, and highways.

Q–12: What is the special rule for valuing the availability to an employee of an employer-provided automobile?

A–12: If an employer provides an employee with an automobile which is available to the employee for an entire calendar year, the Annual Lease Value (as defined in Q/A–13 of this section) is the value of the benefit provided. An automobile available to or used by an individual, but taxable to an employee (see Q/A–3 of this section), is referred to in Q/A–11 through Q/A–19 of this section as available to the employee and use by the individual is considered use by the employee. For a discussion of the working condition fringe exclusion relating to the business use of an employer-provided automobile, see section 132 (a)(3) and § 1.132–1T.

When the special rule is not used, the value of the availability of an employer-provided automobile is determined under the general valuation principles set forth in this section. In general, such valuation must be determined by reference to the cost to the employee of renting or leasing a comparable automobile on comparable terms for a comparable period. The value of the availability of an employer-provided automobile cannot be determined by reference to a cents-per-mile rate applied to the number of miles the automobile is driven.

Q–13: What is Annual Lease Value?

A–13: The Annual Lease Value of a particular automobile is determined as follows:

(a) *Fair market value.* To calculate the Annual Lease Value for an employer using the special rule, determine the fair market value of the automobile, without regard to any group or volume discount, as of the first date on which the automobile is made available to any employee of the employer for personal use. For an automobile made available to an employee for personal use prior to January 1, 1985, determine the fair market value as of January 1, 1985.

If the employer is not using the special rule, the employee may calculate the Annual Lease Value by determining the fair market value of the automobile as of the first date on which the automobile is made available to the employee for personal use or, for an automobile made available to an employee for personal use prior to January 1, 1985, by determining the fair market value as of January 1, 1985. If the employer is using the special rule, however, then the employee may use the special rule only if such use is consistent with the employer's use. Thus, if an employer uses the special rule with respect to an automobile, the employee to whom the automobile is made available must use the special rule, if at all, by including the same amount in income as the amount included in the employee's income by the employer.

(b) *Annual Lease Value.* Select the dollar range in column 1 of the table set forth below, corresponding to the fair market value determined in (a). Except as otherwise provided in this Q/A–13, the Annual Lease Value for each year of availability is the corresponding amount in column 2 of the table.

ANNUAL LEASE VALUE TABLE

Automobile fair market value	Annual lease value
(1)	(2)
$0 to 999	$600
1,000 to 1,999	850
2,000 to 2,999	1,100
3,000 to 3,999	1,350
4,000 to 4,999	1,600
5,000 to 5,999	1,850
6,000 to 6,999	2,100
7,000 to 7,999	2,350
8,000 to 8,999	2,600
9,000 to 9,999	2,850
10,000 to 10,999	3,100
11,000 to 11,999	3,350
12,000 to 12,999	3,600
13,000 to 13,999	3,850
14,000 to 14,999	4,100
15,000 to 15,999	4,350
16,000 to 16,999	4,600
17,000 to 17,999	4,850
18,000 to 18,999	5,100
19,000 to 19,999	5,350
20,000 to 20,999	5,600
21,000 to 21,999	5,850
22,000 to 22,999	6,100
23,000 to 23,999	6,350
24,000 to 24,999	6,600
25,000 to 25,999	6,850
26,000 to 27,999	7,250
28,000 to 29,999	7,750
30,000 to 31,999	8,250
32,000 to 33,999	8,750
34,000 to 35,999	9,250
36,000 to 37,999	9,750
38,000 to 39,999	10,250
40,000 to 41,999	10,750
42,000 to 43,999	11,250
44,000 to 45,999	11,750
46,000 to 47,999	12,250
48,000 to 49,999	12,750
50,000 to 51,999	13,250
52,000 to 53,999	13,750
54,000 to 55,999	14,250
56,000 to 57,999	14,750
58,000 to 60,999	15,250

For vehicles having a fair market value in excess of $60,000, the Annual Lease Value is equal to:
(.25 × automobile fair market value) + $500.

(c) *Determination of Annual Lease Value after fourth year.* Except as otherwise provided in (d), the figures in the Table are the Annual Lease Values for the period starting on the first date on which the special rule is applied by the employer or the employee to the automobile, and ending on December 31 of the fourth full year following that date. The Annual Lease Value for each of the subsequent calendar years is determined by taking the fair market value of the automobile on the January 1

following the period described in the previous sentence and selecting the amount in column 2 of the Table corresponding to the appropriate dollar range in column 1 of the Table.

(d) *Transfer of automobile to another employee.* If, for bona fide business reasons, the employer transfers the automobile from one employee to another employee, the employer may redetermine the Annual Lease Value based upon the fair market value of the automobile on January 1 of the year of transfer. The Annual Lease Value may not be redetermined upon transfer of the automobile if the purpose for the transfer is the reduction of federal taxes.

Q–14: Are maintenance of and insurance for an employer-provided automobile included in the Annual Lease Value determined pursuant to Q/A–13 of this section?

A–14: Yes.

Q–15: Is fuel provided in kind by an employer included in the Annual Lease Value determined pursuant to Q/A–13 of this section?

A–15: No. The Annual Lease Value does not include fuel provided in kind by an employer. The provision of fuel in kind may be valued separately at fair market value based upon all the facts and circumstances, or in the alternative, it may be valued at 5.5 cents per mile for all miles driven by the employee.

Q–16: Is provision by the employer of any service with respect to an automobile not specifically identified in Q/A–14 of this section, such as the services of a chauffeur, included in the Annual Lease Value determined pursuant to Q/A–13 of this section?

A–16: No. The provision of the services of a chauffeur or other service must be valued separately at fair market value based upon all the facts and circumstances.

Q–17: May the special rule be used to value the availability of automobiles in countries other than the United States?

A–17: No, unless the automobile is physically located in the United States for substantially all of the calendar year.

Q–18: May the special rule be used to value the availability of an employer-provided automobile if such automobile is available to the employee for less than the entire calendar year?

A–18: Yes, subject to the following conditions:

(a) *Continuous availability of at least 30 days.* Except as otherwise provided in (d) of this Q/A–18, for periods of continuous availability of at least 30 days, but less than an entire calendar year, the value of the employer-provided automobile is determined by using a pro-rated Annual Lease Value, computed by multiplying the Annual Lease Value by a fraction, the numerator of which is the number of days of availability and the denominator of which is 365.

(b) *Continuous availability of less than 30 days—Daily Lease Value.* Except as otherwise provided in (c) of this Q/A–18, for periods of continuous availability of one or more but less than 30 days, the Daily Lease Value must be used. The Daily Lease Value equals the Annual Lease Value multiplied by a fraction, the numerator of which is four times the number of days of availability and the denominator of which is 365.

(c) *Election to treat all periods as periods of at least 30 days.* A pro-rated Annual Lease Value may be applied with respect to a period of continuous availability of less than 30 days, by treating the automobile as if it had been available for 30 days, if to do so would result in a lower valuation than applying the Daily Lease Value to the shorter period of actual availability.

(d) *Periods of unavailability.* In general, a pro-rated Annual Lease Value (as provided in (a) of this Q/A–18) may be used to value the availability of an employer-provided automobile to an employee for a period of continuous availability of at least 30 days but less than the entire calendar year. However, a pro-rated Annual Lease Value may not be used to the extent any periods for which the employer-provided automobile is not available to the employee are not attributable to bona fide business reasons of the employer. The fact that an automobile is unavailable because the employee is on a personal vacation is not a bona fide business reason of the employer for unavailability. For example, assume an automobile is available to an employee during the first five months of the year and during the last five months of the year. The period of unavailability occurs because the employee is on a personal vacation. The Annual Lease Value, if it is applied, must be applied with respect to the entire twelve-month period. The Annual Lease Value may not be pro-rated to take into account the two-month period of unavailability.

Q–19: What rules govern the adoption and application of the special rule?

A–19: (a) Use of the special rule is optional. Neither the employer nor the employee is bound by the other's use of the special rule.

(b) An employer may adopt the special rule for an automobile only if such rule is adopted with respect to the first calendar quarter in which the automobile is made available to an employee of the employer for personal use. For an automobile made availabele to an employee for personal use prior to January 1, 1985, the special rule must be adopted with respect to the first quarter of 1985.

Once the special rule has been adopted for an automobile by an employer, the rule must be used by the employer for all years in which the employer makes such automobile available to any employee, and such rule must be used for all purposes with respect to the automobile.

(c) An employee may adopt the special rule for an automobile only if such rule is adopted with respect to the first calendar year in which the automobile is made available to the employee for personal use. For an automobile made available to the employee for personal use prior to January 1, 1985, the special rule may be used by the employee only if it is adopted with respect to 1985.

Once the special rule has been adopted for an automobile by an employee, the rule must be used by the employee for all years in which the automobile is available to the employee, and such rule must be used for all purposes with respect to the automobile.

(d) If the special rule is used by an employer and/or employee with respect to an automobile and a different automobile is provided to the employee for the purpose of reducing Federal taxes, then the employer and/or employee using the special rule must continue to use the rule with respect to such different automobile.

Use of Employer-Provided Automobiles for Commuting

Q–20: Is there a special rule that taxpayers may use to value employer-provided automobiles which are not available for personal use other than commuting use?

A–20: A special rule may be used to compute commuting value if the following criteria are met with respect to an employer-provided automobile:

(a) For bona fide, noncompensatory business reasons, the employer requires the employee to commute in the automobile,

(b) The employer's policy is that the employee is not allowed to use the automobile for personal purposes other than commuting,

(c) Except for de minimis use, the employee does not use the automobile for any personal purpose other than commuting,

(d) The automobile is used in the employer's business,

(e) Except in the case of police, fire, and emergency medical vehicles, a substantial amount of the use of the automobile in the employer's business is

by employees other than the employee required to use the automobile for commuting, and

(f) The employee required to use the automobile for commuting is not a key employee (as defined in Q/A–26 of this section).

Q–21: If the requirements of Q/A–20 of this section are satisfied, what is the special rule for valuing the commuting in the employer-provided automobile?

A–21: Under the special rule, the commuting is valued at $4.00 per day for each day the automobile is used for commuting (either one-way or round-trip).

Q–22: What rules govern the adoption and application of the special rule?

A–22: (a) Use of the special rule is optional.

(b) For any calendar year, adoption of the special rule by the employee must be made with respect to all commuting in the calendar year which qualifies for use of the special rule.

(c) For any calendar year, adoption of the special rule by the employer with respect to any employee must be made with respect to all commuting by such employee in the calendar year which qualifies for use of the special rule.

Valuation of Flights on Employer-Provided Airplanes

Q–23: What is the special rule for valuing a flight by an employee on an employer-provided airplane?

A–23: If an employee is provided with a flight on an employer-provided airplane, multiples of the applicable Standard Industry Fare Level ("SIFL") rates are used to value the flight by applying the following formula: (applicable SIFL multiple in Q/A–25 of this section × ($.1480 per mile for the first 500 miles, $.1128 per mile for miles between 501 and 1500, and $.1065 per mile for miles over 1500)) + a terminal charge of $27.05. For example, the value of a one-way flight which is 2,000 miles would equal $27.05 + (the applicable SIFL multiple in Q/A–25 of this section × (($.1480×500) + ($.1128×1,000) + ($.1085×500))). The value of a round-trip flight which is 2,000 miles each way would equal twice the value determined in the preceding sentence.

The numbers in the preceding paragraph reflect the SIFL rates in effect on December 31, 1984. To determine the SIFL rates in effect for the date of a particular flight, see Q/A–24 of this section.

The special rule may not be used to value a flight on an airplane on which the employer offers, in the ordinary course of its business, air transportation to customers. In addition, the special rule may not be used to value a flight by a key employee (as defined in Q/A–26 of this section) if there is no business purpose for the trip by the airplane. For rules relating to the valuation of such a flight, see Q/A–29 of this section.

For purposes of Q/A–23 through Q/A–29 of this section, a flight provided to an individual whose flight would be taxed to the employee (such as the employee's spouse, see Q/A–3 of this section) is referred to as being provided to the employee, and a flight taken by such individual is considered a flight taken by the employee. For a discussion of the working condition fringe exclusion for a flight on an employer-provided airplane, see section 132 (a) (3) and § 1.132–1T.

Q–24: What is SIFL?

A–24: SIFL is a per-mile formula rate, revised periodically, calculated by the Department of Transportation beginning January 1, 1985. Prior to that date, the Civil Aeronautics Board calculated the SIFL rates. For purposes of this section, in determining the value of a particular flight during the first six months of a calendar year, the SIFL rates in effect on December 31 of the preceding year apply, and in determining the value of a particular flight during the last six months of a calendar year, the SIFL rates in effect on June 30 of that year apply.

Q–25: What are the appropriate SIFL multiples for purposes of Q/A–23 of this section?

A–25: The appropriate SIFL multiples are as follows:

(a) 125 percent of the SIFL rates for any flight by any employee who is not a key employee (as defined in Q/A–26 of this section).

(b) 125 percent of the SIFL rates for a flight by a key employee if there is a primary business purpose for the trip by the airplane. For purposes of this (b), entertaining an employee or other individual is not a business purpose.

(c) 600 percent of the SIFL rates for a flight by a key employee if there is no primary business purpose for the trip by the airplane. Where there is no business purpose for the trip by the airplane, the special rule may not be used to value a flight by a key employee. See Q/A–29 of this section for rules concerning flights by key employees on such trips. For purposes of this section, compensating an employee is not a business purpose.

The value of a flight derived from these multiples applies on a passenger by passenger basis. For example, if an individual accompanies an employee, and the flight taken by the individual would be taxed to the employee, the employee would be taxed on the special rule value of his flight and on the special rule value of the flight taken by the individual accompanying him. If an employee is a key employee, any individual whose flight would be taxed to the employee (such as the employee's spouse), see Q/A–3 of this section, is also considered a key employee for purposes of the special rule.

Q–26: Who is a "key employee" for purposes of determining the value of flights on employer-provided airplanes under the special rule?

A–26: A "key employee" is any employee who is a five-percent owner or an officer of the employer, or who, with respect to a particular trip by the airplane, controls the use of the airplane. For purposes of determining who is a five-percent owner, any individual who owns (or is considered as owning) more than five-percent of the fair market value of an entity (the "owned entity") is considered a five-percent owner of all entities which would be aggregated with the owned entity under the rules of section 414 (b), (c), or (m).

Q–27: For what types of flights may the special rule be used?

A–27: The special rule may only be used for the following types of flights on employer-provided airplanes:

(a) Flights that originate and terminate in the United States; or

(b) Flights that originate in the United States and terminate in Canada (or vice versa); or

(c) Flights that originate in the United States and terminate in Mexico (or vice versa).

Q–28: What rules govern the adoption and application of the special rule?

A–28: (a) Use of the special rule is optional. An employee is not bound by an employer's use of the special rule for wage withholding and employment tax purposes, and an employer who does not use the special rule is not bound by an employee's use thereof.

(b) The special rule, if adopted by an employer or employee for any calendar year, must be used by the person adopting such rule for all flights either provided by the employer or taken by the employee, in such calendar year which qualify for use of the special rule, and must be used for all purposes for each such flight.

(c) If the special rule is used by an employer or a key employee, as the case may be, on the ground that either

(1) the key employee is not in fact a key employee, or

(2) an airplane trip had a primary business purpose, or

(3) an airplane trip had some business purpose, and that position is determined to be erroneous, the special rule may not thereafter be used with respect to that flight taken by that key employee by the

person or persons previously taking the erroneous position.

Q-29: What is the value of a flight on an employer-provided airplane if for any reason the special rule is not or cannot be used?

A-29: The value of such a flight is the fair market value determined on the basis of all the facts and circumstances. For example, if an employee controls the use of the airplane on a trip with no business purpose, such flight is valued by reference to the cost of chartering a similar airplane for a similar trip. The result would be the same if there were some (but not a primary) business purpose and the special rule was not used or could not be used. The charter cost must be apportioned equally among all passengers on the flight, excluding employees who are not key employees.

Valuation of Free or Discounted Commercial Airline Flights

Q-30: Are free or discounted commercial airline flights by parents of an airline employee includible in the gross income of the employee?

A-30: Yes. Section 61 includes the fair market value of such flights as a fringe benefit. The employee is taxed on the benefit, since it is provided in connection with the performance of services by the employee.

The value of a flight by a parent of an airline employee is not eligible for the no-additional-cost service exclusion provided by section 132(a)(1) with respect to flights by airline employees, as defined in section 132(f)(1), and with respect to flights by spouses and dependent children of airline employees under section 132(f)(2). This Q/A-30 applies equally to flights provided to other guests, as defined in Q/A-32 of this section, of employees.

Q-31: What date is relevant for application of section 61(a)(1) and this section to a free or discounted flight on a commercial airline?

A-31: The relevant date is the date of the flight. The date of purchase or issuance of a pass or ticket is not relevant. Thus, this section applies to a flight taken on or after January 1, 1985, regardless of the date on which the pass or ticket for the flight was purchased or issued.

Q-32: What is the special rule for valuing taxable fringe benefit flights on a commercial airline by airline employees or their guests?

A-32: A flight—

(a) provided on an airplane on which the employer offers, in the ordinary course of business, transportation to customers,

(b) for which the airline, by carrying an employee or guest of the employee, incurs no substantial additional cost (including forgone revenue) determined without regard to any amount paid for such flight (i.e., the employee or guest flies on a "stand-by basis"), and

(c) which is subject to the types of restrictions customarily associated with flying on an employee stand-by basis,

is valued at 50% of the actual carrier's highest unrestricted coach fare in effect for the particular flight being valued.

For purposes of Q/A-30 through Q/A-34 of this section, a guest of an employee is an individual whose free or discounted flight would be taxed to the employee (see Q/A-3 of this section).

Q-33: Does the special rule apply to flights by an employee or an employee's guest on a nonemployer airline pursuant to a reciprocal agreement between the employer and the actual carrier?

A-33: The special rule may be used for such a flight only if the flight is one which would meet the conditions of Q/A-32 if the actual carrier were the employer.

Q-34: What rules govern the adoption and application of the special rule?

A-34: (a) Use of the special rule is optional. An employee is not bound by an employer's use of the special rule for wage withholding and employment tax purposes, and an employer who does not adopt the special rule is not bound by an employee's use thereof.

(b) The special rule, if adopted by an employer or employee for any calendar year, must be used for all flights either provided by the employer or taken by the employee in such calendar year which qualify for use of the special rule, and must be used for all purposes for each such flight.

Par. 2. The following new section is added after § 1.127-2 and reads as follows:

§ 1.132-1T Questions and answers relating to the exclusion from gross income of certain fringe benefits (temporary).

The following questions and answers relate to the exclusion from gross income of certain fringe benefits pursuant to section 531(a) of the Tax Reform Act of 1984 (98 Stat. 878):

In General

Q-1: What does section 132(a) provide?

A-1: Section 132 provides an exclusion from gross income for any fringe benefit that qualifies as a—

(a) No-additional-cost service,

(b) Qualified employee discount,

(c) Working condition fringe, or

(d) De minimis fringe.

Line of Business

Q-2: What is the line of business limitation of sections 132(b) and 132(c)(4)?

A-2: A service provided to or on behalf of an employee does not qualify as a no-additional-cost service under section 132(b) unless the service is offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is performing services. Similarly, a discount does not qualify as a qualified employee discount under section 132(c)(4) unless the property or service is offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is performing services. See section 4977 and § 1.4977-1T for a transitional election relating to the line of business limitation.

Working Condition Fringe

Q-3: What is a working condition fringe?

A-3: A working condition fringe is any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167. If the hypothetical payment would be allowable as a deduction with respect to a trade or business of the employee, which is unrelated to the employer's trade or business, such payment will not be deemed allowable as a deduction for purposes of determining the amount, if any, of the working condition fringe.

Q-4: How does the working condition fringe exclusion apply to availability of an employer-provided automobile?

A-4: In general, the amount excludable as a working condition fringe is the amount that would be allowable as a deduction under section 162 or 167 if the employee paid for the availability of the automobile. For purposes of this section, use by an individual of an automobile whose availability to the individual would be taxed to an employee is included in references to use by the employee.

For example, assume the value of the availability for a full year of an employer-provided automobile is $2,000, without regard to any working condition fringe (i.e., assuming all non-business use). Assume further that the employee drives the automobile 6,000 miles for his employer's business and 2,000 miles for non-business reasons. In this situation the value of the working condition fringe is $2,000 multiplied by a fraction, the numerator of which is the business-use

mileage (6,000 miles) and the denominator of which is the total use mileage (8,000 miles). Thus, the value of the working condition fringe is $1,500. The total amount includible in gross income by the employee on account of the availability of the automobile is $500. In determining business and total use mileage, only mileage driven by the employee is counted.

Q–5: In determining the amount, if any, of an employee's working condition fringe, do section 280F and the regulations thereunder apply?

A–5: No. For example, assume that employee A has available for a calendar year an employer-provided automobile which has a fair market value of $28,000. Assume further that the Annual Lease Value, as defined in § 1.61–2T, is $7,750 and that all of the employee's use of the automobile during the calendar year is in the employer's business. The employee would be entitled to exclude the entire Annual Lease Value as a working condition fringe, despite the fact that if the employee paid for the use of the automobile, an income inclusion would be required under § 1.280F–5T(d)(1). This Q/A–5 does not affect the applicability of section 280F to the employer with respect to such employer-provided automobile, nor does it affect the applicability of section 274.

Q–6: How does the working condition fringe exclusion apply to an employee who uses different employer-provided automobiles during the year?

A–6: The rule applies on an automobile by automobile basis. For example, assume automobile Y is available to employee D for 3 days in January and for 5 days in March, and automobile Z is available to D for a week in July. Assume further that the Daily Lease Value, as defined in § 1.61–2T, of each automobile is $50. For the eight days of availability of Y in January and March, D uses Y 90 percent for business (by mileage). During July, D uses Z 60 percent for business (by mileage). The value of the working condition fringe is determined separately for each automobile. Therefore, the working condition fringe for Y is $360 ($400 x .90) leaving an income inclusion of $40. The working condition fringe for Z is $210 ($350 x .60) leaving an income inclusion of $140. In determining business and total use mileage, only mileage driven by the employee is counted.

Q–7: How does the working condition fringe exclusion apply to specially designed automobiles which are provided by an employer for business-oriented security reasons?

A–7: The value of the working condition fringe is the amount which would be allowable as a deduction under section 162 or 167 if the employee paid for the availability of the specially designed automobile. For example, assume that for bona fide business-oriented security reasons an employer provides employee P with an automobile specially designed for security. Assume further that P uses the automobile only for personal use during the year. If P paid for the availability of the automobile, P would have been able to deduct no more than the excess of the amount P paid over the lesser amount P would have paid for the same mode of transportation absent the business-oriented security reasons. Thus, the includible amount would be not less than the value of the availability of the automobile without the special security design.

Q–8: If an employer provides an employee with an expensive automobile for the employee's personal purposes and the choice to provide an expensive rather than an inexpensive automobile is made by the employer for bona fide, noncompensatory business reasons, how does the working condition fringe rule apply?

A–8: There would be no working condition fringe with respect to the personal miles driven by the employee. If the employee had paid for the automobile he would not have been able to deduct any part of the payment attributable to personal miles.

Q–9: How does the working condition fringe exclusion apply to a flight on an employer-provided airplane?

A–9: If employee S flies on S's employer's airplane primarily for business reasons of S's employer, the value of S's flight is excludable as a working condition fringe. However, if S's spouse and children accompany S on such airplane trip for primarily personal reasons, the value of the flights by S's spouse and children is includible in S's gross income.

Q–10: How does the working condition fringe rule apply to flights on an employer-provided airplane for business-oriented security reasons?

A–10: The value of the working condition fringe is the amount that would be allowable as a deduction under section 162 or 167 if the employee paid for the flight. For example, assume that for bona fide business-oriented security reasons an employer provides an employee with a flight on an employer-provided airplane. Assume further that the flight is provided to the employee for personal purposes. If the employee paid for the flight, the employee would have been able to deduct no more than the excess of the amount paid over the lesser amount the employee would have paid absent the business-oriented security reasons. Thus, the includible amount would be not less than the amount the employee would have paid absent the security concern.

Q–11: Assume that an employer provides a flight to an employee on an employer-provided airplane and that the employer and/or the employee take the position on a return that the value of the flight is not includible in the employee's income because the purpose of the employee's flight was primarily business. If it is subsequently determined that the primary purpose of the employee's flight was personal, how is the flight valued?

A–11: The value of the flight is determined under the general valuation principles set forth in § 1.61–2T. The special valuation rules set forth in § 1.61–2T cannot be used. Similarly, if an employer and/or employee improperly take the position on a return that, due to a security concern, part or all of the value of a personal flight by an employee on an employer-provided airplane is excluded from gross income, the person who has improperly taken that position cannot use the special valuation rule provided in § 1.61–2T with respect to such flight by such employee.

For purposes of this Q/A–11, a flight by any individual whose flight would be taxed to the employee is treated as a flight by the employee (see § 1.61–2T).

Discrimination

Q–12: If an employer establishes separate fringe benefit plans or arrangements, will each plan be judged separately with respect to whether the plan discriminates in favor of officers, owners, or highly compensated employees ("prohibited group")?

A–12: Whether the separate fringe benefit plans will be judged separately depends upon the facts and circumstances. For example, assume a department store provides a 20 percent merchandise discount to all employees under one fringe benefit plan. Under a separate fringe benefit plan, the department store provides an additional 15 percent merchandise discount to a group of employees defined under a classification which discriminates in favor of the prohibited group. In this case, each plan would not be judged separately with respect to whether it is discriminatory. Instead, the plans would be considered together for purposes of testing for discrimination. Since considered together such plans would be discriminatory, section 132(a)(2) (relating to qualified employee

discounts) would not apply to the prohibited group members who are participants in both plans, so that no exclusion would be available for such employees with respect to either plan. Therefore, the entire 35 percent merchandise discount provided to the prohibited group members is includible in such employees' gross incomes.

Q–13: How are employer-provided cash bonuses or rebates provided to the prohibited group, which are adjusted according to the amount of purchases made by the employee, treated under section 132?

A–13: Such bonuses or rebates are treated as equivalent discounts. For example, assume all employees of an employer are provided a 20 percent discount with respect to all merchandise. In addition, the employer provides cash bonuses to a group of employees defined under a classification which discriminates in favor of the prohibited group. Assume further that such cash bonuses are equal to 15 percent of the value of merchandise purchased by each such employee. Such a structure would be treated exactly as the example in Q/A–12 of this section, and the prohibited group members who receive the cash bonuses may not exclude the 20 percent discount.

Q–14: Who is a highly compensated employee for purposes of section 132 and this section?

A–14: Except as otherwise provided below, any employee who has compensation greater than the compensation of 90 percent of all employees employed by the employer is a highly compensated employee. There are two exceptions to this rule:

(a) any employee who has compensation of $50,000 or more during a calendar year is a highly compensated employee for that year, regardless of whether his compensation is greater than the compensation of 90 percent of all employees employed by the employer, and

(b) any employee who has compensation of $20,000 or less during a year is not a highly compensated employee for that year, unless no employee of the employer has compensation in excess of $35,000.

The term "compensation" is defined as the amount which would be reported on a Form W–2 as compensation (excluding amounts that would be excludable but for section 132(h)(1)) for the calendar year. Compensation includes amounts received from all entities which would be treated as a single employer under section 414 (b), (c), and (m) and is not restricted to amounts received with respect to any one line of business.

Q–15: For purposes of Q/A–14 of this section, what is the meaning of the term "employee"?

A–15: Generally, for purposes of Q/A–11 of this section, the term "employee" does not include any individual who does not perform services for the employer as an employee during the calendar year. For example, if an employer has active employees, retired employees, and widows or widowers who are "employees" under section 132(f)(1)(B), the 90 percent test and the second exception to the 90 percent test (as listed in Q/A–14 of this section) apply only to the active employees.

Par. 3. The following new section is added after § 1.162–24 and reads as follows:

§ 1.162–25T Question and answer relating to compensation deductions with respect to noncash fringe benefits (Temporary).

The following question and answer relates to compensation deductions with respect to noncash fringe benefits pursuant to section 162 of the Internal Revenue Code of 1954:

Q–1: If an employer includes the value of a noncash fringe benefit in an employee's income, may the employer deduct both this amount (as compensation for services) and the costs incurred by the employer in providing the benefit to the employee?

A–1: No. For example, assume that an employer makes an automobile available to an employee solely for the employee's personal use during a calendar year. In addition, assume that the special rule provided in § 1.61–2T is used and that the Annual Lease Value (as defined in § 1.61–2T) is $2,100, which is the same amount that the employer paid to lease the automobile for the calendar year. The employer would only be entitled to deduct $2,100 with respect to such automobile. The employer would not be able to deduct both the cost of leasing the automobile for the calendar year and the Annual Lease Value.

If the employer had purchased, rather than leased the same automobile, and the depreciation with respect to such automobile was $1,500, the employer would only be entitled to deduct $1,500 with respect to such automobile. The employer would not be able to deduct both the depreciation and the Annual Lease Value.

PART 31—[AMENDED]

Par. 4. The following new section is added after § 31.3121(a)–1 and reads as follows:

§ 31.312(a)–1T Question and answer relating to the definition of wages in section 3121(a) (Temporary).

The following question and answer relates to the definition of wages in section 3121(a) of the Internal Revenue Code of 1954, as amended by section 531(d)(1)(A) of the Tax Reform Act of 1984 (98 Stat. 885):

Q–1: Are fringe benefits included in the definition of "wages" under section 3121(a)?

A–1: Yes, unless specifically excluded from the definition of "wages" pursuant to section 3121(a) (1) through (20). For example, a fringe benefit provided to or on behalf of an employee is excluded from the definition of "wages" if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132.

Par. 5. The following new section is added after § 31.3231(e)–1 and reads as follows:

§ 31.3231(e)–2T Question and answer relating to the definition of compensation in section 3231(e) (Temporary).

The following question and answer relates to the definition of "compensation" in section 3231(e) of the Internal Revenue Code of 1954, as amended by section 531(d)(2) of the Tax Reform Act of 1984 (98 Stat. 885):

Q–1: Does the term "compensation" include any benefit provided to or on behalf of an employee?

A–1: Yes, if the employment agreement provides, either expressly or impliedly, for the inclusion of the benefit as part of the employee's remuneration. However, even if the agreement either expressly or impliedly so provides, such benefit is not "compensation" if, at the time such benefit is provided, it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132.

Par. 6. The following new section is added after § 31.3306(b)–1 and reads as follows:

§ 31.3306(b)–1T Question and answer relating to the definition of wages in section 3306(b) (Temporary).

The following question and answer relates to the definition of wages in section 3306(b) of the Internal Revenue Code of 1954, as amended by section 531(d)(3) of the Tax Reform Act of 1984 (98 Stat. 885):

Q–1: Are fringe benefits included in the definition of wages under section 3306(b)?

A–1: Yes, unless specifically excluded from the definition of "wages" pursuant to section 3306(b) (1) through (16). For

example, a fringe benefit provided to or on behalf of an employee is excluded from the definition of "wages" if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132.

Par. 7. The following new section is added after § 31.3401(a)–1 and reads as follows:

§ 31.3401(a)–1T Question and answer relating to the definition of wages in section 3401(a) (Temporary).

The following question and answer relates to the definition of wages in section 3401(a) of the Internal Revenue Code of 1954, as amended by section 531(d)(4) of the Tax Reform Act of 1984 (98 Stat. 886):

Q–1: Are fringe benefits included in the definition of "wages" under section 3401(a)?

A–1: Yes, unless specifically excluded from the definition of "wages" pursuant to section 3401(a) (1) through (20). For example, a fringe benefit provided to or on behalf of an employee is excluded from the definition of "wages" if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132.

Par. 8. The following new section is added after § 31.3404–1 and reads as follows:

§ 31.3501(a)–1T Question and answer relating to the time employers must collect and pay the taxes on noncash fringe benefits.

The following questions and answers relate to the time employers must collect and pay the taxes imposed by subtitle C on noncash fringe benefits:

Q–1: If a noncash fringe benefit constitutes "wages" under section 3121(a), 3306(b), or 3401(a), or constitutes "compensation" under section 3231(e), when must an employer collect and pay the taxes imposed by subtitle C?

A–1: For purposes of an employer's liability to collect and pay the taxes imposed by subtitle C, an employer may deem such fringe benefit to be paid at any time on or after the date on which it is provided, as long as such date is on or before the last day of the calendar quarter in which such benefit is provided. An employer may consider the benefit to be provided in two or more parts for purposes of the preceding sentence. For example, if a fringe benefit with a fair market value of $1,000 is provided on January 1, 1985, the employer could deem $500 paid on February 28, 1985 and $500 paid on March 31, 1985.

With respect to noncash fringe benefits provided during the first calendar quarter of 1985, a special rule applies. Such benefits may be deemed paid at any time on or after the date on which they are provided as long as the date they are deemed paid is on or before the last day of the second calendar quarter of 1985.

In addition, for purposes of § 31.6302(c)–1(a)(1)(i), the term "tax" does not include the employer tax under section 3111 with respect to noncash fringe benefits which are deemed by the employer to be paid on the last day of any calendar quarter. For purposes of the first sentence of § 31.6302(c)–2(a)(1), the phrase "employer tax imposed after December 31, 1983, under section 3221 (a) and (b)" will not include any such employer tax with respect to noncash fringe benefits which are deemed by the employer to be paid on the last day of the quarter; provided that for purposes of deposits required under § 31.6302(c)–1(a)(1)(v), such first sentence applies to such noncash fringe benefits.

Notwithstanding anything in this section to the contrary, if an employer in fact withholds, the amount withheld is subject to the general deposit rules.

The manner in which and the time at which the employer withholds amounts from the wages of an employee to pay the taxes imposed under section 3101, 3201, and/or 3402 will generally be left to be determined by the employer and the employee. Any delay in withholding, however, does not affect the employer's obligation upon the filing of an employment tax return, to pay amounts which would be due under this subtitle if the employer had withheld, with respect to noncash fringe benefits, the amount which would have been required to be withheld if such noncash fringe benefits had been paid in cash on the date the benefits were deemed paid. However, if such amounts are not withheld from the wages of an employee within a reasonable period after payment of the taxes by the employer, payment by the employer may be deemed additional compensation of the employee.

Q–2: Are any fringe benefits excepted from the rules contained in Q/A–1 of this section?

A–2: Yes. The rules contained in Q/A–1 of this section do not apply to the transfer of personal property (both tangible and intangible) of a kind held for investment or to the transfer of real property. Accordingly, an employer is liable for the collection and payment of taxes imposed by this subtitle when such property is transferred. For example, stock transferred in connection with the performance of services is paid, for purposes of this subtitle C, on the date the stock is transferred, i.e., on the date the stock vests pursuant to section 83 (absent a section 83(b) election).

Q–3: What is an example of the application of the rules contained in Q/A–1 of this section with respect to obligations under Chapters 21 and 24 of subtitle C?

A–3: All of employer A's employees received $100 in cash as wages each week from A. In addition, during a calendar quarter, each such employee receives noncash fringe benefits, the fair market value of which is $500. A deems all such noncash fringe beneftis to be paid on the last day of the quarter. As of the end of the quarter, no amount has been withheld from the employee's wages with respect to such noncash fringe benefits, and A has "undeposited taxes" (within the meaning of § 31.6302(c)–1(a)(1)(i)) of more than $3,000 attributable to amounts actually withheld under section 3102 or section 3402 or due under section 3111 with respect to cash wages of A's employees. The amount which A must deposit within 3 banking days after the end of the quarter will be determined without regard to the noncash fringe benefits deemed paid on the last day of the quarter.

During the month following the quarter, A withholds from its employees with respect to the noncash fringe benefits deemed paid on the last day of the quarter. As A withholds amounts, such amounts become "taxes" subject to § 31.6302(c)–1(a)(1)(i). If, as of the date of filing of the return for the period which includes the last day of the quarter, A has not deposited all amounts with respect to the quarter which are due under section 3111 or which would have been due had A withheld, under sections 3102 and 3402, with respect to noncash fringe benefits, the amount which would have been required to be withheld had such benefits been paid in cash, A shall pay the balance with its return. A must make such payment regardless of whether, at the time the return is filed, he has actually withheld all amounts which he would have been required to withhold had such benefits been paid in cash.

Q–4: If an employee is provided with a noncash fringe benefit and separates from service before the benefit is deemed paid by the employer, is the employer liable for the taxes imposed by subtitle C?

A–4: Yes. The employer's liability is unaffected by his ability to collect the tax from the former employer.

Q–5: If an entity other than the employer provides a noncash fringe

benefit to an employee, is that entity considered the employer of such employee with respect to such noncash fringe benefit for any purposes of subtitle C?

A–5: The provision of noncash fringe benefits by an entity to an employee of another employer does not make such entity the employer of such employee with respect to such noncash fringe benefit for any purpose of subtitle C, so long as such noncash fringe benefits are incidental to the provision of wages by the employer to such employee. For example, if two unrelated airlines, A and B, enter into a reciprocal agreement where by the parents of employees of both airlines are entitled to free flights on both airlines, the fact that A is providing a noncash fringe benefit to the employees of B generally will not make A the employer of such employees for purposes of subtitle C.

Q–6: Do special rules apply to the provision of taxable noncash fringe benefits by a nonemployer under a reciprocal agreement with the employee's employer?

A–6: If the provision of taxable noncash fringe benefits meets the requirements of Q/A–5 of this section, the nonemployer provider of the benefits is not required to withhold. The employer must take the steps necessary to obtain the relevant information from the provider of the benefits in order to enable the employer to satisfy, in a timely manner, its obligations under subtitle C to collect and pay taxes with respect to the noncash fringe benefits provided by the nonemployer.

Q–7: For purposes of subtitle C, how is the fair market value of an employer-provided automobile during any time period to be determined?

A–7: The fair market value of an employer-provided automobile must be determined under the rules provided in § 1.61–2T and § 1.132–1T. For example, assume that an employee adopts the special rule provided in § 1.61–2T and that the Annual Lease Value, as defined in § 1.61–2T, of an automobile is $2,100. The automobile is provided to employee A on January 1, 1985. As of March 31, A had driven the automobile 1,000 personal miles and 3,000 miles in the course of his employer's business. For the quarter, A would have had wages of $131.25 attributable to his personal use of the automobile computed by subtracting a $393.75 working condition fringe from $525 ($2,100 divided by 4). See section 132(d) and § 1.132–1T. During the second quarter of 1985, A drives the automobile only 1,000 miles, all of which are personal. In order to calculate the value of the wages provided to A in the second quarter in the form of the availability of the employer-provided automobile, first A's employer calculates the Annual Lease Value attributable to the first six months of 1985 which is $1,050 ($2,100 divided by 2). Second, A's employer calculates the working condition fringe exclusion which is $630 ($1,050 multiplied by a fraction the numerator of which is A's business mileage (3,000 miles) and the denominator of which is A's total mileage (5,000 miles)). The calculations result in a total inclusion of $420 ($1,050—$630). From the total inclusion of $420, the wages provided in the first quarter, $131.25, are subtracted, leaving $288.75 as the wages includible in the second quarter attributable to the availability to A of the employer-provided automobile.

Q–8: May an employer treat the Annual Lease Value or Daily Lease Value (as defined in § 1.61–2T), or the fair market value if the special rule of § 1.61–2T is not used, of an employer-provided automobile made available to an employee as fully includible in the employee's gross income without regard to whether the employee has used the automobile in the employer's business?

A–8: No. Before including any amount in an employee's gross income, the employer must request that the employee furnish the employer with either records or a statement which shows, with respect to each employer-provided automobile, the number of miles driven by the employee in the employer's business and the number of total miles driven by such employee. (For purposes of this Q/A–8, if an automobile is available to any person and such availability would be taxed to an employee, miles driven by such person will be considered miles driven by the employee.) Such records or statement requested must relate to the period or periods with respect to which the employer is determining the amount that must be included in the employee's gross income. Unless the employer knows or has reason to know that such records or statement is not accurate, the employer must report the employee's income after taking into account the business and total use shown by such records or statement. If the employee fails to respond within a reasonable period of time, or if the employee produces records or a statement which the employer knows or has reason to know is not accurate, the employer may include in the employee's gross income an amount calculated without regard to a working condition fringe exclusion based on business mileage with respect to the employer-provided automobile.

In addition, the employer must, before reporting any amount as gross income with respect to an employer-provided automobile, take into account other working condition fringe exclusions, such as the security exclusion discussed in § 1.132–1T. If proper calculation of an exclusion requires information from the employee and the employee either does not respond within a reasonable period of time to a request for such information or produces information which the employer knows or has reason to know is not accurate, the employer may disregard such exclusion in reporting such employee's gross income.

Q–9: If an employee purchases any property or service from an employer at a discount and the discount is not excludable under section 132 and any applicable regulations thereunder, when is the noncash fringe benefit provided?

A–9: Such property or service is provided at the time that ownership is transferred, in the case of property, or the time service is rendered, in the case of services. This will be true regardless of when the employee pays for such property or service or the date payment is due or the rate of interest charged prior to payment. The time at which ownership of the property is transferred must be determined under general tax principles.

Q–10: What rules apply with respect to the treatment of the payment of any noncash fringe benefit as the payment of supplemental wages under section 3402?

A–10: An employer may treat the payment of any noncash fringe benefit as the payment of supplemental wages. Thus, if noncash fringe benefits are provided and tax has been withheld from the employee's regular wages, the employer may determine the tax to be withheld with respect to such noncash fringe benefits by using a flat percentage rate of 20 percent, without allowance for exemptions and without reference to any regular payment of wages. For example, assume that during a calendar quarter A receives from his employer a taxable noncash fringe benefit with a fair market value of $1,000. If the requirements specified above are satisfied, A's employer may determine the tax to be withheld with respect to such benefit by using a flat percentage rate of 20 percent. The employer may also determine the tax to be withheld with respect to such benefit by use of the method described in § 31.3402 (g)–1(a)(2).

PART 54—[AMENDED]

Par. 9. The following new section is added after § 54.4975–15 and reads as follows:

§ 54.4977-1T Questions and answers relating to the election concerning lines of business in existence on January 1, 1984 (Temporary).

The following questions and answers relate to the election by employers under section 4977 of the Internal Revenue Code of 1954, as added by section 531(e)(1) of the Tax Reform Act of 1984 (98 Stat. 886), to treat all employees of any line of business in existence on January 1, 1984, as employees of one of those lines of business for purposes of section 132(a) (1) and (2):

Q-1: What does section 4977 provide with respect to the exclusion from gross income of certain fringe benefits?

A-1: In general, section 4977 provides an elective grandfather rule that allows an employer under certain circumstances to treat employees of all lines of business which were in existence on January 1, 1984, as employees of one of those lines of business for purposes of section 132(a) (1) and (2), but not for purposes of section 132(g)(2).

Q-2: Under what circumstances does the elective grandfather rule of section 4977 apply?

A-2: If—

(a) an election under section 4977 is in effect with respect to an employer for any calendar year, and

(b) on and after January 1, 1984, at least 85 percent of the employees of the employer in all of its lines of business which existed on January 1, 1984, were entitled to employee discounts or services provided by the employer in one line of business,

then all employees of any line of business of the employer which was in existence on January 1, 1984, are treated, for purposes of section 132(a) (1) and (2) (but not for purposes of section 132(g)(2)) as employees of the one line of business referred to in (b) of this Q/A-2.

Q-3: How does an employer make the election provided for in section 4977?

A-3: An employer must file a statement with the director of the service center with which the employer's tax returns are filed. The statement must indicate that the employer is electing to apply the provisions of section 4977 to one or more of the employer's lines of business and must contain the following information:

(a) The employer's name, address, and taxpayer identification number;

(b) A description of all of the employer's lines of business in existence on January 1, 1984; and

(c) For each lines of business which is to have as an employee for purposes of section 132(a) (1) and (2) an individual but for the election under section 4977 would not be treated as an employee for purposes of section 132(a) (1) and (2)—

(1) A description of the no-additional-cost service or qualified employee discount (including, with respect to discounts, the percentage discount) to be offered to employees pursuant to section 4977 in such line of business, and

(2) With respect to employees in all of the employer's lines of business in existence on January 1, 1984, the number of such employees and the number entitled to the described fringe benefit. Such numbers may be determined as of a date which does not precede the date the election is filed by more than 30 days.

Q-4: In order to make a timely section 4977 election, when must an employer file the election statement?

A-4: Except as otherwise provided in the second senfence of this answer, the employer must file the election statement before the end of the calendar year preceding the year for which the election is to apply. For calendar year 1985, however, the employer has until March 31, 1985, to file the election statement. However, the Commissioner may, in his discretion, extend the March 31, 1985 deadline to a later date.

Q-5: Does section 4977 apply to all calendar years following the calendar year in which the election is made?

A-5: Yes, unless the employer revokes the election.

Q-6: When is a revocation effective?

A-6: A revocation is effective with respect to the calendar year following the calendar year in which it is filed.

Q-7: If an employer does not make a timely section 4977 election with respect to 1985, will the employer be entitled to make an election with respect to any subsequent year?

A-7: No.

Q-8: If an employer revokes a section 4977 election, is the employer entitled to elect the application of section 4977 for subsequent years?

A-8: No.

The regulations are issued under the authority contained in sections 132 and 7805 of the Internal Revenue Code of 1954 (Title 26 of the United States Code).

M. Eddie Heironimus,

Acting Commissioner of Internal Revenue.

Approved: December 31, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85-292 Filed 1-2-85; 9:44 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF-194; Ref: Notice No. 547]

Extension of Mandatory Compliance Date for Registry Number of American Bottler, and Geographical Brand Names

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

ACTION: Treasury decision, final rule.

SUMMARY: This final rule amends the mandatory compliance date of January 1, 1985, to January 1, 1987, with regard to two labeling requirements for wine found in 27 CFR Part 4. The affected regulations concern the American bottler's registry number requirement, and the "brand" requirement for brand names having geographical significance. This action is being taken since both regulations are involved in rulemaking and may subsequently be amended.

These regulations were first promulgated under Treasury Decision ATF-53, published in the **Federal Register** on August 23, 1978 (43 FR 37672, 54624). However, certain of those regulations were challenged in court. *Wawszkiewicz* v. *Department of the Treasury*, 480 F.Supp. 739 (D.D.C 1979), *aff'd in part, rev'd in part* and *remanded with directions*, 670 F.2d 296 (D.C. Cir. 1981).

This final rule only addresses the extension of the mandatory compliance date. The final rule concerning the registry number of the bottler, also discussed in Notice No. 547, will be published at a later date, after the comment period closes (January 22, 1985), and the comments have been analyzed.

EFFECTIVE DATE: February 6, 1985.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta or Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202-566-7626.

SUPPLEMENTARY INFORMATION:

Notice No. 547

On October 23, 1984, AFT published Notice No. 547 (49 FR 42577), proposing to take regulatory action on the provision in the wine regulations which requires, in part, that the registry number of the bottler be shown in direct conjunction with the name and address of the bottler (27 CFR 4.35(d)). The

proposal was the result of a petition received from the Wine Institute requesting the elimination of the registry number requirement. The comment period on this portion of the Notice closes on January 22, 1985.

AFT also proposed in the Notice to extend the mandatory compliance date from January 1, 1985, to January 1, 1987, for two regulations involved in rulemaking proceedings. The regulations are 27 CFR 4.35(d), requiring the registry number of the bottler to appear on the label, and 27 CFR 4.39(i), involving use on labels of brand names having geographic significance. AFT proposed to extend the mandatory compliance date, in order to allow sufficient time for the rulemaking processes to be completed. The comment period for the extension of the mandatory compliance date closed on November 7, 1984.

This final rule addresses only the extension of the mandatory compliance date. The final rule regarding the bottler's registry number will be published at a later date, after the comment period closes and the comments have been analyzed.

ATF has received two comments regarding the extension of the compliance date, both in support of AFT's proposal to extend the mandatory compliance date from January 1, 1985, to January 1, 1987.

ATF believes the two year extension period is necessary in order to allow sufficient time for the rulemaking processes to be completed. Therefore, the final rule is adopted as proposed.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(c) Significant adverse 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.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule 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 final rule will not have a significant economic impact on a substantial number of small entities.

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 final rule because no requirement to collect information is imposed.

Disclosure

Copies of the petitions, the notices of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: Office of Public Affairs and Disclosure, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, DC.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

Drafting Information

The principal author of this document is James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended; 27 U.S.C. 205, 27 CFR Part 4 is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Subpart D—Labeling Requirements for Wine

Paragraph 1. Section 4.35 is amended to change the mandatory compliance date in paragraph (d). The date appearing in the second sentence of paragraph (d) of § 4.35 is revised as follows:

§ 4.35 Name and address.

* * * * *

(d) *Trade or operating names.* The trade or operating name of any person appearing upon any label shall be identical with a name appearing on the basic permit or notice. In addition, after December 31, 1986, * * *

Paragraph 2. Section 4.39 is amended to extend the mandatory compliance date of paragraph (i). The heading of § 4.39(i) is revised to read as follows:

§ 4.39 Prohibited practices.

* * * * *

(i) Geographical brand names (not mandatory before January 1, 1987. * * *

* * * * *

Signed: December 3, 1984.

Stephen E. Higgins,

Director.

Approved: December 21, 1984.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-359 Filed 1-4-85; 8:45 am]

BILLING CODE 4810-31-M

---

27 CFR Part 4

[T.D. ATF-195; Ref Notices Nos. 493 and 501]

Wine Labeling and Advertising Regulations Under the Federal Alcohol Administration Act (Appellations of Origin and Placement of Name and Address and Net Contents)

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

ACTION: Treasury decision, final rule.

SUMMARY: This final rule amends various regulations governing the labeling and advertising of wine, 27 CFR Part 4.

First, ATF is amending the regulations in 27 CFR 4.34 to allow an appellation of origin to appear "substantially as conspicuous" as the class and type designation instead of "in the same size of type, and in lettering as conspicuous as the class and type designation." The "same size of type" requirement would have become mandatory on January 1, 1985.

Second, ATF is amending 27 CFR 4.27 to allow the appellation of origin, which is required to appear on labels of vintage wine, to appear "substantially as conspicuous" as the class and type designation. Additionally, 27 CFR 4.34 is amended to reflect the requirement in 27 CFR 4.27 that a vintage wine must be labeled with an appellation of origin other than a country.

Third, ATF is amending 27 CFR 4.32 to provide that the name and address of the bottler may appear on any label affixed to the bottle under any

circumstance. Previously, in certain cases, the name and address of the bottler had to appear on the brand label.

Fourth, ATF is amending 27 CFR 4.32 to provide that the net contents statement may appear on any label affixed to the bottle, if the net contents is a metric standard of fill, as authorized under 27 CFR 4.73. Previously, the net contents statement had to appear on the brand label, or on a separate label affixed in the immediate proximity thereto on the same side of the bottle, unless the net contents was legibly blown or branded into the container.

Finally, ATF is adding a provision to 27 CFR 4.25a to allow the names of more than one viticultural area to be used as the appellation of origin, in the case of overlapping areas, if not less than 85 percent of the volume of the wine is derived from grapes grown in the overlap area.

These actions are the result of comments received pursuant to a notice of proposed rulemaking which resulted from a petition and the need to clarify related issues such as ATF's interpretation of the statement "substantially as conspicuous."

EFFECTIVE DATE: February 6, 1985.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta or Charles N. Bacon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202–566–7626.

SUPPLEMENTARY INFORMATION:

Notice No. 493

On November 16, 1983, ATF published Notice No. 493 (48 FR 52088) which made various proposals to amend the wine labeling regulations in 27 CFR Part 4. The comment period was originally to have closed on January 16, 1984, however, the Delegation of the Commission of the European Communities requested an extension. As a result of this request, ATF extended the comment period until February 27, 1984, in Notice No. 501 (January 13, 1984, 49 FR 1752). During the comment period, ATF received a total of 26 comments. Specific comments are discussed under the appropriate headings relating to each issue.

Type Size Requirements

Treasury Decision ATF–53 (43 FR 37672, Aug. 23, 1978; and 43 FR 54624, Nov. 22, 1978) set forth the requirement in 27 CFR 4.34(c), that an appellation of origin disclosing the true place of origin of the wine shall appear on the label in direct conjunction with, in the same size of type, and in lettering as conspicuous as the class and type designation of the wine if: (1) A grape type (varietal) is used under the provisions of § 4.23a; (2) a semi-generic type designation is employed as the type designation of the wine pursuant to § 4.24(b); or (3) a brand name or product name is qualified with the word "brand" as required by the provisions of § 4.39(i) or (j). Prior to T.D. ATF–53, when an appellation of origin was required to be stated on a wine label, it was required to be substantially as conspicuous as the class and type designation.

The Wine Institute petitioned ATF to delay the effective date of §§ 4.34(c) and 4.39(i) from January 1, 1983, to January 1, 1985. Due to the fact that the validity of other regulations promulgated by T.D. ATF–53 was cast into doubt the *Wawszkiewicz* v. *Department of the Treasury*, 480 F.Supp. 739 (D.D.C. 1979), *rev'd in part and aff'd in part*, 670 F.2d 296 (D.C. Cir. 1981), (while one of the regulations at issue was upheld by the Court of Appeals, the other regulations at issue in the case were remanded to ATF for further consideration), wine industry members could not intelligently plan the redesign of their labels in order to confrom to all of the requirements set forth in the Treasury decision. The Wine Institute felt that its members should not be compelled to redesign their labels again until the future of the regulations at issue in *Wawszkiewicz* was settled. In other words, the Wine Institute felt that its members should only be required to redesign their labels once in order to conform to the rules promulgated in T.D. ATF–53 and they cannot be sure what those rules will be until the *Wawszkiewicz* matter in finalized. Since the Wine Institute's petition reflected valid concerns, ATF issued a notice of proposed rulemaking which resulted in T.D. ATF–126 deferring the effective date of §§ 4.34(c) and 4.39(i) until January 1, 1985.

Not only did the Wine Institute petition for a deferral of the effective date of the above-noted regulations, they also expressed the opinion that the appellation of origin and the class and type designation should not be required to be in the same size of type. They stated that this requirement was not demanded by consumers, provides no additional information concerning the origin of the grapes, and that the requirement would necessitate large-scale label changes. Subsequent to receipt of the Wine Institute's petition, ATF received petitions from Sonoma-Cutrer Vineyards and Napa Valley Vintners, which requested that the requirement set forth in § 4.34(c) that the appellation of origin be stated in the same size of type as the class and type designation be changed or elemented.

ATF concurred with the reasons given in the petitions, and proposed to return the appellation of origin type size requirement to "substantially as conspicuous" as the class and type designation. Of the 21 commenters responding to this issue, the majority believed that the appellation or origin should appear in the same size of type, and in lettering as conspicuous as the class and type designation. These commenters did not state that the appellation of origin should appear in the same size type in all cases, but mentioned specific circumstances.

One commenter, an American wine consumer, stated that, at the least, the appellation of origin when it is a viticultural area should appear in the same size of type as the class and type designation. A viticultural area emphasizing viticultural distinction should appear as prominent as the type of the wine.

The remaining commenters who took exception represented American importers, import trade associations, and foreign governments. These commenters believed that the appellation of origin should appear in the same size of type as the class and type designation, specifically when the class and type designation is a semi-generic designation of wine having geographic significance. Semi-generic designations of wine have a geographic connotation of origin, but they may also be used to designate wine having an origin other than that indicated by such name. Semi-generic names are Angelica, Burgundy, Claret, Chablis, Champagne, Chianti, Malaga, Marsala, Madeira, Moselle, Port, Rhine (Hock) Wine, Sauterne, Haut Sauterne, Sherry, and Tokay. However, when these designations are used for wines having an origin other than that indicated by the semi-generic designation, an appellation of origin must appear in director conjuction therewith disclosing the true place of origin. 27 CFR 4.24(b). These commenters believed that to ensure that no consumer would be confused or deceived as to the true place of origin of the wine, the appellation of origin should appear in the same size of type as the semi-generic designation.

ATF agrees with the commenters who stated that the regulation concerning appellation of origin type size should return to the "substantially as conspicuous" standard. No evidence has been presented to ATF that consumers have been or will be deceived when an appellation of origin appears in a size of type different from that of the class and type designation. ATF believes, after

evaluating the comments, that the reasons for initially making the proposal are still valid.

Requiring the appellation of origin to appear in the same size of type as the class and type designation conveys no more information than when the appellation of origin appears "substantially as conspicuous." The "substantially as conspicuous" requirement has been in effect for nearly half a century without problems arising over the requirement, and it allows industry members to design their labels as they deem most appropriate for the market place. ATF believes that it should regulate only where necessary, and then, only to the extent necessary. ATF further believes that requiring the appeallation of origin to appear "substantially as conspicuous" balances the winemakers' interest of being free to design their labels as they wish with the consumers' interest of being truthfully and adequately informed as to the origin of the product.

ATF believes a discussion of what it has held "substantially as conspicuous" to mean over the years is necessary. This discussion should remove any confusion on the part of industry members as to what the term means and how labels should be designed in relation to the appellation of origin and class and type designation type sizes. In addition, this should address the concerns of the opposing commenters since, as was brought out in the hearings preceding T.D. ATF-53, they believed the term "substantially as conspicuous as" had been "eroded" over time, resulting in smaller type faces, lighter colors, and different styles of type.

As with any mandatory information, the appellation of origin and class and type designation must be at least two millimeters in height and on a completely contrasting background. Most wine labels bear the class and type designation in a larger type size. The regulations read that the appellation of origin shall appear substantially as conspicuous as the class and the type designation. ATF will not question the type size of the appellation of origin when it appears no smaller than two millimeters and at least one-half the size of the class and type designation. Where the type size does not meet these standards, ATF will determine the acceptability of the label on a case-by-case basis.

ATF believes that, by clarifying the term "substantially as conspicuous as," and having the appellation of origin appear in direct conjunction with the class and type designation, on a completely contrasting background, the necessity for having the "same size type" requirement is eliminated. Therefore, ATF is amending the regulations as proposed.

Vintage Wine

In Notice No. 493, ATF made specific proposals relating to the provisions governing vintage wine. Under 27 CFR 4.27(a), a vintage wine must be labeled with an appellation of origin appearing in the same size of type, and in direct conjunction with the class and type designation. ATF proposed to return the type size requirement for the appellation of origin to read "substantially as conspicuous." This proposal was consistent with the type size amendment proposed for 27 CFR 4.34(c).

ATF also proposed to amend 27 CFR 4.34 to reference that a vintage wine must be labeled with an appellation of origin other than a country. This requirement is currently stated in 27 CFR 4.27(b).

The above proposals relating to vintage wine are adopted in this final rule without change. No comments were received that specifically addressed these proposals. The rationale for amending the type size requirement for an appellation of origin appearing on the label of a vintage wine is the same as that governing the size of type for appellations of origin generally.

Overlap Viticultural Area Appellation of Origin

Under 27 CFR Part 9, ATF has established several American viticultural areas which overlap to some extent. Additionally, a number of petitions to establish areas currently under consideration could result in the establishment of viticultural areas which overlap to various degrees. In some cases, the overlap would be such that a smaller viticultural area would be entirely contained within the boundaries of a larger area.

ATF has taken the position that when not less than 85 percent of the volume of a wine is derived from grapes grown in the area of overlap or more than one viticultural area, the wine may be labeled with the name of any of the appropriate viticultural areas. Based on this premise, ATF proposed to allow multi-viticultural area appellations of origin. This final rule establishes the use of multi-viticultural area appellations of origin only where overlapping occurs and under certain requirements. To preclude confusion with multi-county and multi-state appellations of origin, ATF is labeling these appellations as "overlap" viticultural area appellations of origin.

When not less than 85 percent of the volume of the wine is derived from grapes grown in the area of overlap of more than one viticultural area, the wine may be labeled with the name of each viticultural area. For example, if viticultural areas A and B overlap to some extent and not less than 85 percent of the volume of the wine is derived from grapes grown in the area where A and B overlap, the wine may be labeled with the viticultural area appellation of origin "A," "B," or "A-B."

Seven commenters responded to this issue. All concurred with the proposal in theory, however, two commenters suggested additional qualifications. One commenter stated that to qualify for the use of more than one viticultural area name, the overlap should be complete, that is, a smaller viticultural area totally within the boundaries of a larger viticultural area. ATF does not agree with this comment. ATF believes that the determining factor is the overlap itself. Whether the overlap is total or partial, consumers will be truthfully and specifically informed as to the origin of the grapes used to produce the wine. Accordingly, whether or not the overlap area is totally contained within the boundaries of a larger area or partial overlap occurs is not a concern. Therefore, ATF is not adopting this qualification.

Another commenter suggested that when a varietal designation is used in conjunction with an overlap viticultural area appellation of origin, the entire qualifying percentage requirement for a varietal designation should be grown within the overlap area. ATF agrees with this comment. However, no new rule to this effect is required since 27 CFR 4.23a(b) requires that if a single grape variety is to be used as the type designation, at least 75 percent of the wine must be derived from grapes of that variety grown in the labeled appellation of origin area. Therefore, when an overlap viticultural area is the labeled appellation of origin, § 4.23a(b) will require that to be labeled with a single grape variety as the type designation, at least 75 percent of the wine must be derived from grapes of that variety grown in the labeled overlap viticultural area.

ATF believes that this regulatory amendment will afford consumers more precise information concerning the origin of the grapes that are used to produce a wine. Consumers will be able to see not only that the grapes were grown within a viticultural area, but that they were grown within a particular portion of that area. Moreover, industry members will be provided with alternatives in which to label the origin of their wines.

Location of Name and Address

Under 27 CFR 4.32, the name and address of the bottler or packer of the wine shall appear on the brand label unless the name and address of the person for whom the wine was bottled appears on the brand label. Additionally, if wine is blended, bottled, or packed in a foreign country other than the country of origin and the country of origin is stated or otherwise indicated on the label, there must also be stated on the brand label the name of the bottler, packer, or blender, and the place where bottled, packed, or blended.

ATF proposed to allow the name and address of the bottler or packer of the wine to appear on any label affixed to the bottle. Eight commenters responded to this proposal and six commenters supported it.

The two opposing commenters believed that the name and address of the bottler or packer should remain on the front of the bottle, as it is important information. ATF agrees that the name and address of the bottler or packer is important consumer information and that it should be required to be stated on bottles of wine. However, ATF believes that consumers are knowledgeable enough to find such information whether it appears on the brand label, or on a label affixed in immediate proximity thereto, or on a side panel or back label. Therefore, ATF is amending 27 CFR 4.32, as proposed, to permit the information required by 27 CFR 4.35 to appear on any label. This will afford industry maximum flexibility in designing their labels while ensuring that the consumer is provided with the necessary required information.

Location of Net Contents Statement

27 CFR 4.32 also provides that the net contents of a bottle of wine shall be shown on the brand label, or on a separate label affixed in immediate proximity thereto on the same side of the container, unless it is legibly blown or branded into the container. ATF originally believed it was necessary to require this information to be so prominently placed because imported wines were not subject to standard of fill requirements prior to the adoption of metric standards of fill. This meant that a bottle of imported wine and a bottle of American wine, though appearing similar in size, could contain different amounts of wine. Presently, unless exempted by the provisions of 27 CFR 4.70(b), all wines bottled after December 31, 1978, both imported and American, are subject to the standard of fill requirements set forth in 27 CFR 4.73. Wines must be bottled in containers of a size set forth therein and the contents, in metric units, must appear on the brand label under 27 CFR 4.32 and 4.37.

Since American and imported wines are now subject to the same standard of fill requirements, except as provided in § 4.70(b), and since the contents of American and imported wines must appear in metric units, ATF believes that it is no longer necessary that the net contents appear on the brand label. Since consumers will no longer see a quart of American wine next to a liter of imported wine, for example, and possibly think the bottles have equal contents if they should fail to see the contents as stated on the brand label, it is no longer necessary that the net contents be so prominently stated. Accordingly, ATF proposed to allow the net contents statement, to appear on any label affixed to a bottle of wine. Seven commenters responded to this proposal and only one took exception.

The amount of any product in a container is, of course, crucial information for any consumer. Such information must be stated on bottles of wine so that wine consumers will have adequate information to be able to purchase the amount of wine they desire and so that they may not be deceived as to the quantity of the wines they purchase. ATF believes wine consumers look for this information and are knowledgeable enough to find it whether it appears on the brand label or a back label. However, since there are many wines which were bottled in sizes other than the metric standards of fill before January 1, 1979, ATF believes that the net contents statement on these wines should remain on the front of the bottle since they are not bottled in one of the authorized metric standards of fill. Therefore, ATF is amending 27 CFR 4.32 to provide that, when the net contents of a bottle of wine is one of the metric standards of fill as authorized under 27 CFR 4.73, such contents may be stated on any label affixed thereto. When the net contents is a size other than a metric standard of fill, the net contents shall be stated on the front of the bottle.

ATF believes this requirement will afford the wine industry a degree of freedom as to the design of their labels while ensuring that consumers are provided with essential information concerning the product.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) Major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule since it will not have a significant economic impact on a substantial number of small entities because the regulations relax requirements and provide labeling alternatives for other requirements. This final rule will not have: significant or secondary incidental effects on a substantial number of small entities: or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is certified under the provision of 5 U.S.C. 604(b) of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities.

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 final rule because no requirement to collect information is imposed.

Disclosure

Copies of the petitions, the notice of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: Office of Public Affairs and Disclosure, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, DC.

Drafting Information

The principal author of this document is Roger L. Bowling, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and wine.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended; 27 U.S.C. 205, 27 CFR Part 4 is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Subpart C—Standards of Identity for Wine

Paragraph 1. Section 4.25a is amended to add a new paragraph (e)(4) relating to overlap viticultural area appellations of origin and reads as follows:

§ 4.25a Appellations of origin (Not Mandatory before January 1, 1983).

* * * * *

(e) *Viticultural area.*

* * * * *

(4) *Overlap viticultural area appellations.*

An appellation of origin comprised of more than one viticultural area may be used in the case of overlapping viticultural areas if not less than 85 percent of the volume of the wine is derived from grapes grown in the overlapping area.

Par. 2. Section 4.27 is amended by removing the requirement in paragraph (a) that the appellation of origin and the class and type designation be the same size of type and by providing that the appellation of origin be substantially as conspicuous as the class and type designation. As revised, the third sentence of § 4.27(a) reads as follows:

§ 4.27 Vintage wine.

(a) *General.* * * * The appellation shall be shown in direct conjunction with the designation required by § 4.32(a)(2), in lettering substantially as conspicuous as that designation. * * *

* * * * *

Subpart D—Labeling Requirements for Wine

Par. 3. Section 4.32 is amended by removing paragraph (c) in its entirety, and paragraph (d) is redesignated as paragraph (c); and by revising paragraphs (a) and (b) to allow the name and address statements required by § 4.35 and the net contents statement required by § 4.37 to appear on the brand label or back label. As revised, § 4.32 (a) and (b) read as follows:

§ 4.32 Mandatory label information.

(a) There shall be stated: on the brand label:

(1) Brand name, in accordance with § 4.33.

(2) Class, type, or other designation, in accordance with § 4.34.

(3) Alcohol content, in accordance with § 4.36.

(4) On blends consisting of American and foreign wines, if any reference is made to the presence of foreign wine, the exact percentage by volume.

(b) There shall be stated on any label affixed to the container:

(1) Name and address, in accordance with § 4.35.

(2) Net contents, in accordance with § 4.37. If the net contents is a standard of fill other than an authorized metric standard of fill as prescribed in § 4.73, the net contents statement shall appear on a label affixed to the front of the bottle.

* * * * *

Par. 4. Section 4.34 is amended by removing paragraph (c) in its entirety; by providing that the appellation of origin shall appear in lettering substantially as conspicuous as the class and type designation in paragraph (b); and by adding a new provision, paragraph (b)(4), to reflect the requirement that vintage wine must be labeled with an appellation of origin. As revised, § 4.34(b) reads as follows:

§ 4.34 Class and type.

* * * * *

(b) An appellation of origin such as "American," "New York," "Napa Valley," or "Chilean," disclosing the true place of origin of the wine, shall appear in direct conjunction with and in lettering substantially as conspicuous as the class and type designation if:

(1) a grape type (varietal) designation is used under the provisions of § 4.23a;

(2) a semi-generic type designation is employed as the class and type designation of the wine pursuant to § 4.24(b);

(3) a brand name or product name is qualified with the word "Brand" under the requirements of § 4.39 (i) or (j); or

(4) the wine is labeled with the year of harvest of the grapes, and otherwise conforms with the provisions of § 4.27. The appellation of origin for vintage wine shall be other than a country.

Signed: October 25, 1984.

W.T. Drake,

Acting Director.

Approved: December 21, 1984.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-360 Filed 1-4-85; 8:45 am]

BILLING CODE 4810-31-M

POSTAL SERVICE

39 CFR Part 10

Express Mail International Service to Finland and Saudi Arabia

AGENCY: Postal Service.

ACTION: Final action on Express Mail International Service to Finland and Saudi Arabia.

SUMMARY: Pursuant to agreements with the postal administrations of Finland and Saudia Arabia, the Postal Service intends to begin Express Mail International Service with Finland and Saudi Arabia at postage rates indicated in the tables below. Service is scheduled to begin on February 7, 1985.

EFFECTIVE DATE: February 7, 1985.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlinn (202) 245-4414.

SUPPLEMENTARY INFORMATION: By a notice published in the **Federal Register** on December 3, 1984 (49 FR 47275), the Postal Service announced that it was proposing to begin Express Mail International Service to Finland and Saudi Arabia. Comments were invited on published rate tables, which are proposed amendments to the International Mail Manual (incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1), and which are to become effective on the date service begins. No comments were received.

Accordingly, the Postal Service states that it intends to begin Express Mail International Service with Finland and Saudi Arabia on February 7, 1985 at the rates indicated in the tables below.

List of Subjects in 39 CFR Part 10.

Postal Service, Foreign Relations.

FINLAND—INTERNATIONAL EXPRESS MAIL

Custom designed service [1] [2]—up to and including		On demand service [3]—up to and including	
Pounds	Rate	Pounds	Rate
1	$26.00	1	$20.00
2	31.70	2	23.70
3	35.40	3	27.40
4	39.10	4	31.10
5	42.80	5	34.80
6	46.50	6	38.50
7	50.20	7	42.20
8	53.90	8	45.90
9	57.60	9	49.60
10	61.30	10	53.30
11	65.00	11	57.00
12	68.70	12	60.70
13	72.40	13	64.40
14	76.10	14	68.10
15	79.80	15	71.80
16	83.50	16	75.50
17	87.20	17	79.20
18	90.90	18	82.90
19	94.60	19	86.60
20	98.30	20	90.30
21	102.00	21	94.00
22	105.70	22	97.70
23	109.40	23	101.40
24	113.10	24	105.10

FINLAND—INTERNATIONAL EXPRESS MAIL—Continued

Custom designed service [1] [2]—up to and including		On demand service [2]—up to and including	
Pounds	Rate	Pounds	Rate
25	116.80	25	108.80
26	120.50	26	112.50
27	124.20	27	116.20
28	127.90	28	119.90
29	131.60	29	123.60
30	135.30	30	127.30
31	139.00	31	131.00
32	142.70	32	134.70
33	146.40	33	138.40
34	150.10	34	142.10
35	153.80	35	145.80
36	157.50	36	149.50
37	161.20	37	153.20
38	164.90	38	156.90
39	168.60	39	160.60
40	172.30	40	164.30
41	176.00	41	168.00
42	179.70	42	171.70
43	183.40	43	175.40
44	187.10	44	179.10

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

SAUDI ARABIA—INTERNATIONAL EXPRESS MAIL

Custom designed service [1] [2]—Up to and including		On demand service [2]—up to and including	
Pounds	Rate	Pounds	Rate
1	$28.00	1	$20.00
2	31.70	2	23.70
3	35.40	3	27.40
4	39.10	4	31.10
5	42.80	5	34.80
6	46.50	6	38.50
7	50.20	7	42.20
8	53.90	8	45.90
9	57.60	9	49.60
10	61.30	10	53.30
11	65.00	11	57.00
12	68.70	12	60.70
13	72.40	13	64.40
14	76.10	14	68.10
15	79.80	15	71.80
16	83.50	16	75.50
17	87.20	17	79.20
18	90.90	18	82.90
19	94.60	19	86.60
20	98.30	20	90.30
21	102.00	21	94.00
22	105.70	22	97.70

[1] Rates in this table are applicable to each piece of International Customs Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the **Federal Register** as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

(39 U.S.C. 401, 404, 407)

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85-413 Filed 1-4-85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2750-5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: This notice approves equivalent visible emission limitations (EVEL) for the following five sources in Ohio: Corning Glass Works, Packaging Corporation of America, Springview Center, Denman Rubber Manufacturing Company and Chardon Rubber Company. All of these sources are located in areas that are designated as attainment for the National Ambient Air Quality Standards (NAAQS) for particulates. The EVEL is set at a level corresponding to the applicable mass limit for these sources. The EVEL will serve as an enforceable surveillance tool to ensure continued proper operation and maintenance of air pollution control equipment at the facility.

DATE: This action will be effective March 8, 1985 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of this revision are available for inspection at the following addresses:

The Office of the Federal Register, 1100 L Street, NW., Room #8401, Washington, D.C. 20480

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

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

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Written comments should be sent to:

Gary Gulezian, Chief, Regulatory Analysis Section, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Regulatory Analysis Section, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6038.

SUPPLEMENTARY INFORMATION: The State of Ohio on August 3, 1983, and June 28, 1984, submitted revisions to the total suspended particulate (TSP) portion of its State Implementation Plan (SIP). The August 3, 1983, revision is for the following six sources: Chardon Rubber Company, Cleveland Electric Illuminating Company, Cyclops Corporation, Denman Rubber Manufacturing Company, Packaging Corporation of America, and Springview Center. On May 7, 1984, in response to USEPA's request, the State submitted additional information for Packaging Corporation of America. Also, in the May 7, 1984, letter the State withdrew the revision for Cyclops Corporation and in a July 23, 1984, letter withdrew the revision for Cleveland Electric Illuminating Company. Therefore, from the August 3, 1983, submittal USEPA is rulemaking on four SIP revisions. The June 28, 1984, submittal is for one SIP revision, Corning Glass Works. The five sources that USEPA will be rulemaking on in today's notice are located in areas that are designated attainment for particulates and the revisions are all in the form of permits to operate. Specifically, the State is requesting approval of equivalent visible emission limitations (EVELs) for these sources. An EVEL is an opacity limit which exceeds the general opacity limit but represents a sources opacity when the source has been demonstrated to be in compliance with the applicable mass limit. All of the EVELs were established in accordance with Ohio Engineering Guides which USEPA has found to be acceptable. The Guides outline a procedure for setting the EVEL as the second highest non-overlapping six minute average that exceeds 20 percent opacity when the source is in compliance with the applicable mass particulate limit. Mass and opacity measurements were performed using USEPA's Reference Methods 5 and 9, respectively. The rulemaking docket contains the raw visible emissions data and particulate matter test data which formed the basis of these revisions.

Following is a discussion of the specific EVELs and USEPA's action on these revisions.

A. Chardon Rubber Company

• The State is requesting an EVEL of not greater than 40 percent opacity for Boiler No. 2.

• The 40 percent opacity was the second highest non-overlapping six minute average of the visible emissions observed during the three mass emission test runs in which the average particulate emission rate was 0.22 lbs/MMBTU. The 40 percent EVEL should ensure that Chardon Rubber will remain in compliance with the 0.35 lbs/MMBTU SIP allowable mass emission rate.

• The source is located in Chardon (Geauga County) Ohio which is designated as an attainment area for particulates. (40 CFR 81.336)

USEPA's ACTION: Approval.

B. Denman Rubber Manufacturing Company

• The State is requesting an EVEL of not greater than 35 percent opacity for Boiler No. 1.

• The 35 percent opacity was the second highest non-overlapping six minute average of the visible emissions observed during the three mass emission test runs in which the average particulate emission rate was 0.28 lbs/MMBTU. The 35 percent EVEL should ensure that Denman Rubber will remain in compliance with the 0.28 lbs/MMBTU SIP allowable mass emission rate.

• The source is located in Braceville Township (Trumbull County) Ohio which is designated an attainment area for particulates. (40 CFR 81.336)

USEPA's ACTION: Approval.

C. Packaging Corporation of America

• The State is requesting an EVEL of not greater than 35 percent opacity for Boiler Nos. 1, 2, and 3.

• The 35 percent opacity was the second highest non-overlapping six minute average of the visible emissions observed during the three mass emission test runs for Boiler No. 2 in which the average particulate emission rate was 0.16 lbs/MMBTU. No test runs were conducted for Boiler Nos. 1 and 3, because these boilers are identical and will be operating under the same conditions as No. 2. USEPA believes the 35 percent EVEL for all three boilers will ensure that Packaging Corporation will remain in compliance with the 0.18 lbs/MMBTU SIP allowable mass emission rate.

• The source is located in Rittman (Wayne County) Ohio which is designated an attainment area for particulates. (40 CFR 81.336)

USEPA's ACTION: Approval.

D. Springview Center

• The State is requesting an EVEL of not greater than 35.21 percent opacity for Boiler Nos. 1 and 2.

• The 35.21 percent opacity was the second highest non-overlapping six minute average of the visible emissions observed during the three mass emission test runs that were conducted for Boilers 1 and 2 in which the average particulate emission rate was 0.40 lbs/MMBTU. The 35.21 percent EVEL should ensure that Springview Center will remain in compliance with the 0.40 lbs/MMBTU SIP allowable mass emission rate.

• The source is located in Springview (Clark County) Ohio which is designated an attainment area for particulates. (40 CFR 81.336)

USEPA's ACTION: Approval.

E. Corning Glass Works

• The State is requesting an EVEL of not greater than 36 percent opacity for a glass melting furnace identified as tank No. 141.

• The 36 percent EVEL was the second highest non-overlapping six minute average of the visible emissions observed during the three mass emission test runs in which the average particulate emission rate was 9.73 lbs/hr. The 36 percent EVEL should ensure that Corning Glass Works will remain in compliance with the 11.3 lbs/hr SIP allowable mass emission rate.

• The source is located in Greenville (Darke County) Ohio which is designated an attainment area for particulates. (40 CFR 81.336)

USEPA's ACTION: Approval.

Because USEPA considers today's action noncontroversial, we are approving it today without prior proposal. This action will become effective on (60 days from the date of this notice). However, if we receive notice by 30 days from the date of this notice that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws this action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

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

I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities (46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, incorporation by reference, particulate matter.

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

This notice is issued under authority of section 110 of the Clean Air Act, as amended (42 U.S.C. 7410).

Dated December 28, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter 1, Part 52 is amended.

1. Section 52.1870 is amended by adding new paragraph (c)(65) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(65) On August 3, 1983, May 7, 1984 and June 28, 1984, the Ohio Environmental Protection Agency submitted revisions to the total suspended particulate State Implementation Plan for Chardon Rubber Company, Corning Glass Works, Denman Rubber Manufacturing Company, Packaging Corporation of America, and Springview Center. Each of the revisions are in the form of a permit to operate and contain equivalent visible emission limitations.

[FR Doc. 85-380 Filed 1-4-85; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[GA-007; A-4-FRL-2751-1]

Approval and Promulgation of Implementation Plans; Georgia; Blue Bird Body Bubble

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves a bubble permit which the Environmental Protection Division of the Georgia Department of Natural Resources submitted on January 27, 1984, as a State Implementation Plan (SIP) revision. The bubble will allow Blue Bird Body Company in Fort Valley to meet a plantwide limit on volatile organic

compound (VOC) emissions from its operations rather than meet the emission limits specified in the Georgia regulations for each individual operation.

EFFECTIVE DATE: This action is effective February 6, 1985.

ADDRESSES: Copies of the materials submitted by Georgia may be examined during normal business hours at the following locations:

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

Library, Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20005

Air Management Branch, EPA, Region IV, 345 Courtland Street, NE. Atlanta, Georgia 30365

Air Protection Branch, Environmental Protection Division, Georgia Department of Natural Resources, 270 Washington Street, SW., Room 816, Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Walter Bishop, Air Management Branch, EPA Region IV, at the above address, telephone 404/881-2864 (FTS 257-2864).

SUPPLEMENTARY INFORMATION: The Georgia Environmental Protection Division (EPD) has submitted as a SIP revision an alternative emission reduction plan for Blue Bird Body Company, which manufactures buses and motor homes at its facility in Fort Valley. This area is unclassified for ozone. The individual operations which cause emissions of VOC are covered by Georgia regulation 391-3-1-.02(2)(il), VOC Emissions from Surface Coating of Miscellaneous Metal Part and Products. The company had originally expected to be exempt from the regulation by using low-solvent coatings, thus reducing emissions below the 100 tons per year applicability cutoff point. However, this proved to be impossible, and the company then proposed a VOC bubble: Low-solvent coatings are to be used for certain operations only and instead of meeting the emission limits specified by the State's regulation for individual operations, the company will meet a plantwide cap assuring an equivalent or greater reduction in VOC emissions. Compliance will be determined on the basis of a daily calculation of the VOC content of the coatings used in the previous 24 hours. Such calculations will include any dilution or make-up solvent used.

The bubble permit for Blue Bird Body Company received public hearing on May 16, 1983, and was submitted to EPA as a SIP revision on January 27, 1984.

EPA finds that it is consistent with the Agency's policy statement of December 8, 1980 (45 FR 30824) on daily averaging of VOC emissions and that it meets the criteria for approval specified in the Agency's Emission Trading Policy of April 7, 1982 (47 FR 15076). On this basis, EPA proposed on July 23, 1984 (49 FR 29622) to approve it; no comments were received on the proposal.

Final Action

EPA today approves Georgia's VOC bubble for Blue Bird Body Company in Fort Valley.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

The Director of the Federal Register approved the incorporation by reference of the Georgia State Implementation Plan on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, intergovernmental relations, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, carbon monoxide, hydrocarbons, incorporation by reference.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: December 28, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

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

Subpart L—Georgia

Section 52.570 is amended by adding paragraph (c)(31) as follows:

§ 52.570 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(31) Bubble permit for Blue Bird Body Company in Fort Valley, submitted on January 27, 1984, by the Georgia Department of Natural Resources.

[FR Doc. 85-382 Filed 1-4-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-1-FRL-2750-7]

Approval and Promulgation of Implementation Plans, New Hampshire; Table of EPA Approved Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is publishing a table which summarizes approval actions already taken to incorporate New Hampshire Air Pollution regulations into the State Implementation Plan (SIP). The intended effect of this action is to make it easier to identify those New Hampshire Air Pollution regulations, or portions thereof, which have been approved by EPA and made part of the federally approved SIP.

EFFECTIVE DATE: This action will be effective March 8, 1985 unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Harley F. Laing, Director, Air Management Division, Room 2312, JFK Federal Building, Boston, MA 02203. Copies are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: David Conroy (617) 223-4869.

SUPPLEMENTARY INFORMATION: Since the State of New Hampshire initially submitted its State Implementation Plan (SIP) to EPA in 1972, there have been numerous revisions to the plan. These revisions included changes to almost every regulation. The table which is being codified today at 40 CFR 52.1525 identifies those New Hampshire regulations which are part of the federally approved SIP. The table also provides the date on which EPA took final action to revise each regulation. Where only part of a regulation is federally approved, it is indicated in the comments section of the table. We are publishing this table in today's **Federal Register**, and making it part of the Code of Federal Regulations to assist the public in identifying those New Hampshire regulations or portions thereof, which are federally approved. We intend to revise this table each time we approve a revision to the New Hampshire SIP. The table published today has been developed primarily for informational purposes. It does not have

any independent regulatory effect. The actual federally approved New Hampshire SIP is incorporated by reference at 40 CFR 52.1520. To the extent that this table codified at 40 CFR 52.1525 conflicts with 40 CFR 52.1520, 40 CFR 52.1520 governs.

EPA is publishing this table without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective March 8, 1985.

Final Action

EPA is publishing a table of federally approved New Hampshire Air Pollution regulations at 40 CFR 52.1525.

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

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

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

Dated: December 28, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

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

Subpart EE—New Hampshire

1. Section 52.1525, is added as follows:

§ 52.1525 EPA-Approved New Hampshire State regulations

The following table identifies that State regulations which have been submitted to and approved by EPA as revisions to the New Hampshire State Implementation Plan. This table is for informational purposes only and does not have any independent regulatory effect. To determine regulatory requirements for a specific situation consult the plan identified in § 52.1520. To the extent that this table conflicts with § 52.1520, § 52.1520 governs.

TABLE 52.1525—EPA APPROVED RULES AND REGULATIONS [1]—NEW HAMPSHIRE

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Comments
Organizational rules: Definitions	NH APCC regulations (all)	1/19/72	5/31/72	37 FR 10879	(b)	See footnote 2.
		3/21/74	11/20/75	40 FR 53999	(c)10	
		4/26/79	4/11/80	45 FR 24869	(c)12	
	CH air 100	12/17/81	3/15/83	48 FR 10830	(c)22	Approved CH Air 100.01–.98 except for no action on .01– .03; .27; .31; .50; .52; .57; .63; .70– .73; .76; .78; .90; .97 and Part Air 102 and Air 103.
		7/21/83	2/1/84	49 FR 3989	(c)28	Def. of process weight Part Air 101.74.
Procedural rules: Permit notice and hearing procedures.						Prior to 3/15/83, 205.01–.09 were part of the SIP narrative. See footnote 2.
	CH air 200, part air 205	12/17/81	3/15/83	48 FR 10830	(c)22	Part Air 205.01–205.09 only.
		10/21/82	4/21/83	48 FR 17077	(c)24	Part Air 205.10 added.
Ambient air quality standards	NH APCC regulation 11	1/19/72	5/31/72	37 FR 10879	(b)	See footnote 2.
		3/21/74	11/20/75	40 FR 53999	(c)10	
		2/21/80	7/15/81	46 FR 36699	(c)18	
	CH air 300	12/17/81	3/15/83	48 FR 10830	(c)22	Part Air 301, 302 and 303. No action on Part 304, Fluorides.
Sulfur content limit in fuels	NH APCC regulation 5	4/15/70	5/31/72	37 FR 10879	(b)	See Footnote 2.
		9/19/79	6/23/80	45 FR 41942	(c)13	Approved only for Brown Co., Berlin.
	CH air 400	12/17/81	3/15/83	48 FR 10830	(c)22	Part Air 401; 402.01; 402.01; 402.03–402.04; 403–405.
		2/20/75	3/23/84	49 FR 11094	(c)26	Statewide SO2 reg. Part Air 402.02.
		10/20/83	8/7/84	49 FR 31415	(c)29	Revision to Part Air 402.02.
		12/15/83	8/1/84	49 FR 30695	(c)31	Revision to Part Air 402.02.
Statewide permit system	NH APCC regulation 16	1/19/72	5/31/72	37 FR 10879	(b)	See footnote 2.
		4/26/79	4/11/80	45 FR 24869	(c)12	
		6/19/80	9/22/80	45 FR 62814	(c)16	Revoked Reg 16, Attachment #1 (PSD).
	CH air 600	12/17/81	3/15/83	48 FR 10830	(c)22	Part Air 601–616, except 609 which was revoked in (c)16 above.
Permit fee system	NH APCC regulation 16					Attachment #3

TABLE 52.1525—EPA APPROVED RULES AND REGULATIONS [1]—NEW HAMPSHIRE—Continued

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Comments
	CH air 700	12/17/81	3/15/83	48 FR 10830	(c)22	Part Air 701-706.
Testing requirements	NH APCC most regulations.	1/19/72/	5/31/72	37 FR 10879	(b)	See footnote 2.
		3/21/74	11/20/75	40 FR 53999	(c)10	
	CH air 800	12/17/81	3/15/83	48 FR 10830	(c)22	Part Air 801 and 802. Part Air 803 is not part of the federally-approved SIP.
Owner or operator obligations	NH APCC various regulations.	1/19/72	5/31/72	37 FR 10879	(b)	See footnote 2.
		3/21/74	11/20/75	40 FR 53999	(c)10	
		3/20/75	1/21/76	41 FR 3085	(c)11	
	CH air 900	12/17/81	3/15/83	48 FR 10830	(c)22	Part Air 901-903.
Prevention, abatement and control of open source air pollution.	NH APCC regulation 12	1/19/72	5/31/72	37 FR 10879	(b)	See footnote 2.
	CH air 1000	12/17/81	3/15/83	48 FR 10830	(c)22	Part Air 1001. Part Air 1002 is not part of the federally-approved SIP.
Prevention, abatement and control of stationary source air pollution.	NH APCC regulations 4, 6, 7, 8, 10, 13, 14, 22.	1/19/72	5/31/72	37 FR 10879	(b)	See footnote 2.
		3/21/74	11/20/75	40 FR 53999	(c)10	
		5/16/74				
		4/26/79	4/11/80	45 FR 24869	(c)12	
			12/30/82	47 FR 56251	(c)20	
	CH air 1200	12/15/77	3/15/83	48 FR 10830	(c)22	Part Air 1201 (except Sect. Air 1201.07) through Part Air 1205; Part Air 1207 and 1208. Part Air 1206 is not part of the federally-approved SIP.
		6/17/82				
		2/19/80	10/31/83	48 FR 50077	(c)27	Part Air 1204.02(c) and 1204.21(j).
		7/21/83	2/1/84	49 FR 3989	(c)28	Exemption of non-reactive VOCs (1204.01).
		2/16/84	6/1/84	49 FR 24724	(c)30	Part Air 1201.05(e) added.

[1] These regulations are applicable statewide unless otherwise noted in the COMMENTS section.
[2] For each TITLE/SUBJECT this table first lists regulations adopted as of 1972. In the 3/15/82 approval, the existing NH regulations were readopted and recodified into the CHAPTER-PART-Section format indicated above, e.g., former Regulation 22 "Prevention, Abatement and Control of Volatile Organic Compound Emissions" is now incorporated in CHAPTER 1200 PART 1204 Sections 12.04.01-.21. Where it was possible to easily cross-reference the old citation with the new this was done. However, in cases where it would have been cumbersome to cross-reference the old citation with the new citation, no attempt was made to reference the old citation.

[FR Doc. 85-381, Filed 1-4-85; 8:45 am]

BILLING CODE 4310-40-M

40 CFR Part 52

[EPA Action MO 1665; A-7-FRL-2750-3]

Approval and Promulgation of the Missouri State Implementation Plan for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On September 27, 1984, the Missouri Air Conservation Commission amended item No. 6 of the Consent Order issued to the AMAX Lead Company of Missouri. The Consent Order is an approved portion of the Missouri State Implementation Plan for lead. The amendment requires AMAX to install equipment and to implement procedures which are designed to provide equivalent lead emission reductions to those measures contained in item No. 6 of the original Consent Order. EPA has reviewed the proposed State revision and concludes that the amended Consent Order issued to AMAX is equivalent for the purpose of the lead emission control strategy. Therefore, EPA is approving the revision.

EFFECTIVE DATE: This action will be effective March 8, 1985 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the State's submission and EPA's technical support document are available for review at the following addresses:

Environmental Protection Agency, Region VII, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106

Missouri Department of Natural Resources, 1101 Rear Southwest Blvd., Jefferson City, Missouri 65104

Copies of the State's submission are available for review at:

Public Information Reference Unit, EPA, 401 M Street, SW., Washington, DC,

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

Notice of intent to submit adverse or critical comments should be sent to Dewayne E. Durst, Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Dewayne E. Durst at the above address or call (816) 374-3791, (FTS) 758-3791.

SUPPLEMENTARY INFORMATION: On April 27, 1981 (46 FR 23412), EPA approved a Consent Order issued to the AMAX Lead Company as part of the Missouri lead SIP. The Consent Order contains six specific lead control measures which form the control strategy for meeting the air quality standard in the vicinity of the AMAX primary lead smelter. The final compliance date for the AMAX Lead Company was October 27, 1984, as published in the **Federal Register** on May 15, 1981 (46 FR 26769). Item No. 6 of the Consent Order, as originally approved, provided for collection and control of fugitive lead emissions in the blast furnace feed area. This control item was to provide approximately 2% of the total lead emission reduction in the control strategy for the AMAX smelter. The company investigated alternate methods of providing equivalent lead emission reductions to those contained in the original Consent Order. Working with the Missouri Department of Natural Resources, a revised Consent Order was prepared which incorporates the alternate control

measures. That revised Order is the subject of this approval action.

On September 27, 1984, after proper notice and public hearing the Missouri Air Conservation Commission amended item 6 of the Consent Order issued to AMAX Lead Company. The amended Consent Order requires the following control measures:

6a. Install an additional (spare) exhaust fan for furnace tapping and settler ventilation to assure that the furnace tapping and settler operations are always vented to the baghouse.

6b. Recondition the offtake thimble at the south blast furnace to reduce excess leakage and improve capture efficiency at the top of the blast furnace.

6c. Institute a revised operating practice to cool hot lead bullion at least 30 minutes before pouring the bullion into the drossing kettles.

6d. Install improved valves on the main baghouse dust hoppers to reduce air leakage which will reduce baghouse dust leakage at the valves by 90%.

6e. Install a water spray system at the cooling chamber ahead of the main baghouse to prevent baghouse overheating. Presently when the baghouse overheats, excess air is introduced to cool the baghouse which reduces collection efficiency at the process emission points or the baghouse fans turn off so the lead emissions bypass the baghouse.

As stated above, the control measures contained in the revised Consent Order provide lead emission reductions at the AMAX lead smelter in excess of those required by the original Consent Order which is an approved portion of the Missouri lead SIP. The Order requires all measures in the revised Order be completed by October 31, 1984. Approval of this revision does not change the attainment date of October 31, 1984.

ACTION: EPA approves the modification of AMAX Lead Company Consent Order item No. 6 as a revision to the Missouri lead SIP. EPA believes this action is noncontroversial and thus, a proposal was not published. The public is advised that this action is effective March 8, 1985 unless we receive written notice within 30 days of date of publication that someone wishes to submit adverse or critical comments. In such case, this action will be withdrawn and rulemaking will commence again by announcing a proposal of this action and establishing a comment period.

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

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12292.

Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Office of the Federal Register on July 1, 1982.

This notice of final rulemaking is issued under the authority of section 110 of the Clean Air Act, as amended, August 1977 (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Air pollution control, Lead, Particulate matter, Intergovernmental relations.

Dated: December 28, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart AA—Missouri

1. Section 52.1320 is amended by adding a new paragraph (c)(49) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified. * * *

(49) On October 5, 1984, the Missouri Department of Natural Resources submitted a revision to the September 2, 1980, lead State Implementation Plan pertaining to item 6 of the Consent Order for the AMAX Lead Company. The revision consists of a substitution of equivalent control measures for item 6.

[FR Doc. 85-379 Filed 1-4-85; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[A-I-FRL-2751-3]

Approval and Promulgation of Implementation Plans, Rhode Island; Table of EPA Approved Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is publishing a table which summarizes approval actions already taken to incorporate Rhode Island Air Pollution regulations into the State Implementation Plan (SIP). The intended effect of this action is to make it easier to identify those Rhode Island Air Pollution regulations, or portions thereof, which have been approved by EPA and made part of the federally-approved SIP.

EFFECTIVE DATE: This action will be effective March 8, 1985 unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Harley F. Laing, Director, Air Management Division, Room 2312, JFK Federal Building, Boston, MA 02203. Copies are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, (617) 223-4868.

SUPPLEMENTARY INFORMATION: Since the State of Rhode Island initially submitted its State Implementation Plan (SIP) to EPA in 1972, there have been numerous regulatory additions and revisions to the plan. These revisions include changes to almost every regulation. The table which is being codified today at 40 CFR 52.2081 identifies those Rhode Island regulations which are part of the federally-approved SIP. The table also provides the date on which EPA took final action to approve each regulation and revision. Where only part of a regulation is federally-approved, a notation to that effect is made in the comments section of the table. We are publishing this table in today's Federal Register, and making it part of the Code of Federal Regulations to assist the public in identifying those Rhode Island regulations, or portions thereof, which are federally-approved. We intend to revise this table each time we approve a regulatory addition or revision to the Rhode Island SIP. The table published today has been developed for informational purposes. It does not have any independent regulatory effect. The actual federally-approved Rhode Island SIP is incorporated by reference at 40 CFR 52.2070. To the extent that this table, codified at 40 CFR 52.2081, conflicts with 40 CFR 52.2070, 40 CFR 52.2070 governs.

EPA is publishing this table without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal

Register unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective 60 days from today.

Final Action

EPA is publishing a table of the federally-approved Rhode Island Air Pollution regulations at 40 CFR 52.2081.

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

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

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

Dated: December 28, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

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

Subpart 00—Rhode Island

1. Section 52.2081, is added as follows:

§ 52.2081 EPA-Approved EPA Rhode Island State Regulations.

The following table identifies the State regulations which have been approved by EPA and incorporated by reference into the Rhode Island State Implementation Plan. This table is for informational purposes only and does not have any independent regulatory effect. To determine regulatory requirements for a specific situation consult the plan identified in § 52.2070. To the extent that this table conflicts with § 52.2070, § 52.2070 governs.

TABLE 52.2081—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.2070	Comments/Unapproved sections
	Air pollution control regulation					
No. 1	Visible emissions	8/02/67	5/31/72	37 FR 10842	(b)	
		2/28/72	5/31/72	37 FR 10842	(b)	
		2/22/77	5/07/81	46 FR 25446	(c)(12)	
No. 2	Handfiring of soft coal	8/02/67	5/31/72	37 FR 10842	(b)	
		2/28/72	5/31/72	37 FR 10842	(b)	
		2/22/77	5/07/81	46 FR 25446	(c)(12)	
No. 3	Particulate emissions from industrial processes.	8/02/67	5/31/72	37 FR 10842	(b)	
		2/28/72	5/31/72	37 FR 10842	(b)	
		2/22/77	5/07/81	46 FR 25446	(c)(12	
No. 4	Open fires	8/02/67	5/31/72	37 FR 10842	(b)	
		10/01/71	5/31/72	37 FR 10842	(b)	
		2/22/77	5/07/81	46 FR 25446	(c)(12)	
No. 5	Fugitive dust	8/02/67	5/31/72	37 FR 10842	(b)	
		2/22/77	5/07/81	46 FR 25446	(c)(12)	
No. 6	Opacity monitors	8/02/67	5/31/72	37 FR 10842	(b)	
		2/22/77	5/07/81	46 FR 25446	(c)(12)	
No. 7	Emission of air contaminants detrimental to persons or property.	8/02/67	5/31/72	37 FR 10842	(b)	
		7/19/77	5/07/81	46 FR 25446	(c)(12)	
No. 8	Sulfur content of fuels	10/01/71	5/31/72	37 FR 10842	(b)	
		5/28/74	11/03/75	40 FR 51044	(c)(8)	
			1/21/81	46 FR 5980	(c)(13)	Narragansett Electric Bubble.
		2/22/77	5/07/81	46 FR 25446	(c)(12)	

TABLE 52.2061—EPA-APPROVED RULES AND REGULATIONS—Continued

State citation	Title/subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.2070	Comments/Unapproved sections
			12/30/81	46 FR 63043	(c)(14)	Temporary Relaxation for Bradford Dye.
			11/10/82	47 FR 50866	(c)(16)	Temporary Relaxation for Kenyon Piece Dye Works.
		10/05/82	3/29/83	48 FR 13027	(c)(17)	Conversion/Conservation Incentive/Bubble.
			5/15/84	49 FR 20493	(c)(21)	URI Bubble.
		8/29/83	7/27/84	49 FR 30177	(c)(23)	Narragansett Electric (South Street).
No. 9	Approval to construct, modify or operate	10/03/71	5/31/72	37 FR 10842	(b)	
		2/22/77	5/07/81	46 FR 25446	(c)(12)	
		4/12/81	5/07/81	46 FR 25446	(c)(12)	No action on 9.2.3(b) and 9.12.
		4/05/82	6/28/83	48 FR 29690	(c)(18)	NSR fully approved, 9.12 Emission Banking approved.
		2/13/84	7/6/84	49 FR 27749	(c)(22)	PSD fully approved, 9.2.3(b) approved.
No. 10	Air pollution episodes	2/28/72	5/31/72	37 FR 10842	(b)	
		10/11/75	11/03/75	40 FR 51043	(c)(6)	
		2/22/77	5/07/81	46 FR 25446	(c)(12)	
No. 11	Petroleum liquids marketing and storage	2/22/77	5/07/81	46 FR 25446	(c)(12)	
		7/05/79	5/07/81	46 FR 25446	(c)(12)	
		4/22/81	4/26/82	47 FR 17817	(c)(15)	
No. 12	Incinerators	2/28/72	6/22/73	38 FR 16351	(c)(3)	
		2/22/77	5/07/81	46 FR 25446	(c)(12)	
		4/22/81	4/26/82	47 FR 17817	(c)(15)	
No. 13	Particulate emissions from fossil fuel fired steam or hot water generating units.	1/17/73	10/23/73	38 FR 29296	(c)(14)	
		2/22/77	5/07/81	46 FR 25446	(c)(12)	
		7/05/79	5/07/81	46 FR 25446	(c)(12)	
			11/10/82	47 FR 50866	(c)(16)	Temporary Relaxation for Kenyon Piece Dye Works.
		10/05/82	3/29/83	48 FR 13027	(c)(17)	Conversion/Conservation Incentive.
No. 14	Record keeping and reporting	5/14/73	1/15/76	41 FR 2231	(c)(10)	
		2/22/77	5/07/81	46 FR 25446	(c)(12)	
		7/05/79	5/07/81	46 FR 25446	(c)(12)	
No. 15	Control or organic solvent emissions	8/21/75	5/07/81	46 FR 25446	(c)(12)	
		3/14/83	7/06/83	48 FR 31028	(c)(19)	Includes 100 TPY RACT Reg/Generic Bubble Rule.
No. 16	Operation of air pollution control system	2/22/77	5/07/81	46 FR 25446	(c)(12)	
No. 17	Odors	2/22/77	5/07/81	46 FR 25446	(c)(12)	
No. 18	Control of emissions from solvent metal cleaning.	7/5/79	5/07/81	46 FR 25446	(c)(12)	
		4/22/81	4/26/82	47 FR 17817	(c)(15)	
No. 19	Control of VOCs from surface coating operations.	11/13/79	5/07/81	46 FR 25446	(c)(12)	Conditional approval.
		4/05/82	7/06/83	48 FR 31026	(c)(19)	Removes Conditions/Generic Bubble Rule.
No. 21	Control of VOCs from printing operations	4/05/82	7/06/83	48 FR 31026	(c)(19)	Generic Bubble Rule.

[FR Doc. 85-384 Filed 1-4-85; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 65

[A-3-FRL-2752-1]

Delayed Compliance Order; Approval of a Delayed Compliance Order Issued by the Pennsylvania Department of Environmental Resources to Franklin Steel Co.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of the Environmental Protection Agency hereby approves a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Franklin Steel Company. The Order requires the company to bring air emissions from its sign post manufacturing facility in Franklin, Pennsylvania into compliance with certain regulations contained in the Federally approved Pennsylvania State Implementation Plan (SIP) by June 30, 1985. Because of the Administrator's approval, compliance with the Order by Franklin Steel will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the order during the period the Order is in effect.

DATE: This rule will take effect on January 7, 1985.

ADDRESSES: A copy of the Delayed Compliance Order, and supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying (for appropriate charges) during normal business hours at: U.S. EPA, Region III, Air Management Division (3AM21), Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106.

FOR FURTHER INFORMATION CONTACT: Joseph Arena, Enforcement Policy & State Coordination Section (3AM21), Air Management Division, U.S. EPA, Region III, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-6553.

SUPPLEMENTARY INFORMATION: On August 22, 1984 the Acting Regional Administrator of the Environmental Protection Agency's Region III Office published in the **Federal Register**, Vol. 49 No. 164, a notice proposing approval of a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Franklin Steel Company. The notice asked for public comments by September 21, 1984 on the EPA proposal.

No public comments have been received by this Office, therefore, the delayed compliance order issued to Franklin Steel is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Franklin Steel on a schedule to bring its sign post manufacturing facility in Franklin into compliance as expeditiously as practicable with Title 25 Pennsylvania Code, section 129.52, "Surface Coating Processes", a part of the federally approved Pennsylvania State Implementation Plan. The order also imposes interim requirements which meet section 113(d)(1)(C) and 113(d)(7) of the act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Franklin Steel to delay compliance with the SIP regulations covered by the Order until June 30, 1985. The company is unable to immediately comply with these regulations. EPA has determined that its approval of the Order shall be effective January 7, 1985, because of the need to immediately place Franklin Steel on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution controls

(42 U.S.C. 7413(d), 7601)

Dated: December 28, 1984.

William D. Ruckelshaus,

Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDER

By adding the following entry to the table in Part 65, § 65.431.

§ 65.431 EPA Approval of State Delayed Compliance Orders Issued to major stationary sources.

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
Franklin Steel Co.	Franklin, PA		Aug. 22, 1984	Section 129.52 of Title 25	Sept. 30, 1985

[FR Doc. 85-389 Filed 1-4-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 65

[A-3-FRL-2751-6]

Delayed Compliance Order; Approval of a Delayed Compliance Order Issued by the Pennsylvania Department of Environmental Resources to Allied Paper, Division of SCM Corp.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of the Environmental Protection Agency hereby approves a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Allied Paper, Division of SCM Corporation. The Order requires the company to bring air emissions from its copy paper manufacturing facility in Phoenixville, Pennsylvania into compliance with certain regulations contained in the Federally approved Pennsylvania State Implementation Plan (SIP) by April 9, 1985. Because of the Administrator's approval, compliance with the Order by Allied Paper will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule will take effect on January 7, 1985.

ADDRESSES: A copy of the Delayed Compliance Order, and supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying (for appropriate charges) during normal business hours at: U.S. EPA, Region III, Air Management Division (3AM21), Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106.

FOR FURTHER INFORMATION CONTACT: Joseph Arena, Enforcement Policy & State Coordination Section (3AM21), Air Management Division U.S. EPA, Region III, Sixth and Walnut Streets,

Philadelphia, Pennsylvania 19106 (215) 597-6553.

SUPPLEMENTARY INFORMATION: On August 22, 1984 the Acting Regional Administrator of the Environmental Protection Agency's Region III Office published in the **Federal Register**, Vol. 49 No. 164, a notice proposing approval of a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Allied Paper, Division of SCM Corporation. The notice asked for public comments by September 21, 1984 on the EPA proposal.

No public comments have been received by this Office, therefore the delayed compliance order issued to Allied Paper is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Allied Paper on a schedule to bring its copy manufacturing facility in Phoenixville into compliance as expeditiously as practicable with Title 25 Pennsylvania Code, section 129.52, "Surface Coating Processes", a part of the federally approved Pennsylvania State Implementation Plan. The order also imposes interim requirements which meet section 113(d)(1)(C) and 113(d)(7) of the act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Allied Paper to delay compliance with the SIP regulations covered by the Order until April 9, 1985. The company is unable to immediately comply with these regulations. EPA has determined that its approval of the Order shall be effective January 7, 1985, because of the need to immediately place Allied Paper on a schedule which is effective under the Clear Air Act for compliance with the applicable requirements of the Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

(42 U.S.C. 7413(d), 7601)

Dated: December 28, 1984.

William D. Ruckelshaus,

Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDER

By adding the following entry to the table in Part 65, § 65.431.

§ 65.431 EPA approval of state delayed compliance orders issued to major stationary sources.

Source	Location	Order No.	Dated of FR proposal	SIP regulation involved	Final compliance date
Allied Paper Division of SCM Corporation	Phoenixville, PA		Aug. 22, 1984	Section 129.52 of Title 25	Apr. 9, 1985.

[FR Doc. 85-386 Filed 1-4-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 65

[A-3-FRL-2751-7]

Delayed Compliance Order; Approval of a Delayed Compliance Order Issued by the Pennsylvania Department of Environmental Resources to Apollo Metals, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of the Environmental Protection Agency hereby approves a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Apollo Metals, Inc. The Order requires the company to bring air emissions from its coil coating facility in Bethlehem, Pennsylvania into compliance with certain regulations contained in the Federally approved Pennsylvania State Implementation Plan (SIP) by April 9, 1985. Because of the Administrator's approval, compliance with the Order by Apollo Metals will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

DATE: This rule will take effect on January 7, 1985.

ADDRESSES: A copy of the Delayed Compliance Order, and supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying (for appropriate charges) during normal business hours at: U.S. EPA, Region III, Air Management Division (3AM21), Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106.

FOR FURTHER INFORMATION CONTACT: Joseph Arena, Enforcement Policy & State Coordination Section (3AM21), Air Management Division, U.S. EPA, Region III, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-6553.

SUPPLEMENTARY INFORMATION: On August 22, 1984 the Acting Regional Administrator of the Environmental Protection Agency's Region III Office published in the **Federal Register**, Vol. 49 No. 164, a notice proposing approval of a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Apollo Metals Inc. The notice asked for public comments by September 21, 1984 on the EPA proposal.

No public comments have been received by this Office, therefore, the delayed compliance order issued to Apollo Metals is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Apollo Metals on a schedule to bring its coil coating facility in Bethlehem into compliance as expeditiously as practicable with Title 25 Pennsylvania Code, section 129.52, "Surface Coating Processes", a part of the federally approved Pennsylvania State Implementation Plan. The order also imposes interim requirements which meet section 113(d)(1)(C) and 113(d)(7) of the act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Apollo Metals to delay compliance with the SIP regulations covered by the Order until April 9, 1985. The company is unable to immediately comply with these regulations. EPA has determined that its approval of the Order shall be effective January 7, 1985, because of the need to immediately place Apollo Metals on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

(42 U.S.C. 7413(d), 7601)

Dated: December 28, 1984.

William D. Ruckelshaus,

Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDER

By adding the following entry to the table in Part 65 § 65.431.

§ 65.431 EPA Approval of State Delayed Compliance Orders Issued to major stationary sources.

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
Apollo Metals, Inc.	Bethlehem, PA		Aug. 22, 1984	Section 129.52 of Title 25	Apr. 9, 1985.

[FR Doc. 85-387 Filed 1-4-85; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 65

[A-3-FRL-2751-4]

Delayed Compliance Order; Approval of a Delayed Compliance Order Issued by the Pennsylvania Department of Environmental Resources to Keystone Lamp, Subsidiary of Kidde, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of the Environmental Protection Agency hereby approves a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Keystone Lamp, Subsidiary of Kidde, Inc. The Order requires the company to bring air emissions from its furniture coating facility in Washington Township, Pennsylvania into compliance with certain regulations contained in the Federally approved Pennsylvania State Implementation Plan (SIP) by April 9, 1985. Because of the Administrator's approval, compliance with the Order by Keystone Lamp will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

DATE: This rule will take effect on January 7, 1985.

ADDRESSES: A copy of the Delayed Compliance Order, and supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying (for appropriate charges) during normal business hours at: U.S. EPA, Region III, Air Management Division (3AM21), Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106.

FOR FURTHER INFORMATION CONTACT: Joseph Arena, Enforcement Policy & State Coordination Section (3AM21), Air Management Division, U.S. EPA, Region III, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-6553.

SUPPLEMENTARY INFORMATION: On August 22, 1984 the Acting Regional Administrator of the Environmental Protection Agency's Region III Office published in the **Federal Register**, Vol. 49 No. 164, a notice proposing approval of a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Keystone Lamp, Subsidiary of Kidde, Inc. The notice asked for public comments by September 21, 1984 on the EPA proposal.

No public comments have been received by this Office, therefore, the delayed compliance order issued to Keystone Lamp is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Keystone Lamp on a schedule to bring its furniture coating facility in Washington Township into compliance as expeditiously as practicable with Title 25 Pennsylvania Code, section 129.52, "Surface Coating Processes", a part of the federally approved Pennsylvania State Implementation Plan. The order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Keystone Lamp to delay compliance with the SIP regulations covered by the Order until April 9, 1985. The company is unable to immediately comply with these regulations. EPA has determined that its approval of the Order shall be effective January 7, 1985, because of the need to immediately place Keystone Lamp on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Implemnention Plan.

List of Subjects in 40 CFR Part 65

Air pollution Control.

(42 U.S.C. 7413(d), 7601)

Dated: December 28, 1984.

William D. Ruckelshaus,

Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDER

By adding the following entry to the table in Part 65, § 65.431.

§ 65.431 EPA Approval of State Delayed Compliance Orders Issued to major stationary sources.

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
Keystone Lamp, Subsidiary of Kidde, Inc.	Washington Township, PA		Aug. 22, 1985	1129.52 of Title 25	Apr. 9, 1985.

[FR Doc. 85-385 Filed 1-4-85; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 65

[A-3-FRL-2751-8]

Delayed Compliance Order; Approval of a Delayed Compliance Order Issued by the Pennsylvania Department of Environmental Resources to Victor Balata Belting Company

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of the Environmental Protection Agency hereby approves a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Victor Balata Belting Company. The Order requires the company to bring air emissions from its fabric coating facility in Wilson Borough, Pennsylvania into compliance with certain regulations contained in the Federally approved Pennsylvania State Implementation Plan (SIP) by April 9, 1985. Because of the Administrator's approval, compliance with the Order by Victor Balata will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

DATE: This rule will take effect on January 7, 1985.

ADDRESSES: A copy of the Delayed Compliance Order, and supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying (for appropriate charges) during normal business hours at: U.S. EPA, Region III, Air Management Division (3AM21), Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106.

FOR FURTHER INFORMATION CONTACT: Joseph Arena, Environment Policy & State Coordination Section (3AM21), Air Management Division, U.S. EPA, Region III, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-6553.

SUPPLEMENTARY INFORMATION: On August 22, 1984 the Acting Regional Administrator of the Environmental Protection Agency's Region III Office published in the **Federal Register**, Vol. 49, No. 164, a notice proposing approval of a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Victor Balata Belting Company. The notice asked for public comments by September 21, 1984 on the EPA proposal.

No public comments have been received by this Office; therefore, the delayed compliance order issued to Victor Balata is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Victor Balata Belting Company on a schedule to bring its fabric coating facility in Wilson Borough into compliance as expeditiously as practicable with Title 25, Pennsylvania Code, section 129.52, "Surface Coating Processes", a part of the federally approved Pennsylvania State Implementation Plan. The order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Victor Balata to delay compliance with the SIP regulations covered by the Order until April 9, 1985. The company is unable to immediately comply with these regulations. EPA has determined that its approval of the Order shall be effective January 7, 1985, because of the need to immediately place Victor Balata on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

(42 U.S.C. 7413(d), 7601)

Dated: December 28, 1984.

William D. Ruckelshaus,

Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDER

By adding the following entry to the table in Part 65, § 65.431.

§ 65.431 EPA Approval of State Delayed Compliance Orders Issued to major stationary sources.

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
Victor Balata Belting Co.	Wilson Borough, PA		Aug. 22, 1984	Section 129.52 of Title 25	Apr. 9, 1985

[FR Doc. 85-388 Filed 1-4-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[SW-1-FRL-2752-2]

Vermont; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of application of State of Vermont for final authorization.

SUMMARY: Vermont has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Vermont's application and found it includes all the information necessary for final authorization. Vermont has addressed to EPA's satisfaction all EPA requirements and all concerns identified in the October 4, 1984 notice. EPA grants to Vermont final authorization to operate its hazardous waste program.

EFFECTIVE DATE: Final Authorization for Vermont, for purposes of judicial review, shall be effective at 1:00 p.m. eastern time, January 21, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Jane O'Donnell, State Waste Programs Branch, U.S. EPA, Room 409, J.F. Kennedy Federal Building, Boston, Massachusetts 02203 (617) 223-1927.

SUPPLEMENTARY INFORMATION: Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize state hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type is known as "interim authorization". It is a temporary authorization and is not addressed here.

The second type of authorization is a "final" authorization that is granted by EPA if the Agency finds the State program: (1) Is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C.

6226(b)). EPA regulations for final authorization appear at 40 CFR Part 271.

On July 9, 1984, Vermont submitted a complete application to obtain final authorization to administer the RCRA program. Following detailed review of the complete application and the development of a Capability Assessment evaluating past State program performance and present resource capacity for future program implementation, EPA published a tentative decision on October 4, 1984, announcing its intent to grant Vermont final authorization. Further background on the tentative determination to grant authorization appears at Vol. 49, No. 194 Federal Register, pages 39175–39176, October 4, 1984. This tentative determination notice reviewed all issues raised in the consolidated EPA comments to the State and the State intended responses to these comments.

The only outstanding issue at the time of publication of the tentative determination was the submission of a signed Memorandum of Agreement and Memorandum of Understanding. The Vermont Agency of Environmental Conservation submitted these two documents to EPA on November 30, 1984. These two documents satisfied EPA's concerns relative to interagency coordination.

The tentative determination notice also announced the availability of the application for public comment and a public hearing date if significant interest was expressed. EPA did not hold a public hearing due to lack of interest. By the end of the comment period EPA received two letters relative to Vermont's final authorization. Both of the individuals who wrote these letters supported granting Vermont final authorization.

Decision

After review of the public comment and the changes the State has made to its application/program since the tentative decision, I conclude that the Vermont application for final authorization meets all statutory and regulatory requirements established by RCRA. Accordingly, Vermont is granted authorization to operate its hazardous waste program. Upon the effective date of this authorization and subject to the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984), Vermont has responsibility for permitting hazardous waste treatment, storage and disposal facilities within its borders and for carrying out other aspects of the approved Vermont program. Vermont also has primary enforcement responsibility, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under secs. 3008, 3013 and 7003 of RCRA.

Prior to the Hazardous and Solid Waste Amendments (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the EPA. EPA's regulations no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit.

Now, however, under section 3006(g) of RCRA, 42 U.S.C. 6226(g), the new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Vermont. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. EPA will administer and enforce the portions of the HSWA in Vermont until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized. Once Vermont is authorized to implement an HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State will assist EPA's implementation of the HSWA under a Cooperative Agreement.

HSWA-related requirements that are more stringent than the State's program apply in Vermont. Any State requirement that is more stringent than an HSWA provision also remains in effect; thus, the universe of the more stringent provisions in the authorized State program and today's approval defines the applicable requirements in Vermont. (Vermont is not being authorized now for any requirement implementing the HSWA.)

EPA will be publishing a Federal Register notice that explains in detail the HSWA and its effect on authorized States. That notice should be referred to for further information.

EPA Region I and Vermont are currently reviewing the Memorandum of Agreement (MOA) to revise it to address the requirements of the HSWA. The current MOA provides that Vermont shall administer the RCRA program in lieu of EPA and that EPA shall not issue permits in the State. Thus, it is inconsistent with the HSWA and will be revised to reflect EPA's and Vermont's respective responsibilities under the new Federal/State regulatory scheme. (Because of the strict statutory time clock for processing final authorization applications, the State and EPA did not have ample time to revise the MOA before EPA's final approval of the State's application.)

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

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

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: December 13, 1984.

Michael R. Deland,

Regional Administrator.

[FR Doc. 85–390 Filed 1–4–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 77

Remedial Actions Applicable to Letter of Credit Administration; Conditions for Imposition

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: These regulations govern the imposition of remedial actions against recipient organizations holding letters of

credit under programs administered by the Department of Health and Human Services. The regulations describe the conditions that may prompt the imposition of remedial actions and establish uniform procedures for providing affected recipient organizations: (1) Adequate notice of the grounds upon which proposed remedies are based, (2) an opportunity to respond to the legal and factual bases of the proposed remedies, and (3) a reasoned decision that articulates the factual and legal bases of the proposed remedies.

EFFECTIVE DATE: February 6, 1985.

FOR FURTHER INFORMATION CONTACT: David V. Dukes, (202) 245–7084.

SUPPLEMENTARY INFORMATION:

I. Background

On March 8, 1983, we published in the Federal Register proposed rules that would govern the conditions that give rise to the imposition of remedial actions for violations of requirements pertinent to letter of credit administration and the procedures that would be used to impose remedial actions.

Under the letter of credit system, grantees and contractors (recipient organizations) are financed by either a Federal Reserve Bank Letter of Credit (FRB–LOC) or a Treasury Financial Communication System-Letter of Credit (TFCS–LOC). Under the FRB–LOC, recipient organizations draw cash advances against their awards directly from the United States Treasury through letters of credit maintained in Federal Reserve Banks. Under the TFCS–LOC, recipient organizations draw their cash advances against their awards directly from the United States Treasury through letters of credit maintained by the United States Treasury Disbursing Office. It is the grant award or contract that constitutes the authorization to draw federal funds, not the letter of credit. The letter of credit is only a payment device that facilitates the transfer of federal funds from the Treasury to the individual grantee or contractor. Basic authorities governing withdrawal of federal cash under the letter of credit system were issued by the Treasury Department in its Circular No. 1075, now codified at 31 CFR Part 205 and in the Treasury Fiscal Requirements Manual. The Department has published a compendium of policies and procedures for grantees and contractors whose awards under Departmental programs are paid by letter of credit called the "Departmental Federal Assistance Financing System Policy and Procedure Manual for Recipients" (DFAFS Manual). Within the Department administration of the letter of credit process lies largely with the Department Federal Assistance Financing System, but is also shared with the Assistant Secretaries for Health and Human Development Services, and the Administrator of the Health Care Financing Administration.

We published the proposed rules because, nothwithstanding the thousands of letters of credit through which the Department finances grants and contracts, there has never been a uniform procedure for the resolution of disputes that arise over letter of credit administration. We believe that having such procedures will be useful both as a sound management tool for the Department and as a guide to inform grantees and contractors of procedures that may affect the manner by which federal funds are disbursed to them under grants and contracts issued by this Department.

II. Discussion of Major Comments

Over forty comments were received from State agencies, universities, and various organizations. The recommendations of the commenters and our responses follow:

Comment: Four States and one university expressed concern that certain delays in the grant process that are attributable only to the Department might cause a grantee to draw funds from its letter of credit in excess of existing grant authority, thereby unfairly triggering remedial steps by the Department. For example, a State may not be timely advised of a negative grant award, causing an unintentional overdraw; or, the federal program agency may not promptly advise DFAFS of increasing supplemental grant awards that would serve to cover what DFAFS perceives as an overdraw.

Response: To a limited extent these comments reflect legitimate concerns about the grant process, but they misperceive the intent of these regulations. The Department commonly issues negative grant awards, for example immediately following a Grant Appeals Board decision that is adverse to a State when the State has been holding the disputed funds. Here, however, it is virtually always the case that by the time a grantee receives formal notice of the downward adjustment to its grant award it has long since been advised informally by the granting agency of the forthcoming action. Thus, the grantee should have ample time to make the necessary adjustments to avoid overdraws of its outstanding grant award authority. The issue is much the same with increasing supplemental grant awards which the Department may issue, for example, when a grantee's deferred claim is determined to be programmatically allowable. Here, there have been occasions of time lags between the granting agency and DFAFS that have temporarily caused DFAFS to believe that the grantee may have overdrawn its outstanding grant authority. In neither example, however, would the Department automatically seek to take remedial actions under the terms of these regulations. Rather than providing a "triggering" device that would automatically bring into play the remedial steps outlined in the regulations every time a grantee or contractor temporarily overdraws a grant, these regulations are designed to address only the most serious or continuing violations. In the examples posed by the commenters, no action would be taken by the Department until it first determined (through consultation between DFAFS and the granting agency) that a violation had in fact occurred and, second, a judgment had been made that remedial action had to be taken to protect the integrity of the letter of credit system. Unless the grant overdraw was serious and could not be remedied by informal means, or the violation demonstrated a grantee's or contractor's continuing mismanagement of its letter of credit, it is very likely that the Department would not resort to the procedures set forth in these regulations. Because these regulations provide a comprehensive set of procedures applicable to all formal disputes, they will not be aimed at curing the temporary or unintentional problems posed by the commenters.

Comment: Three universities objected to what they believed was the possibility of having to report all draws under each grant award in order to document that individual grant award authorities were not being exceeded.

Response: We are not asking universities to report to us on each and every *draw* that there is currently available grant award authority. We are interested, however, in making sure that at the time universities report to us their *expenditures* (whether on a monthly or quarterly basis) that the proper adjustments have been made to reconcile their expenditures with available grant award authority. Moreover, this requirement to reconcile expenditures with existing grant award authority is fundamental to a sound cash management system and, for this reason, has been reflected in Department grant policy for many years.

Comment: Several States and universities commented that the

provision relating to the possible imposition of remedial action because of a recipient organization's failure to file timely reports was overly broad because it did not indicate what was meant by "timely" or "other data." These commenters expressed concern that there is not enough time now for them to be "timely" and that they would be continually liable to remedial actions by the Department.

Response: These regulations do not establish any reporting deadlines; any deadlines that recipient organizations must meet are already set forth in other federal regulations. Thus, we do not believe that these regulations need to incorporate all pre-existing reporting requirements or otherwise define what is meant by "timely" since that term has already been defined elsewhere. Similarly, the reference to "other data" in the regulation is not intended to create a new body of reporting requirements, but rather refers to existing requirements that are too numerous or detailed to warrant explicit incorporation into these regulations.

In response to those commenters that fear continual enforcement efforts by the Department to remedy occasional failures to file timely reports, we can only say that these regulations are not designed to remedy minor reporting failures by grantees and contractors. The Department has no intention to seek remedial action under these regulations if, for example, reports are "one day late," or occasionally late, as one commenter suggested. Whether the remedial actions specified in these regulations come into play will very much reflect the use of judgment, not an automatic "triggering," and will be used only after informal attempts at corrective action have failed. As we indicated earlier, the regulations are designed to address situations in which patterns of conduct regarding untimely reporting are so improper that they impair the Department's ability to assure the integrity of the letter of credit system.

Comment: One State suggested that the Department already has existing protective measures to remedy a grantee's failure to comply with program reporting requirements.

Response: While it is true that existing program authorities provide remedies to address a grantee's or contractor's failure to abide by pertinent reporting requirements, those remedies are geared solely to underlying grant or contract eligibility. For example, should a State agency under the Medicaid program habitually fail to file needed data with the Health Care Financing Administration, the Department can exercise its authority under Section 1904 of the Social Security Act to withhold program funds from the State until such time as the State returns to compliance with the program's reporting requirements. Barring recourse to this drastic remedy, the Department has no uniform set of procedures that focus on the payment mechanism through which the grantee receives federal funds, as distinguished from its underlying grant eligibility. Thus, these regulations provide the Department with greater flexibility to remedy certain program deficiences without disturbing underlying entitlements or othewise disrupting project activities.

Comment: Several commenters have asked us to define what we mean by the accumulation of "excess amounts" of federal funds relative to a recipient organization's actual and immediate disbursement requirements.

Response: We have found it to be both unrealistic and unworkable to attach a fixed or arbitrary standard to the concept of "excess amounts" of federal cash. Dollar amounts cannot be used because of the vastly differing amounts of grants and contracts that are subject to the same rule. Similarly, a fixed percentage or fixed number of days' accumulation is too inflexible and does not account for circumstances that may temporarily cause a departure from what is otherwise a sound cash management system.

We do believe, however, that certain judgments can be made by analyzing the spending patterns of recipient organizations and comparing them to the level and frequency of draws that are made from their letters of credit; and, it is this assessment that will dictate whether the Department finds it necessary to intervene into a deficient cash management system. It is relevant, for example, to determine whether a recipient organization has sums of money on hand when there is no discernible obligation that must be met immediately that would have prompted it to make the draw when it did. It would also be relevant to determine whether draws are tied to current disbursements or whether they are arbitrarily drawn regardless of current disbursement needs. Certainly in the case of a State that has overestimated a quarterly level of expenditure in the Medicaid or AFDC program, there would be no justification for making draws from its letter of credit beyond the expenditures it incurred during the quarter.

Because we are mindful of the flexibility that is built into the concept of "excess amounts" of federal funds, and the potential for varying interpretations, we do not expect to invoke this provision automatically whenever a potential problem is identified. We would want to determine informally in the first instance whether the Department's preliminary judgment that there is an excessive amount of cash on hand can be satisfactorily explained by the recipient organization; or, we would want to determine whether this particular cash management difficulty is unique or reflective of a pattern that increases the likelihood of the Department's seeking corrective action.

Comment: While two States expressed approval of the provision providing for remedial action in cases of a recipient organization's "misrepresentations, fraud, or abuse" (Section 77.3(e)), four commenters expressed concern about this provision's lack of specificity. In particular, these commenters wanted to know what standards would be applied to determine whether cash management deficiencies existed.

Response: As we have indicated already, these regulations do not purport to establish any substantive requirements that do not already exist. These regulations set forth a series of procedures that may be applied if other pre-existing substantive program requirements are violated. To this extent, we do not believe there is a need to enumerate the lengthy list of program requirements that govern grantee and contractor performance under the 284 programs through which this Department disburses federal funds by letters of credit. Thus, standards of program performance are already set forth in 45 CFR Part 74 or in Treasury Department regulations at 31 CFR Part 205. State and local governments and universities may look additionally to the Appendices to Part 74 to identify perhaps the primary example of federal requirements that dictate standards of financial reporting and cash management. To further define terms such as "generally accepted accounting principles" or "irregularities" would necessitate interpretation of the Department's various underlying program regulations, which is clearly outside the scope of these procedural regulations.

Comment: One university was concerned that the Department would use these regulations to make judgments arbitrarily about the adequacy of a grantee's cash management system when those judgments are better left to the grantee's independent auditors.

Response: It is not our intention to use these regulations as a management tool

to coerce a grantee or contractor to use one system or technique over another where either meets generally acceptable standards of operating a cash management system. Rather, these regulations are focused on addressing violations of existing program regulations that reflect on a grantee's or contractor's cash management system. To the extent that a grantee or contractor meets these underlying program regulations, it is irrelevant to the Department which among the many methods of managing federal cash the grantee or contractor is using.

Comment: One State wanted some clarification of what criteria might be used by the Department in determining the choice and severity of remedial action and one public organization expressed its expectation that the Department would not precipitate remedial actions for minor or temporary aberrations in letter of credit procedures.

Response: The range of possible violations of requirements that bear on letter of credit administration is as broad as the regulations and published procedures that govern this activity. Apart from requirements that stem from the Department's Payment Management System (PMS) manual and Treasury regulations that address letter of credit requirements applicable to all recipient organizations, there is a vast array of program regulations some of which bear on letter of credit administration. Because of this broad scope of pertinent legal authorities, we cannot realistically establish a mechanical set of guidelines that would dictate which type of remedial action the Department would take for violations of each applicable requirement. Rather, our approach to determinations of whether to take remedial action and, if so, the selection of a suitable remedy, would be a reflection of several considerations that would be pertinent regardless of which grant or contract is at issue. First, to reiterate a position stated earlier, we do not view the imposition of remedial steps under these regulations to be automatic each and every time the Department identifies a violation of applicable requirements. Whether the Department discerns a threat to the integrity of the letter of credit system and the protection of federal funds will hinge primarily on the severity of the violation. Thus, if a grantee fails to submit a required report by a time specified in regulations or temporarily neglects to coordinate draws against a recently issued negative grant award, we would not be inclined to resort to these regulations when the problem is of such a passing nature and, in almost all cases, is resolved through informal processes. If, on the other hand, a grantee draws in flagrant violation of what it knows (or should know) to be its outstanding grant authority or is so delinquent in the submission of required data that we cannot maintain an adequate check of the flow of federal funds, remedial action is far more likely. Whether remedial action is taken will also be dictated by the frequency of the violation and whether the Department perceives the recipient organization as a chronic abuser of its letter of credit privileges. Similarly, whether the Department has a continuing relationship with a recipient organization (in such a manner as to reasonably assure us that necessary recoveries can always be made by applicable offset procedures) may influence a decision to pursue remedial actions.

Comment: One university objected to the possibility that the Department might impose a monthly dollar ceiling for the expenditure of federal funds because it would unfairly restrict a project director's expenditure authority.

Response: We do not concur. Dollar ceilings are universal in letter of credit administration and are based on spending plans developed by the *grantee.* Thus, any limitations imposed on a monthly basis are, in the first instance, a reflection of how the grantee, not the Department, defines its spending patterns. Should a grantee have substantial cash on hand, this demonstrates that the grantee's suggested spending pattern (and dollar ceiling) is erroneous and does not in fact reflect actual grant needs or practices. To this extent, the adjustment of a dollar ceiling should not have any adverse impact on grant administration.

Comment: One State objected to the possibility that the Department might impose more stringent reporting requirements on grantees as a result of cash management deficiencies since this type of action would be inconsistent with OMB Circular A–102.

Response: We do not concur. Department grant requirements in 45 CFR Part 74 (which incorporated provisions of OMB Circular A–102, the uniform grant administration requirements for State and local governments) explicitly provide authority (at 45 CFR 74.7) for the Department to impose stricter grant conditions than those otherwise set forth in Part 74. Since Part 74 sets forth a number of reporting requirements applicable to grantees (*e.g.,* 45 CFR 74.70–74.76), it is entirely consistent with OMB Circular A–102 to impose stricter reporting requirements on a grantee if such action is warranted.

Comment: One university and a public organization expressed their concern that the regulations might tend to polarize the Department and recipient organization and tend to discourage the informal resolution of differences that might arise over letter of credit administration.

Response: It is not our intent to resort to the procedures set forth in these regulations every time a problem surfaces between the Department and a recipient organization. As we have indicated already, we except that these regulations will be used only in situations which the Department believes represent a serious threat to its ability to protect federal funds under the letter of credit system. In what we believe to be the vast majority of cases in which a dispute arises, the dispute is easily resolved by informal means. Indeed, in many respects we view these regulations as coming into play when attempts at informal resolution have not succeeded and the Department believes that a more formal remedial procedure is appropriate.

Comment: One State and one university objected to what they view as an unconstitutional denial of an oral hearing under these regulations.

Response: We do not concur. First, oral hearings are not prohibited under these regulations. Under § 77.5(a)(4), the official designated to make a final decision on remedial actions is empowered to convene an informal conference or to hear an oral presentation by the parties if in so doing that official believes that this would materially enhance making a decision in the matter. We decided not to make oral conferences mandatory for every dispute because we believe that in most cases the ability of the deciding official to reach a final decision without such conferences will not be impaired. The nature of the disputes that will fall under these regulations will in almost every case be resolved by recourse to the pertinent documents that underlie the dispute and to the written arguments that accompany those documents. Certainly in these disputes witness credibility would not be an issue and this further reduces the need for oral conferences. Moreover, to require an oral hearing in all cases would be inordinately costly and unduly delay the prompt resolution of matters that are of inportance to the Department and recipient organizations. In an attempt to strike a balance between these competing considerations, deciding

officials will always have the discretion to call for an oral presentation if, after reviewing the pertinent written record, there still exists a need for further explanation in order to reach a reasoned decision.

Even when no oral hearing is made available to a recipient organization, we believe that no infringement upon due process principles has been made by these regulations. As we explained in the preamble to the proposed rule (48 FR 9669), due process is a flexible concept that does not always require the opportunity for an oral hearing. How comprehensive a set of procedures, such as those set forth in these regulations, must be is a reflection of a balancing of the needs of both the affected party and the government. As discussed above, we believe that we have struck the necessary balance of interests between a recipient organization's need for an adequate airing of its defense and the government's need for a prompt and cost-effective decision.

We wish to stress that a basic principle underlying the design of these regulations is that a letter of credit is not an entitlement. A letter of credit is simply one payment device, among many, that facilitates the flow of federal grant or contract funds. Thus, should the Department invoke the procedures set forth in these regulations it could affect the *manner* of payment only, not a grantee's or contractor's underlying entitlement, if any, to receive the funds necessary to carry out the grant or contract. Whether a grantee or contractor is entitled to receive *any* funds is a matter that rests with the substantive program authority of the various components of the Department and is outside the scope of these regulations.

Comment: One university objected to what it believed would be the imposition of remedial action with only thirty days' notice and expressed its concern that this short time period would not allow for a full airing of the issues.

Response: Section 77.5(a)(2) of the regulations provides for the imposition of remedial actions within thirty days of the recipient organization's receipt of the notice only if the organization does not submit a response within the thirty day period. If a response is received within thirty days of the notice, no remedial action is imposed until after the completion of the procedures (including the issuance of a final decision) set forth in the regulations.

Comment: One university objected to the absence of an opportunity in the regulations for recipient organizations to respond to the Department's rebuttal when the matter is before the deciding official.

Response: In cutting off the opportunity to submit documents and written arguments to the deciding official with the Department's rebuttal, if any, we believe we are striking a fair balance between a recipient organization's opportunity to address the matter in dispute fully and the Department's need to avoid unnecessary extensions in the process. Once a recipient organization receives notice of a proposed remedial action, it will have all the information it needs to respond fully to the issues raised by the Department. We have included an opportunity for the Department to rebut the recipient organization's submission essentially because it will be the only opportunity for the Department to put before the deciding official a fully substantive explanaiton of its arguments for the proposed remedial action and a direct response to the points raised by the recipient organization. Without the Department's rebuttal, the deciding official would have before him a potentially comprehensive brief of the recipient organization on the one hand and only the Department's notice on the other. While the notice will set forth the basis of the Department's intended action, it would clearly not provide a comprehensive submission on the order of a recipient organization's brief and obviously could not be responsive to the points that might be raised by the recipient organization.

Comment: One university and one State suggest that with respect to emergency remedial actions the regulations should be revised to permit: (1) Additional time for the recipient organization to respond before implementing the remedial action, (2) a more prompt provision of written notice, and (3) a remedy for lost earnings if the Department erroneously takes remedial action.

Response: We do not concur with the suggested revisions. First, by providing additional time to a recipient organization before the Department takes emergency actions under these regulations, the Department loses valuable time in taking an action that it has already determined essential to the protection of federal grant or contract funds. The Department must be able to retain this ability to act swiftly in these cases. As we explained in the preamble to the proposed rule (48 FR 9670), we expect this procedure to be used only in the most extreme cases of serious cash management deficiencies and primarily with respect to recipient organizations with whom the Department does not have a continuing relationship under its programs.

Insofar as the suggestions for more prompt written notices are concerned, we might be more inclined to shorten the time for such notice were it not for the oral notice requirement already set forth in the regulations. Under this requirement, which provides for oral notice within one business day of the Department's action, an affected party will receive very prompt notice of the nature of and reasons for the emergency action. Thus, by the time that a recipient organization receives a written notice within seven business days of the action, it will already have a clear understanding of the events that caused the Department's emergency response. We believe that the combination of oral and written notice under this procedure is reasonable in light of the critical circumstances that might prompt the Department to act.

Lastly, the Department does not believe it should provide for "lost earnings" should it subsequently determine that an emergency remedial action was unwarranted. If a recipient organization has been administering its grant or contract correctly, it draws from its letter of credit should approximate very closely its immediate cash needs. To this extent, there should be no "earnings" inuring to the organization. Moreover, if, under the regulation's emergency procedures, the Department should remove letter of credit authority from a recipient organization and replace it with another payment device, the recipient organization would continue to receive the funds necessary to administer its grant or contract (if it is still owed funds) and would not suffer the loss of cash flow required for its activities.

III. Changes in the Final Regulations

We have made the following technical changes in these regulations:

1. The phrase "file in a timely fashion" in § 77.3(c) has been revised to read "file timely" to make clear that we are referring to specific filing deadlines that already appear in pertinent federal regulations.

2. The word "otherwise" has been deleted from § 77.3(e) so as to remove the incorrect implication that a recipient organization's failure to comply with well recognized accounting principles necessarily means that such failure is an example of an irregularity, misrepresentation, fraud or abuse.

3. The word "sanction" has been revised to read "remedial action" throughout the regulation to remove what we preceived to be a pejorative

term that in other contexts applies to suspensions or debarments of grantees or contractors. As we have indicated in the preamble, a change of payment mechanisms (that could occur under these regulations) does nothing to disturb a recipient organization's underlying entitlement, if any, to the funds it is receiving under a grant or contract with the Department.

4. The reference in § 77.3(e) to "well recognized accounting principles" has been changed to "generally accepted accounting principles" to conform to the phrase most commonly used under the Department's grant programs and contracts.

IV. Impact Analysis

Executive Order 12291

We have determined that these final regulations do not meet the criteria for a major rule that are set forth in section 1(b) of Executive Order 12291. That is, the final regulations would not:

1. Have an annual effect on the economy of $100 million or more;

2. Cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or

3. Have a significant adverses effect 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.

We have made this determination bacause the final rules would not require recipient organizations to alter the manner in which they administer their grant programs or contracts. These regulations would simply provide all recipient organizations with a well defined set of procedures that should facilitate their requests for an orderly review of potentially adverse determinations affecting the manner of payment under their grant or contract. Additionally, these regulations would remove the uncertaintly that now exists among organizations as to the process for resolution of issues they may have with the Department concerning cash management issues.

Regulatory Flexibility Analysis

We have reviewed this regulatory initiative is light of the Regulatory Flexibility Act (5 U.S.C. ch. 6), and we have concluded that it will not have a significant economic impact on a substantial number of small businesses, organizations, or government jurisdictions. As dicussed above, the final regulations would not impose any new requirements on receipient organizations that receive federal funds through the letter of credit system. Indeed, requirements for grant and contract administration would remain wholly unaffected by these regulations. We believe that the final regulations would, in fact, benefit holders of Departmental letters of credit because for the first time recipient organizations would have available to them well defined procedures that expressly address the resolution of disagreements that often occur with the Department concerning letter of credit administration.

V. List of Subjects in 45 CFR Part 77

Credit, Grants administration, Penalties.

Dated: December 11, 1984.

Margaret M. Heckler,

Secretary.

PART 1—[AMENDED]

45 CFR 1.2 is revised as set forth below:

§ 1.2 Subject matter of Office of the Secretary regulations in Parts 1–99.

This subject matter of the regulations in Parts 1–99 of this title includes:

- *Civil rights/nondiscrimination:* Parts 80, 81, 83, 84, 86, 90.
- *Protection of human subjects:* Part 46.
- *Day care requirements:* Part 71.
- *Information, privacy, advisory committees:* Parts 5, 5a, 5b, 11, 17, 99.
- *Personnel:* Parts 50, 57, 73, 73a.
- *Grants and letter of credit administration, property, hearing rights:* Parts 10, 12, 15, 16, 74, 75, 77, 95.
- *Claims:* Parts 30, 35.
- *Inventions and patents:* Parts 6, 7, 8.
- *Miscellaneous:* Parts 3, 4, 9, 19, 67.

45 CFR is amended by adding a new Part 77 as set forth below:

PART 77—REMEDIAL ACTIONS APPLICABLE TO LETTER OF CREDIT ADMINISTRATION

Sec.

77.1 Purpose.
77.2 Scope.
77.3 Conditions that may give rise to remedial actions.
77.4 Remedial actions.
77.5 Remedial action procedures.
77.6 Emergency procedures.

Authority: 5 U.S.C. 301.

§ 77.1 Purpose.

Letters of credit with the United States Treasury, issued by the Department to States or other grantees and contractors, are a convenient means for disbursing Federal funds to recipients of grant awards or contracts (recipient organizations) under the programs of this and other Executive Departments. The sound and efficient operation of the letter-of-credit system is dependent in large part upon the honesty, good faith, and responsible financial management of recipient organizations that receive funds pursuant to letters of credit. This part sets forth conditions that may prompt the Department to seek remedial action against a recipient organization operating under a letter of credit and the procedures that will be used to reach a final decision regarding the taking of remedial actions against a recipient organization.

§ 77.2 Scope.

The regulations in this part apply to all recipient organizations under any program administered by the Department through which the organization receives Federal funds under a letter of credit.

§ 77.3 Conditions that may give rise to remedial actions.

If the Department determines that any of the following conditions is present in a recipient organization's administration of a letter of credit, it may take remedial actions against the organization:

(a) A recipient organization draws Federal funds through its letter of credit in excess of the aggregate grant award or contract authority currently available to it.

(b) A recipient organization draws Federal funds for a particular program in excess of currently available grant award or contract authority for that program, even though the organization may not have exceeded its aggregate grant award or contract authority.

(c) A recipient organization fails to file timely all reports and other data required by the Department in connection with its grant awards, contracts, or letter of credit.

(d) A recipient organization accumulates, through its letter of credit or otherwise, excess amounts of Federal funds relative to its actual and immediate disbursement requirements.

(e) A recipient organization's cash management system fails to comply with generally accepted accounting principles or Departmental regulations or demonstrates irregularities, misrepresentations, fraud, or abuse in its operation.

§ 77.4 Remedial actions.

If, after the conclusion of the procedures set forth in §§ 77.5 or 77.6 the Department finds that one or more of the conditions set forth in § 77.3 is or has been present, the Department may take the following remedial actions

against a recipient organization's use of its letter of credit:

(a) The Department may place special limits, restrictions, or controls upon the recipient organization's use of its letter of credit.

(b) The Department may require more frequent or more detailed financial reporting from the recipient organization.

(c) The Department may suspend, reduce, or terminate the recipient organization's use of its letter of credit.

§ 77.5 Remedial action procedures.

Except as provided in § 77.6, the Department will use the following procedures whenever it seeks the remedial action specified in §77.4.

(a) *Notice.*—Prior to taking remedial action, the Department will provide the recipient organization written notice of its intended action setting forth both the legal and factual reasons therefor. Notice may be provided by certified or express mail, TWX, telegram, delivery, or similar means.

(b) *Opportunity to respond.*—(1) The recipient organization has 30 days after receipt of the notice in which to submit to the Department a written statement setting forth any legal and factual reasons why it believes the proposed remedial action would be inappropriate. If no response is received by the Department within the 30-day period, the Department may make the proposed remedial action effective immediately. If a response opposing the taking of remedial action is received from the recipient organization within the 30-day period, no remedial action will be taken until a final decision has been reached under paragraph (c) of this section. (2) The Department may prepare a written reply to the recipient organization's response. Any such reply will be forwarded to the deciding official together with the notice sent to the recipient organization and the organization's response, and a copy of the reply will be served on the recipient organization.

(c) *Departmental decision.*—The Department's decision to take remedial action under this part will be made by an official of the Department who had no involvement with the initial determination to seek remedial action. The deciding official may affirm, reverse, or modify the initial determination. In making the decision, the official will consider only the notice provided by the Department, the recipient organization's statement, the Department's reply, together with any other documents attached to them, and statements at any informal conference held pursuant to paragraph (d) of this section. The official's decision will be provided to the recipient organization in writing and will constitute the Department's final administrative action on the matter.

(d) *Informal conference.*—If, in the judgment of the official designated to make a final decision, it would materially enhance his ability to resolve the matters in dispute, he may convene an informal conference to question or hear an oral presentation by the parties. If an informal conference is convened it will be transcribed.

(e) *Effect of decision.*—The decision in a proceeding under this section affects only the recipient organization's obligations related to its letter of credit and does not determine the organization's ultimate liability with respect to improperly spent funds or other misconduct.

§ 77.6 Emergency procedures.

(a) Should the Department determine that it cannot adequately protect assets of the Federal government available to a recipient organization under its letter of credit without taking remedial action prior to the procedures specified in § 77.5, it may immediately take remedial action subject to the subsequent completion of those procedures.

(b) Where the Department has taken remedial action as described in paragraph (a) of this section, it will notify the recipient organization orally of the remedial action within one business day of its imposition and in writing within seven business days of its imposition. The written notice will conform to that described in § 77.5(a).

(c) After receipt of the written notice, the recipient organization will have the same opportunity to respond as described in § 77.5(b)(1).

(d) The Department will issue a final decision in writing no later than twenty days following receipt of any response submitted by the recipient organization.

[FR Doc. 85-435 Filed 1-4-85; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 31

[CC Docket No. 81-893]

Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry); and Amendment for Nonregulated Activities; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule, correction.

SUMMARY: This document is being issued to correct errors in the Fifth Report and Order in Docket 81-893, concerning the Uniform System of Accounts for Class A and Class B Telephone Companies and Implementation of the Second Computer Inquiry, published November 26, 1984 (49 FR 46378).

FOR FURTHER INFORMATION CONTACT: Gerald P. Vaughan, Chief, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

Erratum

In the matter of procedures for implementing the detariffing of customer premises equipment and enhanced services (Second Computer Inquiry); CC Docket No. 81-893 and Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies, to provide for nonregulated activities.

Released: January 2, 1985.

On November 20, 1984, the Commission released a Fifth Report and Order in the above captioned proceeding (See FCC 84-547). Two errors were included in the Appendix and are corrected below:

1. On page 46382, in § 31.106, paragraph (b) of item 5 includes incorrect account codes. The correct account codes are as follows:

106.1 Permanent investment
106.2 Receivable/payable
106.3 Current net income or loss.

2. The accounting proposed and ultimately established in this Fifth Report and Order had as its basis the accounting established for the record carrier industry in Docket 82-678. On page 46382, in § 31.122, paragraph (e) of item 6 includes language which though necessary for the record carriers should

not have been included for the telephone industry. Accordingly, paragraph (e) of Item 6 is eliminated in its entirety.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 85-353 Filed 1-4-85; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 90

[PR Docket No. 84-608, RM-4765; FCC 84-631]

Provision for 800 MHz Conventional and Trunked Stations Operating on Four Specific Mountaintop Sites in the San Diego Area to Increase Effective Radiated Power

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends Part 90 of the Commission's Rules to allow up to 500 watts effective radiated power for 800 MHz conventional and trunked stations located on four mountaintop sites in the San Diego, California area. Increased power is necessary to provide adequate signal coverage due to unusual terrain.

EFFECTIVE DATE: February 1, 1985.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private Land Mobile Radio Services, Radio.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 90.635 of the Commission's Rules and Regulations to allow 800 MHz conventional and trunked stations operating on four specific mountaintop sites in the San Diego area to increase effective radiated power (PR Docket No. 84-608, RM-4765).

Adopted: December 19, 1984.

Released: December 31, 1984.

By the Commission.

A. Background

1. On June 22, 1984, the Commission released a *Notice of Proposed Rule Making* (NPRM), which proposed to amend Part 90 of the Rules and Regulations to allow increased effective radiated power (ERP) for 800 MHz stations located on four mountaintop sites in the vicinity of San Diego, California.[1] The NPRM was issued in response to a petition filed by Motorola, Inc.,[2] requesting that 800 MHz conventional and trunked stations located on the mountaintop sites of Palomar, Otay, Woodson, and Miguel in the San Diego, California area be allowed to operate with an ERP of up to 500 watts.[3]

2. In 1975, the Commission concluded that a departure from the power levels specified in Table 2 of § 90.635 of the Rules was warranted for stations located in the Los Angeles area.[4] Licensees operating on four specific mountain peaks were permitted to utilize an ERP of one kilowatt regardless of the station's antenna height above average terrain. The irregular terrain of the large geographical area of urban and suburban Los Angeles is such that stations operating from the four mountaintop sites had insufficient radio coverage using the lower ERPs specified in the Rules. Allowing a higher ERP for these stations enabled them to serve adequately a greater portion of the Los Angeles area by reducing dead spots in radio coverage. In its decision, the Commission noted that the unusual terrain adjacent to the Los Angeles area was a special situation requiring a departure from our general rules, and that if similar circumstances should become evident in other localities, it would address them as they arose.

3. The petitioner argued that a similar situation exists in San Diego. To obtain adequate radio coverage in the extensive San Diego area, mobile relays are generally installed on four mountaintop sites. The irregular terrain between these sites and the desired service areas creates dead spots in the radio coverage when sufficient ERP is not available. The petitioner argued that relief similar to that afforded licensees in Los Angeles is needed and is justified in San Diego.

B. Discussion

4. Comments on the NPRM were received from five parties, all supporting the proposal.[5] No reply comments were received. Motorola's comments included computer generated radio coverage prediction maps showing that increasing the allowable ERP to 500 watts at the four mountaintop sites would significantly increase coverage in San Diego County without resulting in harmful interference. The maps indicated that for the Woodson, Miguel, and Otay locations, 95% of the radio signal energy would be attenuated in San Diego County, and since most Palomar radio sites are on the south side of Mt. Palomar, no interference should result. Motorola noted that if interference problems from Palomar stations did occur, the use of directional antennas would provide a solution on a case-by-case basis.

5. After considering all comments including the radio coverage prediction maps submitted by Motorola, we conclude that our current rules restricting maximum transmitter power and antenna height, which were based on an assumed service radius of up to 20 miles, result in "dead-spots" in system coverage. The irregular terrain prevalent in the San Diego area makes it difficult to provide adequate coverage from these sites. To allow licensees to make more effective use of them, we are adopting our proposal to amend § 90.635 of the Rules and Regulations to allow 800 MHz conventional and trunked systems located at the San Diego mountaintop sites of Palomar, Otay, Woodson, and Miguel to raise their ERP limitation to 500 watts.

6. As stated in the Notice, the Commission certifies that Sections 603 and 604 of the Regulatory Flexibility Act of 1980 do not apply to the rule changes in this Report and Order because these changes will not have a significant economic impact on a substantial number of small entities. The Secretary shall cause a copy of this Report and Order, including the above certification, to be published in the Federal Register, and to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 605(b) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et. seq.* (1981).

7. Accordingly, it is ordered, that pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 90 of the Commission's Rules is amended, effective February 1, 1985, as set forth in the attached Appendix. It is further ordered that this proceeding is terminated.

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

---

[1] *Notice of Proposed Rule Making*, PR Docket No. 84-608, 49 FR 26284, June 27, 1984.

[2] *Petition for Rule Making*, RM-4765, filed January 31, 1984.

[3] Under the current rules, the allowed ERP is a function of the height above average terrain of the station's antenna. The maximum ERP permitted at the Palomar site is 35 watts for conventional stations and 140 watts for trunked stations. At Otay, conventional stations may operate with 50 watts and trunked stations with 200 watts. At Woodson, conventional stations may operate with 80 watts and trunked stations with 350 watts. At Miguel, the maximum ERP is 350 watts for both conventional and trunked stations.

[4] *Memorandum Opinion and Order*, Docket 18262, 51 FCC 2d 945, 979, adopted March 19, 1975.

[5] Comments were received from Motorola, Inc., Westec Security, Inc., Mobile Brake Service, Inc., H&D Construction Company, and Dietrich Corporation.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

PART 90—(AMENDED)

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Section 90.635 is amended by adding a new footnote 5 to Table 2.

TABLE 2. EQUIVALENT POWER AND ANTENNA HEIGHTS FOR BASE STATIONS IN THE 851-866 MHZ BAND WHICH HAVE A REQUIREMENT FOR A 32 KM (20 MI) SERVICE RADIUS

Antenna height (AAT)(feet)(meters)	Effective radiated power power (watts) [1] [2] [3] [4]	
	Urban/ Trunked	Suburban

* * * * *

[4] Licensees in San Diego, California will be permitted to utilize an ERP of 500 watts at the following mountaintop sites: Palomar, Otay, Woodson, and Miguel.

[FR Doc. 85-358 Filed 1-4-85; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1803, 1804, 1805, 1812, 1813, 1814, 1815, 1816, 1817, 1825, 1827, 1831, 1832, 1835, 1842, 1844, 1845, and 1852

Acquisition Regulations; Promulgation of NASA FAR Supplement Directive 84-3

AGENCY: Procurement Policy Division, National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This document promulgates miscellaneous amendments to the NASA acquisition regulations contained in NASA FAR Supplement Directive (NFSD) 84-3.

EFFECTIVE DATE: December 18, 1984.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-2119.

SUPPLEMENTARY INFORMATION: At 49 FR 45194 (November 15, 1984), NASA published a notice of proposed rulemaking which consisted of the proposed changes to be effected by NASA FAR Supplement Directive 84-3. All comments received have been considered and the proposed document has been revised as necessary. This document reflects amendments to the NASA FAR Supplement contained in NSFD 84-3 concerning the following:

1. Identical bid reports need be furnished to Code HP only when collusion is suspected. NFS 1803.303(c) is added to reflect this policy.

2. NFS 1804.103 is amended to provide that the Assistant Administrator for Procurement is the approving official referenced in the FAR clause at 52.204-1. This should be stated in the Schedule of NASA contracts.

3. FAR 13.505-3 establishes conditions for and limitations on the use of the Standard Form 44, Purchase Order-Invoice-Voucher. The ceiling for use of the form is set at $2,500, but agencies are authorized, at 13.505-3(b)(1), to establish higher dollar limitations for specific activities or items. In accordance with that authority, the ceiling is raised to $10,000 only for use of the Standard Form 44 for purchases of aviation fuel and oil. All other limitations on the use of the form remain in effect.

4. The Procurement Request Overlay Method (1813.70) is modified to clarify that it is limited to use with procurements of $2,500 or less, since purchases in excess of that amount are subject to certain clauses and therefore must be in writing. This limitation does not apply to orders under BPA's because the BPA itself will include the required clauses.

5. NFS 1814.201-3, Part II, 1815.406-3 and 1852.214-70 are amended or added to specify the order of precedence that is applicable after contract award.

6. NFS text pertaining to the Uniform Contract Format that was previously in 1515.406-3, has been removed. This text required that contract Section I "include all clauses required by this regulation (NFS), if these clauses are not required in any other section of the Uniform Contract Format." However, a decision was later made not to include clause matrices in the NFS, so the regulation provides no guidance on which Uniform Contract Format section applies to a given NFS clause. Without removing the previous text of 1815.406-3, this had the effect of requiring that *all* NFS clauses be placed in Section I of the contract. This removal will free contracting officers to place clauses in whatever section of the Uniform Contract Format that is most appropriate.

7. The FAR is supplemented to reflect NASA's special requirements regarding the handling and safeguarding of information submitted by potential contractors. Significant changes include:

(a) The clause prescribed at NFS 1815.407-70 (NFS 1852.215-72) is to be used in lieu of the FAR clause prescribed at 15.407(c)(8). (See also NFS 1804.103.) (PN 84-5, Paras. 2, 3, 17, 18.)

(b) Extensive implementation and interpretation is provided for FAR 15.413-2, Alternate II, on disclosure and use of proposal information before award. Authority to disclose unsolicited proposals for evaluation outside of the Government is delegated to the NASA official one level higher than the NASA official responsible for the overall substantive conduct of the evaluation. The policies and procedures in this subsection (NFS 1815.413-70) are extended to apply after award. (PN 84-5, Paras. 4, 5, and new material).

(c) FAR 15.508(b) and 15.509 are replaced with a special NASA version at NFS 1815.508-70 and 1815.509-70 (See also NFS 1815.508 and NFS 1815.509.) (PN 84-5, Paras. 6-9, and new material.)

8. Codes G and H have agreed that NASA will, in the future, comply with the late proposal policy in the FAR (See 15.407(c)(6) and 52.215-10). In summary, this policy is that a late proposal or late "best and final" offer cannot be considered unless (1) it was sent by a certain time and is late only because it was mishandled in the mail or at the Government installation or (2) is the only proposal received. NASA officials are no longer authorized to consider a late proposal or "best and final" offer that is advantageous to the Government.

1815.407 is revised; 1814.201-6, 1815.412, 1852.214-23, and 1852.215-10 are deleted in their entirety.

9. NFS 1815.505 is revised to delete the requirement for some of the supporting information previously required to be submitted.

10. Allowable Costs and Funding:

(a) Subsection 1816.307 is expanded to provide that in solicitations and contracts containing FAR fixed—or incentive-fee clauses, the Schedule shall include terms for provisional billing against fee, as appropriate. (PN 84-5, Para. 10.)

(b) As prescribed at NFS 1831.170, a clause covering precontract costs under cost-reimbursement contracts is added at 1852.231-71. (PN 84-5, Para. 13, 21.)

(c) For NASA solicitations and contracts, payment will be made approximately 30 days after receipt of a voucher or invoice as set forth in NFS 1852.216-770 and 1852.216-7, in lieu of the "not more often than every 2 weeks" specified by FAR 52.216-7. (PN 84-5, Paras. 19, 20.)

(d) A special Schedule statement is provided at NFS 1832.704 for use with contracts which contain the limitations of Funds clause at FAR 52.232-22. (PN 84-5, Amend. 1, Para. 14.)

11. NFS 1816.403 is added to authorize the contracting officer to sign D&F's required by FAR 16.403(c) pertaining to fixed-price incentive contracts.

12. NFS 1817.203 is amended by adding language to designate the Procurement Officer as the "authorized person" mentioned in FAR 17.203(g)(2) to approve option quantities. PN 84–11 is superseded.

13. NFS 1825.102(c) is revised to state that the Head of the Installation is required to approve the "Determination" only if the contract is estimated to exceed $1,000,000.

14. FAC 84–1, Item VIII, added Israel to the list of countries designated under the Trade Agreement Act of 1979. Accordingly, NFS 1825.401 is removed.

15. NFS 1831.170, Contract clauses, is added to require the use of the Date of Incurrence of Costs clause in cost reimbursement contracts for which precontract costs are authorized.

16. Guidance is provided at NFS 1835.003–71, 1835.070(c), and 1827.375–2(a)(2) for contractor submission of a detailed plan for New Technology reporting. (PN 84–5, Paras. 12, 15, 16, and 22.)

Note.—Procurement Notice 84–5 and Amendment 1 thereto are superseded.

17. NFS 1844.302–70 is revised to authorize incidental assistance by NASA personnel to DOD personnel who are performing CPSR's for NASA without obtaining approval of the Assistant Administrator for Procurement.

18. NFS 1845.505–70(a) and (b) are revised to make editorial corrections and to update policy applicable to the reporting of property in the possession of contractors.

19. In the introductory paragraphs of NFS 1852.212–70 and 1852.212–71, the cross references to the clause prescriptions are corrected.

20. In the clause at NFS 1852.232–78, Payment Information, paragraph (b)(2)(iv) is added to require the furnishing of the contractor's account number.

List of Subjects in 48 CFR Ch. 18

Government procurement.

Accordingly, 48 CFR, Chapter 18 is amended as set forth below.

L.E. Hopkins,

Deputy, Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Ch. 18 reads as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 1803.303 is amended by adding paragraph (c) to read as follows:

1803.303 Reporting suspected antitrust violations.

* * * * *

(c) The contracting officer shall submit the identical bid report required by FAR 3.303(d) to NASA Headquarters, Code HP. The report shall include the reasons for suspecting collusion.

PART 1804—ADMINISTRATIVE MATTERS

3. Section 1804.103 is revised to read as follows:

1804.103 Contract clause.

See Subpart 1804.72, Review and Approval of Contractual Instruments. When the clause at FAR 52.204–1, Approval of Contract, is used, the Schedule shall provide that the Assistant Administrator for Procurement is the official referred to in the clause.

PART 1805—PUBLICIZING CONTRACT ACTIONS

1805.303–70 [Amended]

4. Section 1805.303–70 is amended by revising the parathetical material in paragraph (a)(1)(iii) to read "(but see 1815.413)."

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

1812.102 [Amended]

5. The heading of Section "1812.102, Contract clauses." is redesignated as "1812.104 Contract clauses." The text of section 1812.102, consisting of paragraphs (a) and (b), is given a new subsection heading reading "Section 1812.104–70, Additional Clauses."

PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

6. Section 1813.505–3 is added to read as follows:

1813.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.

The $2,500 ceiling for use of the Standard Form 44 at FAR 13.505–3 is raised to $10,000 for purchases of aviation fuel and oil only.

7. Section 1813.7002 is amended by removing the word "or" after paragraph (e), inserting the word "or" after paragraph (f) and adding new paragraph (g) to read as follows:

1813.7002 Limitations on use.

* * * * *

(g) The amount of the purchase is over $2,500 (unless the purchase is made under a BPA).

PART 1814—FORMAL ADVERTISING

8. Section 1814.201–3 is added to read as follows:

1814.201–3 Part II—Contract clauses.

Section I, Contract clauses. The contracting officer shall insert in invitations for bids and resulting contracts the clause at 1852.214–70, Contract Order of Precedence, except in those for construction or that do not follow the uniform contract format. The clause may, however, be revised as appropriate and used in contracts for construction or that do not follow the uniform contract format.

1814.201–6 [Removed]

9. Section 1814.201–6 is removed.

PART 1815—CONTRACTING BY NEGOTIATION

10. Section 1815.406–3 is added to read as follows:

1815.406–3 Part II—Contract clauses.

Section I, Contract clauses. The contracting officer shall insert the clause at 1852.215–73, Contract Order of Precedence—Negotiation, in requests for proposals, requests for quotations, and negotiated contracts to which the uniform contract format applies. The clause may, however, be revised as appropriate and used in contracts to which the uniform contract format does not apply.

11. Section 1815.407 is revised to read as follows:

1815.407 Solicitation provisions.

The clause prescribed at FAR 15.407(c)(8) shall not be used in NASA solicitations. See instead 1815.407–70.

12. Section 1815.407–70 is added to read as follows:

1815.407–70 NASA solicitation provisions.

The contracting officer shall insert in requests for proposals and requests for quotations other than for information or planning purposes the provision at 1852.214–72, Restriction of Use and Disclosure of Proposal/Quotation Information (Data).

13. Section 1815.413 is revised, and 1815.413–2 is added to read as follows:

1815.413 Disclosure and use of information before award.

(a) The alternate procedures at FAR 15.413–2 shall be used for NASA

procurements in lieu of those prescribed at FAR 15.413-1. The policies and procedures of FAR 15.413 and 1815.413-2 shall apply after as well as before award. The Notice at FAR 15.413-2(e) shall be placed on the cover sheet of all proposals, whether solicited or unsolicited. (See 1805.303-70(a)(1)(iii) regarding release of the names of firms which submitted bids or proposals.)

(b) During evaluation proceedings, whether or not a Source Evaluation Board is used, NASA personnel participating in any way in evaluating proposals shall not reveal any information concerning the evaluation to anyone who is not also participating in the same evaluation proceedings, and then only to the extent that such information is required in connection with the evaluation. When non-NASA personnel participate in evaluation proceedings, they shall be instructed to observe these restrictions. (Information will be provided to unsuccessful offerors in accordance with FAR 15.1002 and section 1815.1002 of this regulation.)

1815.413-2 Alternate II.

(a) *General.* The references in FAR 15.413-2 to the clause at FAR 52.215-12 shall be considered to be references to the clause at 1852.215-72.

(b) *Policy.* It is NASA policy to have proposals evaluated by the most competent technical and management sources available in NASA and JPL. Proposals may be disclosed to Jet Propulsion Laboratory (JPL) personnel for evaluation purposes; *however,* JPL personnel participating in evaluation proceedings shall be instructed to observe the restrictions in FAR 15.413 and 1815.413. In processing a proposal for evaluation by Board, Committee, or otherwise, NASA may find, in some instances, that it is necessary to disclose a proposal outside the Government to meet its evaluation needs. Such outside evaluation may be made, provided the requirements in paragraphs (c) and (d) below are met.

(c) *Approval.* Under FAR 15.413-2(f)(1), only the Assistant Administrator for Procurement, NASA Headquarters, or designee is authorized to make a decision to disclose a proposal outside the Government or JPL, except that (1) proposals submitted in response to "Announcements of Opportunity" may be disclosed in accordance with NHB 8030.6A and NMI 1156.4F and any amendments thereto and (2) unsolicited proposals may be disclosed with the concurrence of the NASA official one level higher than the NASA program official responsible for overall conduct of the evaluation.

(d) *Agreement with evaluator.* When, in accordance with paragraph (c) above, it is determined to disclose a proposal outside the Government or JPL, the following agreement, or similar appropriate arrangment for the treatment of the proposal, shall be obtained in writing from the evaluator prior to disclosure. Also, the releasing official shall review the proposal to ensure that the Notice at FAR 15.413-2(e) (see 1815.413) is affixed before it is disclosed to the evaluator.

Conditions for Evaluation of Proposals (December 1984)

(a) Whenever NASA furnishes a proposal for evaluation, the recipient agrees to use the information contained in the proposal only for NASA evaluation purposes.

(b) This requirement does not apply to information obtained from another source without restriction.

(c) The NASA Notice on the cover sheet, and any notice which may have been placed on the proposal by its originator shall be applied to any reproduction or abstract. Upon completion of the evaluation, the recipient shall return all copies of the proposal and abstracts, if any, to the NASA office which initially furnished the proposal for evaluation.

(d) Unless authorized by the NASA initiating office, the recipient shall not contract the originator of the proposal concerning any aspect of its contents.

(End of agreement)

14. Section 1815.505 is revised to read as follows:

1815.505 Content of unsolicited proposals.

Proposals for renewal of ongoing projects are generally simple to prepare. However, they should cover the identifying number of the basic contract or other agreement and the items listed at FAR 15.505 (a) through (c), particularly as dictated by changes since the original award was made. Prior contact with the NASA technical officer is advisable to determine the optimum amount of technical information to include.

15. Sections 1815.508, 1815.508-70, 1815.509 and 1815.509-70 are added to read as follows:

1815.508 Prohibitions.

FAR 15.508(b) shall not apply to NASA. See instead 1815.508-70.

1815.508-70 NASA prohibitions.

Information (data) contained in unsolicited proposals furnished to the Government is to be used for evaluation purposes only. Disclosure outside the Government for evaluation is permitted only to the extent authorized by, and in accordance with the procedures set forth in, FAR 15.413-2 and 1815.413.

1815.509 Limited use of data.

FAR 15.509 shall not apply to NASA. See instead 1815.509-70.

1815.509-70 Limited use of proposals.

(a) The Government's limited use of proposals does not require that the proposal bear a restrictive notice. Proposers should, however, in order to maximize protection of proposal information that constitutes trade secrets for other information that is commercial or financial and privileged or confidential, place the following notice on the title page and specify the information to be made subject to the notice by inserting appropriate identification, such as page numbers, in the notice. In any event, unsolicited proposal information will be protected to the extent permitted by law, but the Government assumes no liability for use or disclosure of information not made subject to the notice.

Restriction on Use and Disclosure of Proposal Information

[The information (data) contained in ———— insert page numbers or other identification] of this proposal constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed other than for evaluation purposes; provided, however, that in the event a contract is awarded on this proposal the Government shall have the right to use and disclose this information (data) to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

(End of notice)

(b) If an unsolicited proposal is received with a more restrictive legend than that set forth in paragraph (a) above, the procedures of FAR 15.413-2(c) are to be followed.

(c) Upon receipt, the Government notice prescribed in FAR 15.413-2(e) shall be placed on the cover sheet of all unsolicited proposals.

(d) Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with, the procedures prescribed in FAR 15.413-2(f) and 1815.413.

(e) In the event of a request under the Freedom of Information Act for any information contained in an unsolicited proposal, the procedures of FAR 15.413-2(g) are to be followed.

PART 1816—TYPES OF CONTRACTS

16. Section 1816.307 is added to read as follows:

1816.307 Contract clauses.

In solicitations and contracts containing the clause at FAR 52.216–8, Fixed Fee, or FAR 52.261–10, Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

17. Section 1816.403 is added to read as follows:

1816.403 Fixed-price incentive contracts.

The determination and findings required by FAR 16.403(c) may be signed by the contracting officer for individual purchases and contracts.

PART 1817—SPECIAL CONTRACTING METHODS

18. Section 1817.203 is added to read as follows:

1817.203 Solicitations.

The "authorized person" mentioned in FAR 17.203(g)(2) is hereby designated as being the Procurement Officer.

PART 1825—FOREIGN ACQUISITION

19. Section 1825.102(c) is revised to read as follows:

1825.102 Policy.

* * * * *

(c) Determinations made under 1825.102(a) shall be approved by the Head of the Installation if the contract is estimated to exceed $1,000,000.

20. 1825.103(b) is revised to read as follows:

1825.103 Agreements with certain foreign governments.

* * * * *

(b) The procedures in paragraph (a) above do not apply to or affect items—

(1) Listed in FAR 25.108;

(2) Determined to be nonavailable under 1825.102; or

(3) Contracts for basic and applied research in Canada. (See NMI 1362.1.)

1825.401 [Removed]

21. Section 1825.401 is removed.

PART 1827—PATENTS, DATA, AND COPYRIGHTS

22. Section 1827.375–2 is amended by adding before the beginning sentence of paragraph (a) the paragraph designator "(1)" and by adding paragraph (2) to read as follows:

1827.375–2 Follow-up by contractor.

(a) *Contractor procedures.* (1) * * *

(2) In order to ensure that there is adequate understanding of, and commitment to, the reporting requirements of the New Technology clause, prospective contractors under any NASA contract having an estimated cost of $2,500,000 or more (or a lesser dollar amount where deemed appropriate) that contains the clause may be required to submit for approval a detailed plan for New Technology Reporting. (See 1835.003–71.)

* * * * *

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

23. Section 1831.170 is added to read as follows:

1831.170 Contract clauses.

The contracting officer shall insert the clause at 1852.231–71, Date of Incurrence of Costs, in cost-reimbursement contracts for which specific coverage of precontract costs is authorized in accordance with FAR 31.205–32.

PART 1832—CONTRACT FINANCING

24. Section 1832.704 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

1832.704 Limitation of cost or funds.

* * * * *

(b)(1) In contracts that contain the clause at FAR 52.232–22, Limitation of Funds, add the following in the Schedule:

Contract Funding

(a) For purposes of payment of cost, exclusive of fee, pursuant to the Limitation of the Funds clause, the total amount allotted by the Government to this contract is $———— (insert amount of funds presently available for payment of the estimated cost exclusive of fee). The above allotment is for ———— (insert items covered) and covers the following period of performance: ———— (insert applicable period).

(b) An additional amount of $———— (insert amount of funding presently available for payment of fee only) is obligated under this contract for payment of fee.

(End of article)

(2) It is not necessary, although it is not prohibited, to have separate financial/accounting data for cost and fee. The breakdown is required only in the above schedule article.

(3) When amending the above to increase funding, installations may find it is helpful to show the old amounts, the amount(s) added, and the new totals.

(4) The amount of funds obligated for fee should always be at least sufficient to pay fee anticipated to be earned by the contractor for the work to which the amount allotted for the estimated cost applies.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

25. Section 1835.003–71 is added to read as follows:

1835.003–71 Plan for New Technology Reporting.

(a) In conformance with section 305(b) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(b)), as well as with said section 203(a), it is NASA policy to obtain the prompt reporting of any invention, discovery, improvement, or innovation (i.e., items of new technology, whether or not patentable) made in the performance of NASA contracts for the purpose of providing for the widest practical and appropriate dissemination of the results thereof. The NASA Technology Utilization Program has been established to help carry out this purpose, and the clause at 1852.227–70, New Technology, is included in certain NASA contracts to assure the prompt reporting of such inventions, discoveries, improvements and innovations.

(b) In order to ensure that there is adequate understanding of the requirements for new technology reporting in certain contracts containing the clause at 1852.227–70, New Technology, a contractor may be requested in response to a solicitation for any such contract to (1) provide estimates of cost and manpower requirements to perform new technology reporting, and (2) if selected for negotiation, provide a detailed plan as to how such reporting is to be carried out. (See 1852.235–72, Plan for New Technology Reporting.)

26. Section 1835.070 is amended by adding paragraph (c) to read as follows:

1835.070 NASA contract clauses.

* * * * *

(c) The contracting officer shall insert the provision at 1852.235–72, Plan for New Technology Reporting, in any solicitation for any contract estimated to cost $2,500,000 or more if such contract is also to contain the clause at 1852.227–70, New Technology, unless, in consultation with the installation New Technology Officer, the contracting officer determines that the provision is not appropriate. In addition, the contracting officer may insert the provision in a solicitation for any such contract of a lesser dollar amount if deemed appropriate after consultation with the installation New Technology Officer.

PART 1842—CONTRACT ADMINISTRATION

27. Section 1842.202–71 is amended by revising the last sentence of paragraph (a) to read as follows:

1842.202–71 Delegations to audit offices.

* * * * *

(a) * * * Audit functions include but are not limited to contract cost and price audits, estimating systems surveys, review of accounting systems (see also 1815.871(b)), and approval of vouchers for provisional payment.

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

28. Section 1844.302–70 is amended by revising paragraph (b) to read as follows:

1844.302–70 Contractors' purchasing system reviews conducted by the Department of Defense.

* * * * *

(b) NASA installations desiring to provide full time participants for any DOD CPSR shall forward a request for such participation to the Assistant Administrator for Procurement, Code HP, for approval. Incidental assistance by NASA personnel to DOD personnel who are performing CPSR's for NASA does not require Headquarters approval.

PART 1845—GOVERNMENT PROPERTY

1845.505–6 [Amended]

29. Section heading 1845.505–6 is amended by removing the word "plant."

1845.505–670 [Amended]

30. Section 1845.505–670(b) is amended by removing the second sentence beginning with the word "Reporting" and ending with the word "change."

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.212–71 [Amended]

31. Section 1852.212–71 is amended by revising the citation "1812.102(b)" to read "1812.104–70(b)."

1852.214–23 [Removed]

32. Section 1852.214–23 is removed.

33. Section 1852.214–70 is added to read as follows:

1852.214–70 Contract Order of Precedence.

As prescribed in 1814.201–3, insert the following clause:

Contract Order of Precedence (December 1984)

Any inconsistency in this contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) contract clauses; (c) other documents, exhibits, and attachments; and (d) the specifications.

(End of Clause)

34. Sections 1852.215–12 is added to read as follows:

1852.215–12 Restriction on Disclosure and Use of Data.

As prescribed in 1815.407, this clause shall not be used in NASA solicitations. See instead 1852.215–72.

35. Sections 1852.215–72 and 1852.215–73 are added to read as follows:

1852.215–72 Restriction on Use and Disclosure of Proposal/Quotation Information (Data).

As prescribed in 1815.407–70, insert the following provision in all requests for proposals and requests for quotations other than those for information or planning purposes.

Restriction on Use and Disclosure of Proposal/Quotation Information (Data) (December 1984)

It is NASA policy to use information contained in proposals and quotations for evaluation purposes only. While this policy does not require that the proposal or quotation bear a restrictive notice, offerors or quoters should, in order to maximize protection of trade secrets or other information that is commercial or financial and confidential or privileged, place the following notice on the title page of the proposal or quotation and specify the information, subject to the notice by inserting appropriate identification, such as page numbers, in the notice. In any event, information (data) contained in proposals and quotations will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

Restriction on Use and Disclosure of Proposal and Quotation Information (Data)

The information (data) contained in /——— *insert page numbers or other identification* ———/ of this proposal or quotation constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed for other than evaluation purposes: *provided*, however, that in the event a contract is awarded on the basis of this proposal or quotation the Government shall have the right to use and disclose this information (data) to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

(End of provision)

1852.215–73 Contract Order of Precedence—Negotiation.

As prescribed in 1815.406–3, insert the following clause:

Contract Order of Precedence—Negotiation (December 1984)

Any inconsistency in this contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) contract clauses; (c) other documents, exhibits, and attachments; and (d) the specifications.

(End of clause)

36. Section 1852.216–7 is amended by adding the following sentence at the end of the paragraph:

1852.216–7 Allowable Cost and Payment.

* * * Paragraph (a) of the clause at FAR 52.216–7 shall be modified as specified in 1852.216–770. If the contract is with a non-profit organization, modify the clause by deleting from paragraph (a) the words "Subpart 31.2" and substituting for them "Subpart 31.7".

37. Section 1852.216–770 is added to read as follows:

1852.216–770 Allowable Cost and Payment—NASA Deviation.

When used in NASA solicitations and contracts, the first sentence of paragraph (a) of the clause at FAR 52.216–7, Allowable Cost and Payment, shall be modified to read: "The Government shall make payments to the Contractor when work progresses, approximately 30 days after receipt of each proper invoice or voucher, in amounts determined to be allowable * * *".

38. Section 1852.231–71 is added to read as follows:

1852.231–71 Date of Incurrence of Costs.

As prescribed in 1831.170, insert the following clause in cost-reimbursement contracts for which specific coverage of precontract cost is authorized in accordance with FAR 31.205–32.

Date of Incurrence of Costs (December 1984)

The Contractor shall be entitled to reimbursement for costs incurred in an amount not to exceed $——— on or after ——— which, if incurred after this contract had been entered into, would have been reimbursable under the provisions of this contract.

(End of clause)

1852.232–78 [Amended]

39. Section 1852.232–78 is amended by revising the clause date to read "DECEMBER 1984" in place of "APRIL 1984" and by adding to the clause paragraph (b)(2)(iv) to read as follows:

1852.232-78 Payment information.

* * * * *

(iv) Recipient Contractor's account number.

40. Section 1852.235-72 is added to read as follows:

1852.235-72 Plan for New Technology Reporting.

As prescribed in 1835.070(c), the contracting officer shall insert the following provision in any solicitation for any contract estimated to cost $2,500,000 or more if such contract is also to contain the clause at 1852.227-70, New Technology, unless, in consultation with the installation New Technology Officer, the contracting officer determines that the provision is not appropriate. The contracting officer may insert the provision in solicitations for such contracts of a lesser dollar amount if deemed appropriate after consultation with the installation New Technology officer.

Plan for New Technology Reporting (December 1984)

The offeror shall, in the proposal in response to this solicitation, provide estimates of the cost and manpower requirements to perform the new technology reporting required by the clause at 1852.227-70, New Technology, to be included in any resulting contract. In addition, if selected for negotiation, the Offeror will be required to submit for approval prior to contract execution a detailed plan for New Technology Reporting setting forth the manner in which the offeror will meet the new technology reporting requirements of the New Technology clause. Such plan shall, at a minimum—

(a) Identify the specific areas of technical effort which are considered likely to generate new technology;

(b) Describe the means by which project supervisory and technical personnel will be advised of the responsibilities, details and benefits of new technology reporting;

(c) Describe the procedures to be established, maintained and followed for review of the effort to be undertaken for the purposes of identification and reporting (disclosure) of new technology within the time periods and in the manner prescribed by the New Technology clause;

(d) Describe the procedure for timely submission of the interim and final new technology reports required by the New Technology clause.

(e) Describe the procedures for (1) selecting which of NASA's New Technology clause or other patent rights clause is to be included in each subcontract having as a purpose the conduct of experimental, developmental, research, design, or engineering work, and (2) for providing prompt notification of either the award of such subcontracts or a subcontractor's refusal to accept the clause; and

(f) Identify the individual(s) assigned substantial and specific responsibilities for ensuring compliance with the requirements of the New Technology clause, as well as their qualifications and organizational placement to discharge these responsibilities.

(End of provision)

[FR Doc. 85-190 Filed 1-4-85; 8:45 am]

BILLING CODE 7510-01-M

VETERANS ADMINISTRATION

48 CFR Ch. 8

Acquisition Regulations

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The FAR (Federal Acquisition Regulation) was issued to provide a uniform acquisition regulation system pursuant to Executive Order 12352, Federal Procurement Reforms. In order to conform to the new acquisition regulation system, effective April 1, 1984, the VA published the VAAR (Veterans Administration Acquisition Regulation), which implemented and supplemented the FAR. It was published as an interim final rule on March 29, 1984 (49 FR 12582). While basically the VAAR is a recodification of the superseded VA Procurement Regulation (Chapter 8, Title 41, CFR), a 30-day comment period was provided. The document confirms the interim final rule as a final rule, with identified amendments.

EFFECTIVE DATE: January 7, 1985.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, Chief, Policy Division, Office of Procurement and Supply (91), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389-2334.

SUPPLEMENTARY INFORMATION: The VA is adopting and amending the VAAR (Veterans Administration Acquisition Regulations) interim final rule published in the Federal Register of March 29, 1984 at 49 FR 12582-12644, and the proposed rule amending VAAR Parts 819 and 852 published in the Federal Register on September 18, 1984 at 49 FR 36529-36531, making VAAR a final rule with this publication. In both rulemakings, interested persons were given 30 days in which to comment. No comments were received on the proposed rule, and only one comment received on the interim final rule. This comment is discussed below. Numerous revisions to the interim final rule were recommended by VA contracting activities and many of these are being adopted in this final regulation.

The one comment received on the interim final rule was from the AACPP (Association of Asbestos-Cement Pipe Producers). The association objects to the VAAR procurement controls on asbestos contained in 870.114. One of the arguments posed is that the "VAAR should, as the FAR directs, limit agency acquisition regulations to those necessary to implement FAR policies." This argument is not valid. Agency supplements to the FAR are intended to supplement as well as implement FAR provisions. The procurement controls on asbestos are contained in VAAR Part 870, which is a Part supplement to the FAR. Use of agency supplemental provisions are authorized by the FAR to provide agency-specific guidance.

The AACPP questions the authority to "impose public health policy on the VA acquisition process." The Administrator has ultimate agency acquisition authority pursuant to Section 213, Title 38, U.S.C. Other contracting officers in the VA derive contracting authority from the Administrator in VAAR Subpart 801.6. The Administrator, therefore, has authority to limit his delegation. Furthermore, the Administrator has responsibility under Part VI—Acquisition and Disposition of Property, Title 38 U.S.C. to oversee the acquisition and operation of medical facilities. Title 38 U.S.C. 5006 states, ". . . the Administrator shall be responsible for all construction authorized under this subchapter, including . . . approval of materials and workmanship supplies pursuant to a constriction contract."

Finally, one of the primary responsibilities of the Administrator is the provision of hospital and nursing home care to eligible veterans. Inherent in this responsibility is providing a health care environment that itself is healthful. EPA findings contained in their publication, "Guidance for Controlling Fiable Asbestos-Containing Materials in Buildings," March 1, 1983, include the following:

"• Exposure to airborne asbestos, regardless of the level, involves some health risk".

"• The potential for exposure to airborne asbestos buildings and the associated risk of asbestos—related disease cannot be ignored. The decision whether or not to take action and the selection among alternative courses of action are the responsibility of the individual building owners."

We believe our controls on procurement of asbestos are prudent. While not forbidding its use, we state a preference for substitute items and establish an approval mechanism for individual cases.

In addition to minor and editorial changes, the pertinent revisions made to the VAAR interim final are as follows:

(1) 801.602(a). Revised to clearly state that Government Bills of Lading are included under the contract delegation and to clarify that contracting authority flows through the Agency Procurement Executive.

(2) 801.602-70(a)(4). Revised to include legal and technical review requirements for ADP software and software licensing agreement.

(3) 801.670-14. Revised to allow Service Directors in VACO Research and Development to sign letters of agreement.

(4) 801.680. Revised to clarify the types of controls for which the Inspector General is exempt.

(5) 810.005(b). Revised to adding control of "brand-name or equal" provision and to prescribe a new clause in 852.210-77.

(6) 810.006(c)(4). Revised to eliminate reference to VA Form 10-1365 which has been eliminated.

(7) 814.201. Revised to reference FAR 52.214-22 in lieu of 852.214-72 which is being deleted as unnecessary.

(8) 814.407-8(a). Revised to reduce the time allotted the contracting office to submit the pertinent protest file.

(9) 815.204 and 815.211. Revised to correct U.S.C. citations.

(10) 815.204(d)(1). Revised to add the definition of specialized medical resources.

(11) 815.207. Revised to allow designation of twelve contracting officers within the Federal Supply Schedule Division to negotiate contracts in excess of the small purchase limitation.

(12) 815.211 and 815.307. Revised to clearly require a D&F for acquisitions of experimental, development or research work.

(13) 819.803. Added to specify a time limit for SBA to propose an acceptable 8(a) subcontractor.

(14) 819.804. Added to specify a time limit for 8(a) contract negotiations.

(15) 819.806-2 and 819.806-4. Added to incorporate an approved FAR deviation to allow awarding 8(a) contracts if the proposed contract price is considered fair and reasonable. The objectives of the 8(a) program will be considered in estimating the fair market price.

(16) Part 852. Clauses and provisions are differentiated.

(17) 852.210-70. Revised to reflect cancellation of VA Specification X-1711.

(18) 852.210-73. Revised to change refrigeration from 10 degrees to 0 degrees.

(19) 852.210-77. "Brand-Name or Equal" provision added. FAR did not incorporate this provision. The VAAR incorporates this former Federal Procurement Regulation Clause.

(20) 852.214-72. This provision is eliminated as unnecessary, since FAR 52.214-22 covers multiple awards.

(21) 852.236-77. Revised to eliminate reference to the availability of specifications in the Office of Construction.

(22) 852.236-84. Revised to eliminate "Progress Chart" requirement. Bar graphs are being prescribed as less cumbersome and more useful.

(23) 852.236-88. Revised to clarify when contractor certification is required for claims less than $500,000.

(24) 852.236-89. "Buy American Act" clause added to provide a statement of VA general policy regarding the use of foreign construction material.

(25) 852.270-4. Revised to prescribe the commercial Advertising clause for all VA contracts.

I. Executive Order 12291

Pursuant to the memorandum from David Stockman, Director, Office of Management and Budget, to Donald Sowle, Administrator, Office of Federal Procurement Policy, and Christopher DeMuth, Administrator, Information and Regulatory Affairs, dated December 15, 1983, this rule is exempt from Sections 3, 4, and 5 of the Executive Order 12291.

II. Regulatory Flexibility Act (RFA)

Because this rule does not come within the term "rule" as defined in the RFA (54 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change, in itself, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 48 CFR Ch. 8

Government procurement.

III. Paperwork Reduction Act

The information collection requirements contained in 819.7003 have been approved by the Office of Management and Budget in accordance with section 3504(h) of the Paperwork Reduction Act under OMB Control Number 2900-0445.

Approved: December 27, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

The interim final rule published on March 29, 1984, at 49 FR 12582-12644 is hereby adopted as final rule with the following changes:

1. The authority citation for Parts 801, 802, 805, 810, 814, 815, 816, 819, 825, 829, 836, 837, 842, 852, 853, 870 reads as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

CHAPTER 8—VETERANS ADMINISTRATION

2. In Chapter 8, table of contents is amended by correcting Part 810 by changing the word "DESCRIPTION" to read "DESCRIPTIONS"; by removing "PART 823"; and by amending PART 871 by removing the words "EDUCATION AND REHABILITATION PROGRAMS" and inserting the words "VOCATIONAL REHABILITATION AND COUNSELING PROGRAMS".

PART 801—VETERANS ADMINISTRATION ACQUISITION REGULATIONS SYSTEM

3. Section 801.301-70 is amended by revising the table in paragraph (c) to read as follows:

801.301-70 Paperwork Reduction Act Requirements.

* * * * *

(c) * * *

48 CFR part or section where identified and described	Current OMB control No.
809.504(d)	2900-0418
819.7003	2900-0445
836.606-71	2900-0422
852.236-72	2900-0422
852-236-79	2900-0422
852-236-81 through 852.236-85	2900-0422
852.236-88	2900-0422
871.201-2	2900-0418

4. Section 801.602 is amended by revising paragraph (a) to read as follows:

801.602 Contracting officers.

(a) Except as otherwise provided for by law, VA regulations and these acquisition regulations, the authority vested in the Administrator to execute, award, and administer contracts, purchase orders, and other agreements (including interagency agreements) for the expenditure of funds involved in the aquisition of personal property, or services (excluding construction and architect engineer service), issuing Govenment bills of lading, and for the sale of personal property, is hereby delegated to the Agency Procurement Executive. The Agency Procurement Executive further delegates the authority contained herein to those employees of the Veterans Administration appointed or designated to the following positions:

* * * * *

5. Section 801.602-70 is amended by adding paragraphs (a)(4) (x) and (xi) to read as follows:

801.602-70 Legal/technical review requirements to be met prior to contract execution

(a) * * *

(4) * * *

(x) Contracts for ADP software exceeding $10,000.

(xi) ADP software licensing agreements for ADP software exceeding $10,000 (all software licensing agreements require technical review).

* * * * *

801.670.2 [Amended]

6. In 801.670-2, paragraph (b) is amended by removing the word "Director" from the phrase "Senior Project Director Supervisors".

801.670-12 [Amended]

7. In 801.670-12, paragraph (b) is amended by removing the word "or", which appears after the words "designate one or more", and inserting the word "of".

8. In 801.670-14, paragraph (a)(9) is revised to read as follows; and paragraph (c) is amended by inserting the words "of this section" after the words "paragraphs (a) and (b)".

801.670-14 Letters of agreement.

(a) * * *

(9) Directors, Domiciliary and Medical Centers and Research and Development Service Directors authorized to sign for the Assistant Chief Medical Director for Research and Development (limited to obtaining peer review of research (see 837.270)).

* * * * * * *

9. In 801.680, paragraph (d) is revised to read as follows:

801.680 Contracting authority of the Inspector General.

* * * * * * *

(d) Contracts entered into under the authority of paragraph (a) of this section are subject to the provisions of the Federal Acquisition Regulations. In addition, such contracts are subject to those provisions of VAAR which implement and supplement the FAR on matters other than those stemming from or related to delegations of the Administrator's contracting authority (e.g., management controls and approvals specified in Subpart 837.2 will not apply to contract actions under the contract authority of the Inspector General).

PART 802—DEFINITIONS OF WORDS AND TERMS

802.100 [Amended]

10. Section 802.100 is amended by inserting the word "the" after the words "head of".

PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

803.409 [Amended]

11. In 803.409, paragraph (b) is amended by removing the word "head" and inserting the word "heads".

PART 805—PUBLICIZING CONTRACT ACTION

12. In 805.207, the introductory text of paragraph (a) is revised to read as follows:

805.207 Preparation and transmittal of synopses.

(a) Synopses of proposed procurements will be forwarded to the Department of Commerce for publication in the CBD (Commerce Business Daily) via teletype VADATS (Veterans Administration Data Transmission System).

* * * * * * *

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

808.307-70 [Amended]

13. Section 808.307-70 is corrected by changing the word "consumated" to read "consummated".

PART 809—CONTRACTOR QUALIFICATIONS

809.403 [Amended]

14. Section 809.403, is corrected by changing the word "submission" to read "submissions".

809.406-3 [Amended]

15. In 809.406-3, paragraph (a) is amended by removing the word "recommendations" and inserting the words "a recommendation"; and paragraph (b)(3) is corrected by changing the word "finding" to read "findings".

809.508-2 [Amended]

16. Section 809.508-2 is amended by removing the word "solicitation" and inserting the word "solicitations".

PART 810—SPECIFICATIONS, STANDARDS AND PURCHASE ORDER DESCRIPTIONS

17. In 810.005, paragraph (b) is revised to read as follows:

810.005 Management of purchase descriptions.

* * * * *

(b) Invitation for bids, "brand name or equal" descriptions. The invitation for bids or request for proposals on mechanical equipment using "brand name or equal" purchase descriptions will contain the service data manual clause (852.210-70) and guarantee clause (852.210-71) and the brand name or equal provisions (852.210-77). Use of brand name or equal description will be used only when formal Government specification or commercial item descriptions are not available or cannot be developed in a timely manner. The contract file will be documented explaining the need for use of a brand name or equal description.

18. In 810.006, paragraphs (a) and (c) are amended by removing the amount "$10,000" and inserting the words "the small purchase limitation"; paragraph (c)(4) is revised to read as follows; and paragraph (e) is amended by removing the reference "808.75" and inserting "808.8".

810.006 Using specifications and standards.

* * * * * *

(c) * * *

(4) Contract terms and conditions governing the procurement of subsistence items are listed in the Federal Hospital Subsistence Guide and IMPS. These provisions shall be made a part of each solicitation for such items when applicable.

* * * * * *

810.011 [Amended]

19. Section 810.011 is amended by removing the paragraph designation "(a)" and by removing the colon ":" after the word follows and inserting a period "." in its place.

PART 814—FORMAL ADVERTISING

814.201 [Amended]

20. In 814.201, paragraph (e)(2) is amended by removing the word "or" and inserting the word "an"; and paragraph (f)(2) is amended by removing the words "Aggregate Award" clause set forth in 852.214-72' and inserting the words "provision set forth in FAR 52.214-22".

814.302 [Amended]

21. Section 814.302 is corrected by changing the word "addresses" to read "addressee".

814.402 [Amended]

22. In 814.402, paragraph (b) is corrected by changing the word "bids" to read "bid".

814.407-8 [Amended]

23. In 814.407-8, paragraph (a) is amended by removing the number "10" and inserting the number "5"; paragraph (d)(1) is amended by removing the words "to the Director, Office of . . . Comptroller General" and inserting the words "as prescribed in paragraph (b) of this section".

PART 815—CONTRACTING BY NEGOTIATION

Subpart 815.1—[Amended]

24. In Part 815, Subpart 815.1 is amended by removing the word "Negotiations", in the title, and inserting the word "Negotiation".

25. In 815.204, paragraph (b) is amended by removing the citation "FAR 15.204" and inserting the citation "41 U.S.C. 252(c)(4)"; and paragraph (d)(1) is revised to read as follows:

815.204 Personal or professional services.

* * * * *

(d) * * *

(1) The mutual use, or exchange of use, of specialized medical resources (whether equipment, space or personnel, which, because of cost limited availability, or unusual nature, are either unique in the medical community or are subject to maximum utilization only through mutual use) when such a contract will obviate the need for a similar resource to be provided in a Veterans Administration facility; or

* * * * *

26. Section 815.207 is amended by revising paragraph (c)(5) to read as follows:

815.207 Medicines or medical supplies.

* * * * *

(c) * * *

(5) Four contracting offices for each Marketing Division when so designated by the Marketing Division Chief. (Twelve contracting officers may be so designated by the Chief, Federal Supply Schedule Division.)

27. Section 815.211 is revised to read as follows:

815.211 Experimental, developmental, or research work.

Research authorized to be conducted by the Veterans Administration, in accordance with the provisions of Title 38, United States Code, will be negotiated under the authority of 41 U.S.C. 252(c)(11) (except prosthetics research authorized by 38 U.S.C. 4101 will be negotiated under the authority of 41 U.S.C. 252(c)(15), regardless of the dollar amount. Such acquisitions will require a determination and findings and will be processed as prescribed in 815.307.

815.804-70 [Amended]

28. Section 815.804-70 is amended by removing the words ", Office of Audit (52)," and inserting the words "for Policy, Planning and Resources (53),".

PART 816—TYPES OF CONTRACTS

816.102 [Amended]

29. In 816.102, paragraph (a)(2) is amended by adding the word "Subpart" after the words "See 817.202 and FAR".

816.603 [Amended]

30. Section 816.603 is amended by removing the words "or staff office head" and inserting the words "head or staff office director".

PART 819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

31. Part 819 is amended by revising the entries for Subpart 819.8 and by adding the entries for Subpart 819.70 in the table of contents to read as follows:

Subpart 819.8—Contracting With the Small Business Administration (The 8(a) Program)

Sec.
819.801 General.
819.803 Selecting acquisitions for the 8(a) program.
819.804 Agency evaluation of the Small Business Administration's request for a commitment.
819.806-2 Estimating the current fair market price.
819.806-4 Funding business development expense.
819.807-70 Commitments of the Office of Construction's funded projects for the 8 (a) program.
819.809-70 Procurement of supplies, services, and research and development.
819.809-71 Procurement of construction.

Subpart 819.70—Veterans-Owned and Operated Small Business

819.7001 Policy.
819.7002 Definition.
819.7003 Procedure.
819.7004 Waiver of the use of Vietnam era or disabled veterans-owned firms.

819.202-70 [Amended]

32. In 819.202-70, paragraph (m) is amended by removing the words "an opportunity and reasonable time" and inserting the words "ten (10) working days", and by removing the words "with a reasonable time allowed" and inserting the words "for ten (10) working days"; and paragraph (n) is amended by inserting the words "within five (5) working days" after the words "notifies the SBA", and by removing the words "to the Assistant Regional . . . take place" and inserting the words "in accordance with FAR 19.705-6".

33. Section 819.502-2 is amended by revising paragraphs (a), introductory text and paragraph (d) to read as follows and by removing paragraphs (b)(3) and (4):

819.502-2 Total set-asides.

(a) When a total small business set-aside is made, one of the following statements, as applicable, will be included in the solicitation for bids:

* * * * *

(d) All proposed procurement for construction anticipated to cost between $10,000 and $3 million and all proposed procurements for architect-engineer services construction projects of $3 million and less will be considered as though SBA had initiated a set-aside request. Determinations of the need to deviate from this policy made by the head of a contracting activity will require review by the Director, Office of Small and Disadvantaged Business Utilization.

34. Section 819.502-3 is revised to read as follows:

819.502-3 Partial set-asides.

When, in accordance with the provisions of FAR 19.502-3, it is determined that a particular procurement will be partially set aside for exclusive small business participation or small business/labor surplus participation, the solicitation for bids will have appropriate product or service classification, appropriate size standard and whichever of the following statements is applicable, placed on the face page:

(a) Notice of partial set-aside for small business concerns located in labor surplus areas, page —, applies to Item — through Item — in this solicitation.

(b) Notice of partial small business set-aside, page —, applies to Item — through Item — in this solicitation.

35. Section 819.801 is amended by revising paragraphs (b) and (d) to read as follows:

819.801 General.

* * * * *

(b) When it is determined that the requirements of the Veterans Administration are appropriate for inclusion in this program, the contracting officer will make this fact known to proper officials of the SBA regional office servicing his/her area. However, when projects funded from minor construction appropriation

(between $400,000 and $2 million) are proposed for 8(a) acquisition, the Director, OSDBU (Office of Small and Disadvantaged Business Utilization) (005C), shall be contracted by telephone or notified in writing in order to afford the OSDBU an opportunity to identify possible 8(a) sources prior to apprising SBA officials. If the certification required by paragraph (a) of this section is received, the Veterans Administration contracting officer will secure from SBA the name(s) and location(s) of their subcontractor(s) and the unit price(s) to be paid. Should these prices be within a range acceptable to the Veterans Administration, the contracting officer will notify SBA of acceptance.

* * * * *

(d) In addition to meeting the requirements of 801.602-70, contracting officers will secure cost and pricing data prescribed in FAR 15.804-2 and 815.804-2 when negotiating contracts under the SBA 8(a) program. Contracting officers will request an audit in accordance with 815.805-5 on proposals in excess of $500,000 before negotiating any contract or modification.

36. Subpart 819.8 is amended by adding 819.803, 819.804, 819.806-2 and 819.806-4 to read as follows:

819.803 Selecting acquisitions for the 8(a) program.

The contracting officer will specify in writing the time limit for SBA to propose an acceptable 8(a) subcontractor. The time limit should be between 30 and 45 days, but may be extended by the contracting officer.

819.804 Agency evaluation of the Small Business Administration's request for a commitment.

(a) The contracting officer will notify SBA in writing of the time limit for contract negotiations in accordance with FAR 19.804(b). The time limit, as a minimum, should be 45 days, but may be extended by the contracting officer.

819.806-2 Estimating the current fair market price.

(a) VA contracting officers will consider the objectives of the 8(a) program in developing the estimate of fair market price, i.e., the estimate will be what is considered a fair and reasonable price for the commodity or service to be obtained. However, it will not necessarily be the lowest price that might be expected on the open market.

(b) This section has been promulgated as a deviation to the FAR as provided by FAR Subpart 1.4.

819.806-4 Funding business development expense.

(a) The following officials may determine that a proposed 8(a) contract price, while exceeding the estimated fair market price developed in accordance with 819.806-2, is fair and reasonable and appropriate for contract award:

(1) Medical Centers—Director.

(2) Major and Minor Construction Projects—Director, Office of Construction.

(3) VA Central Office—Director, Office of Procurement and Supply (90A), in consultation with requestor.

(4) Headstones and markers (801.670-13)—Chief Memorial Affairs Director.

(b) If a proposed 8(a) contract price is not considered fair and reasonable pursuant to paragraph (a) of this section, the contracting officer will contact the Director, Office of Small and Disadvantaged Business Utilization, for guidance.

(c) This section has been promulgated as a deviation to the FAR as provided in FAR Subpart 1.4.

37. PART 819 is amended by adding Subpart 819.70 to read as follows:

Subpart 819.70—Veteran-Owned and Operated Small Business

819.7001 Policy.

(a) Pub. L. 93-237 amended the Small Business Act by directing SBA to give "special consideration" to veterans of the Armed Forces in all SBA programs. Consistent with and in furtherance of that statute, it is the policy of the Veterans Administration to encourage participation by Vietnam era and disabled veteran-owned and operated small businesses in VA acquisitions.

(b) All VA facilities having procurement requirements for which Vietnam era veteran-owned small businesses and disabled veteran-owned small businesses are known sources, will taken affirmative action to solicit these firms and assist them in participating in VA acquisition opportunities.

819.7002 Definition.

A Vietnam era veteran-owned small business or a disabled veteran-owned small business is a small business that is at least 51 percent owned by such a veteran who also controls and operates the business. Control in this context means exercising the power to make policy decisions. Operate in this context means actively involved in day-to-day management. For purposes of this definition, eligible veterans include:

(a) Vietnam era veterans who served for a period of more than 180 days, any part of which was between August 5, 1964 and May 7, 1975 and were discharged other than dishonorably.

(b) Disabled veterans of any era with a minimum compensable disability of 30 percent; or a veteran of any era who was discharged for disability.

819.7003 Procedure.

(a) As part of each procurement action involving other than small purchase procedures, VA contracting offices shall request, through Small Business Administration, Procurement Automated Source System (PASS), a listing of Vietnam era veteran-owned contractors capable of meeting the requirements of the particular solicitation. Firms identified on the PASS list shall be included on solicitation mailing lists, shall be incorporated in the contract file and shall be subject to audit. The Veteran-owned business representation in 852.219-70 shall be included in all solicitations and to each request for quotations.

(b) To further identify disabled veteran-owned businesses, each contracting activity shall formulate local plans to identify such firms and to include them on the facility solicitation mailing lists. State and local employment agencies and veterans' councils are potential sources for this information. In addition, the Department of Labor and the Vietnam Veterans Leadership Conference (a unit of ACTION) are provided the PASS list for use in employment assistance efforts for Vietnam era and disabled veterans.

819.7004 Waiver of the use of Vietnam era or disabled veterans-owned firms.

It is the policy of the VA to provide Vietnam era and disabled veteran-owned firms an opportunity to participate in the acquisition process. A contracting office wishing to waive this policy for a particular procurement over $10,000 must first process a VA Form 07-2268 or 90-2268. The contracting officer must clearly document on VAF 07-2268 or 90-2268 the reasons that eligible veteran-owned firms are not intended to be solicited or quotations sought for the particular procurement. Exempt from this reporting requirement are SBA 8(a) acquisitions and Labor Surplus Area set-asides.

PART 823—[REMOVED]

38. Part 823 is removed.

PART 825—FOREIGN ACQUISITION

825.102-70 [Amended]

39. In 825.102-70, paragraph (b) is amended by removing the word "construction".

40. In 825.202-70, paragraph (c) is amended by removing the word "above" and inserting the words "of this section"; and paragraph (d) is added to read as follows:

825.202-70 Nonavailability in the United States.

* * * * *

(d) Each solicitation will include the clause specified in 852.236-89. This provision reflects the general policy of not authorizing nondomestic materials on VA construction contracts.

PART 829—TAXES

829.270-2 [Amended]

41. In 829.270-2, paragraph (b) is amended by removing the word "head" and inserting the word "director".

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

836.302 [Amended]

42. Section 836.302 is amended by removing the word "An" and inserting the word "A" at the beginning of the paragraph.

836.371 [Amended]

43. In 836.371, paragraph (a) is amended by removing the word "of", which appears after the words "SF 1442 serves that purpose", and inserting the word "for".

PART 837—SERVICE CONTRACTING

837.104 [Amended]

44. In 837.104, paragraph (a) is amended by inserting the words "VA Manual" before the word "MP-5".

837.205 [Amended]

45. In 837.205, paragraph (c)(1) is amended by removing the reference "837.205-70" and inserting "837.270"; paragraph (c)(2) is amended by removing the word "head" and inserting the word "director"; and paragraph (d)(3) is amended by removing "Reports Control Symbol 91-4" and inserting "Reports Control Symbol 90-0411".

837.270 [Amended]

46. In 837.270, paragraph (d) is amended by inserting the word "this" after the words "in Appendix A of".

837.271-3 [Amended]

47. In 837.271-3, paragraph (a)(2) is corrected by removing the word "of" after the words "Work involved is of".

837.271-4 [Amended]

48. In 837.271-4, paragraph (a) is amended by inserting the words "of this subpart" after the words "Appendix A".

Appendix A—[Amended]

49. In Subpart 837.2, Appendix A, number 21 is amended by removing the words "FPMR Subpart 101-36.47" and inserting the words "FIRMR Subpart 201-36.47".

837.7003 [Amended]

50. In 837.7003, paragraphs (b)(5), (d), and (e) are amended by adding the words "VA Department of Medicine and Surgery Manual" before the words" M-1, Part I".

837.7004 [Amended]

51. In 837.7004, paragraphs (b) and (c) are amended by removing the words "head of the station" and inserting in their place "station director".

837.7005 [Amended]

52. Section 837.7005 is amended by removing the word "of" which appears after the words "under the direct care" and inserting the word "or", and by inserting the words "Department of Veterans Benefits" before the words "Manual M27-1".

PART 842—CONTRACT ADMINISTRATION

842.000 [Amended]

53. Section 842.000 is amended by removing the word "paragraph".

842.102 [Amended]

54. In 842.102, paragraph (b) is amended by removing the word "head" and inserting the word "director", and by removing the reference "801.602-72(a)(3)" and inserting "801.602-70(a)(4)".

842.202 [Amended]

55. Section 842.202 is amended by removing the word "head" and inserting the word "director"; by removing the reference "801.602-70(a)(5)" and inserting "801.602-70(a)(6)"; and by removing the reference "FAR 30-401" and inserting "FAR 30.401".

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

56. The table of contents to Subpart 852.2 is amended by revising and adding the following entries:

Subpart 852.2—Texts of Provisions and Clauses

* * * * *

852.210-77 Brand name or equal.

* * * * *

852.219-70 Veteran-owned small business.

* * * * *

852.236-70 Clauses and provisions for fixed-price construction contracts.

* * * * *

852.236-89 Buy American Act.

* * * * *

852.247-70 Transportation provision for bid evaluation.

* * * * *

57. Section 852.101 is revised to read as follows:

852.101 Using Part 852.

Part 852 prescribes supplemental provisions and clauses to the FAR. Provision and clause numbering are as prescribed in FAR 52.101 (e.g. supplementary Architect-Engineer and Construction clauses are numbered 852.236-70, 852.236-71, etc.).

Subpart 852.2—[Amended]

58. Subpart 852.2 is amended by adding the date "(November 1984)" after the provision or clause titles that appear in the following sections: 852.210-71, 852.210-72, 852.210-73, 852.236-73, 852.236-84, 852.236-88, 852.270-4

59. Subpart 852.2 is further amended by adding the date "(April 1984)" after the provision or clause titles that appears in the following sections: 852.203-70, 852.208-70, 852.209-70, 852.210-74, 852.210-75, 852.210-76, 852.212-70, 852.214-70, 852.214-71, 852.214-73, 852.216-70, 852.222-70, 852.228-70, 852.229-70, 852.229-71, 852.236-71, 852.236-72, 852.236-74, 852.236-75, 852.236-76, 852.236-77, 852.236-78, 852.236-79, 852.236-80, 852.236-81, 852.236-82, 852.236-83, 852.236-85, 852.236-86, 852.236-87, 852.237-70, 852.237-71, 852.247-70, 852.270-1, 852.270-2, 852.270-3, 852.271-70, 852.271-71, 852.271-72, 852.271-73, 852.271-74, 852.271-75.

852.203-70 [Amended]

60. In 852.203-70, the introductory paragraph is amended by removing the word "certification" and inserting the word "provision"; and by removing the word "Clause", which appears at the end of the clause, and inserting the word "Provision".

852.208-70 [Amended]

61. In 852.208-70, the introductory paragraph and the end of the clause are amended by removing the word "clause" and inserting the word "provision".

852.209-70 [Amended]

62. Section 852.209-70 is amended by removing the word "representation" in the introductory paragraph and inserting

the word "provision", and by removing the word "Clause", which appears at the end of the clause, and inserting the word "Provision".

63. Section 852.210-70 is revised to read as follows:

852.210-70 Requirements for operating and maintenance manuals.

(a) Solicitations and requests for proposals for technical medical and other technical equipment and devices issued by a field facility will normally require the contractor to provide operating and maintenance manuals.

(b) The purpose of the requirement is for the manufacturer to provide the Veterans Administration a manual or groups of manuals that will allow the in-house repair of the equipment purchased. Unless the facility Chief, Engineering Service, indicates that such service manuals are not needed, each invitation for bid or request for proposal for technical medical or other technical equipment and devices will include the following clauses for operating and maintenance manuals:

Service Data Manual (November 1984)

(a) The successful bidder will supply operation/service (maintenance) manuals with each piece of equipment in the quantity specified in the solicitation and resulting purchase order. As a minimum, the manual(s) shall be bound and equivalent to the manual(s) provided the manufacturer's designated field service representative as well as comply with all the requirements in paragraphs (b) through (i) of this clause. Sections, headings and section sequence identified in (b) through (i) of this clause are typical and may vary between manufacturers. Variances in the sections, headings and section sequence, however, do not relieve the manufacturer of his responsibility in supplying the technical data called for therein.

(b) *Title Page and Front Matter*—The title page shall include the equipment nomenclature, model number, effective date of the manual and the manufacturer's name and address. If the manual applies to a particular version of the equipment only, the title page shall also list that equipment's serial number. Front matter shall consist of the Table of Contents, List of Tables, List of Illustration s and a frontispiece (photograph or line drawing) depicting the equipment.

(c) *Section I, General Description*—This section shall provide a generalized description of the equipment or devices and shall describe its purpose or intended use. Included in this section will be a table listing all pertinent equipment specifications, power requirements, environmental limitations and physical dimensions.

(d) *Section II, Installation*—Section II shall provide pertinent installation information. It shall list all input and output connectors using applicable reference designators and functional names as they appear on the equipment. Included in this listing will be a brief description of the function of each connector along with the connector type. Instructions shall be provided as to the recommended method of repacking the equipment for shipment (packing material, labeling, etc.).

(e) *Section III, Operation*—Section III will fully describe the operation of the equipment and shall include a listing of each control with a brief description of its function and step-by-step procedures for each operating mode. Procedures will use the control(s) nomenclature as it appears on the equipment and will be keyed to one or more illustrations of the equipment. Operating procedures will include any preoperational checks, calibration adjustments and operation tests. Notes, cautions and warnings shall be set off from the text body so they may easily be recognizable and will draw the attention of the reader. Illustrations should be used wherever possible depicting equipment connections for test, calibration, patient monitoring and measurements. For large, complex and/or highly versatile equipment capable of many operating modes and in other instances where the Operation Section is quite large, operational information may be bound separately in the form of an Operators Manual. The providing of a separate Operators Manual does not relieve the supplier of his responsibility for providing the minimum acceptable maintenance data specified herein.

Where applicable, flow charts and narrative descriptions of software shall be provided. If programming is either built-in and/or user modifiable, a complete software listing shall be supplied. Equipment items with software packages shall also include diagnostic routines and sample outputs. Submission information shall be given in the Maintenance Section to identify equipment malfunctions which are software related.

(f) *Section IV, Principles of Operation*—This section shall describe in narrative form the principles of operation of the equipment. Circuitry shall be discussed in sufficient detail to be understood by technicians and engineers who possess a working knowledge of electronics and a general familiarity with the overall application of the devices. The circuit descriptions should start at the overall equipment level and proceed to more detailed circuit descriptions. The overall description shall be keyed to a functional block diagram of the equipment. Circuit descriptions shall be keyed to schematic diagrams discussed in paragraph (i) below. It is recommended that for complex or special circuits, simplified schematics should be included in this section.

(g) *Section V, Maintenance*—The maintenance section shall contain a list of recommended test equipment, special tools, preventive maintenance instructions and corrective information. The list of test equipment shall be that recommended by the manufacturer and shall be designated by manufacturer and model number. Special tools are those items not commercially available or those that are designed specifically for the equipment being supplied. Sufficent data will be provided to enable their purchase by the Veterans Administration. Preventive maintenance instructions shall consist of those recommended by the manufacturer to preclude unnecessary failures. Procedures and the recommended frequency of performance shall be included for visual inspection, cleaning, lubricating, mechanical adjustments and circuit calibration. Corrective maintenance shall consist of the data necessary to troubleshoot and rectify a problem and shall include procedures for realigning and testing the equipment. Troubleshooting shall include either a list of test points with the applicable voltage levels or waveforms that would be present under a certain prescribed set of conditions, a troubleshooting chart listing the symptom, probable cause and remedy, or a narrative containing sufficient data to enable a test technician or electronics engineer to determine and locate the probable cause of malfunction. Data shall also be provided describing the preferred method of repairing or replacing discrete components mounted on printed circuit boards or located in areas where special steps must be followed to disassemble the equipment. Procedures shall be included to realign and test the equipment at the completion of repairs and to restore it to its original operating condition. These procedures shall be supported by the necessary waveforms and voltage levels, and data for selecting matched components. Diagrams, either photographic or line, shall show the location of printed circuit board mounted components.

(h) *Section VI, Replacement Parts List*—The replacement parts list shall list, in alphanumeric order, all electrical/electronic, mechanical and pneumatic components, their description, value and tolerance, true manufacturer and manufacturers' part number.

(i) *Section VII, Drawings*—Wiring and schematic diagrams shall be included. The drawings will depict the circuitry using standard symbols and shall include the reference designations and component values or type designators. Drawings shall be clear and legible and shall not be engineering or productions sketches.

(End of Clause)

(c) Solicitations and requests for proposals for mechanical equipment (other than technical medical equipment and devices) issued by a field station will include the following clause:

Service Data Manual (November 1984)

The contractor agrees to furnish two copies of a manual, handbook or brochure containing operating, installation, and maintenance instructions (including pictures or illustrations, schematics, and complete repair/test guides as necessary). Where applicable, it will include electrical data and connection diagrams for all utilities. The instructions shall also contain a complete list of all replaceable parts showing part number, name, and quanitity required.

(End of Clause)

(d) When the bid or proposal will result in the initial purchase (including each make and model) of a centrally procured item, the following clause will be used:

Service Data Manual (November 1984)

The contractor agrees, when requested by the contracting officer, to furnish not more than three copies of the technical documentation required by paragraph 852.210-70(a) to the Service and Reclamation Division, VA Supply Depot, Hines, Ill. In addition, the contractor agrees to furnish two additional copies of the technical documentation required by 852.210-70(a) above with each piece of equipment sold as a result of the invitation for bid or request for proposal.

(End of Clause)

852.210-71 [Amended]

64. In 852.210-71, paragraph (a) is amended by adding the words "of equipment" after the words "result in any purchase".

852.210-73 [Amended]

65. In 852.210-73, the clause is amended by removing the temperature "10" degrees and inserting "0" degrees.

852.210-74 [Amended]

66. In 852.210-74, paragraph (a), introductory text, is amended by removing the word "station" and inserting the word "facility" and by removing the word "clause" and inserting the word "provision", and by removing the word "Clause" which appears at the end of the clause and inserting the word "Provision".

852.210-75 [Amended]

67. In 852.210-75, the introductory paragraph and the end of the clause are revised by removing the word "clause" and inserting the word "provision".

68. Subpart 852.2 is further amended by adding 852.210-77 to read as follows:

852.210-77 Brand name or equal.

The brand name or equal clause when used as prescribed by 810.005 will be as follows:

Brand Name or Equal (November 1984)

(Note.—As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this invitation for bids have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements listed in the invitation.

(b) Unless the bidder clearly indicates in his bid that he is offering an "equal" product, his bid shall be considered as offering a brand name product referenced in the invitation for bids.

(c) (1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his/her bid as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his/her bid all descriptive material (such as cuts, illustration, drawings or other information) necessary for the purchasing activity to: (i) Determine whether the product offered meets the salient characteristics requirement of the Invitation for Bids, and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he/she shall: (i) Include in his/her bid a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of Clause)

852.214-71 [Amended]

69. Section 852.214-71 is amended by removing the words "clauses", " Clause" or "clause" wherever they appear and inserting the words "provisions", "Provision" or "provision" in their place respectively.

852.214-72 [Removed]

70. Section 852.214-72, including its footnote, is removed.

852.214-73 [Amended]

71. In 852.214-73, the introductory paragraph and the end of the clause are amended by removing the words "clause" and "Clause" and inserting the words "provision" and "Provision" respectively.

852.216-70 [Amended]

72. In 852.216-70, paragraph (a) is amended by removing the word "station-level" and inserting the word "facility-level".

73. Subpart 852.2 is further amended by adding 852.219-70 to read as follows:

852.219-70 Veteran-owned small business.

(a) As prescribed in 819.7003(a), the following certification will be made a part of all solicitations and all requests for quotations:

The offeror represents that the firm submitting this offer ( ) is ( ) is not, a Vietnam era veteran-owned small business and ( ) is ( ) is not, a disabled veteran-owned small business. A Vietnam era veteran-owned business or a disabled veteran-owned small business is defined as a small business, at least 51 percent of which is owned by such a veteran, who also controls and operate the business. Control in this context means exercising the power to make policy decisions. Operate in this context means actively involved in day-to-day management. For the purpose of this definition, eligible veterans include:

(1) Those who served for a period of more than 180 days, any part of which was between August 5, 1964 and May 7, 1975 and were discharged other than dishonorable.

(2) Disabled veterans of any era with a minimum compensable disability of 30 percent, or a veteran of any era who was discharged for disability.

(b) Failure to execute this representation will be deemed a minor informality and the bidder or offeror shall be permitted to satisfy the requirement prior to award (see FAR 14.405).

852.229-70 [Amended]

74. In 852.229-70, the introductory paragraph and the end of the clause are amended by removing the word "clause" inserting the word "provision".

852.229-71 [Amended]

75. In 852.229-71, the introductory paragraph and the end of the clause are amended by removing the words "clause" and "Clause" and inserting the words "provision" and "Provision" respectively.

852.236-70 [Amended]

76. In 852.236-70, the section title, paragraphs (a), (b), and (c) are amended by adding the words "and provisions" after the word "clauses"; and paragraph (b) is further amended by adding the word "Subparts" after the word "FAR".

77. Section 852.236-72 is amended by revising paragraph (d) of the clause to read as follows:

852.236-72 Performance of work by the contractor.

* * * * *

(d) In the event the contractor fails or refuses to meet the requirement of paragraph (a) of this clause, it is expressly agreed that the contract price will be reduced by 15

percent of the value of that portion of the percentage requirement which is accomplished by others. For the purposes of this clause, it is agreed that 15 percent is an acceptable estimate of the contractor's overhead and profit, or mark-up, on that portion of the work which the contractor fails or refuses to perform, with his/her own forces, in accordance with paragraph (a) of this clause.

(End of Clause)

852.236-73 [Amended]

78. The table in 852.236-73 is amended by removing "$1,000,000 to $5,000,000" and inserting "$1,000,001 to $5,000,000" and by removing "$5,000,000 and over" and inserting "5,000,001 and over".

852.236-77 [Amended]

79. Section 852.236-77 is amended by removing the paragraph letter "(a)" in paragraph (a) of the clause; and by removing paragraph (b) of the clause in its entirety.

852.236-81 [Amended]

80. In 852.236-81, the introductory paragraph is amended by removing the word "provision" and inserting the word "clause"; and the clause is amended by removing the word "six", where it appears in two places, and inserting the word "three".

852.236-82 [Amended]

81. In 852.236-82, in the introductory paragraph of the clause, the first word of the paragraph, "Clause", is removed and replaced with "The clause"; and paragraph (a) of the clause is amended by added subparagraph number "(2)" before the word "Examples" and by removing subparagraph number "(2)" and inserting number "(3)".

852.236-83 [Amended]

82. In 852.236-83, the section number is amended by removing "852.236.83" and inserting "852.236-83"; in the introductory paragraph of the clause, the first word of the paragraph, "Clause", is removed and replaced with "The clause"; paragraph (a) of the clause is amended by adding subparagraph number "(2)" before the word "Examples" and by removing subparagraph number "(2)" and inserting number "(3)"; and paragraph (b)(5) of the clause is corrected to read as follows:

852.236-83 Payments under fixed-price construction contracts (including NAS).

* * * * *

(b) * * *

(5) Payment for adjust and test activities will be made only after the contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

VALUES OF ADJUSTING CORRECTING, AND TESTING SYSTEM

System	Percent
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Water distilling equipment	5
Prefab temperature rooms (cold, constant temperature)	5
Entire air-conditioning system (Specified under 600 Sections)	5
Entire boiler plant system (specified under 700 Sections)	5
General supply conveyors	10
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Material's transport system	10
Engine-generator system	5
Primary switchgear	5
Secondary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

* * * * *

83. Section 852.236-84 is revised to read as follows:

852.236-84 Schedule of work progress.

Schedule of Work Progress

(a) The contractor shall submit with the schedule of costs, a progress schedule that indicates the anticipated installation of work versus the elapsed contract time, for the approval of the contracting officer. The progress schedule time shall be represented in the form of a bar graph with the contract time plotted along the horizontal axis. The starting date of the schedule shall be the date the contractor receives the "Notice to Proceed." The ending date shall be the original contract completion date. At a minimum, both dates shall be indicated on the progress schedule. The specific item of work, i.e., "Excavation", "Floor Tile", "Finish Carpentry", etc., should be plotted along the vertical axis and indicated by a line or bar at which time(s) during the contract this work is scheduled to take place. The schedule shall be submitted in triplicate and signed by the contractor.

(b) The actual percent completion will be based on the value of installed work divided by the current contract amount. The actual completion percentage will be indicated on the monthly progress report.

(c) The progress schedule will be revised when individual or cumulative time extensions of 15 calendar days or more are granted for any reason. The revised schedule should indicate the new contract completion date and should reflect any changes to the installation time(s) of the items of work affected.

(d) The revised progress schedule will be used for reporting future scheduled percentage completion.

(End of Clause)

852.236-88 [Amended]

84. In 852.236-88, the introductory paragraph is revised to read as follows; the clause in paragraph (a) is amended by removing the word "Clause" at the beginning of the introductory paragraph of the clause and inserting "The clause"; and by removing the last sentence of paragraph (a) of the clause; and paragraph (b) is amended by revising the introductory paragraph of the clause and paragraph (j) of the clause and adding paragraph (k) to the clause to read as follows:

852.236-88 Contract changes.

The Clauses entitled "Changes" in FAR 52.236-2 and "Differing Site Conditions" in FAR 52.236-2 will be supplemented wih the following two clauses. The clause in paragraph (a) of this section will apply to negotiated changes exceeding $500,000 and does not provide ceiling rates for indirect expenses. Such expenses will be included as part of the submission of certified cost and pricing data, will be negotiated by the contracting officer and will be audited in accordance with 815.805-5. When the negotiated change will be less than $500,000 the clause specified in paragraph (b) of this section will apply. If cost and pricing data is required, the contracting officer may require that it be certified in accordance with FAR 15.804-2(a) (2). It must be emphasized that these indirect cost rates are ceiling rates only, and the contracting officer will negotiate the indirect expense rates within the ceiling limitations.

* * * * *

(b) * * *

Changes—Supplement (for Changes Costing Less than $500,000)

The clauses entitled "Changes" in FAR 52.253-4 and "Differing Site Conditions" in FAR 52.236-2 are supplemented as follows:

* * * * *

(j) Overhead and contractor's fee percentages shall be considered to include insurance other than mentioned herein, field and office supervisors and assistants, watchmen, use of small tools, incidental job burdens, and general home office expenses and no separate allowance will be made therefor. Assistants to office supervisors include all clerical, stenographic and general office help. Incidental job burdens include, but are not necessarily limited to, office equipment and supplies, temporary toilets, telephone and conformance to OSHA requirements. Items such as, but not necessarily limited to, review and coordination, estimating and expediting relative to contract changes are associated with field and office supervision and are

considered to be included in the contractor's overhead and/or fee percentage.

(k) Bond premium adjustment, consequent upon changes ordered, will be made as elsewhere specified at the time of final settlement under the contract and will not be included in the individual change.

(End of Clause)

85. Subpart 852.2 is further amended by adding 852.236-89 to read as follows:

852.236-89 Buy American Act

The Buy American Act (41 U.S.C. 10a-d) requires that only domestic construction material shall be used in the performance of contracts for construction. To clarify the VA's position on foreign material, the following "Special Notice" will be inserted into the bid package, in front of SF 20, Invitation for Bids:

Buy American Act (November 1984)

(a) Reference is made to the clause entitled "Buy American Construction Materials," FAR 52.225-5.

(b) Notwithstanding a bidder's right to offer identifiable foreign material in its bid pursuant to the above provisions, the VA does not anticipate accepting an offer that includes foreign items.

(c) If a bidder chooses to submit a bid which includes foreign materials, that bidder must provide a listing of the specific foreign materials he/she intends to use and a price for said materials. Because the VA has a strong preference for domestic items, bidders are strongly urged to include bid prices for comparable domestic construction material. If the VA determines not to accept foreign items and no comparable domestic items are provided the entire bid will be rejected.

(d) Any foreign item proposed after award will be rejected unless the bidder proves to the VA's satisfaction: (1) it was impossible to request the exemption prior to award, and (2) said domestic construction material is no longer available, or (3) where the price has escalated so dramatically after the contract has been awarded that it would be unconscionable to require performance at that price. The determinations require by (1), (2) or (3) of this paragraph shall be at the sole discretion of the Administrator of Veterans Affairs.

(e) By signing this bid, the bidder declares that all articles, materials and supplies for use on the project shall be domestic unless specifically set forth on the Bid Form or addendum thereto.

(End of Clause)

852.247-70 [Amended]

86. In 852.247-70, the introductory paragraph and the end of the clause are revised by removing the words "clause" and "Clause" and inserting the words "provision" and "Provision" respectively.

852.270-1 [Amended]

87. Section 852.270-1 is amended by removing the word "provisions" and inserting the word "provision" and by removing the word "Clause" and inserting the word "Provision".

852.270-3 [Amended]

88. Section 852.270-3 is corrected by changing the word "clauses" in the introductory paragraph to read "clause".

852.270-4 [Amended]

89. In 852.270-4, the introductory paragraph is amended by removing the words "invitations for bids" and inserting the words "VA contracts", and the clause is revised by adding the words "or offeror"after the words "The bidder".

PART 853—FORMS

853.107 [Amended]

90. Section 853.107 is corrected by changing the word "of", which appears after the words "VA contracting officer", to "or".

852.213 [Amended]

91. In 853.213, paragraph (a) is amended by removing the reference "831.505-2" and inserting "813.505-2".

853.236-1 [Removed and Reserved]

92. Subpart 853.2 is amended by removing and reserving section 853.236-1.

PART 870—SPECIAL PROCUREMENT CONTROLS

870.112 [Amended]

93. In 870-112, paragraph (a) is amended by adding "VA" before the word "Manual" and by removing the word "station" in the footnote and inserting the word "facility"; paragraphs (a) and (b) are amended by removing "852.270-4" and inserting "852.210-74"; and paragraph (c)(3) is amended by removing the words "days time" and inserting the words "calendar days".

PART 871—LOAN GUARANTY AND VOCATIONAL REHABILITATION AND COUNSELING PROGRAMS

94. The authority citation for Part 871 reads as follows:

Authority: 38 U.S.C. 210, 40 U.S.C. 486(c), 38 CFR 36.4320, 38 U.S.C. Chs. 31, 32, 33, 34, 35, and 37 and Pub. L. 96-77.

871.201-1 [Amended]

95. In 871.201-1, paragraph (a) is corrected by changing the word "or", which appears after the words "which involves the application", to read "of".

871.201-2 [Amended]

96. In 871.201-2, paragraph (a) is corrected by changing the word "of", which appears after the word "Entrance", to read "or".

871.204 [Amended]

97. Section 871.204 is corrected by changing the title to read "Guaranteed payment".

871.207 [Amended]

98. In 871.207, paragraph (a)(1)(i) is corrected by changing the word "on", which appears after the words "which are members of national", to read "or"; and paragraph (b)(1) is amended by removing the word "training", which appears after the words "basis if the", and inserting the word "trainee".

[FR Doc. 85-395, Filed 1-4-85; 8:45 am]
BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176 and 177

[Docket No. HM-191; Amdt. Nos. 171-82, 172-95, 173-182, 174-46, 175-33, 176-20, 177-64]

Classification of Detonating Cord, and Packaging of Detonators

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: The description and classification of "cordeau detonant fuse, class C explosive" is changed to "detonating cord, class A explosive" and "detonating cord, class C explosive". The revised description is adopted in order to use proper shipping names that are recognized internationally. Reclassification of detonating cord from class C explosive to class A explosive is considered necessary since it behaves much the same as other materials and articles in the class A explosive hazard class. These changes in description and classification are intended to reduce risks associated with the transportation of detonating cord; thereby achieving a more acceptable level of safety.

Requirements for the packaging of detonators, class A explosives are revised to permit the shipment of detonators in an Institute of Makers of Explosives (IME) standard 22 container or compartment without their first being packed in one of the DOT specification wooden or fiberboard boxes currently required. This revision is necessary for

shippers and carriers to maintain currently authorized operating procedures after December 31, 1984. This packaging option is intended to permit use of a container (or compartment) which, through its design and construction, achieves a level of safety that justifies its continued use as an outside packaging for detonators transported on a motor vehicle also carrying class A explosives, class B explosives, or blasting agents.

EFFECTIVE DATE: October 1, 1985. However, compliance with the regulations as amended herein is authorized as of January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas G. Allan, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590, telephone (202) 426–2075.

SUPPLEMENTARY INFORMATION:

I. Background

On May 17, 1984, MTB published a notice of proposed rulemaking (Notice 84–4) in the **Federal Register** (49 FR 20673). That notice proposed the reclassification of cordeau detonant fuse from class C explosive to class A explosive, and a change in its proper shipping name to "cord, detonating *flexible*". In addition, the notice proposed changes to permit carriage of detonators, class A explosive, within an IME standard 22 container under rules which, until now, applied to detonators, class C explosive, only. This final rule contains amendments to the Hazardous Materials Regulations (HMR) based on proposals in Notice 84–4 and the merits of comments filed in response to that notice. Interested persons should refer to Notice 84–4 for detailed background information.

In response to Notice 84–4, MTB received 109 written comments. The respondents represent a variety of interests. There are 97 users of explosives, of which 66 are engaged in the oil well service industry. Seven commenters are dealers of explosive materials and two commenters are manufacturers of explosives. Comments were also received from the IME, the U.S. Army and the International Fire Service Training Association (IFSTA).

Each commenter accepted (though some did so reluctantly) the proposal to reclassify large quantities of detonating cord as a class A explosive. In addition, each commenter, with the exception of IFSTA, favored the proposed classification for small quantities of detonating cord as a class C explosive. However, each commenter, save one, opposed the proposal that would restrict the transportation of detonating cord classed as a class C explosive to private carriage.

With respect to that part of the proposal addressing the packaging of detonators, the commenters generally favored the proposed rules. However, three commenters requested that detonators packaged for transportation prior to January 1, 1985, be authorized for shipment in accordance with the regulations in effect on October 31, 1979. That authorization is requested to extend through December 31, 1985.

A discussion of significant comments and amendments adopted in this final rule follows.

A. Detonating Cord

1. *Classification.* A majority of commenters took exception to MTB's assumption that most packages of detonating cord will not behave in a manner characteristic of class C explosives. Several commenters suggested MTB develop evidence which supports such speculation before making extensive changes in the regulation of detonating cord.

While MTB does not have hard data to support this reclassification, it notes the petition initiating this rulemaking docket was filed by the IME whose member companies produce a major portion of the commercial explosives materials transported in the United States. Their expertise in this area is unquestioned and it is irresponsible for MTB to ignore or unduly delay that request for reclassification.

Though some commenters do not agree that detonating cord is a class A explosive, they reluctantly accept that classification. However, those commenters qualified their acceptance of the class A explosive hazard class on the condition that transportation of relatively small quantities of detonating cord may continue as class C explosives. This is of particular concern to wireline operators in the oil well service industry who recommended an increase in the proposed maximum permitted gross weight from 50 pounds to 100 pounds.

Upon reconsideration of the limited risk posed by relatively small quantities of detonating cord, and in response to comments received, MTB is raising the maximum permitted gross weight of packages of detonating cord that may be offered for transportation or transported as class C explosives to 100 pounds.

Other commenters believe the classification of detonating cord must be determined on the basis of its performance under test conditions, and not by the assignment of a weight limit. The following comments from the Department of Army are very specific in that regard.

> As pointed out in 49 CFR the most important consideration in determining DOT class is the risk posed to detonation of other similar packages in close contact, if one of the packages is detonated. The Army is presently testing some current packages of detonating cord, in accordance with the requirements of TB 700–2/NAVSEAINST 8020.8/TO 11A–1–47/DLAR 8220.1, to determine their proper DOT class. It is possible that these tests will determine that our current detonating cord should be DOT class B or C. In addition, new packages containing less cord per package have been proposed and will be tested when design is complete. It is our design intention that these new packages will not pose an explosive propagation hazard and will qualify as DOT class C.
>
> * * * * *
>
> DOT classes should be based on the actual hazard that each package (defined as packaging materials and contents per 49 CFR 171.8) poses. Different quantities of the same item packaged in different ways may present different hazards. In the case of detonating cord, a DOT class A assignment could be presumed and assignment of DOT class B or class C specifically permitted for DOD when test results justify such assignment to specific packaged configurations. There is ample precedent for the assignment of different DOT classes based on different hazards for similar items.

MTB is very much interested in the results of this proposed testing and encourages the design of packages that do not pose an explosive propagation hazard. The development of such packages is beneficial to safety in transportation. In addition, shippers and consignees of detonating cord may also benefit by the reduced transportation charges normally assessed for class C explosives, as compared to transportation charges for a comparable quantity of class A explosives. The United Nations (U.N.) Recommendations currently provide for classification of detonating cord in class 1.1D and 1.4D (essentially equivalent to DOT's class A and C explosive hazard classes, respectively) and the design of packages that do not mass explode allows MTB to maintain a consistency with the U.N.

Exception is taken to DOD's suggestion that some packages of detonating cord may be classified as a class B explosive. The class B explosive hazard class is peculiar to materials which, in general, function by rapid combustion rather than detonation. The explosive compounds used in detonating cord will detonate. Thus, the class B explosive hazard class is not appropriate.

Considering some shippers are confident they may design packages of

detonating cord that react to adverse environments in a manner characteristic of the class C explosive hazard class, this final rule adopts a new entry in the Hazardous Materials Table for "Cord, detonating *flexible*, class C explosive". The safety benefits and economic incentives derived from having a set of regulations that permits the class C explosive hazard class as a possible alternative to the class A explosive hazard class will, hopefully, stimulate shippers to further reduce threats to health and property.

2. *Modal restrictions.* MTB proposed that detonating cord not exceeding 100 grains per linear foot, and not exceeding 50 pounds may be transported only by a private carrier, operating in the highway or water mode, under requirements typically applicable to the class C explosive hazard class. In all other cases, the notice proposed that detonating cord shall be offered for transportation and transported as a class A explosive. There was much resistance to that proposal.

For the most part, opposition came from shippers and users of detonating cord. One large shipper states "(b)illions of feet of detonating cord have been transported as a class C explosive by for-hire carriers in the last fifty years and, to our knowledge, there have been no transportation incidents that suggest that the transportation of detonating cord, class C explosive, should be limited to private motor carriers." The commenter went on to recommend "* * * the maximum quantity offered for shipment as a class C explosive be changed to 100 lbs. gross weight. This is consistent with the original IME proposal since, by weight, the explosive content of packaged detonating cord is slightly less than 50 percent." This call for a 100 pound gross weight limitation was echoed by 86 commenters. A single commenter suggested "(a) more realistic approach would be to allow 250 lbs. of detonating cord to be shipped class C by common carrier."

The IME reiterated this good safety record for detonating cord, but then provided MTB with information on a previously unreported transportation incident near Colstrip, Montana in which 100,000 feet of cord detonated during a fire in the cargo compartment of a motor vehicle operated by a private carrier. That incident occurred in 1974. It resulted in a total loss of the vehicle and contents, but there were no deaths or injuries.

Each of the commenters from the oil and gas well perforating industry complained of the difficulty and expense they might incur if suppliers are unable to ship detonating cord as a class C explosive via common carrier. Tariff restrictions imposed by common carriers are claimed to make the cost of transportation of small quantities of class A explosives prohibitive. Also, the small user is frequently several hundred miles distant from the supplier and the costs associated with private carriage thereby become prohibitive.

One perforating company with operations throughout the world filed the following comments:

> Many of these wells are located in parts of the world where storing large quantities of explosives is very difficult and sometimes impossible. It is imperative, therefore, that these locations have the ability to transport small quantities of detonating cord by air. Approximately 90 percent of all our explosives shipments are sent by cargo or passenger aircraft.
>
> The present proposal to classify detonating cord as a class A explosive would prohibit us from transporting it on cargo and passenger aircraft. This proposal, therefore, would greatly impact the well service industry's ability to provide timely service to the oil industry.

The commenters have shipping statistics which show detonating cord may be safely transported by private and for-hire carriers. However, they do not go on to explain fully why a rule less restrictive than proposed should be adopted for each class of for-hire carriers. In the absence of data which shows conclusively that small quantities of detonating cord, when detonated, will not significantly affect transportation safety; MTB believes it must restrict transportation of detonating cord to modes limiting the population at risk to the smallest possible number and, to the extent possible, to those persons who regularly accept the risks inherent with the transportation of hazardous materials.

In consideration of comments received, MTB is adopting amendments which are less restrictive than proposed. Specifically, the gross weight of packages containing detonating cord, class A explosive which may be offered for transportation or transported as class C explosives is raised to 100 pounds. In addition, carriage is permitted via each mode of transportation. However, detonating cord, offered for transportation or transported under provisions of § 173.81(c) may not be carried aboard a passenger-carrying aircraft, except for a passenger-carrying aircraft used during that flight to serve a remote site, like an off-shore drilling unit, by shuttling operating personnel and carrying their necessary supplies and equipment.

3. *Miscellaneous comments.* Several commenters addressed problems associated with the transportation by vessel of class A explosives to locations such as Alaska, Hawaii and Guam. They correctly indicate that class A explosives are prohibited from many ports, and ports which do handle class A explosives impose charges which greatly exceed the charges currently in effect for class C detonating cord. The problems addressed by these commenters are significantly reduced by MTB's increasing the maximum permitted weight from 50 pounds to 100 pounds, and permitting carriage by common carriers.

A commenter in the oil well service industry complained the reclassification of detonating cord, as a class A explosive, would adversely affect operations which require use of jet perforating guns. The commenter states:

> Many oil field applications of detonating cord also involve the use of other class C materials. For example, oil and gas wells are almost universally completed using shaped charges conveyed in a hollow steel cylinder called a perforating gun. These charges are normally ballistically linked using a length of detonating cord. As both materials are currently classified as class C explosives, they can be assembled at a central location and transported together to remote well locations simply and economically. Reclassification of detonating cord as a class A explosive would require separate transportation of these materials with assembly of the perforating gun at the remote wellsite. This would thus substantially increase the cost of providing this service while compounding operational difficulties.

The commenter is mistaken. Since the jet perforating gun is a separately identified explosive article, the shipper must offer it for transportation and transport it under rules applicable to the completed article, and not on the bases of regulations applicable to each of its components. The HMR currently provide for classification of jet perforating guns as a class A explosive or a class C explosive, depending on the total amount of explosive contents of the guns being transported per motor vehicle. Thus, this rule does not affect the classification of a perforating gun.

B. Detonators.

1. *Packaging in IME Standard 22 Container.* Several commenters took exception to current and proposed requirements associated with the transportation of detonators in an IME 22 container. One comment from the Department of Army reads as follows:

> The proposal to amend 49 CFR 173.103 to require inside containers of DOT class C detonators to be so marked in order to permit use of the IME Standard 22 container creates an untenable situation because 173.103 and

173.66 combine to base DOT class on the efficiency of the total packaged configuration, including inside, intermediate, and outside packagings. If DOT class C is determined, based on inside, intermediate, and outside packaging, and the intermediate and outside packaging is then removed, there is doubt about the propriety of marking "class C explosive" on what has thereby become a DOT class A package. We would recommend that some other administrative method be selected to achieve the intended result since use of methods such as that proposed are usually reasons for DOT to impose sanctions on shippers.

Intermediate and outside packagings do influence the classification of detonators. However, as indicated in Notice 84–4, more than 12 years experience with the IME–22 container in the transportation of detonators indicates its performance in accident and fire situations is excellent. Furthermore, during that period, use of the IME–22 container was extended to detonators meeting criteria for a class A explosive under recently revised rules. Based on that experience, MTB is confident requirements pertaining to use of the IME–22 container provide an adequate level of safety.

Although the commenter states "(w)e would recommend that some other administrative method be selected to achieve the intended result * * *.", MTB notes no such recommendation was provided. The record does not, therefore, support the commenter's suggestion that the regulations be revised to prohibit transportation of detonators which are not packaged in a intermediate or specification outside packaging.

Twenty-five commenters objected to the proposed requirement that an IME–22 box shall be used when detonators and detonating cord are transported on the same motor vehicle. The following comment is representative of this group.

I disagree with DOT's position that * * * restricting the transportation of class C detonating cord and class C detonators from carriage on the same vehicle unless the detonators are packed in an IME–22 box would not cause "significant impact on a substantial number of small entities." My company is definitely a small business entity and this proposal would severely limit my capability to compete in oilfield wireline service industry.

* * * *

I believe it is very important to small wireline businesses that you continue to allow * * * properly packaged class C detonators (packaged in accordance with 49 CFR 173.103(d)(1) and 173.103(d)(2), to be transported on the same vehicle with class C detonating cord. If you do so, I'll be able to remain competitive in my business and you will have performed your duty to insure the safe transportation of detonating cord and the safety of the general public.

These commenters contend an equivalent level of safety may be achieved by using packages of detonators suitable for transportation aboard passenger-carrying aircraft. Packages conforming to § 173.103(d) may not exceed 50-pounds gross weight. In addition, those packages must be so designed that if one device near the center of a package is detonated, no other device in the package will detonate and there will be no communication of detonation from one package to another. There is, then, strong bases for the packaging option suggested by these commenters.

In consideration of the above, § 177.835(g) is amended to permit transportation of detonators, class C explosive, packaged to conform with § 173.103(d), on the same motor vehicle with detonating cord, class C explosive.

2. *Detonators packaged prior to January 1, 1985.* Several commenters took note of the impending date for mandatory compliance with requirements promulgated under Docket HM–161 (44 FR 70721, December 10, 1979). The following chronology tracks events which result in a problem for these commenters.

- HM–161 adopted a rule which did away with the classification of blasting caps on the basis of quantity (i.e., more than 1000 are class A and 1000 or less are class C).
- HM–161 adopted a rule which determines hazard class on basis of limited propagation (class C), explosion of more than 25 grams of the aggregate gross weight of explosives, excluding ignition and delay charges, in the outside packaging (class A) and mass detonation (class A).
- HM–161 provides in § 173.66(G) a transition period of 5 years for shippers to have their blasting caps approved as class C explosives. (Jan 1, 1980–Dec. 31, 1984).
- To the surprise of most shippers, there is difficulty developing packages that meet criteria for class C explosive for a majority of their detonators. Therefore, shippers continue to classify on the basis of quantity.
- A principle reason that shippers continue to mark and label their packages "blasting caps, class C explosive" is the limitation in the 1979 edition of the IME Standard 22 permitting class C blasting caps only.
- IME filed petition for rulemaking P–891 on January 14, 1983. That petition seeks to also permit transportation of class A detonators in an IME Standard 22 container.

The IME submitted the following comment:

In order to preserve an operation which has a demonstrated record of safety in transportation, the explosives industry awaited action on its petitions which are covered in HM–191 to clarify HM–161. Therefore, packaging certain blasting caps as detonators was delayed.

There will be a substantial inventory of blasting caps in the field as of January 1, 1985. In order to deplete this inventory, IME respectfully requests that material packaged prior to January 1, 1985 continue to be shipped under existing markings and regulations until January 1, 1986 at which time all remaining inventory will be relabeled.

The Department of the Army commented by stating:

The proposal would require reaccomplishing standard emergency resupply packages of munition items, which are configured to support a declared national emergency. Repackaging and reworking present inventories would increase packaging and transportation costs. * * *

* * * * *

Recommend a grandfather clause be incorporated to allow Department of Defense to package, mark, and ship present stocks of this material in accordance with the regulations prior to implementation of this ruling. This will allow Department of Defense to deplete our inventory without costly repackaging and remarking.

While a five year transition period provided shippers adequate time to reclassify packages of detonators, they were hampered by the restriction in IME Standard 22 which limits use of that container to blasting caps that are class C explosives. With adoption in this final rule of a revised edition of the IME Standard 22 permitting class A detonators also, there is no longer a reason to mark packages of detonators "blasting caps", class C explosive. However, as adoption of that revised edition of IME Standard 22 comes at the eleventh hour, MTB recognizes a considerable number of packages marked and classed under the grandfathered rules are stored in explosives magazines. Considering that blasting caps have been safely transported under that description and class for well over 50 years, MTB believes benefits gained by remarking the packages are disproportionate to costs. Section 173.66(g), therefore, is revised to permit the transportation of detonators, packaged prior to January 1, 1985, in accordance with regulations in effect on October 31, 1979. This provision terminates on December 31, 1985. Each package offered for transportation after December 31, 1985 must conform with rules in effect at the time of shipment.

3. *IME Standard 22.* For consistency with amendments proposed in Notice No. 84–4, the IME submitted a later revision to their Standard Library Publication (SLP) No. 22 which specifies conditions that must be met before detonating cord, class C explosive, may be transported on the same motor vehicle with detonators. Essentially, the revision permits transportation of class

C detonating cord and detonators in a manner already in effect for high explosives and detonators. It is agreed the revision is necessary. Therefore, MTB is incorporating by reference IME SLP No 22 revised as of January 1, 1985.

II. Review by Sections

General References to IME Standard 22 throughout the HMR address not only the manner of design and construction of the container or compartment but the permitted uses and requirements specified in that publication as well.

Section 171.7 is revised to incorporate the January 1, 1985 edition of IME Standard 22. A copy is available for review in the docket file for this rulemaking action.

Section 172.101 is amended by removing the proper shipping name "cordeau detonant fuse" and adding two entries with the proper shipping name "Cord, detonating *flexible*" (class A and class C).

Section 173.53 is amended by adding a definition of detonating cord at paragraph (w).

Section 173.66 Paragraph (c) is revised to permit the carriage by motor vehicle of certain detonators (blasting caps) that are not packed in an outside specification wooden or fiberboard box. Instead, the detonators shall be transported in an IME Standard 22 container or compartment.

Paragraph (e) is amended by adding subparagraph (3) to permit use of an IME Standard 22 container or compartment as an alternative to specification wooden and fiberboard boxes ordinarily required for class A detonators.

Paragraph (g) is amended by extending by one year the period during which detonators may be transported under rules in effect on October 31, 1979.

Section 173.81 is added to specify packaging requirements for detonating cord, class A explosive. The packaging requirements are similar to those specified in § 173.104 for class C detonating cord.

Paragraph (c) permits transportation of 100 pounds or less of detonating cord not exceeding 100 grains of explosive per linear foot as a class C explosive.

Section 173.100(d) is revised to redefine detonating cord. The expanded definition specifies the approving agency shall assure that a detonation in one package will not communicate detonation to adjacent packages.

Section 173.103 is amended by adding a requirement in paragraph (c)(4) that each inside packaging containing detonators, class C explosives, shall be marked "class C explosives". The Department of the Army did not concur in this proposal. However, the commenter did not provide support for its nonconcurrence.

The requirement that inside packagings for detonators be marked "class C explosive" is essential to safety in transportation. Absent this marking requirement, intermediate and end-use shippers could mistakenly remove unmarked inner packages of class A detonators containing an excessive amount of explosive material and transport them in an IME–22 container as a class C explosive. As safety requirements pertaining to transportation of class A explosives are more stringent, the regulations must consider the worst possible case. Consequently, the shipper may take advantage of the less stringent regulations pertaining to class C explosives, but only upon a positive endorsement that the detonators otherwise qualify as class C explosives.

Twenty-six commenters requested that MTB permit use of packages which conform to requirements of § 173.103(d), as an alternative to the IME–22 container. Thus, paragraph (d) is amended by adding a requirement that each package of detonators suitable for transportation aboard a passenger-carrying aircraft shall have a marking which assures motor carrier personnel those detonators may be transported with hazardous materials normally requiring segregation or separation. The required marking states "This package conforms to conditions and limitations specified in 49 CFR 173.103(d)." Currently, the air carrier's need to know this information is satisfied by the required shipping paper entry "Cargo aircraft only". However, as the package now has special significance in the highway mode, motor carriers must see an endorsement which assures that otherwise incompatible materials are not transported on the same vehicle.

Section 173.104 is revised to give formal notice that each outstanding approval for cordeau detonant fuse, class C explosive is amended by changing the hazard class from class C explosive to class A explosive, and by changing the proper shipping name from cordeau detonant fuse to cord, detonating *flexible*. To facilitate an orderly transition, a period of approximately 18 months is granted during which detonating cord, for which an approval was issued prior to January 1, 1985, may be transported subject to conditions of the approval and in accordance with requirements of the HMR in effect on December 31, 1984.

Section 174.81 is amended by: adding detonating cord to the list of materials identified in row b of the table (e.g. high explosives and propellant explosives, class A), removing cordeau detonant fuze from row 8, and adding detonating cord at row 8a. Detonating cord (class A and C) is prohibited from transportation in the same transport vehicle with initiating explosives, all detonators and detonating primers, detonating fuzes, and special fireworks and railway torpedoes.

The letter "X" is added at the intersection of rows d and 10 to prohibit the transportation of detonators and blasting agents on the same transport vehicle.

Row 7a, headed "Detonators, detonating primers", is added to the group of class C explosives. These articles are prohibited from transportation with certain other explosives, blasting agents and poisonous gases.

Row 8a, headed "Detonating cord", is added to the group of class C explosives. Detonating cord is prohibited from transportation with initiating explosives, detonators and detonating primers, detonating fuzes, and special fireworks and railway torpedoes.

The heading of row 10 is revised to include ammonium nitrate-fuel oil mixtures.

Footnote 1 and references to it within the table are removed since class C detonators and detonating primers are now separately identified in row 7a.

Reference to footnote 2 is added at the intersection of rows 13 and e since its applicability is also to ammunition for cannon.

Footnote 5 is revised to remove references to blasting agents and ammonium nitrate-fuel oil mixtures. Those materials were included with oxidizers (row 12) prior to establishment of the blasting agents hazard class. However, as they are now included with blasting agents in row 10 the footnote's reference is limited to ammonium nitrate, fertilizer grade.

Section 175.320 is amended by changing a description in the table in paragraph (a) from cordeau detonant fuse to detonating cord. This specific authorization to transport detonating cord aboard a cargo only aircraft supersedes the general restriction in column (6)(b) of the Hazardous Materials Table.

Section 176.83 is amended at Table I by: adding detonating cord, class A explosive to the list of materials identified in row 2 of the table (e.g. high explosives and propellant explosives class A); removing cordeau detonant fuze from row 15; and adding detonating cord at row 15a. Detonating cord (class

A and C) is prohibited from transportation in the same hold or compartment with initiating explosives, all detonators and detonating primers, detonating fuzes, and special fireworks and railway torpedoes.

Detonators and detonating primers (class C explosives) are added at row 14a. These articles are prohibited from loading and stowage with other explosives and blasting agents; the same as class A detonators and detonating primers.

All detonators are prohibited from loading and stowage with blasting agents.

Detonating fuzes are prohibited from loading and stowage with blasting agents.

Section 177.835(g) is revised to add blasting agents and detonating cord. Class C explosive as materials that may not be transported on the same motor vehicle with detonators or detonating primers. However, exceptions in paragraph (g) permit transportation of detonators and blasting agents on the same motor vehicle. Paragraph (g) is revised to permit transportation of detonators packaged to conform with requirements specified in § 173.103(d) with detonating cord, class C explosives.

Paragraph (g) is further revised to clarify that detonators may be transported on the same motor vehicle with detonating primers.

Section 177.848 is amended by adding detonating cord to the list of materials identified in row b of the table (e.g. high explosives and propellant explosives, class A), and by removing cordeau detonant fuze from row 8.

Row 7a, headed "Detonators, detonating primers" is added to the group of class C explosives. These articles are prohibited from transportation with other explosives and blasting agents; generally the same as class A detonators and detonating primers. An exception is made for shipments transported under provisions of § 177.835(g).

Row 8a, headed "Detonating cord", is added to the group of class C explosives. Detonating cord is prohibited from transporation with initiating explosives, all detonators and detonating primers, detonating fuzes, and special fireworks and railway torpedoes. An exception is made for shipments transported under provisions of §§ 173.81(c) or 177.835(g).

The heading of row 10 is revised to include ammonium nitrate-fuel oil mixtures.

Reference to footnote 1 at coordinates d-9, d-11, d-12, d-13 and d-14 is removed since requirements applicable to class C detonators are now specified in row 7a.

Footnote 1 is revised to apply to class A detonators, and class C detonators transported with class C detonating cord.

Reference to footnote 2 in row 13 is changed from row d to row e since its applicability is to ammunition for cannon and not detonators.

Footnote 5 is revised to remove references to blasting agents and ammonium nitrate-fuel oil mixtures. These materials were included with oxidizers (row 12) prior to establishment of the blasting agents hazard class. However, as they are now included with blasting agents in row 10, the footnote's reference is limited to ammonium nitrate, fertilizer grade.

III. Administrative Notices

A. Executive Order 12291

The MTB determined the affect of this final rule will not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. This is not a significant rule under DOT regulatory procedures (44 FR 11034) and requires neither a Regulatory Impact Analysis, nor an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 *et. seq.*). A regulatory evaluation is available for review in the Docket.

B. Impact on Small Entities

Based on limited information concerning size and nature of entities likely affected, I certify this final rule will not, as promulgated, have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

C. List of Subjects

49 CFR Part 171

Explosives, Hazardous materials transportation.

49 CFR Part 172

Explosives, Hazardous materials transportation.

49 CFR Part 173

Explosives, Packaging and containers.

49 CFR Part 174

Explosives, Railroad safety.

49 CFR Part 175

Explosives, Air carriers.

49 CFR Part 176

Explosives, Maritime carriers.

49 CFR Part 177

Explosives, Motor carriers.

IV. Rules and Regulations

In consideration of the foregoing, Parts 171 through 177 of Title 49, Code of Federal Regulations are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. In § 171.7 paragraph (d)(9) is revised to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(9) IME Safety Library Publication No. 22 (IME Standard 22) is titled, "Recommendations for the Safe Transportation of Detonators in a Vehicle With Certain Other Explosive Materials." Revised January 1, 1985.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

2. § 172.101, the Hazardous Materials Table is amended by removing and adding the following entries:

§ 172.101 Purpose and use of hazardous materials table.

§ 172.101 Hazardous Materials Table

+ EAW	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo aircraft only	Cargo vessel	Passenger vessel	Other requirements
(1)	(2)	(3)	3(a)	(4)	5(a)	5(b)	6(a)	6(b)	7(a)	7(b)	7(c)
	REMOVE										
	Cordeau detonant fuse	Class C explosive		Explosive C	None	173.104	50 pounds	300 pounds	1,2	1,2	
	ADD										
	Cord, detonating *flexible*	Class A explosive		Explosive A	173.81	173.81	Forbidden	Forbidden	6	5	
	Cord, detonating *flexible*	Class C explosive		Explosive C	None	173.104	Forbidden	150 pounds	1,3	1,3	

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. In § 173.53 paragraph (w) is added to read as follows:

§ 173.53 Definition of class A explosives.

* * * * *

(w) Detonating cord is a device consisting of a core of pentaerythrite tetranitrate, cyclotrimethylene-trinitramine or similar explosive overspun with tapes, yarns and plastics or waterproofing compounds without wire countering.

4. In § 173.66, paragraph (c)(2) is redesignated (c)(3); paragraph (g) is revised; and paragraphs (c)(2) and (e)(3) are added to read as follows:

§ 173.66 Detonators.

* * * * *

(c) * * *

(2) Devices that are electric blasting caps with leg wires 4 feet long or longer, delay connectors in plastic sheaths, or blasting caps with empty plastic tubing 12 feet long or longer, and contain no more than 1 gram of explosive (excluding ignition and delay charges) may be offered for transportation and transported in an IME Standard 22 container or compartment without the outside packaging specified in paragraph (e)(1) or (e)(2) of this section if—

(i) The devices are packed as specified in paragraph (a)(1) and (a)(3)(i) of this section;

(ii) There are no more than 1000 detonators in the IME Standard 22 container or compartment; and

(iii) No material is loaded on top of the IME Standard 22 container, or no material is loaded against the outside of the door of the IME Standard 22 compartment.

* * * * *

(e) * * *

(3) IME Standard 22 container or compartment when the detonators conform with conditions and limitations specified in paragraph (c)(2) of this section.

* * * * *

(g) Devices subject to this section and approved by an agency listed in § 173.86(b) before January 1, 1980, may be transported subject to conditions of the approval and in accordance with regulations in effect on October 31, 1979, until December 31, 1985. Applicability of this paragraph is further limited to detonators packaged for transportation prior to January 1, 1985.

5. Section 173.81 is added to read as follows:

§ 173.81 Detonating cord.

(a) Detonating cord shall be packed in wooden or fiberboard boxes.

(b) Each outside packaging shall be plainly marked "DETONATING CORD—HANDLE CAREFULLY".

(c) Detonating cord having an explosive content not exceeding 100 grains per linear foot may be offered for transportation and transported as a class C explosive if the gross weight of all packages of detonating cord does not exceed 100 pounds per—

(1) transport vehicle, freight container or cargo only aircraft.

(2) offshore down hole tool pallet carried on a cargo vessel.

(e) cargo compartment of a cargo vessel.

(4) passenger-carrying aircraft used to transport personnel to remote work sites, such as offshore drilling units.

6. In § 173.100, paragraph (d) is revised to read as follows:

§ 173.100 Definition of class C explosives.

* * * * *

(d) Cord, detonating *flexible* is a device consisting of a core of pentaerythrite tetranitrate, cyclotrimethylene- trinitramine or similar explosive overspun with tapes, yarns and plastics or waterproofing compounds without wire countering. Approval of detonating cord as a class C explosive is contingent upon:

(1) examination by an agency listed in § 173.86(b); and

(2) a demonstrated ability to confine blast effects of a detonation to the package as prepared for transportation, and without propagation of detonation to similar packages which surround it.

* * * * *

7. In § 173.103, paragraphs (c)(2) and (d)(1) are amended by removing the word "and" at the end of the clause; paragraphs (c)(3) and (d)(2) are amended by removing the period and inserting, in its place, a semicolon followed by the word "and"; and paragraph (c)(4), notes 1 and 2 to paragraph (c), and paragraph (d)(3) are added to read as follows:

§ 173.103 Detonators, class C explosives, and detonating primers, class C explosives.

* * * * *

(c) * * *

(4) Each inside packaging shall be marked "class C explosives".

Note 1.—The "class C explosives" marking is the shippers certification that the contents of the IME Standard 22 container or compartment are class C explosives.

Note 2.—Any detonator packed in an inside packaging that is not marked "class C explosives" shall be offered for transportation as a class A explosive.

(d) * * *

(3) The shipper certifies conformance with requirements of this paragraph by marking the outside of the package with the statement: "This package conforms to conditions and limitations specified in 49 CFR 173.103(d)".

8. Section 173.104 is revised to read as follows:

§ 173.104 Cord, detonating flexible; mild detonating fuse, metal clad or flexible; or flexible linear shaped charges, metal clad.

(a) Cord, detonating *flexible* which was properly examined, and classed and described "cordeau detonant fuse,

class C explosive" prior to January 1, 1985 by an agency listed in § 173.86(b) is reclassed class A explosive and assigned the proper shipping name "cord, detonating *flexible*". However, until June 30, 1986, cord detonating *flexible* which was properly examined, and classed and described "cordeau detonant fuse, class C explosive" may be offered for transportation and transported subject to conditions of the approval and in accordance with requirements of this subchapter in effect on December 31, 1984.

(b) Cord, detonating *flexible;* mild detonating fuse, metal clad or flexible; and flexible linear shaped charges, metal clad may not be packed in the same package with detonators or with any high explosive.

(c) Cord, detonating *flexible;* mild detonating fuse, metal clad or flexible; and flexible linear shaped charges, metal clad shall be packed in wooden or fiberboard boxes. Each package shall be marked "CORD, DETONATING *FLEXIBLE*—HANDLE CAREFULLY", "MILD DETONATING FUSE, METAL CLAD *or* FLEXIBLE—HANDLE CAREFULLY" or "FLEXIBLE LINEAR SHAPED CHARGES, METAL CLAD—HANDLE CAREFULLY", as appropriate.

PART 174—CARRIAGE BY RAIL

9. In § 174.81, the table is revised to read as follows:

§ 174.81 Segregation and separation requirements for hazardous materials in rail cars.

(a) * * *

BILLING CODE 4910-60-M

BILLING CODE 4910-60-C

Segregation and Separation Chart of Hazardous Materials

Footnotes

1. (Reserved).

2. Unless loaded in opposite ends of car, corrosive liquids must not be loaded with flammable solids, oxidizing materials, ammunition for cannon with or without projectiles, or propellant explosives, except that shippers loading carload shipments of corrosive liquids and flammable solids or oxidizing materials and who have obtained prior approval from the Department may load such materials together when it is known that the mixture of contents will not cause a dangerous evolution of heat or gas.

3. Explosives, class A, and explosives, class B must not be loaded or stored with chemical ammunition containing incendiary charges or white phosphorus either with or without bursting charges.

4. Bursters (explosive), boosters (explosive), or supplementary charges (explosive) without detonators when shipped by, to, or for the Departments of the Army, Navy, and Air Force of the United States Government may be loaded with any of the articles named except those in columns c, d, 3, 9, 11, 12, 13, 14, 15 and 16.

5. Does not include ammonium nitrate, fertilizer grade, which may be loaded, transported or stored with high explosives, or with detonators containing no more than 1 gram of explosive each, excluding ignition and delay charges.

6. Normal uranium, depleted uranium, and thorium metal in solid form may also be loaded and transported with articles named in columns a, b, c, d, e, f, and g.

Instructions

The letter X at an intersection shows that these materials must not be loaded or stored together. Example: Detonating fuzes, class A, with or without radioactive components, (g), must not be loaded or stored with high explosives or propellant explosives, (b).

		a	b	c	d	e	f	g	1	2	3	4	5	6	7	7a	8	8a	9	10	11	12	13	14	15	16
CLASS A EXPLOSIVES	Low explosives or black powder.																									
	High explosives, propellant explosives or detonating cord.																									
	Initiating or priming explosives, wet: Diazodinitrophenol; fulminate of mercury; guanyl nitrosamino guanylidene hydrazine, lead azide, lead styphnate, nitro mannite, nitrosoguanidine, pentaerythrite tetranitrate, tetrazene, lead mononitroresorcinate																									
	Detonators, detonating primers.																									
	Ammunition for cannon with explosive projectiles, gas projectiles, smoke projectiles, incendiary projectiles, illuminating projectiles; ammunition for small arms with explosive projectiles, incendiary projectiles; rocket ammunition with explosive projectiles, gas projectiles, smoke projectiles, incendiary projectiles, illuminating projectiles; boosters (explosive); bursters (explosive); and supplementary charges (explosive) without detonators. 3/, 4/																									
	Explosive projectiles; bombs; torpedoes; mines; rifle or hand grenades (explosive); jet thrust units (jato); igniters, jet thrust, rocket motors; igniters rocket motor. 3/																									
	Detonating fuzes, class A, with or without radioactive components																									
CLASS B EXPLOSIVES	Ammunition for cannon with empty, inert-loaded or solid projectiles, or without projectiles; or rocket ammunition with empty projectiles, inert-loaded or solid projectiles or without projectiles.																									
	Propellant explosives, jet thrust units (jato), igniters, jet thrust, rocket motors, rocket engines (liquid), igniters, rocket motor, starter cartridges.																									
	Fireworks, special or railway torpedoes.																									
CLASS C EXPLOSIVES	Small arms ammunition, or cartridges, practice ammunition.																									
	Primers for cannon or small arms, empty cartridge bags—black powder igniters, empty cartridge cases, primed, empty grenades, primed, combination primers or percussion caps, toy caps, explosive cable cutters, explosive rivets.																									
	Percussion fuzes, tracer fuzes or tracers.																									
	Time, combination or detonating fuzes.																									
	Detonators, detonating primers.																									
	Safety squibs, fuse lighters, fuse igniters, delay electric igniters, electric squibs, instantaneous fuse or igniter cord.																									
	Detonating cord.																									
	Fireworks, common.																									
OTHER HAZARDOUS MATERIALS	Blasting agents, n.o.s., or ammonium nitrate-fuel oil mixture; blasting agent label.																									
	Flammable liquids or flammable gases; flammable liquid or flammable gas label.																									
	Flammable solids; flammable solid label. Oxidizer; oxidizer label. Organic peroxide; organic peroxide label.																									
	Corrosive liquids; corrosive label.																									
	Nonflammable gases; N.F.G. label.																									
	Poisonous gases or liquids in tank car tanks, cylinders, projectiles or bombs; poison gas labels.																									
	Radioactive materials; radioactive label.																									

		a	b	c	d	e	f	g	1	2	3	4	5	6	7	7a	8	8a	9	10	11	12	13	14	15	16
CLASS A EXPLOSIVES	Low explosives or black powder.																									
	High explosives, propellant explosives or detonating cord.																									
	Initiating or priming explosives, wet: Diazodinitrophenol; fulminate of mercury; guanyl nitrosamino guanylidene hydrazine, lead azide, lead styphnate, nitro mannite, nitrosoguanidine, pentaerythrite tetranitrate, tetrazene, lead mononitroresorcinate			X																						
	Detonators, detonating primers.			X																						
	Ammunition for cannon with explosive projectiles, gas projectiles, smoke projectiles, incendiary projectiles, illuminating projectiles; ammunition for small arms with explosive projectiles, incendiary projectiles; rocket ammunition with explosive projectiles, gas projectiles, smoke projectiles, incendiary projectiles, illuminating projectiles; boosters (explosive); bursters (explosive); and supplementary charges (explosive) without detonators. 3/, 4/			X			X																			
	Explosive projectiles; bombs; torpedoes; mines; rifle or hand grenades (explosive); jet thrust units (jato); igniters, jet thrust, rocket motors; igniters rocket motor. 3/			X			X																			
	Detonating fuzes, class A, with or without radioactive components			X				X																		
CLASS B EXPLOSIVES	Ammunition for cannon with empty, inert-loaded or solid projectiles, or without projectiles; or rocket ammunition with empty projectiles, inert-loaded or solid projectiles or without projectiles.			X					X																	
	Propellant explosives, jet thrust units (jato), igniters, jet thrust, rocket motors, rocket engines (liquid), igniters, rocket motor, starter cartridges.			X						X																
	Fireworks, special or railway torpedoes.			X				X	X	X	X															
CLASS C EXPLOSIVES	Small arms ammunition, or cartridges, practice ammunition.			X								X														
	Primers for cannon or small arms, empty cartridge bags—black powder igniters, empty cartridge cases, primed, empty grenades, primed, combination primers or percussion caps, toy caps, explosive cable cutters, explosive rivets.			X									X													
	Percussion fuzes, tracer fuzes or tracers.			X										X												
	Time, combination or detonating fuzes.			X											X											
	Detonators, detonating primers.			X							X					X										
	Safety squibs, fuse lighters, fuse igniters, delay electric igniters, electric squibs, instantaneous fuse or igniter cord.			X													X									
	Detonating cord.			X					X		X		X			X		X								
	Fireworks, common.			X					X		X		X			X			X							
OTHER HAZARDOUS MATERIALS	Blasting agents, n.o.s., or ammonium nitrate-fuel oil mixture; blasting agent label.			X							X					X				X					
	Flammable liquids or flammable gases; flammable liquid or flammable gas label.			X				X	X	X	X		X								X					
	Flammable solids; flammable solid label. Oxidizer; oxidizer label. Organic peroxide; organic peroxide label.			X				X	X	X	X		X								X	X				
	Corrosive liquids; corrosive label.			X				X	X	X	[2]X		X								X	X	[2]X			
	Nonflammable gases; N.F.G. label.			X				X	X	X	X		X								X	X	X	X		
	Poisonous gases or liquids in tank car tanks, cylinders, projectiles or bombs; poison gas labels.			X	X	X	X	X	X	X	X		X			X			X		X	X	X	X	X	
	Radioactive materials; radioactive label.			[6]X	[6]X	[6]X	[6]X	[6]X	[6]X	[6]X	[6]X		[6]X			[6]X			[6]X		[6]X	[6]X	[6]X	[6]X	[6]X	

PART 175—CARRIAGE BY AIRCRAFT

§ 175.320 [Amended]

10. In § 175.320, the table in paragraph (a) is amended by removing the words "Cordeau detonant fuse" and inserting, in their place, the words "Detonating cord".

PART 176—CARRIAGE BY VESSEL

11. In § 176.83, Table I is revised to read as follows:

§ 176.83 Segregation requirements for cargo vessels and passenger vessels.

BILLING CODE 4910-60-M

BILLING CODE 4910-60-C

Segregation and Separation Chart of Hazardous Materials — Table I

Footnotes

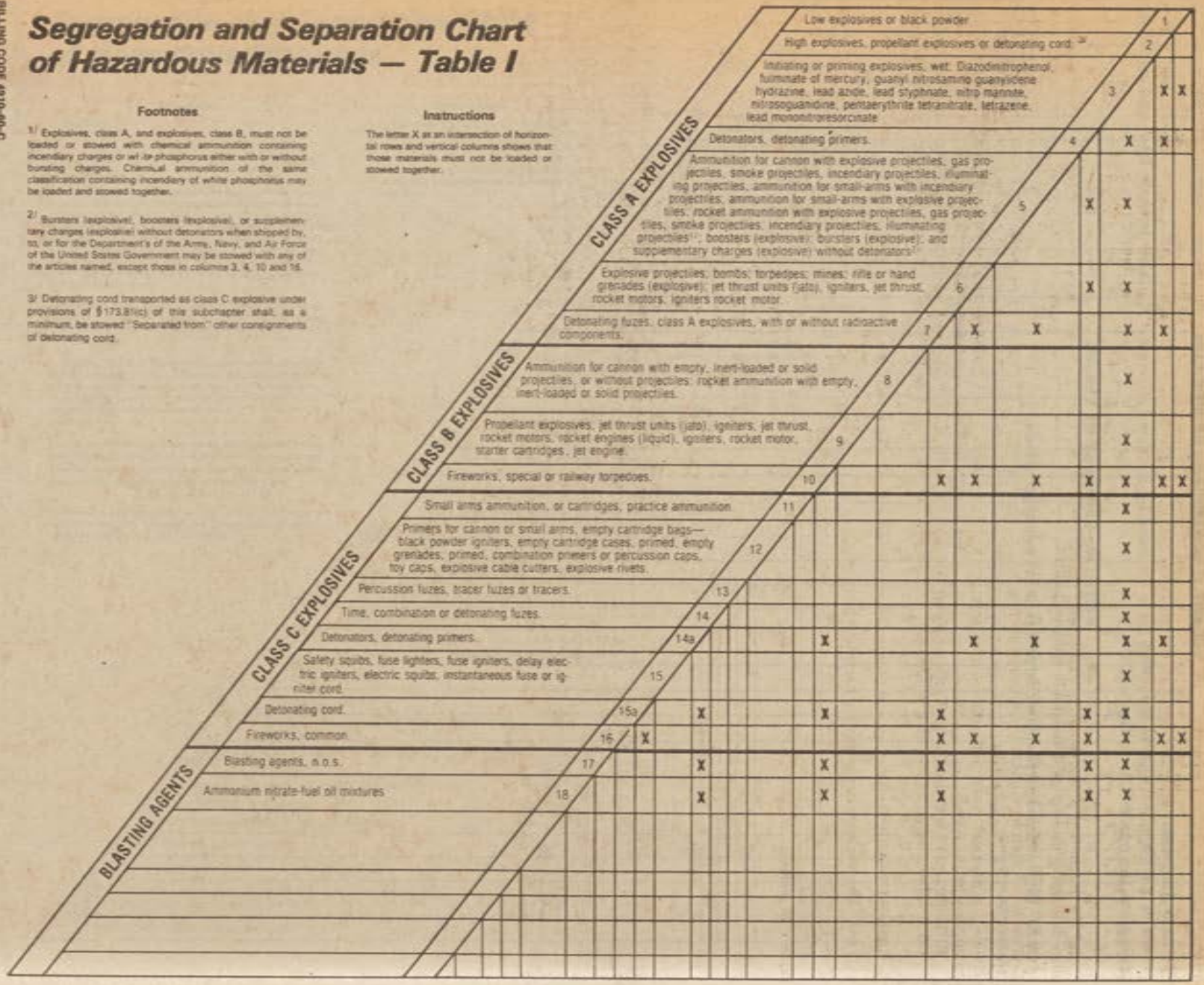
1/ Explosives, class A, and explosives, class B, must not be loaded or stowed with chemical ammunition containing incendiary charges or wi*te* phosphorus either with or without bursting charges. Chemical ammunition of the same classification containing incendiary of white phosphorus may be loaded and stowed together.

2/ Bursters (explosive), boosters (explosive), or supplementary charges (explosive) without detonators when shipped by, to, or for the Department's of the Army, Navy, and Air Force of the United States Government may be stowed with any of the articles named, except those in columns 3, 4, 10 and 16.

3/ Detonating cord transported as class C explosive under provisions of §173.81(c) of this subchapter shall, as a minimum, be stowed "Separated from" other consignments of detonating cord.

Instructions

The letter X at an intersection of horizontal rows and vertical columns shows that those materials must not be loaded or stowed together.



PART 177—CARRIAGE BY PUBLIC HIGHWAY

12. In § 177.835, paragraph (g)(2) is redesignated (g)(3), the introductory text of paragraph (g) is revised, and a new paragraph (g)(2) is added to read as follows:

§ 177.835 Explosives.

* * * * *

(g) No detonating primer may be transported on the same motor vehicle with any class A or class B explosive (except other detonating primers or detonators), blasting agent or detonating cord, class C explosive. No detonator may be transported on the same motor vehicle with any class A or class B explosive (except other detonators or detonating primers), blasting agent or detonating cord, class C explosive unless—

* * * * *

(2) The package conforms with requirements prescribed in § 173.103(d) of this subchapter, and its use is restricted to instances when—

(i) There is no class A or class B explosive or blasting agent loaded on the motor vehicle; and

(ii) A separation of 24 inches is maintained between each package of detonators and each package of detonating cord; or

* * * * *

13. In §177.848(f), the Loading and Storage Chart of Hazardous Materials is revised to read as follows:

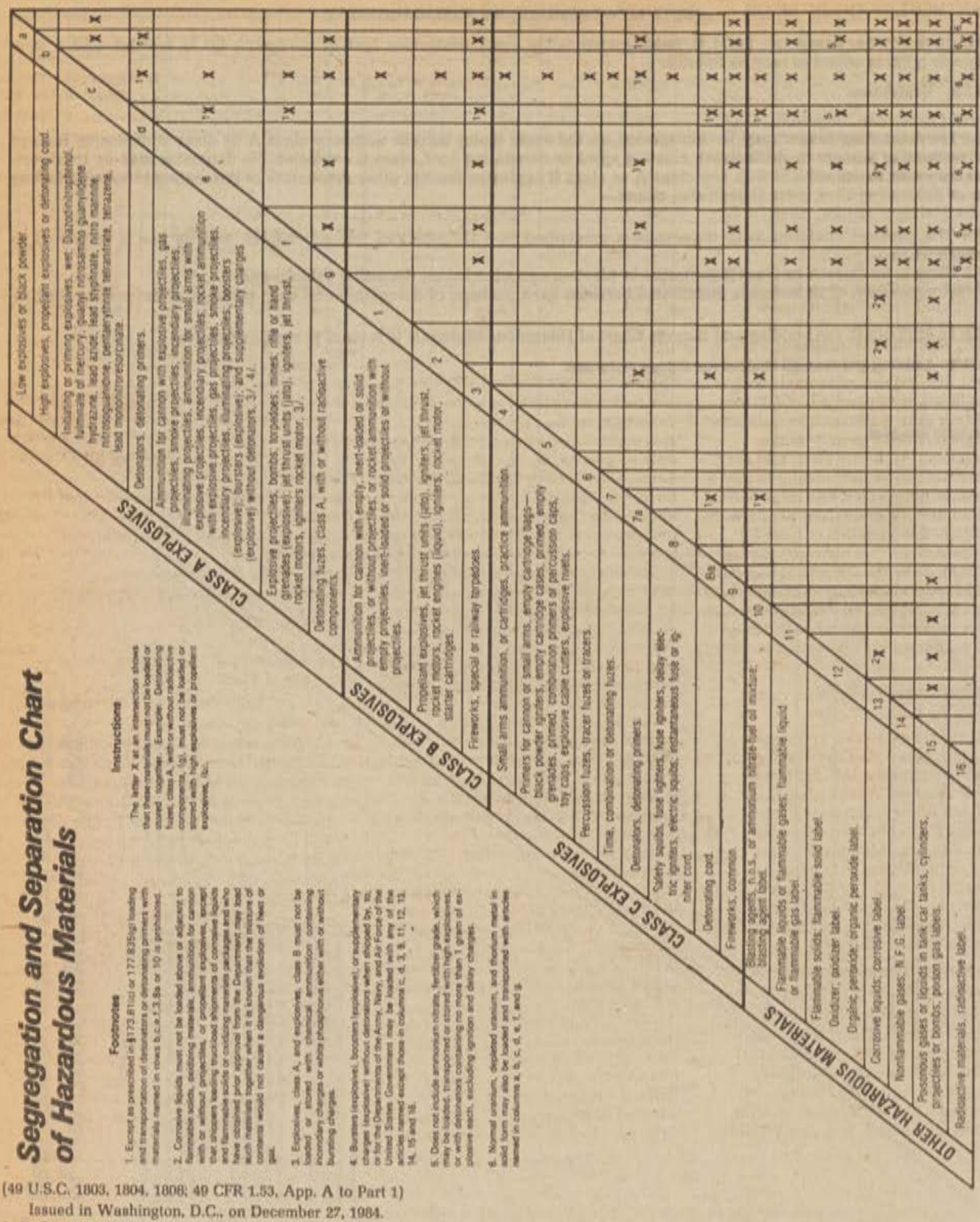
§ 177.848 Loading and storage chart of hazardous materials.

* * * * *

(f) * * *

BILLING CODE 4910-60-M

Segregation and Separation Chart of Hazardous Materials



Footnotes

1. Except as provided in §173.81(a) or 177.835(g) loading and transportation of detonators or detonating primers with materials named in rows b, c, e, f, 3, 8a or 10 is prohibited.

2. Corrosive liquids must not be loaded above or adjacent to flammable solids, oxidizing materials, ammunition for cannon with or without projectiles, or propellant explosives, except that shipments leaking tracked shipments of corrosive liquids and flammable solids or oxidizing materials packages and who have obtained prior approval from the Department may load such materials together when it is known that the mixture of contents would not cause a dangerous evolution of heat or gas.

3. Explosives, class A, and explosives, class B must not be loaded or stored with chemical ammunition containing incendiary charges or white phosphorus either with or without bursting charges.

4. Bursters (explosive), boosters (explosive), or supplementary charges (explosive) without detonators when shipped by, to, or for the Departments of the Army, Navy, and Air Force of the United States Government may be loaded with any of the articles named except those in columns c, d, 3, 8, 11, 12, 13, 14, 15 and 16.

5. Does not include ammonium nitrate, fertilizer grade, which may be loaded, transported or stored with high explosives, or with detonators containing no more than 1 grain of explosive each, excluding ignition and delay charges.

6. Normal uranium, depleted uranium, and thorium metal in solid form may also be loaded and transported with articles named in columns a, b, c, d, e, f, and g.

[49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1)

Issued in Washington, D.C., on December 27, 1984.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 85-71 Filed 1-4-85; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of American Alligators Taken in 1984–85 Harvest Seasons in Texas; Final Findings of Scientific and Management Authorities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final findings and rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species. As a general rule, exports of animals and plants listed in Appendix II of CITES may occur only if a Scientific Authority (SA) has advised a permit-issuing Management Authority (MA) that such exports will not be detrimental to the survival of the species, and if the MA is satisfied that the animals or plants were not obtained in violation of laws for their protection. This notice announces final findings by the SA and MA of the United States on the export of American alligators harvested in Texas. The Service intends to make these findings to span a period of two harvest seasons (1984–85).

EFFECTIVE DATE: These findings are effective on January 7, 1985.

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of Scientific Authority, room 537, 1717 H Street, NW, Washington, D.C. or at the Federal Wildlife Permit Office, room 621, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority Finding—Dr. Richard L. Jachowski, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (202) 653–5948.

Management Authority Finding—Mr. Thomas J. Parisot, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (703) 235–2418.

Export Permits—Mr. Richard K. Robinson, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (703) 235–1903.

SUPPLEMENTARY INFORMATION: This is the second of two notices concerning the Service's findings on export of American alligators taken in the 1984 and 1985 seasons in Texas. The first notice (49 FR 35528; September 10, 1984) announced proposed findings by the SA and MA of the United States on the export of this species. The Service invited public comments from the public at that time, but no comments were received during the comment period.

Scientific Authority (SA) Findings

Article IV of CITES requires that an export permit for any specimen of a species included in Appendix II shall only be granted when certain findings have been made by the SA and MA of the exporting country. The SA must advise "that such export will not be detrimental to the survival of that species" before a permit can be granted.

The SA for the United States must develop such advice on nondetriment for the export of Appendix II animals in accordance with section 8A of the Endangered Species Act of 1973, as amended in 1982. The Act states that the Secretary of the Interior "shall base the determinations and advice given by him under Article IV of the Convention with respect to wildlife upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make or require any State to make estimates of population size in making such determinations or giving such advice."

The American alligator is considered to be listed in Appendix II to respond both to problems of potential threat to the survival of American alligators [CITES Article II.2(a)] and similarity in appearance to other crocodilians that are threatened with extinction [CITES Article II.2(b)]. A review of species in the appendices that was concluded in 1983 confirmed the suitability of this treatment, as set forth in the proposal that the Conference of the Parties adopted in 1979 to place this species in Appendix II. The Service will address the issue of similarity in appearance through tagging hides and documentation of shipments, as it does with furbearers. Because the alligator is listed partly because of a potential threat to its survival (based on previous population declines that have been reversed in certain parts of the United States), the Service also must determine if exports will not be detrimental to the survival of the American alligator itself.

Guidelines developed for SA advice on exports of alligators under the provisions of CITES Article II.2(a) have been revised to conform with the 1982 amendments to the Endangered Species Act (see 48 FR 16494, April 18, 1983).

A. Minimum requirements for biological information:

(1) Information on the condition of the population, including trends (the method of determination to be a matter of State choice), and population estimates where such information is available.

(2) Information of total harvest of the species.

(3) Information on distribution of harvest.

(4) Habitat evaluation.

B. Minimum requirements for a management program:

(1) There should be a controlled harvest, methods and seasons to be a matter of State choice.

(2) All hides should be registered and marked.

(3) Harvest level objectives should be determined annually by the States.

The Service finds that current information on population status and management submitted by Texas, as well as that collected by the Service, fully support a finding that the export of alligators taken in accordance with State regulations will not be detrimental to the survival of the species in Texas.

Tagging of hides by the State and documentation of shipments by the MA provide assurance that export will not reduce the effectiveness of CITES in controlling trade in other species of crocodilians. Documents containing information that provide the basis for SA advice for alligators are available for public inspection at the Office of Scientific Authority (address given above).

Management Authority (MA) Findings

Exports of Appendix II species are to be allowed under CITES only if the MA is satisfied that the specimens were not obtained in contravention of laws for the protection of wildlife or plants. The Service, therefore, must be satisfied that the hides were not obtained in violation of State or Federal law, in order to allow export. Evidence of legal taking for American alligators is provided by State tagging systems. The Service requires that each alligator hide must be tagged by a permanently attached, serially numbered tag of a type approved by the Service that is attached under conditions established by the Service. Tags must clearly identify hides as to species, State of origin, and season of taking. MA export guidelines for the 1984–85 taking seasons are as follows:

(1) Current State hunting, trapping and tagging regulations and sample tags must be on file with the Service (Federal Wildlife Permit Office);

(2) The tags must be durable and permanently locking, and must show State of origin, year of take, species and be serially unique;

(3) The tag must be applied to all hides within a minimum time after take, as specified by the State, and such time should be as short as possible to minimize movement of untagged hides.

(4) The tag must be permanently attached as authorized and prescribed by the State;

(5) State-registerd dealers or State-licensed takers allowed by the State to attach tags must account for tags received and must return unused tags to State within a specified time after taking season closes; and

(6) Fully manufactured hide products may be exported from the U.S. when accompanied by State tags removed from hides contained in the products; such tags must be surrendered to the Service prior to export.

The Service has reviewed the Texas alligator tagging program and has found that it fully meets these guidelines.

Export Approval

The Service received no comments in response to the notice of proposed findings in reference to alligators, with the exception of information provided by the State wildlife agency of Texas.

The Service approves the export of American alligators lawfully taken during the 1984–85 seasons in Texas on the grounds that both SA and MA criteria have been met. Texas now joins Louisiana and Florida in gaining export approval for American alligators legally taken during the 1984–85 seasons. Louisiana and Florida were previously granted such export approval (49 FR 1058; January 9, 1984) for legally taken alligators in the 1983–85 seasons.

The findings announced in this notice are effective immediately. It is the Service's opinion that a delay in the effective date of the regulations after this final rulemaking is published could adversely impact the species by preventing the international marketing of hides (where commercial harvest is an important part of the State conservation program), and thereby reducing the incentive for takers or dealers to comply with State requirements. The Service, therefore, finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, for these regulations to take effect immediately upon publication. Further, because this rule relieves a restriction on export, it may take effect immediately under 5 U.S.C. 553(d)(1).

This rule is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.; 87 Stat. 884 as amended). It was prepared by Dr. Richard M. Mitchell, Office of Scientific Authority, and Mr. S Ronald Singer, Federal Wildlife Permit Office.

Note.—The Department has determined that the final findings on the export of American alligator taken in the 1984–85 harvest seasons in Texas are not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required. The Department also has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). The findings will allow for the export of specimens taken in accordance with State programs that have been instituted for the management of this species. The findings do not contain any information collection or recordkeeping requirements as defined by the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, the Service proposes to amend Part 23 of Title 50, Code of Federal Regulations, as set forth below:

Subpart F—Export of Certain Species

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249, and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531–43.

2. In § 23.57, add new paragraph (f) to read as follows:

§ 23.57 American alligator (Alligator mississippiensis).

* * * * *

(f) 1984–85 harvests: Texas.

Condition on export: Each hide must be clearly identified as to species, State of origin, and season of taking, and must be tagged by a permanently attached, serially numbered tag of a type approved by the Service that is attached under conditions established by the Service.

Dated: December 14, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-405 Filed 1-4-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 40899-4135]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Technical Amendment

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: This document corrects the final regulations implementing the Framework Amendment for Managing the Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California, Commencing in 1985 (Framework Amendment) which were published on October 31, 1984 (49 FR 43679). The regulations did not appropriately express the intention of the Framework Amendment with respect to (1) procedures to modify escapement goals, and (2) the optional provision to modify recreational daily bag limits during the season.

EFFECTIVE DATE: January 7, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. T.E. Kruse (Acting Director, Northwest Region, NMFS) 206-526-6150; or Mr. E.C. Fullerton (Director, Southwest Region, NMFS) 213-548-2575.

SUPPLEMENTARY INFORMATION: Regulations to implement the Framework Amendment were published on October 31, 1984 (49 FR 43679).

Existing escapement goals and procedures to modify escapement goals if new biological data become available were included in the Framework Amendment but were inadvertently omitted from the implementing regulations. The procedure provided by the Framework Amendment to adjust the recreational daily bag limit during the season was discussed in the Appendix to the regulations but was not included in the list of optional inseason management procedures in § 661.21. The public had an opportunity to comment on these provisions at public hearings on the amendment during the November and December 1983 meetings of the Pacific Fishery Management Council (Council) and during the comment period on the proposed Framework Amendment (49 FR 32414, August 14, 1984). The Council made its final selection of options for the Framework Amendment, including these provisions, at its January 11–12, 1984, meeting in Portland, Oregon. The Secretary of Commerce, acting through the Director, Northwest Region, NMFS (Regional Director), approved the Amendment on October 11, 1984.

Classification

The Regional Director has determined that this rule is necessary for the conservation and management of the Pacific coast salmon fishery and that it is consistent with the Framework Amendment, the Magnuson Fishery Conservation and Management Act, and other applicable law.

The Council prepared a final supplemental environmental impact statement (EIS) for the Framework Amendment; a notice of availability was published on September 28, 1984 (49 FR 38355). There will be no change in environmental impact from that determined in the EIS as a result of this rule.

The Council also prepared a regulatory impact review and regulatory flexibility analysis as a part of the Framework Amendment, which describe the estimated ranges of impacts from implementation of the amendment and the regulations and the effects this rule will have on small businesses. There will be no change in impacts from those previously determined as a result of this rule.

This is a technical amendment to a final rule and, as such, not a rulemaking requiring review under Executive Order 12291.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 663

Administrative practice and procedures, Fish, Fisheries, Fishing.

Dated: January 2, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 661 and its Appendix are amended to read as follows:

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA—[AMENDED]

1. The authority citation for Part 661 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In the table of contents, "661.22 Annual and inseason notice Procedures." is removed and new sections are added to read as follows:

661.22 Other actions.
661.23 Notice procedures.

§ 661.3 and 661.21 [Amended]

3. In § 661.3, in the definitions of *Commercial fishing, Recreational fishing,* and *Troll fishing gear,* and in § 661.21(a) (1), (2), and (3), "§ 661.22" is changed to "§ 661.23".

4. In § 661.21, a new paragraph (b)(7) is added to read as follows:

§ 661.21 Inseason actions.

* * * * *

(b) * * *

(7) Modification of recreational daily bag limits.

* * * * *

5. Section 661.22, is redesignated as § 661.23 and the title of newly designated § 661.23 is changed to "§ 661.23 Notice procedures", and paragraph (a) is revised to read as follows:

§ 661.23 Notice procedures.

(a) Actions taken under §§ 661.20, 661.21, and 661.22 will be by notice issued under this section and published in the **Federal Register.**

* * * * *

6. A new § 661.22 is added to read as follows:

§ 661.22 Other actions.

Modifications to escapement goals. Escapement goals, together with criteria and procedures for their modification, are set forth in the Appendix to this Part, Section IV. The Secretary is authorized to modify an escapement goal if—

(a) A comprehensive technical review of the best scientific information available provides conclusive evidence which, in the view of the Salmon Plan Development Team and the Council, justifies modification of an escapement goal;

(b) For Oregon coastal chinook, specific stock goals are developed within the overall goal for south coast and north coast stocks respectively; or

(c) Action by a Federal court indicates that modification of an escapement goal is appropriate.

7. In the Appendix, Section III., paragraph A. 1., "§ 661.22" is changed to § 661.23."

8. The following new section is added to the Appendix after Section III.:

IV. Escapement Goals

A. *Current escapement goals.*

The following specific escapement goals are in effect unless modified as provided herein. Annual management objectives for Washington coastal fall, spring, and summer chinook; Puget Sound chinook; Washington coastal coho; and Puget Sound coho are developed through fixed procedures established in the U.S. District Court.

SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT

System	Spawning [1] escapement goal	Rebuilding schedule
Sacramento Fall Chinook [2]	Range of 122–180,000 for natural and hatchery	
Klamath Fall Chinook	97,500 natural; 17,500 hatchery	Achieve in-river run sizes (natural and hatchery combined) as follows: 1983–86 68,900; 1987–90 82,700; 1991–94 99,200; 1995–98 [3] 115,000 +
Oregon Coastal Chinook	150–200,000 natural	
Columbia River Chinook:		
Upper-River Fall	40,000 bright adults above McNary Dam	
Upper-River Summer	80,000 adults above Bonneville	
Upper-River Spring	100–200,000 adults above Bonneville	
Lower-River Spring (Williamette)	30–35,000	
Columbia River and Oregon Costal Coho	575,000 OPI ocean escapement; 200,000 adult natural costal spawning escapement.	Achieve escapement of natural spawning stocks as follows: Cycle 1: 1983 —; 1984 —; 1985 175,000; 1986 —; 1987 —; 1988 200,000; 1989 —. Cycle 2: 1983 140,000; 1984 —; 1985 —; 1986 170,000; 1987 —; 1988 —; 1989 200,000. Cycle 3: 1983 —; 1984 135,000; 1985 —; 1986 —; 1987 200,00; 1988 —; 1989 —.
Puget Sound Pink	900,000 natural	
Lake Washington Sockeye [4]	300,000 to Lake Washington	
Columbia River Sockeye [4]	80,000 over Priest Rapids	

[1] Represents adult natural spawning escapement goal for viable natural stocks or adult hatchery return goal for stocks managed for artifical production.
[2] The Sacramento River escapement goal is presented as a range within which annual escapements can be expected to vary. Achieving the upper end of the range, especially for the up-river chinook stocks, will be contingent upon solving the problems associated with the Red Bluff Diversion Dam.
[3] The long-term Klamath River escapement goal of 115,000 chinook is spawning escapement to which in-river harvest must be added to calculate the ocean escapement goal.
[4] These stocks represent a negligible component of the Washington ocean harvest.

B. *Modification of escapement goals.*

1. At any time during the year, the Team may conduct a comprehensive technical review of existing biological data to determine whether a change in escapement goals is warranted.

2. The Team will submit any recommendation for modifying an escapement goal with justification to the Council. The recommendation must be based on the best scientific information available and provide conclusive technical evidence to justify modification of an escapement goal.

3. If the recommendation for change is approved by the Council, the Secretary may change the escapement goal if he determines that such a change is justified.

4. Appropriate changes in escapement goals may be made in response to action by a Federal court without regard to the procedures listed above.

5. For Oregon coastal chinook, if the Oregon Department of Fish and Wildlife develops specific goals for north coast and south coast stocks within the overall goal, these changes may be made by the Secretary without regard to the procedures listed above.

6. Modification of escapement goals will be published by notice in the **Federal Register** under § 661.23.

[FR Doc. 85–457 Filed 1–4–85; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 50, No. 4
Monday, January 7, 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 1136

Milk in the Great Basin Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend certain provisions of the Great Basin Federal milk order. The provisions relate 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. Suspension of the provisions was requested by a cooperative association representing most of the producers supplying the market to prevent uneconomic movements of milk. The proposed suspension would be for the months of January through June 1985.

DATE: Comments are due not later than January 14, 1985.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Great Basin marketing area is being considered for the months of January through June 1985: (1) In § 1136.13(c)(3), the language "*Provided,* That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at all pool plants from member producers in any month of March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;", and (2) In § 1136.13(c)(4), the language "*Provided,* That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant from producers who are not members of a cooperative association in any month of March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;".

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 7 days from the date of publication of this notice in the **Federal Register.** The period for filing comments is limited because a longer period would not provide the time needed to complete the required procedures and include January 1985 in the suspension period.

The comments that are received will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would remove for the months of January through June 1985 the limit on the amount of producer milk that a cooperative association or other handlers may divert from pool plants to nonpool plants. The order now provides that a cooperative association may divert up to 25 percent of its member milk physically received at pool plants in any month of March through August, and up to 20 percent of its member milk physically received at pool plants in any month of September through February. Similarly, the operator of a pool plant may divert up to 25 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during the months of March through August, and 20 percent during the months of September through February.

The proposed suspension was requested by Western General Dairies, Inc., A cooperative association that supplies most of the market's fluid milk needs and handles most of the market's reserve milk supplies. The basis for the request is an increased amount of milk surplus to the fluid needs of the market which must be handled by Western General. At the same time, a cheese manufacturing facility at one of the cooperative's pool plants has ceased to operate, diminishing the amount of receipts at such pool plant from which allowable diversions may be calculated. In the absence of the suspension, the cooperative expects that some of the milk of its member producers who regularly have supplied the fluid market would have to be moved, uneconomically, first to pool plants and then to nonpool manufacturing plants in order to continue pool status for such milk during the months of January through June 1985.

List of Subjects in 7 CFR Part 1136

Milk Marketing Orders, Milk, Dairy Products.

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

Signed at Washington, D.C., on: December 31, 1984.

William T. Manley,

Deputy Administrator, Marketing programs.

[FR Doc. 433 Filed 1–4–85; 8:45]

BILLING CODE 3410 02 –M

Farmers House Administration

7 CFR Parts 1804 and 1924

Revision and Redesignation of Part 1804, Subpart D, Planning and Performing Site Development Work

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to revise and redesignate its regulation for planning and performing site development work.

The proposed revision places a greater emphasis on the location of FmHA financed housing, provides guidelines to assist developers and the Agency when reviewing site development plans for compliance with other Federal laws, regulations and executive orders. It also provides for reciprocity of subdivision acceptance among HUD, VA, and FmHA establishes a timetable and specifies the manner in which FmHA will handle subdivision requests including a revision to the approval authorities.

The action is necessary to incorporate recent revisions to the Agency's authorizing statutes mandated by the 1983 Housing Amendments and to reduce complaints from builders and developers due to inconsistent handling of subdivision approval requests.

The overall intent is to provide clear and concise guidelines that will result in a more efficient and effective direction of FmHA's assistance towards the orderly development of rural areas.

DATE: Comments must be received on or before March 8, 1985.

ADDRESSES: Submit comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: James A. Weibel, Senior Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5351, South Agriculture Building, Washington, D.C. 20250. Telephone 202-382-1485.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291 and has been classified as "nonmajor." This action will result in an annual effect on the economy of less than $100 million and will neither result in a major increase in cost or prices, nor adversely affect competition, employment, investment, productively, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. There is no impact on proposed budget levels, and funding allocations will not be affected because of this action. There will be a modest decrease in the reporting requirements required of the public because of the reciprocity provision for subdivision acceptance among Federal agencies.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that it does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

The FmHA programs and projects which are affected by this instruction are subject to intergovernmental consultation in the manner delineated in FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

The Catalog of Federal Domestic Assistance titles and numbers are: Low Income Housing Loans (Section 502 Rural Housing Loans)—10.410, Farm Labor Housing Loans and Grants—10.405, Rural Housing Site Loans (Section 523 and 524 Site Loans)—10.411, Rural Rental Housing Loans—10.415, Very Low Income Housing Repair Loans—10.417, and Rural Self-Help Housing Technical Assistance—10.420.

Clearance has been requested from the Office of Management and Budget of the reporting and recordkeeping requirements contained in this regulation.

Recent revisions in Agency authorizing statutes mandated by the Rural Housing Amendments of 1983, require reciprocity of subdivision acceptance between Federal agencies. Therefore, this governmental action is necessary, in part, to change the regulation to comply with the law and congressional intent.

The objective of this revision is to provide clear and concise guidelines that will result in a more efficient and effective direction of FmHA's financial assistance towards the orderly development of rural areas. Revisions to this regulation to achieve that objective are:

1. Placing a greater emphasis on the orderly location of FmHA financed housing as an integral part of eligible rural communities where access to all essential services currently available to the general population of the community will be provided. For the purposes of this regulation, community will mean those identifiable places having a concentration of inhabited dwellings, private and public buildings. Such location will benefit borrowers through locating housing so that travel will not be excessive to employment, shopping, and nonwork activities. This should affect local jurisdictions by minimizing school bus service, road maintenance, police and fire protection, garbage and trash collection, and other services. Also, the borrower and Federal Government will benefit through the maintenance of property values due to the more desirable locations.

2. Detailing the processing responsibilities and specifying the manner in which FmHA will handle subdivision approval requests including a revision to the approval authorities. The minimum number of contiguous lots composing a subdivision is changed from five to ten to be more consistent with the definition used by HUD. The revised regulation requires that subdivisions be located near eligible rural communities identified by the FmHA State Director and establishes processing time goals to facilitate timely action by FmHA at all levels when handling subdivision approval requests. This should reduce complaints due to increased consistency in dealing with builders and developers. Changes in subdivision approval authority include revising the County Supervisor's authority allowing the District Director approval authority for subdivisions with 10-25 lots if sewer and water are available. All other subdivision approvals would be at the State or National level. This action should also provide increased consistency and relieve pressures to develop isolated strips of road frontage and channel the majority of new construction to more desirable locations.

3. Provides guidelines to assist the Agency and developers when planning and reviewing site development proposals for compliance with other Federal laws, regulations, executive orders, and environmental issues. Included are provisions to meet the intent of Executive Order 11988 and 11990 concerning Floodplain Management and the Protection of Wetlands, respectively; as well as the provisions of the Coastal Barriers Act of 1982, the Departmental Regulation 9500-

3. "Land Use Policy" and additional provisions to fully implement the National Environmental Policy Act of 1969.

4. Redesignating the regulation so that the reference numbers available to the public through the Code of Federal Regulations (CFR) will be identical to those available to our field office staffs, thereby, promoting consistency and a better understanding of FmHA requirements.

5. Finally, incorporated into this regulation are the recent revisions to the Agency's authorizing statutes mandated by the Housing Amendments of 1983 concerning reciprocity of subdivision acceptance among Federal agencies. Provisions have been made for FmHA acceptance of subdivisions which are determined acceptable by the Department of Housing and Urban Development (HUD) and the Veterans Administration (VA). This provision will serve to simplify and expedite the subdivision acceptance process and reduce the paperwork burden to the public.

Exhibit A has been updated to include submittal requirements for environmental documentation. Editorial changes have also been made.

Exhibit B provides basic design requirements and guidelines for applicants or developers in planning site development. This exhibit contains two sections, site location and site improvements. The site location section has been revised to provide requirements and guidelines related to site selection and location which include environmental policies and regulations regarding land use and floodplains.

The site improvement section provides requirements and guidelines related to grading and drainage, blocks, lot layout, streets, and hillside development. The grading and drainage subsection includes requirements for compaction, storm drainage, drainage overflow, erosion control, drainage easements, driveway and street intersections.

The subsection on streets includes design requirements and guidelines related to intersections, pavement width, street construction, and related improvements. General guidelines are also provide for the design of blocks in residential areas. These include block dimensions, intersection spacing, and pedestrian access easements.

Hillside development standards are provided for sites where the majority of the land area has slopes exceeding 15 percent and special measures must be taken to provide adequate building sites with safe access and reliable utilities.

Exhibit C has been developed and added to provide more specific guidelines for multifamily program submittals.

List of Subjects: in Part 1804

Housing standards, Low and moderate income housing, Rural areas.

PART 1804—[AMENDED]

Subpart D—[Redesignated as Subpart C of Part 1924]

For the reason set out in the preamble, Part 1804, Subpart D, Chapter XVIII, of Title 7 of the Code of Federal Regulations is proposed to be revised and redesignated as Part 1924, Subpart C, and to read as follows:

PART 1924—CONSTRUCTION AND REPAIR

* * * * *

Subpart C—Planning and Performing Site Development Work

Sec.

1924.101 Purpose.
1924.102 General policy.
1924.103 Scope.
1924.104 [Reserved]
1924.105 Definitions.
1924.106 Planning development.
1924.107 Location.
1924.108 Utilities.
1924.109 Grading and drainage.
1924.110 Performing development.
1924.111–1924.113 [Reserved]
1924.114 Multiple family housing.
1924.115 Subdivisions.
1924.116 Existing subdivisions.
1924.117 Scattered site.
1924.118 Modification of requirements and recommendations in this subpart.
1924.119 Subdivision reviews.
1924.120 Local entity endorsement.
1924.121 Delegation and redelegation of authority.
1924.122 Exception authority.
1924.123 State supplements and exhibts.
1924.124 Exhibits.
1924.125–1924.150 [Reserved]
Exhibit A—Checklist of Visual Exhibits and Documentation for Subdivisions
Exhibit B—Site Development Design Requirements and Guidelines
Exhibit C—Checklist of Visual Exhibits and Documentation for RRH, RCH, and LH Proposals

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Planning and Performing Site Development Work

§ 1924.101 Purpose.

This subpart establishes the basic Farmers Home Administration (FmHA) policies for planning and performing site development work. It also provides the procedures and guidelines for preparing site development plans consistent with Federal laws, regulations and Executive Orders.

§ 1924.102 General policy.

(a) *Rural development.* This subpart provides for the orderly location and development of building sites and related facilities in rural areas. It is designed to:

(1) Establish standards for building-site design which will encourage and lead to the development of economically stable communities, and the creation of attractive, healthy, and permanent living environments.

(2) Provide for the consideration of energy-efficient land use practices in planning development. Such planning will include an evaluation of proven methods that will reduce the energy needed to install site improvements and to maintain the site and improvement.

(3) Encourage improvements planned for the site to be the most cost-effective of the practicable alternatives. Encourage utilities and services utilized to be reliable, efficient and available at reasonable costs.

(4) Provide for a planning process that will consider impacts on the environment and existing development in order to formulate actions that both advance FmHA program goals and protect, enhance, and restore environmental quality.

(5) Assure that all planned development will be integrated into the existing transportation system to prevent traffic hazards and establish safe, convenient access to community services and facilities and provide for the efficient movement of individuals and goods.

(6) Assure that the proposed development by the applicant or developer will comply with the standards prescribed by this subpart.

(7) Clarify and expedite processing of submittals required by this subpart.

(b) *Development related costs*—(1) *Applicant.* The applicant is responsible for all costs associated with planning, technical services, and actual construction that have taken place before loan and/or grant closing. These costs may be included in the FmHA loan/grant as authorized by FmHA regulations.

(2) *Developer.* The developer is responsible for payment of all costs associated with development under this subpart.

(c) *Local regulations.* (1) The proposed development must comply with all ordinances, codes, applicable planning policies and regultions of the local, regional, or State planning agencies having jurisdiction.

(2) In addition to, or in the absence of local, regional or State regulations, the proposed development must meet the requirements of this subpart.

(3) In those areas where the FmHA State Director determines a local entity has site development design standards equal to or exceeding those of this subpart and has proven capability to enforce those standards, the submittal requirements will be abbreviated under this subpart. This will eliminate duplication of local reviews and associated costs and time delays.

(d) *Reciprocity of subdivision acceptance among Federal agencies.* (1) Subdivisions which the Department of Housing and Urban Development (HUD) or the Veterans Administration (VA) have determined accceptable will be processed under this section. HUD has two procedures for determining acceptance of subdivisions: Developer Certification and Local Area Certification (LAC). Upon receiving an inquiry for making a loan on a site in a subdivision which HUD or VA has determined acceptable:

(i) The County Supervisor or District Director will obtain from the applicant or developer a copy of the letter of acceptance or LAC issued by HUD or VA. (The letter of acceptance used by the agencies are: HUD form 92258 and VA form FL 26-603A. The LAC is Appendix B of HUD handbook 4135.1 Rev. 2.) If HUD or VA issued a conditional acceptance or certification, evidence must be included that those conditions have been satisfied. This information along with appropriate comments will be forwarded to the State Director.

(ii) The State Director or a member of the state staff will immediately contact the issuing agency to determine if the letter of acceptance or LAC is still in effect, to verify any conditional requirements have been met, and to the extent practical, discuss and address any local problems pertaining to that subdivision. In the case of a Planned Unit Development (PUD) review of the Home Owners Association (HOA), documents and covenants would be required. Responsibility for completion of subdivision improvements will remain with the agency issuing the approval.

(iii) When the State Director has determined that the subdivision is accepted by the issuing agency, the State Director will notify the County Supervisor or District Director that individual sites within that subdivision may be considered for financing. Each site must be considered individually and meet the conditions of this subpart applicable to scattered sites under § 1924.117, Subpart A of Part 1944, and Subpart B of Part 1806 (FmHA Instruction 426.6). Conditional commitments issued within such a subdivision will contain a list of the specific improvements that must be completed under the issuing agency's requirements.

(iv) If a HUD or VA accepted subdivision contains uncompleted road(s) or street(s) at the time FmHA is requested to provide financing to an applicant on an individual site, no financing will be approved until (A) the uncompleted streets or roads are completed or (B) FmHA is named as an obligee on a performance and payment bond, a completion bond, escrow agreement, irrovocable letter of credit, or similar assurance acceptable to the State Director that the roads and streets will be completed within one year from the date the financing is approved. If the roads within the subdivision are to be improved by the developer to a hard surface but at the time of an applicant's request for financing the roads are all weather roads which are satisfactory under § 1924.117(b) then a loan may be approved on the individual site without obtaining the bonding or other assurances required in (B) of the preceding sentence provided that for valuation purposes the site is valued based on the road surfaces then existing in the subdivision. Any bonds obtained under this subpart may name FmHA as an additional obligee on an existing bond in favor of HUD or VA if the bond is otherwise satisfactory. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the subdivision is located.

(2) Upon request the State Director will provide evidence to HUD or VA of FmHA subdivision acceptance.

§ 1924.103 Scope.

This subpart is to be used by FmHA personnel when the proposed development includes planning and performing site development work for Rural Housing (RH) loans for individuals. It also provides supplemental requirements for Rural Rental Housing (RRH) loans, Rural Cooperative Housing (RCH) loans, Farm Labor Housing (LH) loans and grants, and Rural Housing Site (RHS) loans. In addition, FmHA will consult with appropriate Federal, State, and local agencies, other organizations, and individuals to implement the provisions of this Subpart.

§ 1924.104 [Reserved]

§ 1924.105 Definitions.

For the purpose of this subpart, the following definitions apply:

(a) *All-weather surface street.* A street that can be used year-round with a minimum of maintenance, such as the use of a grader and minimum application of surface material.

(b) *Applicant.* Any person, partnership, limited partnership, trust, consumer cooperative, corporation, public body or association that has filed a preapplication, or in the case of FmHA programs that do not require a preapplication, an official application with FmHA in anticipation of receiving or utilizing FmHA financial assistance.

(c) *Community.* A community includes cities, towns, boroughs, villages and unincorporated places which have the characteristics of an incorporated area such as, but not limited to police and fire protection, central sewer and water facilities, schools, etc., and are easily identifiable as established concentrations of inhabited dwellings and private and public buildings.

(d) *Contiguous.* Sharing a boundary, adjoining or adjacent. A lot or subdivision is considered to be contiguous to other lots or subdivision if it is adjoining, touching or adjacent. Lots or building sites which are in close proximity, but separated by streets, roads, driveways, or other open spaces shall be considered contiguous.

(e) *Construction or development.* Construction or development is the act of building structures and installing site improvements. Development may also refer to a group of sites, a subdivision, rural rental housing, or some other group of dwelling units.

(f) *County Supervisor.* FmHA County Supervisor or his/her authorized representative, such as Assistant County Supervisor.

(g) *Developer.* Any person, partnership, public body or corporation which intends to develop a site(s) which will be acceptable for FmHA financing.

(h) *District Director.* FmHA District Director or his/her authorized representative, such as Assistant District Director.

(i) *Existing subdivision.* Any series of ten or more platted or recorded contiguous (developed or undeveloped) lots or building sites which were originally developed in accordance with standards other than those outlined in this subpart (See §1924.116).

(j) *Hard surface street.* A street with a portland cement concrete, asphaltic concrete, or bituminous wearing surface. Other hard surfaces may be used when

acceptable to the local public body and suitable for use with local climate, soil, gradient, and volume and character of traffic as determined by the State Director.

(k) *Local entity.* Any city, town, village, county, borough, or parish which has legal authority to develop and enforce site development design standards.

(l) *Minimum property standards.* The Department of Housing and Urban Development (HUD) Minimum Property Standards (MPS) in effect on September 1, 1982. The MPS, available in all FmHA offices, supplements this Subpart with technical requirements for minimum acceptable design, materials and construction methods.

(m) *Scattered site.* An individual single family dwelling site which may be located as an isolated site, or one of up to nine contiguous sites in open country or a site within an existing subdivision or community.

(n) *Subdivision.* A group of 10 or more contiguous (developed or undeveloped) lots, or building sites.

§ 1924.106 Planning development.

Planning is an evaluation of specific development for specific land uses. Planning must take into consideration topography, soils, climate, adjacent land use, environmental impacts, energy efficiency, local economy, aesthetic and cultural values, public and private services, housing and social conditions and a degree of flexibility to accommodate changing demands. Although all planning is the responsibility of the applicant or developer, close coordination must occur with local planning officials and with the respective FmHA office.

(a) *FmHA advice and assistance.* Applicants and developers shall be encouraged to seek the advice and assistance of FmHA before significant expenditures are made. Actions taken which are not in accordance with this subpart may jeopardize the possibility of receiving future financial (or other) assistance from FmHA. When receiving an inquiry about site development, the County Supervisor or District Director will:

(1) Discuss the requirements of FmHA with respect to compliance with local, regional, and State regulations; construction practices; energy efficiency; and, as applicable, those requirements with respect to nondiscrimination; market analysis; good house planning; and location.

(2) Provide Form FmHA 1940–20, "Request for Environmental Information," and explain the requirements for compliance with Subpart G of Part 1940 of this chapter, as well as the limitations on applicants during the application review process as prescribed in § 1940.309 of Subpart G of Part 1940 of this chapter.

(3) Provide information regarding publications, site planning, engineering data, environmental data, soils data, and other technical advice and assistance which are available through local, State, and Federal agencies, planning commissions, and private institutions and organizations.

(4) Provide the following asistance for proposals to develop a new subdivision or for approval of an existing subdivision:

(i) Explain to the applicant or developer the need to complete Form FmHA 1924–20, "Request for Subdivision Location and Feasibility Analysis," to obtain FmHA assistance. Also, provide and explain Form FmHA 400–4, "Assurance Agreement," Form FmHA 400–1, "Equal Opportunity Agreement," and HUD Form 935.2, "Affirmative Fair Housing Marketing Plans," and

(11) Provide this subpart and Exhibits A and B to the applicant or developer.

(iii) Explain to the applicant or developer it is their responsibility to comply with the Instate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.)

(5) For multiple family housing projects, provide Exhibit C to the applicant or developer.

(b) *Technical services.* Site development must be planned according to the general policy in §1924.102. The applicant or developer must use the services of planning and design professionals in order to achieve the desired result. Poorly drawn, incomplete, or uncoordinated drawings and specifications are not acceptable.

(1) Professional assistance is available from the Soil Conservation Service (SCS) and the Cooperative Extension Service.

(2) An applicant or developer proposing a new subdivision, completing an existing subdivision, or multiple family housing project which requires architectural services under § 1924.13(a) of Subpart A of this part must contract for the technical services of a site planner, architect, landscape architect, or engineer, as appropriate to provide complete planning, drawings, and specifications. Such services may be provided by the applicant's or developer's "in house" staff subject to FmHA concurrence. Persons performing these services must be registered or otherwise certified as qualified professionals in the State in which the subdivision is to be developed. For payments for technical services, follow § 1924.102(b) of this subpart.

(3) For developments not specifically required to have technical services under paragraph (b)(2) of this section, such services may be required by the State Director when construction of streets or installation of utilities are involved.

(4) At completion of all construction or completion of a phase or phases of the total project, the person or persons providing technical services under this section must notify the FmHA County or District Office in writing that all work has been completed in substantial conformance with the approved plans and specifications.

(c) *Drawings, specifications, contract documents, and other documentations.* Adequate drawings and specifications must be provided by the applicant or developer to fully describe the work. Required drawings and specifications are described in Exhibits A and C of this subpart and supplemented by Exhibit B of Subpart A of this part. Contract documents must be prepared under § 1924.6 or, in the case of more complex construction, § 1924.13 of Subpart A of this part.

(1) Exhibit A of this subpart should be used as a guide by the applicant or developer in preparing a proposal, and in providing supporting documents for a site development of 10 or more sites.

(2) Exhibit A will also be used by FmHA County Supervisors, District Directors and State Directors in checking subdivision submissions.

(3) Other documents listed as additional supplemental information may be included in the proposals to illustrate and further clarify difficult areas of development and to help reduce possible misunderstandings.

(4) Exhibit C of this subpart should be used as a guide by the applicant or developer in preparing a proposal and supporting documents for multiple family housing projects which require architectural services.

§ 1924.107 Location.

Site selection is the most important phase of development. It is imperative that the applicant or developer conduct preliminary site investigations before purchasing the land. These investigations should be conducted with an understanding of FmHA policies regarding site selection. Stated in this subpart and in Subpart G of Part 1940 of this chapter are several key site selection criteria. (See § 1940.304 for a summary of pertinent locational requirements.) For example, FmHA will not fund any proposal which will

convert floodplains, wetlands, important farmlands, prime forestlands or prime rangelands unless there is no practicable alternative to such conversion. Developments adversely affecting properties listed or eligible for listing on the National Register of Historic Places are to be avoided. No development will be approved within a Coastal Barrier Resource System and development on those portions of barrier islands not within the System is to be avoided. In order to be eligible for FmHA participation:

(a) The proposal must be coordinated with the planning agency having jurisdiction.

(b) The site must be located in an eligible area as defined in the program regulations under which the development is being funded.

(c) The proposal must comply with the applicable environmental laws, Executive Orders, and Subpart G of Part 1940 of this Chapter.

(d) The proposal must comply with the following, when the applicant or developer intends to develop a subdivision:

(1) The subdivision must be located within, or as an integral part of, an eligible rural community and have access to all essential services available to the general population within the community. The State Director or designee will identify and list those eligible rural communities in a State supplement. Communities that have problems with the water supply or waste-water disposal identified by the Environmental Protection Agency (EPA) will not be listed. The list will be posted in a conspicuous place in the County Office. Upon request the list will be reviewed and updated and at least annually reviewed as follows:

(i) The County Supervisor, in consultation with the District Director, should review areas within their jurisdiction annually and report their findings to the State Director. Reports should be completed before March 31, so that, the State Director's review and any changes could be made prior to the new fiscal year.

(ii) When it is anticipated that a community will be removed from the list, all developers and other interested parties should be notified. The State Director should publish prenotices of the review actions in local newspapers for the information of all interested parties approximately 180 days prior to a final determination.

(iii) During the period of the review all conditional commitments and subdivision approvals should be contingent upon the decision concerning continued subdivision development in the community.

(2) The subdjvision must serve residents of communities within eligible rural areas as indentified by the State Director. Subdivisions proposed near the periphery of nonrural areas will not be approved.

(3) The subdivision location must provide a desirable, safe, functional, and attractive living environment for the residents and be convenient to services such as shopping, schools, churches, employment opportunities, recreation, and communications.

(4) The subdivision must be located and planned to ensure long-term market demand and acceptability.

(e) A scattered site must be planned and developed under this subpart, Subpart A of Part 1944, and Subpart G of Part 1940, with particular emphasis on location as specified in § 1940.304. Random development of sites in open country is not an acceptable alternative to orderly growth within established communities. A scattered site must comply with all of the following:

(1) The site:

(i) May be a separate lot or one of up to nine contiguous lots which may be developed or undeveloped, which is not contiguous to a subdivision. Strategic placement of a lot(s) such as across the street, across an intersection, or separated only by minor open spaces from other lots is not to be used to circumvent this subpart, or

(ii) May be one of up to nine continguous or one of several noncontiguous remaining lots within an existing subdivision where 90 percent or more of all the lots have existing single family dwellings. In this instance, an existing subdivision should generally conform with the requirements for subdivisions in §1924.115 of this subpart; however, complete conformance is not mandatory. Building site(s) within subdivisions previously rejected by FmHA may be considered for financial assistance provided the conditions for which the subdivision was rejected have been removed or the conditions no longer apply for subdivision eligibility, or

(iii) May be a site located within a subdivision which has HUD or VA acceptance that meets the requirements of § 1924.102(d) of this subpart.

(2) The site must be located to provide a desirable, safe, functional, convenient, and attractive living environment for the residents.

(3) The site must be located to insure long-term market demand and acceptability.

§ 1924.108 Utilities.

Adequate, economic, safe, energy efficient, dependable utilities with sufficient easements for installation and maintenance are required.

(a) *Water and wastewater disposal systems.* (1) All developed sites shall be served by centrally owned and operated water and wastewater disposal systems unless such systems are determined by FmHA to be economically or environmentally unfeasible and the alternate solution developed and documented by the applicant's or developer's technical consultant is determined economically and environmentally acceptable and consistent with the intent of this subpart.

(2) All central systems, whether they are public, community or private, shall meet the design requirements of the State Department of Health or other comparable reviewing and regulatory authority. The regulatory authority will verify in writing that the water and wastewater systems comply with, or have an approved plan to bring the systems into compliance with the current provisions of the Safe Drinking Water Act and the Clean Water Act, respectively.

(3) Developments which are not presently served by a central system, but which are scheduled for tie-in to the central system within 2 years should have all lines installed during the initial construction. Such developments must have an approved interim water supply or wastewater disposal system installed capable of satisfactory service until the scheduled tie-in occurs.

(4) In addition to written assurance of compliance with State and local requirements, there must be assurance of continuous service at reasonable rates for central water and wastewater disposal systems. Public ownership is preferred whenever possible. In cases where interim facilities are installed pending extension or construction or permanent public services, the developer must assume responsibility for the operation of the interim facility or establish an acceptable entity for its operation. If a system is not or will not be publicly owned and operated it must comply with one of the following:

(i) Be an organization that meets the ownership and operating requirements for a water or wastewater disposal system that FmHA could finance under Subpart A of Part 1942 of this chapter or be dedicated to and accepted by such an organization.

(ii) Be an organization or individual that meets other acceptable methods of ownership and operation as outlined in

HUD Handbook 4075.12, "Ownership and Organization of Central Water and Sewerage Systems." FmHA should be assured that it has the right, in its sole discretion, to enforce the obligation of the operator of the water and/or sewerage systems to provide satisfactory continuous service at reasonable rates. The advice and assistance of the Regional Attorney should be obtained in preparing any necessary agreement with the organization or individual supplying water and/or sewerage systems.

(iii) Be adequately controlled as to rates and services by a public body (Unit of Government or public services commission).

(5) When central systems are not available, the approving official will thoroughly evaluate the proposed individual systems for economic and environmental feasibility. Information and guidance for site evaluation and design of individual water and wastewater systems is contained in EPA publications "Manual of Individual Water Supply Systems", and "Design Manual, Onsite Wastewater Treatment and Disposal Systems", respectively. In developments of more than 25 dwelling units, National Office concurrence is required before the State Director may approve the use of individual systems. A request for concurrence must contain written recommendations from the State Director and the technical staff in addition to the full documentation listed in paragraph (a) of this section. The State Director's evaluation must consider at least the following items:

(i) Statements from local health and regulatory authorities indicating specifically why connection to or installation of a central system is not feasible at this location.

(ii) A thorough State Office technical staff review of the proposal to use individual systems to determine whether central systems might be feasible considering the market for homes over a two-or three-year period at the proposed location. Generally, more lots of higher values will result when central systems are provided. This review will include an economic feasibility analysis which considers the differences in number of lots, value of lots, initial construction costs, and operating costs of central systems versus individual systems. The analysis must take into account the possible uses of all land under the developer's control in the immediate area. Where comparable costs are found, central systems should be required and appraisal allowances made to reflect the appropriate value of lots so served.

(iii) Information prepared by the local, county or State health authority and the County Supervisor, with written opinions of the Technical Staff of the State Office indicating whether individual systems are feasible on all the building sites in question. Supporting factual data should include evidence that clearly shows that individual systems will perform satisfactorily for a reasonable period of time with reasonable maintenance cost. Reasonable time and reasonable cost can be equated with the cost and expected life of a central system if one were available. An individual wastewater disposal system that requires cleaning or repairs every few months cannot be considered as giving satisfactory service or an individual water system that requires extensive treatment equipment to provide an acceptable safe, potable water supply cannot be considered as within reasonable cost. All documentation, calculations and written opinions substantiating the decision shall remain in the subdivision file.

(iv) Supporting information for the proposed individual water systems covering the following points:

(A) Documentation of how individual water supplies can be developed with satisfactory water production at a reasonable cost. In areas where difficulty is anticipated in developing an acceptable water supply and FmHA is providing financial assistance for site development, contingency funds must be included in the original loan estimate. Contingency funds may be necessary for items such as drilling to a greater depth than is common to other wells in the area, providing additional storage to supplement a limited source of water, or providing treatment to soften or correct some other quality defect. It is a good practice to confirm that an acceptable water supply is available early in the site development process. In extreme cases, the water supply should be developed before any other construction is started.

(B) Documentation that the quality of the supply must meet the chemical, physical and bacteriological standards of the health authority having jurisdiction. The maximum containment levels of U.S. EPA shall apply. Individual water systems must be tested for quantity, bacteriological quality and, in certain areas where problems may be anticipated, chemical quality. This last test may be a partial chemical test limited to analysis for the defects common to the area such as iron and manganese, hardness, nitrates, pH, turbidity, color, or other undesirable elements. Polluted or contaminated water supplies are unacceptable.

(v) Supporting information for individual wastewater disposal systems with subsurface discharge as reported by a soil scientist, geologist, soils engineer, or other person recognized by the State regulatory authority. This data should include the following:

(A) Assurance of nonpollution of ground water. State Health authorities must be consulted to ensure that installation of individual wastewater systems will not pollute ground water sources or create other health hazards.

(B) Description of exploratory pit observations.

(C) Determination of soil types and description. The assistance of the SCS should be obtained for soil type determination and a copy of their recommendations included in the documentation.

(D) Description of ground water elevations showing seasonal variations.

(E) Records of percolation tests. FmHA Minimum Property Standards 4900.1, Apendix D test procedure may be used as a guide in obtaining acceptable percolation tests.

(F) Confirmation of space allowances. An accurate drawing to indicate that there is adequate space available on the site to satisfactorily locate the individual water and/or wastewater disposal systems, likewise, documented assurance of compliance with all local requirements. Structures served by wasterwater disposal systems with subsurface discharge require larger sites than those structures served by another type system.

(vi) Supporting information for individual wastewater disposal systems with surface discharge covering the following points:

(A) Effluent standards issued by the appropriate regulatory agency that controls the discharge of the proposed individual systems.

(B) Assurance from the health authority having jurisdiction that the individual systems being proposed will not pollute the environment in excess of the limitation described in paragraph (a)(5)(vi)(A) of this section.

(C) Program of maintenance, parts and service available to the system-owner for upkeep of the system.

(b) *Electricity.* The power supplier will be consulted by the applicant or developer to assure that there is adequate service available to meet the needs of the proposed development.

(1) Within subdivisions, lines must be placed underground where required by local regulatory authorities and, in other cases, where economically feasible.

(2) Where lines are installed above ground, they should be located in rear lot easements, wherever practicable. In all cases, the poles, guy wires, braces, transformers, etc., will be located so as not to unnecessarily detract from the appearance of the property.

(c) *Gas Service.* Gas distribution facilities if provided will be installed according to local requirements where adequate and dependable gas service is available.

(d) *Telephone service.* Telephone service will be available at all dwelling units and other structures as applicable. Facilities will be located in accordance with paragraphs (b)(1) and (b)(2) of this section.

(e) *Outdoor lighting.* Outdoor lighting will be provided when required by local authorities or when necessary to provide adequate safety, and provisions have been made to assure permanent operation and maintenance of the facilities.

(f) *Other utilities.* Other utilities, if available, will be installed according to local requirements.

§ 1924.109 Grading and drainage.

(a) Soil and geologic conditions must be suitable for the type of construction proposed. In questionable or unsurveyed areas, the applicant or developer will provide an engineering report with supporting data sufficient to identify all pertinent subsurface conditions which could adversely affect the structure and show proposed solutions.

(b) The applicant or developer must seek the advice of SCS regarding identification of soils and its characteristics that may cause problems in grading and drainage. Where soil and drainage difficulties are identified, SCS recommendations will be considered during preparation of the development plan.

(c) Grading must conform to all State and local regulations and, where applicable, a grading certificate shall be obtained and established procedures followed.

(d) Site grading will promote drainage of surface water away from buildings and foundations, minimize earth settlement and erosion, and assure that drainage from adjacent properties onto the site or from the site to adjacent properties does not create a health hazard or other undesirable conditions.

(e) Sites requiring extensive earthwork, cuts and fills of 4 feet or more, shall be designed by a registered engineer. Where topography requires fills or extensive earthwork that must support structures and building foundations, these must be controlled fills designed, supervised and tested by a qualified soils engineer.

(f) All slopes must be protected from erosion by planting or other means. Slopes may require temporary cover if exposed for long periods during construction.

(g) The design of storm water systems must consider convenience and property protection both at the individual site level and the drainage basin level. Storm water systems should be compatible with the natural features of the site.

(h) In areas with inadequate natural and/or manmade drainage systems, permanent and/or temporary storm water storage shall be an integral part of the overall development plan. Design of these facilities shall consider safety, appearance and economical maintenance operations.

§ 1924.110 Performing development.

All development will be arranged and completed by the applicant or developer according to local, State or Federal regulations including applicable health and safety standards pertaining to building construction or development, and requirements of this subpart.

(a) The FmHA will not become a party to any construction or development contract. The applicant or developer will contract only with competent contractors. Contractors will provide the required bonding and insurance acceptable to FmHA and the applicant or developer under § 1924.6 of Subpart A of this part.

(b) The work will be performed in accordance with drawings and specifications approved by FmHA.

(c) Written assurance of completion from the responsible public authority will be required when local, city, county, State or other public authority codes, regulations and ordinances require inspections prior to final acceptance. Written assurance of completion and notification of completion from the person(s) providing technical services under § 1924.106(c) of this subpart is required prior to final acceptance by the FmHA.

§§ 1924.111–1924.113 [Reserved]

§ 1924.114 Multiple family housing.

Multiple housing developments will be planned and constructed under the requirements of this subpart, §§ 1924.101–1924.114, Subpart A of this part, and the requirements of the applicable program regulations. The requirements, of § 1924.115(a) of this subpart also apply to multiple housing developments.

§ 1924.115 Subdivisions.

Subdivisions must be planned and developed under this subpart. The development of housing sites must also comply with the following:

(a) *Streets.* (1) Streets must conform to master street plans, design standards, and construction specifications of the local entity or State and the requirements of this subpart. Developments with more than 25 dwelling units must have two accesses available, unless after considering the safety and convenience aspects of the proposal an exception is granted by the State Director.

(2) Streets must be dedicated to and accepted by a public body which shall be responsible for continuous maintenance, except in multiple family housing projects where streets within the development may not be able to be publicly owned and maintained. Variations of this requirement shall not be authorized by the State Director without prior approval of the National Office.

(3) Hard-surfaced streets are mandatory. However, the State Director may make an exception to this requirement when *all* of the following conditions exist:

(i) They are not required by local ordinance and codes.

(ii) The property or subdivision is not adjacent to streets that are or soon will be hard-surfaced.

(iii) The street has an all-weather surface approved by and maintained by a public body.

(iv) The local authority to whom the street is to be dedicated does not have available the required equipment necessary for maintenance and will not accept dedication and be responsible for maintenance of hard-surfaced streets notwithstanding the fact that the hard surfacing would be provided initially by the applicant or developer in accordance with standard local requirements and practices.

(v) Other lending institutions and agencies active in the area will make housing loans or insure mortgages in the subdivision when it is provided only with all-weather streets.

(4) Any deviation from the requirements indicated in paragraph (a)(3) of this section will require an exception from the National Office. The request to the National Office must include documentation as to how many of the requirements of paragraph (a)(3) of this section are met and the following additional information:

(i) Map indicating location of subdivision or project site in relation to other subdivisions and the community

with types of surfacing present on the access streets or roads to the proposed subdivision or project.

(ii) Complete street layout plan.

(iii) Street cross-sections with other necessary details.

(iv) Topographic maps.

(v) Drainage plans.

(vi) All specifications for proposed street construction.

(vii) Other pertinent information.

(5) Streets must have curbs or curbs and gutters for pavement edging to prevent ravelling of the wearing surface and shifting of the pavement base. The State Director may grant an exception to this requirement if adequate shoulders are provided.

(6) Preferably, dwelling units should be occupied after street hard surfacing is completed; however, occupancy may occur after the pavement base is in place and properly cured. In cases of delays due to unsuitable weather conditions or when hard surfacing is not done by the developer but by the local public body, an all-weather street acceptable to the local public body shall be provided prior to occupancy.

(i) When the developer is responsible for providing street surfacing, a performance and payment bond, escrow agreement, irrevocable letter of credit, or similar assurance acceptable to the State Director must be provided by the developer to assure that the required street work will be completed within 1 year from the date dwelling construction is started. This assurance will remain in effect until the streets are accepted by the entity responsible for continuous maintenance. The State Director shall establish a policy for handling these matters according to local regulatory practices or requirements. Any such assurance will specifically name the United States of America acting through FmHA as an obligee in order to give FmHA the ability to enforce the assurance or collection of the bond if the streets are not properly surfaced.

(ii) Where local public bodies provide final surfacing, the subgrade and base shall be prepared according to the specifications of the local body. Written assurance must be obtained from the public body that suitable hard surface will be provided within a reasonable period usually not more than one year.

(b) *Lot layout.* (1) All lots shall be surveyed and platted. Permanent markets shall be placed at all lot corners.

(2) Lots shall meet all requirements of State and local entities and the FmHA.

(3) Lot arrangement should provide for the most effective use of building sites. Street lengths and utility runs should be minimized.

(4) Lot layout must not preclude the orientation of dwelling units for solar access.

(5) Unacceptable lots. Any review of the proposed development will include all the proposed lots. Those lots determined unacceptable because of unsuitable soils, exposure to noise, flooding, etc., shall be combined with acceptable lots, redesigned to eliminate the unacceptable conditions through the use of barriers or building orientation, or made a part of a common area to be dedicated to and maintained by a public body or homeowners association in order to prevent development financed elsewhere from adversely affecting the housing financed by FmHA.

(c) *Covenants, conditions and restrictions.* Covenants, conditions and restrictions (CC&R's) shall be developed to preserve the character, value and amenities of the residential community and to avoid or mitigate potential environmental impacts. CC&R's are required in addition to and should be supportive of public regulations such as zoning or other land use controls.

(1) CC&R's shall be recorded in the public land records and specifically referenced in each deed.

(2) It is the intent that through the CC&R's the:

(i) Developers will be assured the purchasers will use the land in conformance with the planned objectives for the community, and

(ii) Purchasers are assured the developers will proceed to use the land as planned and that other purchasers will use and maintain the land as planned to prevent changes in the character of the neighborhood that would adversely impact values or create a nuisance.

(3) The CC&R's recommended in HUD Data Sheet 40 should be considered as a starting point for developing CC&R's for a specific development. Due to the unique quality and character of each development the CC&R's should be submitted to FmHA for comment prior to recording.

(4) In order to permit the use of dwellings with passive or active solar systems, consideration should be given to including a covenant to protect the solar rights of the individual property owners.

§ 1924.116 Existing subdivisions.

Existing subdivisions must comply with § 1924.107 of this subpart and all other requirements in this section to be acceptable for FmHA financing except as provided in § 1924.102 for existing subdivisions which have been and still are accepted by HUD or VA. Subject to § 1944.10(g) of Subpart A of Part 1944 of this chapter, those subdivisions approved under prior FmHA regulations that do not meet the general policy of § 1924.102 of this subpart and the requirements of this section are acceptable for further development only for a period of two years after the effective date of this regulation. All subdivision plats recorded or subdivisions developed after the effective date of this regulation must be processed under § 1924.115 of this subpart unless an exception is granted by the State Director on the basis that the subdivision was not previously submitted for review for reasons other than circumventing the requirements of this subpart. Those granted exceptions will meet the requirements of development in § 1924.115 of this subpart with only the following modifications:

(a) *Utilities.* (1) Written verification must be obtained from the appropriate regulatory agency that any existing central water or waste-water disposal system is operating in compliance with all State and local regulations and has sufficient capacity to serve the proposed development.

(2) If individual water or wastewater disposal systems have been in use and it is not feasible to convert to central systems, determine the following and process according to § 1924.108(a)(5) of this subpart.

(i) The residents of the subdivision will not be forced to install central systems within a year or two.

(ii) Verify that the existing individual systems are operable and giving satisfactory service at a reasonable maintenance cost. The local regulatory authority should assist in making this determination.

(b) *Streets.* If the streets within the existing neighborhood are soon to be paved and the local authorities will assess such costs to the homeowners, the applicant or developer shall inform FmHA and prospective purchasers of these intentions. Sites must be served by streets as provided in § 1924.115(a) of this subpart.

(c) *Lot layout.* Lots must continue to be developed according to the size and design of the existing development except where the prior design has proven uneconomical, unfeasible or unmarketable.

(d) *Convenants, conditions and restrictions.* Existing CC&R's must be carefully reviewed to ensure they generally conform to those required for subdivisions. It may be necessary to request assistance from the Office of General Counsel to complete the review Any unacceptable language within the

CC&R's must be modified as requested by FmHA before sites in the subdivision are acceptable.

§ 1924.117 Scattered site.

Scattered sites will be evaluated by the loan approval official to determine that the location and market is acceptable. A scattered site must be planned and developed under this subpart, Subpart A of Part 1944, Subpart G of Part 1940, Subpart B of Part 1806 (FmHA Instruction 426.2) and State and local regulations.

(a) *Utilities.* All essential utilities will be provided. If central water or wastewater disposal services are not available, individual systems must be feasible and supporting factual data should include evidence that clearly shows the system(s) will perform satisfactorily for a reasonable period of time at a reasonable maintenance cost (see § 1924.108, paragraphs (a)(5)(iv), (a)(5)(v), and (a)(5)(vi) for suggested evidence that should be required). All sites within subdivisions requiring onsite water or wastewater disposal systems must pass required tests. Also, there must be no evidence of well or wastewater treatment system failures on other sites within the subdivision which may adversely affect the subject site.

(b) *Streets or roads.* All scattered sites shall be contiguous to and have direct access from a(n):

(1) Hard surfaced or all-weather street or road which has been dedicated to and accepted by a public body (an exception to public ownership may be granted by the National Office) which is responsible for continuous maintenance, or

(2) Extended driveway if:

(i) The driveway has an all-weather surface,

(ii) The driveway does not potentially serve more than two individual dwellings, and

(iii) The property includes title to or an easement to the driveway and it is included in the security for the loan. An extended driveway will normally not exceed three hundred (300) feet in length or be used to circumvent the development of publicly-owned streets or roads.

§ 1924.118 Modification of requirements and recommendations in this subpart.

Higher standards than outlined in this subpart may be required. The site development requirements of this subpart have been adopted as minimum standards. State or local authorities or the FmHA, however, may find it necessary to require standards above those in this subpart when the public health, safety or welfare would be better served by more stringent standards. Some examples of considerations for justification for higher standards are:

(a) The site cannot be served adequately and economically with such public and central facilities and services as are normally required. For example, if the local minimum lot size of 10,000 square feet does not provide an adequate absorption field area for individual subsurface wastewater disposal systems according to professional analysis of percolation tests and soil types on a particular site, the State Director may raise the minimum requirement to that which will be safe and sanitary.

(b) Land proposed for building sites may not be safely used because of danger from flood or other inundation or as a result of natural conditions which are a menace to health, safety or public welfare. For example, where the local public body does not, in the opinion of FmHA, have adequate drainage requirements, the State Director may require more rigid specific drainage standards than requested locally or than provided in this subpart. Another example would be that in certain cases the street drainage system must be tied in with irrigation or storm drainage systems to provide storm drainage in a controlled manner.

§ 1924.119 Subdivision reviews.

The procedure for the review of subdivisions will be followed to determine the acceptability of proposed or existing subdivisions for the location of FmHA financed housing. Incomplete, inaccurate and unresponsive submittals will delay the process and, in most cases, will cause the submittals to be returned without an agency determination. The in-office processing times in this section are simply goals established for timely processing of properly prepared submissions, and in no way are intended to discourage proper review of complex submissions. Justifiable requests for waivers will be forwarded to the approving official as soon as possible after their need is identified and the documentation can be assembled.

(a) *Location and feasibility submission.* When Form FmHA 1924–20 with attachments is received from an applicant or developer:

(1) The County Supervisor will:

(i) Handle inquiries and provide basic information about subdivision processing.

(ii) Immediately forward any submission to the District Director for review and advise the applicant or developer of the limitations on his/her actions that apply during the application review process, pursuant to § 1940.309(e) of Subpart G of Part 1940 of this chapter, and that further processing will be handled by the District Office. The County Supervisor must include comments and recommendations in the remarks section of Form FmHA 1924–20 or on attached separate sheets.

(2) Upon receiving a location and feasibility submission, the District Director must:

(i) Discuss with the applicant or developer Form FmHA 1924–20 and required documents to determine the completeness of the submission and the possible need for further information.

(ii) Accompany the applicant or developer to the proposed site to review the feasibility of the location and to become familiar with the natural and fixed features influencing the site.

(iii) If the proposal is within his/her approval authority under § 1924.121 of this subpart, make a comprehensive study to assure compliance with all local, regional and State regulations, codes, ordinances, plans for future development and compliance with this subpart. It may be necessary to contact the State Office Architect, Engineer or Environmental Coordinator during this review.

(iv) When possible, the review should be completed within 30 days and a written analysis including recommendations or conditions provided the applicant or developer with a copy mailed to the County Supervisor.

(v) If beyond his/her approval authority, forward to the State Director with written comments and recommendations as soon as possible.

(3) When the State Director's review of the location and feasibility submission is required, the State Director will:

(i) Make a comprehensive study to assure compliance with all local, regional and State regulations, codes, ordinances, plans for future development and compliance with this subpart. In making this study, the State Director will use the services of State Office personnel including the Architect, Engineer, and the State Environmental Coordinator as well as ensure that the personnel required by Subpart G of Part 1940 of this chapter undertake and complete the proper environmental review for the submittal.

(ii) Provide a written analysis and guidance for further processing to the District Director with a copy to the County Supervisor.

(iii) Whenever possible, complete this review within 30 days.

(4) If the submission requires National Office review, the applicant or developer should be informed. In most cases, the State Director can expect a response within 45 days of the date of a routine request for review.

(b) *Preliminary submission.* When it has been determined by FmHA that the project is feasible and the location conforms with the intent of the funding program the applicant or developer will submit the required additional information as pursuant to Exhibit A II of this Subpart.

(1) Upon receiving a preliminary submission, the District Director will:

(i) Review the comments concerning this development which were made at the time of location and feasibility analysis and verify conformance with any conditions imposed during the initial review.

(ii) Review the drawings and specifications item by item with the applicant or developer to avoid any misunderstandings as to intent, extent, kind and quality of work to be performed and materials to be used. The District Director may find it necessary to contact the State Office technical staff in order to complete this review.

(iii) Offer suggestions to the applicant or developer, when appropriate, as to how the design, drawings and specifications may be altered to improve the facilities and better serve the needs of the public. For revisions that require technical determinations, the applicant or builder-developer may be requested to obtain additional technical assistance.

(iv) Act as outlined in paragraphs (a)(2)(iii), (a)(2)(iv), and (a)(2)(v) of this section.

(2) When the State Director's review of the preliminary submission is required, the State Director must consider all recommendations made on the location and feasibility submission and act as outlined in paragraphs (a)(3)(i) and (a)(3)(ii) of this section.

(c) *Final submission.* (1) Upon receiving a final submission, the District Director will:

(i) Review the submission to determine the completeness of the drawings and specifications.

(ii) Determine that approvals have been received for local, regional and State authorities having jurisdiction.

(iii) Determine compliance with FmHA regulations, and

(iv) Act as outlined in paragraphs (a)(2)(iii), (a)(2)(iv), and (a)(2)(v) of this section.

(2) After approval, one copy of the final submission and evaluation will be forwarded to the County Supervisor. One copy should be placed in the District file. All additional copies, as appropriate, will be returned to the applicant or developer after the final review and a determination has been reached.

(3) When the State Director's review of the final submission is required, the State Director must consider all previous recommendations and act as outlined in paragraphs (a)(3)(i) and (a)(3)(ii) of this section.

(d) *Notification letters for subdivision review.* (1) The District Director will notify the applicant or developer in writting concerning the status of the proposal at the completion of each of the processing review stages. This notification will consist of either:

(i) A letter of acceptance suggesting that the applicant or developer continue with preparation of the materials for further submission to FmHA (See Guide Letter) available in any FmHA office, or

(ii) A letter explaining why the proposal is unacceptable. Possible reasons for rejecting the proposal may include, but are not limited to a proposed site location that would result in:

(A) The unnecessary conversion of important farmland, prime forestlands, prime rangelands, floodplains, or wetlands,

(B) The destruction of a property listed or eligible for listing on the National Register of Historic Places, and

(C) The isolation of housing and its residents from necessary services and utilities (See Guide Letter), or

(iii) Letter of approval (See Guide Letter).

(2) Before proceeding to the next submittal level, the applicant or developer must modify the proposal in accordance with FmHA recommendations, or provide acceptable alternatives.

§ 1924.120 Local entity designation.

To eliminate duplication of review and to encourage local entities to adopt and enforce satisfactory minimum standards for subdivision development, FmHA will practice an abbreviated subdivision review procedure for any submittal from within the jurisdiction of a local entity designated by the State Director under this paragraph.

(a) *Determination.* A local entity with site development design standards equal to or exceeding those in this subpart and with the proven capability to enforce those standards shall be considered for designation. The State Director's determination for possible designation will be based on the successful completion of one or more developments under the jurisdiction of the local entity. The State Director will notify a local entity of a favorable determination and indicate such on the list of communities identified in § 1924.107(d)(1) of this supbart. This designation will be withdrawn immediately upon the local entity taking action to reduce its design standards or failing to enforce the standards. It should be clearly understood that FmHA reserves the right to make all decisions with regard to the eligibility of a proposed development for financing.

(b) *Subdivision reviews.* All site developments will be processed as outlined in § 1924.119(a) of this subpart. This initial phase contains many items that cannot be delegated by FmHA. When FmHA determines the Subdivision Location and Feasibility Analysis submission is acceptable and a National Office waiver is not required, the applicant or developer will not be required to submit any additional documents for FmHA review until the development is complete. Upon completion of all development work, the local entity will provide FmHA written confirmation that the development was completed in accordance with approved drawings and specifications and is in compliance with their site design standards. If a local entity approved subdivision contains uncompleted road(s) or street(s) bonding or escrow funds must be provided in accordance with § 1924.115(a)(6).

(c) *HUD local areas certification.* Subdivison developments proposed within an area certified by HUD will be evaluated as set forth in § 1924.102(d) of this subpart.

§ 1924.121 Delegation and redelegation of authority.

The State Director is responsible for implementing the authorities in this subpart. The table following paragraph (c) of this section summarizes the building site review and approval authority ofthe County Office, District Office, State Office, and the National Office. The State Director may redelegate review and approval authority to appropriate FmHA State Office employees under the following conditions:

(a) The employees have had sufficient training and have demonstrated the capability to perform the required actions, and

(b) A procedure is established to ensure the necessary input from the State Office Engineer/Architect/Environmental Coordinator, and

(c) Any redelegation must be in writing in accordance with FmHA Instruction 2006-F (available in any FmHA office).

Number of building sites [1]	Approval Authority			
	County Supervisor	District Director	State Director	National Office
Contiguous scattered sites: [2]				
1-3	Yes.			
4-9	Yes—if located within a community identified by § 1924.107(d)(1) and the streets and utilities are in place. Otherwise No, forward to District Director with recommendations.	No—Forward to State Director with recommendations.	Yes—Additional assistance may be requested.	Provide special assistance.
Subdivisions:				
10-25	No—Forward to District Director with recommendations.	Yes—If central water and sewer.[3] If individual water and/or wastewater systems are proposed, or unusual conditions exist forward to State Director.	Yes—Additional assistance may be requested.	Provide special assistance.
More than 25	No—Forward to District Director with recommendations.	No—Forward to State Director with recommendations.	Yes—Unless National Office concurrence or waiver is required.	Yes—All proposals where authority has not been delegated to State Director or special assistance is requested.

[1] It is the policy of the agency to encourage new FmHA financed development to take place within or in close association with existing communities and to have access to all services available within the community.

[2] Strategic placement of lots, groupings and subdivisions will not be used to impair or circumvent these approval authorities. The approval authority for a phased project shall be determined by the size of the total proposal. Likewise, when only a portion of the site owned by the applicant is to be used, the approval authority shall be based on the total development capacity of the site.

[3] The District Director is responsible for obtaining the necessary technical assistance from the State Office Architect/Engineer in processing the proposal.

§ 1924.122 Exception authority.

The Administrator may in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and recommendation of the appropriate program Assistant Administrator. Requests for exceptions must be in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, proposed alternative course of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1924.123 State supplements and exhibits.

State Directors will obtain and issue National Office clearance for all State supplements and exhibits in accordance with FmHA Instruction 2006-B (available in any FmHA office).

(a) *State supplements.* State Directors may supplement this subpart to meet State and local laws and regulations and to provide for orderly processing of submittals.

(b) *State exhibits.* State Directors may develop exhibits for use by applicants or developers if the exhibits to this subpart are not adequate for use in the State. Those exhibits may be developed to further explain the items needed within the various submittals; organization of those items; and coordination of this subpart with the requirements of the FmHA program(s) providing the financial assistance.

§ 1924.124 Exhibits.

State Directors may requisition additional copies of the exhibits to this subpart from the Finance Office for use by FmHA offices in assisting applicants and developers with site development.

§§ 1924.125-1924.150 [Reserved]

Exhibit A—Checklist of Visual Exhibits and Documentation for Subdivisions

This Exhibit lists visual exhibits and documentation necessary for FmHA to properly evaluate proposed development. Intermediate consultation by the applicant or developer with the FmHA County, District or State Offices should be as frequent as necessary to reduce chances of misunderstandings and limit the amount of nonproductive time and expense for all parties concerned.

I. Location and Feasibility Exhibits

The applicant or developer will submit the following information to the District Director to determine feasibility of the project and general conformance with FmHA policy:

A. *Form 1924-20, "Request for Subdivision Location and Feasibility Review."* The applicant or developer should fully complete the form and attach any information in addition to that listed herein that is essential in creating a clear understanding of the proposed development. This form is available at any FmHA office.

B. *Form 1940-20, "Request for Environmental Information."* Protions of the form must be completed when the submission contains more than 4 dwelling units and the entire form must be completed when the submission contains more than 25 dwelling units. The form and guidance concerning assembly of the information is available at any FmHA office.

C. *Location Map.* A general site location map of the area indicating the adjacent land uses and zoning, the present and future access roads to the site as well as the proximity to shopping, schools, churches, and major transportation facilities with note of traffic volumes. If a satisfactory map of the locality is not available, a clear and preferably scaled rough sketch map that provides the required information will be sufficient.

D. *Property Survey Map.* A survey (where 1-inch represents no more than 100-feet) of the project site showing the boundaries as well as all existing known features specifically including utilities, easements, access roads, floodplains, drainageways, rock outcroppings and wooded areas or specimen trees. If a current survey does not exist, the most accurate document which is available will be submitted.

E. *Soils Map and Report.* A complete soils map and report, including "site specific" interpretations and recommendations, from the local or county representative of the U.S. Department of Agriculture, Soil Conservation Service (SCS) Office will be included with the location and feasibility submission. A determination of whether or not any lands described in USDA Regulation No. 9500-3 are impacted by the proposed development should also be included. The local SCS office may provide recommendations for the development of suitable drainage and landscaping plans later in the planning process.

F. *Market Survey.* Where available, a market survey from the Department of Housing and Urban Development should be included with the location and feasibility submission. If not available, the applicant or developer should present its estimate of the market. This is required only when conditional commitments will be requested.

G. *Request for Exceptions.* Any need for State or National Office exception(s) should be identified at this stage in the processing. Appropriate exception(s) should be requested

and obtained prior to the preliminary submission.

H. *Other.* Optional information the applicant or developer of the project may wish to present such as:

1. Engineering report relative to the feasibility of central utilities by extension or creation of same onsite.

2. Dwelling drawings and specifications.

3. Site development information.

II. Preliminary Submission Exhibits

After it is determined by FmHA that the project is feasible and the location conforms with the intent of the funding program, the applicant or developer will submit the following information to the District Director in addition to those materials submitted previously:

A. *Property Survey.* A survey of the property and each individual lot showing the exact boundaries and corners of the property accompanied by a written description of said boundaries. Also, locations of predominant features such as utilities, easements, access points, floodplains, drainageways, rock outcroppings and wooded areas or specimen trees affecting the proposed development must be included. This document shall bear the seal of a professional surveyor or engineer. This survey could be a part of item D below of this paragraph.

B. *Topographic Map.* An accurate topographic map with a scale compatible with the size of the project. The site shall be shown at a reasonable scale, usually 1"=100' with 5-foot contour intervals. Where the site is unusually level or steep, the contour intervals may be varied accordingly.

C. *Preliminary Subdivision Plan.* A line drawing, to scale, showing proposed street locations with profiles and widths, lot layouts, major drainageways, and other development planned. Preliminary sections and details shall be provided for the street construction, curbs and gutters, drainageways, and other physical improvements.

D. *Preliminary Dwelling Drawings and Specifications.* If the applicant or developer intends to construct the dwelling units, preliminary floor plans and specifications, elevations and sample site plans showing the placement of the unit on the individual lots should be submitted.

E. *Statement of Planning and Zoning Compliance.* A statement must be submitted which sets forth local, county and State approvals as applicable. If change of zoning or variance is required, the status of the variance or change of zoning shall be documented.

F. *Technical Service Contracts.* Executed contracts for the professional services of a site planner, architect, landscape architect, engineer, or soil engineer will be submitted as appropriate for the planning of the proposed development.

G. *Utility Approvals.* Statements of approval and feasibility for utility systems as follows:

1. Verification of adequate capacity and approval to tie in with local existing water, wastewater disposal, electric, telephone, and other utility systems as appropriate.

2. Tentative approval of local or State health authority for individual waste disposal systems when it is clear a central system is unfeasible at that time. Use § 1924.108(a)(5) of this subpart when preparing information required.

H. *Facility Acceptance.* Evidence that the appropriate public body will accept and maintain streets, common areas, street lighting, sidewalks, and drainageways, when such facilities are to be dedicated to a public body.

I. *Preliminary Specifications.* Outline specifications describing all the proposed materials to be used and how they are to be applied. These are only the materials used in the land development and construction of the streets, drainage, and utility work.

J. *Conditions, Covenants and Restrictions.* A copy of the convenants prior to recording. Use HUD–FHA Data Sheet 40 as a guide for developments of single family detached dwellings. For those proposals including Planned Unit Developments (PUD) or homeowners' associations, the applicant or developer should contact the District Director for guidance.

K. *Incremental Slopes Plan.* If areas of common slope are not identified elsewhere in adequate detail, this information should be provided in a separate plan.

L. *Preliminary Grading Plan.* This plan will indicate degree of work required to provide positive drainage of all building sites and control measures to be taken to eliminate soil erosion. Dwelling locations may be shown if they can be predetermined.

M. *Plat.* A copy of the subdivision plat prior to recording.

III. Final Submission Exhibits

All decisions regarding the conceptual design of the proposed project should be made prior to this submission. This effort is mainly to demonstrate that those agreed upon concepts have been transformed into construction documents and the necessary approvals have been granted. All items requiring revision or more detailed information as determined by the review of the preliminary submission will be resolved before the applicant or developer prepares the final submission. All documents shall be executed in a professional manner and shall carry the appropriate designation attesting to the professional qualifications of the land planner, architect, or engineer. All documents will be accurately drawn at an appropriate scale. The submittal should include 3 copies of each item. Exhibits will include those items I–A, B, C, E and II–A previously submitted and at least the following additional items:

A. *Drawings and Specifications.* These documents will be complete and suitable for construction. They will be identical to those approved by the regulatory authorities having jurisdiction over the project and include all the following:

1. Site plan showing the location of streets, alleys, easements, water supply and wastewater disposal systems, drainage structures, lot lines, etc. Include recreational and the special purpose or common areas.

2. Grading plan with any special instructions and appropriate cross-sections for street construction, curbs and gutters, retaining walls, sidewalks, etc.

3. Drainage plan showing all improvements designed to control on-site and off-site storm water including swales, culverts, retention basins, catch basins, drainage piping, manholes, and associated details necessary for construction.

4. Utility plans and related details for installation of water supply and wastewater disposal systems, natural gas lines, district heating lines, telephone and electric services, street lighting, as applicable, indicating associated permanent and construction easements.

5. Landscaping plan detailing the existing trees to be preserved and the methods by which this and the proper development of common areas and protective screens will be accomplished.

6. Complete specifications for all proposed development.

B. *Individual Lot Plans.* A typical dwelling site plan for each site involving a characteristic situation will be included. Drawings should normally be at a scale of 1"=20' or 1/8"=1'0". These typical plans should illustrate mixing of homes and varying setbacks. Dwelling location for all lots are not mandatory; however, they may be shown on Item III A 1. in lieu of individual plot plans if dwelling locations can be determined and the plan scale is 1"=40' or larger. Individual site plans will be required as part of the individual applications before the development of a lot begins.

C. *Written Approvals.* Written statements will be included which verify the regulatory authorities having jurisdiction over the development have granted the necessary approvals. These approvals shall include at least the following:

1. Local, regional or State planning authority.

2. All utilities including water supply, liquid and solid waste disposal, electric, telephone, etc.

3. Common areas and similar facilities dedicated to and accepted by the public body which shall have the responsibility for continuous maintenance, or if National Office approval has been obtained, deeded to a properly organized homeowners' association.

4. Streets dedicated to and accepted by the public body which shall have the responsibility for continuous maintenance, except for those cases waived by the State Director or the National Office.

D. *Recorded Subdivision Plat.*

E. *Recorded Covenants.*

F. *Surety.* If applicable, evidence that the sponsor will provide bonding or escrow funds in accordance with § 1924.115(a)(7)(i).

G. *Affirmative Fair Housing Marketing Plan.*

H. *Other.* Pertinent items that may be required in any particular situation such as homeowner association documents, special environmental clearances, etc.

Exhibit B—Site Development Design Requirements and Guidelines

This Exhibit provides basic guidelines and considerations to be used by an applicant or developer in planning a site. Farmers Home Administration (FmHA) uses Minimum Property Standards (MPS) for housing

financed with RH, RRH, RCH, LH, and FO loans. The MPS, available in all FmHA offices, supplements this Subpart with the technical requirements for minimum acceptable design, materials and construction methods. For the sake of brevity the MPS requirements have not been repeated. The MPS and those requirements contained herein are stated as minimums and every effort should be made by the applicant or developer to utilize higher standards, when appropriate. All FmHA requirements are to be used in the absence of or in addition to local requirements.

Proper integration of the natural features of a site with the manmade improvements is one of the most critical aspects of residential development. Poor site planning in large scale subdivisions, rental projects and individual sites, has resulted in a loss of valuable private and public natural resources and caused economic burdens and conditions unsuitable for healthy and pleasant living. Proper site design can preserve the most feasible natural features of the site, minimize expenses for streets and utilities and provide a safe and pleasant living environment.

There are numerous references that the applicant or developer may find helpful in planning site development. The following is a partial listing of such references:

(1) Manual of Acceptable Practice; HUD 4930.1.

(2) Architectural Graphic Standards; American Institute of Architects.

(3) Handbook of Landscape Architectural Construction; American Society of Landscape Architects.

(4) Grade Easy—An Introductory Course in the Principles and Practices of Grading and Drainage; American Society of Landscape Architects.

(5) Urban Hydrology for Small Watersheds; SCS–TR–55.

(6) A Method of Estimating Volumes and Site Runoff in Small Watersheds; SCS–TP–149.

(7) Handbook of Channel Design for Soil and Water Conservation; SCS–TP–61.

(8) Simplified Method for Determining Floodwater Retarding Storage; SCS–TR–3.

(9) Hydrology; SCS–NEH–Section 4.

(10) Residential Streets; Urban Land Institute, American Society of Civil Engineers, National Association of Home Builders.

(11) Residential Storm Water Management; Urban Land Institute, American Society of Civil Engineers, National Association of Home Builders.

(12) Residential Erosion and Sediment Control; Urban Land Institute, American Society of Civil Engineers, National Association of Home Builders.

(13) Residential Development Handbook; Urban Land Institute.

(14) Geometric Design Guide for Local Roads and Streets; American Association of State Highway Officials.

(15) A Guide for Accomodating Utilities on Highway Rights-of-Way; American Association of State Highway and Transportation Officials.

(16) Recommended Guidelines for Subdivision Streets; Institute of Transportation Engineers.

Table of Contents

I. Site Location
- A. Location
  - 1. Public Services
  - 2. Public Utilities
  - 3. Utilities
  - 4. Approval by Planning Authority
- B. Topographic, Geologic and Soil Conditions
  - 1. Important and Unique Lands
  - 2. Floodplain/Wetland Areas
  - 3. Slopes
  - 4. Trees, Foliage and Ground Cover
  - 5. Hazardous Conditions and Risks
- C. External Influences on the Site
  - 1. Man-made Hazards
  - 2. Nuisances
  - 3. Noise

II. Site Improvements
- A. Grading and Drainage
  - 1. Compaction
  - 2. Storm Drainage
  - 3. Drainage Overflow
  - 4. Erosion Control
  - 5. Drainage Easements
  - 6. Driveway Intersections
  - 7. Street Intersections
- B. Blocks
  - 1. Block Configuration
  - 2. Block Length
  - 3. Block Width
  - 4. Walkway
  - 5. Intersections
  - 6. Pedestrian Access
- C. Lot Layout
  - 1. Lot Configuration
  - 2. Utilities
  - 3. Corner Lots
  - 4. Access (Vehicular)
  - 5. Lot Frontages (single family-detached)
  - 6. Lot Frontages (townhouses)
  - 7. Double and Reverse Frontage
  - 8. Planting Easement
  - 9. Side Lot Lines
  - 10. Retaining walls
  - 11. End Lots
  - 12. Natural Features
- D. Streets
  - 1. Types of Streets
    - a. Arterial
    - b. Collector
    - c. Local
    - d. Marginal Access
  - 2. Street Patterns
    - a. Grid
    - b. Curvilinear
    - c. Cluster
  - 3. Sub-Types
    - a. Cul-de-sac
    - b. Loop
    - c. Eyebrow
  - 4. Design Features
    - a. Intersection Type
    - b. Intersection Angle
    - c. Intersection Grade
    - d. Intersection Sight Distance
    - e. Traffic Control Devices
  - 5. Rights-of-way and Pavement Width
    - a. Collector Streets
    - b. Local Streets
  - 6. Drainage
    - a. Street Drainage
    - b. Drainage Ditches
    - c. Storm Drains
  - 7. Utilities
    - a. Above Ground
    - b. Below Ground
    - c. Utility Trenches
  - 8. Street Construction
    - a. Drainage
    - b. Subgrade
      - (1) In-Place Soil
      - (2) Fill Material
      - (3) Compaction
      - (4) Soil Stabilization
    - c. Base
      - (1) Gravel
      - (2) Crushed Stone
      - (3) Soil Cement
      - (4) Asphaltic Concrete
    - d. Wearing Surfaces—Hard Surface
      - (1) Portland Cement Concrete
      - (2) Double Bituminous
      - (3) One Course Asphaltic
      - (4) Asphaltic Concrete
    - e. Wearing Surfaces—All Weather
      - (1) Layered Oil
      - (2) Gravel
  - 9. Related Improvements
    - a. Sidewalks
    - b. Planting Strips
    - c. Street Trees
    - d. Street Lighting
- E. Hillside Development
  - 1. Grading
  - 2. Manufactured Slopes
  - 3. Erosion Control
  - 4. Lot Area
  - 5. Lot Width
  - 6. Storm Drainage Design
  - 7. Walkways
  - 8. Steep Street Design
  - 9. Driveway Design
  - 10. Street Lighting
  - 11. Street Dimensions

I. Site Location

Site selection is the most important phase of development. It is imperative that the applicant or developer conduct preliminary site investigations before purchasing the lands. If any uncertainties develop concerning the suitability of a particular site, FmHA should be contacted immediately.

A. Location

The site must be so located as to meet the requirements of § 1924.107 of this subpart.

1. Public services such as, police and fire protection, and solid waste disposal should be available.

2. Public Utilities such as water and wastewater disposal facilities as described in § 1924.108 of this subpart must be provided in a new development.

3. Utilities such as gas, electricity, telephone service, TV cable, etc., must be provided as described in § 1924.108 of this subpart consistent with present and future conditions and needs of the surrounding area.

4. All site location proposals should be coordinated with State and local planning bodies to determine that the area will not be adversely affected by future improvements or alterations. Items of special concern are proposed flyways, airports, highways, dams, reservoirs, waste treatment facilities and industrial development.

B. Topographic, Geologic and Soil Conditions.

1. In accordance with USDA Regulation 9500–3, a site involving important farmland, forestland or rangeland, as identified by SCS, will be considered only after conducting a site investigation and FmHA determining there is no practicable alternative.

2. A site located within or impacting upon a 100-year floodplain or wetland will be considered for development only after compliance with Executive Orders No. 11988 and No. 11990, respectively.

3. All areas to be developed as building sites should have slopes of less than 15 percent. Areas with steeper grades must conform to the criteria for hillside development (See Section II E of this exhibit).

4. Trees, foliage and dense ground cover which contribute to the stability of the soil and the drainage of the property should be identified for preservation.

5. Hazardous conditions and risks such as the following should be avoided: landslide areas, unstable slopes, geologic faults, volcanic activitiy, mudslides, flooding, cliffs, or other hazardous features.

C. External Influences on the Site

No site shall be developed where external influences on the site create conditions undesirable for residential use, such as:

1. Unwarranted risks from man-made hazards such as the presence of hazardous materials, or the presence of potentially hazardous industrial activity or material in the surrounding area;

2. Nuisances from odors, vibrations, unsightly areas, inconvenience or other nuisances;

3. Potential for any adverse noise impacts from a major traffic artery, rail line, airport, or other noise generator as per FmHA MPS.

II. Site Improvements

A. Grading and Drainage

1. All fill for street or home construction shall have compaction of not less than 95 percent maximum density, as determined by proctor or other accepted testing methods. Earth fill used to support a building foundation shall be a controlled fill designed, supervised, and tested by a qualified soils engineer.

2. Drainage facilities must be designed for a 10-year storm frequencyof 24-hour duration. Full potential development of all contributing areas shall be used as a basis for this determination.

3. Consideration shall be given to emergency outlets when the storm sewer system is inoperable due to blockage or when the design capacity has been exceeded.

4. A storm sewer or swale discharge into ponds, swales or ditches requires either riprap or headwall proteciton to prevent undermining of the outlet pipe and erosion of the side slopes.

5. Easements for storm sewers should be a minimum of 10 feet in width. Surface channels should have an easement which is at least the width of the channel plus 10 feet. When possible, locate streets along natural drainageways to accommodate surface drainage and avoid easements.

6. Where a swale or drainage ditch intersects a sidewalk or driveway, an adequately sized culvert or bridge should be provided.

7. Open drainage ditches which intersect streets must have culverts, riprap and bulkheads adequately sized and constructed to prevent the flow of water across the pavement surfaces and erosion of the roadway base.

B. Blocks

1. The lengths, widths and shapes of blocks should be determined with due regard to:

a. Provision of adequate building sites suitable to the special needs of the type of use contemplated.

b. Zoning requirements for lot sizes and dimensions.

c. Needs for convenient access, circulation, control and safety of street traffic.

d. Limitations and opportunities of topography.

2. Block lengths generally should not exceed 1600 feet nor should they be less than 400 feet.

3. Blocks should be wide enough to allow two tiers of lots of minimum depth. However, where this would require lots to front on an arterial street or highway or where topographical conditions or the size of the property prevent two tiers of lots, single lots with necessary alterations may be used.

4. When double tiered blocks are over 800 feet in length, a 10-foot wide pedistrian access easement is recommended near the center of the block connecting the streets on either side of the long block.

5. Intersections with arterial streets should be held to a minimum and preferably spaced at least 1000 feet apart.

6. Pedestrain access easements not less than 10 feet in width should be required where deemed essential to provide circulation or access to schools, playgrounds, shopping centers, transportation and other community facilities.

C. Lot Layout

1. The size, width, depth, shape, orientation, and yards of lots shall, as a minimum, comply with local zoning ordinances, the MPS and the requirements of FmHA.

2. Residential lots which are not served by central water or sewer systems must be of adequate size to help ensure the satifactory operation of individual water and/or wastewater disposal systems.

3. Corner lots for residential use should have extra width to permit appropriate building setback from and orientation to both streets.

4. The subdividing of the land shall be such as to provide each lot with satisfactory access to an existing public street or highway.

5. Lot dimensions for single family detached homes shall be in compliance with local regulations. In the absence of such regulations, the area, width, depth, shape and orientation and the minimum building setback lines should be appropriate for the location of the site and for the type of development and use contemplated.

6. Single family attached dwellings (townhouses) and zero side lot arrangements must have lot dimensions compatible with the design of the individual units.

7. Double frontage and reverse frontage lots should be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation. These types of lots should have additional depth to provide adequate separation.

8. A planting screen easement at least 10 feet wide within the dedicated right-of-way or constructed as part of the site landscaping and across which there should be no right of access shall be provided along the line of lots abutting a major traffic artery, railroad or other disadvantageous use. On Rural Housing Site loans, funds for plantings may be placed in escrow to ensure the developer will install plants within one year after the beginning of building construction.

9. Side lot lines should be substantially at right angles or radial to street right-of-way lines.

10. Lot lines should be located at least 3 feet upslope from the top of any steep slopes or retaining walls to assign undivided responsibility for maintenance.

11. Ends of blocks should be platted with plug lots, or a 6-foot high fence, hedge or other visual barrier should be provided to enhance the appearance of the neighborhood and the privacy of the rear lot areas.

12. Desirable natural features such as streams or lakes should be deeded to the local governing body or homeowners association. An easement not less than 10 feet in width should be provided for access to and circulation around any common natural feature.

D. Streets

The street system should be designed to provide for all traffic needs and at the same time create a street arrangement that will make an attractive neighborhood and good building sites. Streets located with proper regard to topography and traffic flow increase neighborhood desirability and minimize development expense. The proposed street system within a subdivision or a multiple family housing development, should, whenever possible, be tied in with the existing street systems. The proposed street system should also provide for the continuation of the existing City and State systems, whenever these systems have been officially platted on a local or regional plan.

1. *Types of Streets.* In this discussion of street systems, the various types of streets are named and defined by their distinctive functions or uses as follows:

a. Arterial streets and highways (major and secondary thoroughfares) are those which are used primarily for fast or heavy traffic.

b. Collector streets (feeder streets) are those which carry traffic from local streets to the major system of arterial streets and highways, including the principal entrance streets of a residential development and streets for circulation within such a development.

c. Local streets are those which are used primarily for access to the abutting properties.

d. Marginal access streets are local streets which are parallel to and adjacent to arterial streets and highways; and which provide access to abutting properties and protection from through traffic.

2. *Street Patterns.* Streets should serve both as areas for pedestrian and automobile movement and as fixed spaces separating activities. Access, safety, economy and livability should be considered in street design. Street layout can be grouped into several basic categories according to the arrangement of streets and the type of building sites and open space.

a. *Grid.* The grid system of street design provides easy orientation on level ground and the regular patterns help to moderate varying structure sizes and designs. The main deficiency in the grid pattern is that traffic is not directed onto main ways and every street is a major thoroughfare. The frequent four-way intersections create a large number of potential accident areas. Street and utility costs are also higher for this type of layout.

b. *Curvilinear.* Rolling terrain can produce more usable building sites by the use of curvilinear street arrangements. This type of street arrangement also requires less grading and utility installation costs and provides more privacy for residential areas by establishing a hierarchy of traffic use. One problem inherent in this type of design is the lack of orientation due to the random arrangement. However, this type of layout provides greater safety because of the safe intersection designs which are possible.

c. *Cluster.* Grouping dwelling units together in order to protect desirable natural features or provide recreational areas is the primary function of cluster development. This type of arrangement greatly reduces expenditures for street improvements, grading, water, sewer and other utilities. Cluster housing may be in the form of townhouses, zero lot line dwellings or single family detached houses on more compact lots.

2. *Sub-Types.* Several types of short streets can be used not only to provide adequate lots in odd-shaped parcels of land but also to create desirable residential groupings on low traffic streets.

a. *Cul-de-sacs.* Cul-de-sac streets should neither be more than 1000 feet in length nor serve more than 25 homes. Where the length, curvature or slope of the cul-de-sac street does not make obvious the dead-end characteristics, an appropriate street sign should be placed at the entrance. Cul-de-sac streets must be provided with a turn-around having an outside roadway diameter of at least eighty (80) feet, and a street property line diameter of at least one hundred (100) feet.

b. *Loop Streets.* Houses may be sited on streets which loop away from a main street into the site. These can be made into one-way streets with parking on one side. The interior of the loop can be developed as housing sites or left open to provide parking and/or park area.

c. *Eyebrow.* When it is possible to move the building site back off the highway or large street and provide a buffer zone, one of the best methods is the use of the eyebrow. The strip left between the main and minor street acts as a buffer and small recreation space. This type of arrangement reduces the danger of backing out of private driveways onto a major thoroughfare.

4. *Design Features.*

a. *Intersection Type.* No street intersection should have more than four streets entering it, as in the four-way or four-corner intersection. The safe "T" or three-way intersection should be used whenever practical, except for intersection controlled by traffic signal lights. Street jogs with center-line offsets of less than one hundred and twenty-five (125) feet should be avoided. Major street and highway intersections shall be a minimum of one thousand (1,000) feet apart.

b. *Intersection Angle.* Street should be laid out to intersect as nearly as possible at right angles and no street shall intersect any other street at an angle less than 75 degrees. Curb radii shall be a minimum of twenty (20) feet for street intersection.

c. *Intersection Grade.* Grades approaching intersections should not exceed five (5) percent for a distance of not less than one hundred (100) feet from the centerline of the intersection.

d. *Intersection Sight Distance.* Adequate sight distances must be maintained at intersections. Vehicles must be visible when within seventy-five (75) feet of the centerlines of uncontrolled intersecting streets.

e. *Traffic Control Devices.* Signs, pavement markings and other markings are to be installed in accordance with local regulations and in sufficient quantity to adequately control the traffic flow and protect pedestrains. Streets should be numbered, lettered or named in conformance with the local system. Signs should be erected indicating street designations.

5. *Right-of-way and Pavement Widths.* Pavement and right-of-way widths will vary with the development density and type of terrain of the subdivision. These considerations are defined as follows:

a. *Terrain Classifications:*

(1) *Ordinary*—Cross slope range of 0% to 8%.

(2) *Rolling*—Cross slope range of 8.1% to 15%.

(3) *Hilly*—Cross slope of over 15%. See Section II E of this exhibit.

b. Development = Density	Land area—undeveloped areas greater than average lot size
	Number of lots
(1) Low—Less than 2 dwelling units per acre.	
(2) Medium—2 to 6.0 dwelling units per acre.	
(3) High—More than six dwelling units per acre.	

c. *Collector Streets.*

(1) Right-of-way should be a minimum of 60 feet wide.

(2) Pavement should be a minimum of 36 feet wide.

(3) Radius of curvature should be minimum of 200 feet.

d. *Local Streets.*

	Ordinary terrain			Rolling terrain		
	1—Low density	2—Medium density	3—High density	1—Low density	2—Medium density	3—High density
Right-of-way* width	50'	50'	50'	50'	50'	50'
Pavement width for design parking conditions:						
On-Street Prohibited	18'	18'	20'	19'	19'	21'
Partial on-street, on side	18'	20'	26'	19'	21'	27'
Partial on-street, both sides	22'	26'	32'	23'	27'	33'
Total on-street, one side	22'	26'	26'	23'	27'	27'
Total on-street, both sides	26'	32'	36'	27'	32'	36'
Type of curb recommended (V—Vertical face; R—Roll-type; O—None)	O/R	R	V	R	R	V
Sidewalk width	0'	4'	4'	0'	4'	4'
Sidewalk distance from curb face	0'	6'	6'	0'	6'	6'
Minimum sight distance	200'	200'	200'	150'	150'	150'
Maximum grade (percent)	4	4	4	8	8	8
Minimum centerline** radius	200	200	200	150	150	150

*For Cul-de-Sac and Marginal Access Streets the minimum right-of-way width is 40-feet.

**The minimum centerline radius of curvature for cul-de-sacs and loop streets that do not serve more than 50 lots may be reduced to 150 feet when the maximum speed limit is 25 mph and 100 feet when 20 mph.

6. *Drainage.* Streets shall not be approved which will be subject to inundation or flooding. All streets must be located at elevations which will ensure that no sites will be isolated by floods.

a. *Street Drainage.* All streets shall be designed so as to provide for the discharge of surface water from the pavement and from the right-of-way by grading and drainage. For adequate drainage, the minimum street grade shall not be less than one half (½) of one (1) percent. (.005 ft/ft).

b. *Drainage Ditches.* When required, drainage ditches shall be constructed within the street right-of-way. The ditches shall be of adequate size to carry run-off water and to prevent flooding. The ditch line should be a distance of ten (10) feet or more from the edge of pavement on an arterial street. On other streets, the drainage ditch line should be six (6) feet from the edge of pavement. Provisions will be made to prevent erosion and damage to the drainage ditch and related structures.

c. *Storm Drains.* An adequate storm drainage system, including necessary storm sewers, drain inlets, manholes, culverts, bridges and other appurtenances, will be required in all developments to the extent that the foregoing elements are required and approved by the local authorities and the Farmers Home Administration and installed in accordance with the plans and specifications prepared by a qualified engineer. All natural drainage ways shall be preserved at their natural gradient and shall not be filled or interfered with in any way, except as approved by the local authorities. If, in the judgment of the local authorities, a natural drainage way needs to be reserved in the public interest, a storm drainage easement of a width or to an elevation specified by the authority, shall be required and reserved as a public storm drainage easement with the deed rights to these natural drainage easements dedicated so as to assure public maintenance.

7. *Utilities.*

a. *Above ground.* Utilities installed above ground should be located in rear lot easements wherever practicable. In all cases, the poles, guy wires, braces, transformers, etc., will be located so that they do not unnecessarily detract from the property.

b. *Below ground.* Utilities installed below ground should be located in the street or alley, rights-of-way, or in an easement, and installed as follows: When located under the pavement, the utilities should be installed and tested prior to the placement of pavement base and topping material. Where the utility mains are outside the pavement area, the developer may be allowed to omit the installation of service connections provided that at such time as these service connections are needed, they may be jacked across the street without breaking or weakening the existing pavement. Where rock is known to exist beneath the pavement area and at such depth as to interfere with the jacking of service connections, a complete installation of service connections before any base is applied should be required. In cases where underground utilities are provided within the right-of-way of streets, they should not be installed under the paved portions of such streets.

c. *Utility Trenches.* All utility trench locations and arrangements shall have the written approval of local authorities having jurisdiction. Placement of all utilities in a common trench located in the right-of-way should be considered. The common trench requires utilities to be placed in a certain order and with as little time lag between placements as possible. Water mains should be at a higher elevation and on a shelf if in the same trench as sewer lines.

8. *Street Construction.* Street configuration and wearing surfaces must be designed so as to provide safe and economical access to all building sites. When curbs and gutters are used, the streets should function as the primary drainage system for abutting properties. The street structural design shall meet or exceed the requirements of all local, county and State regulations, as appropriate. As a minimum, street construction will be in accordance with this Section.

a. All driving and parking areas shall have sufficient gradient to provide for adequate drainage. Storm sewers or drainage ditches shall be provided to accept surface run-off and prevent pooling on roadway areas. In arid or semi-arid areas, the roadway may be designed with an inverted crown to accommodate occasional run-off. Subsurface drainage shall be adequate to maintain a stable subgrade.

b. The subgrade shall provide a stable platform for the base and wearing surface under all anticipated geologic, hydrologic and climatic conditions. The acceptability of the subgrade shall be based on the soil type and anticipated traffic loads.

1. In-place soil shall not contain amounts of muck, clay, vegetable matter or other elements which could detrimentally affect the structure of the roadway. Where these elements exist, the stabilization procedures outlined in (4) below shall be followed. The subgrade shall be thoroughly compacted to density necessary to support the roadway.

2. Fill material shall be free from muck, clay, vegetable matter or other elements which could detrimentally affect the structure of the roadway. All fill shall be compacted according to the characteristics of the acceptable in-place soil, the fill soil and anticipated traffic loads. Where extensive fill is required, the roadway shall be designed by a qualified professional engineer. Certification of construction should be obtained.

3. Compaction shall be adequate for the design load of the roadway plus a 25 percent impact load. State or local regulaitons shall be followed in the determination of acceptable practice.

4. Soil in-place which is not suitable for use as a street subgrade must be properly stabilized. Appropriate stabilization must be utilized. Soil cement, lime and calcium chloride are acceptable stabilization admixtures which, when necessary, shall be used in accordance with good engineering practice and local regulations.

c. The base shall be constructed in a manner which will provide a suitable course for the applicaiton of the final surfacing. The composition and depth of the base shall be appropriate for the type and amount of traffic anticipated. The types listed below are generally acceptable base materials and others may be used according to local conditions:

1. *Gravel Base.* This base shall consist of gravel and filler constructed on a prepared subgrade. The material shall be free from organic matter and lumps or balls of clay; any such material shall be removed and replaced with approved material. The base thickness shall be determined by the projected road usage and shall be placed in layers not to exceed three (3) inches in thickness after compaction. The base course material shall not be deposited or shaped on a frozen or thawing subgrade or during unfavorable weather conditions.

2. *Crushed Stone Base.* This base shall consist of crushed stone constructed on a prepared subgrade. The material shall consist of hard, durable particles or fragments of stone, free from an excess of flat, elongated, soft or disintegrated pieces, dirt or other objectionable matter. The base thickness shall be determined by the projected road usage and shall be placed in layers not to exceed three (3) inches in thickness after compaction. After the coarse aggregate has been thoroughly compacted, choker stone shall be gradually applied to fill all voids. No base course material shall be deposited or shaped when the subgrade is frozen or thawing or during unfavorable weather conditions.

3. *Soil Cement Base.* This base shall consist of a combination of soil and portland cement uniformly mixed, moistened and compacted. Water shall be free from oil, acids, alkali and vegetable matter and shall be reasonably clean. Soil for this base course shall consist of the soil found in place, and any additional soil that may be required shall be treated as necessary for use as a base material. Prior to mixing, the soil shall be pulverized for the full width and sufficient depth of the roadway. The specified quantity of portland cement shall be spread in one operation and thoroughly mixed before the application of water and compaction. After compaction, the roadway shall be cured for an appropirate period of time and traffic shall be prohibited during this time.

4. *Asphaltic Concrete Base.* This base shall be composed of a combination of course aggregate, fine aggregate and bituminous cement mixed in a central plant. Asphaltic cement to be used in the asphaltic concrete shall be uniform in character, free from water and shall contain no mineral matter other than that naturally present. Aggregate shall consist of fine gravel and sand, disintegrated granite, or other similar granular materials. Where cement concrete or masonary edging is not used, suitable side forms of wood or steel shall be placed. Placing of the mixture shall be as continuous as possible with all joints well bonded and sealed. After spreading, the mixture shall be thoroughly compacted with a power drive roller according to accepted practices. No asphalt material shall be laid when the temperature of the air is 50 degrees Fahrenheit and falling or during other unfavorable weather conditions.

d. Hard surfaced wearing surfaces shall be used where required by local regulations, or § 1924.115 of this Subpart. The surface shall be of adequate design for the projected traffic loads. Local regulations, availability off materials, and maintenance facilities will dictate the type of paving to be used. The following types of paving are generally acceptable, although some types may not be locally accepted, or additional materials may be used according to local regulations:

1. *Portland Cement Concrete Pavement.* This surface shall consist of water, aggregate and cement in the required proportions. Forms shall be placed to acceptable tolerances, properly braced, and well oiled before placement of the material. The concrete shall be deposited rapidly and leveled according to approved methods. Finishing shall be done to remove free water, to provide the desired final appearance and to correct surface irregularities. Expansion and contraction joints shall be provided at the required intervals. Properly protected curing for a minimum of 72 hours shall be observed. No concrete shall be placed on a

frozen or thawing subgrade or during unfavorable weather conditions, or when the temperature is 38 degrees and falling.

2. *Double Bituminous Surface Treatment.* This surface shall consist of three applications of bitumen and a spreading of coarse aggregate and seal coat aggregate on a prepared base. Bituminous materials shall conform to applicable specifications. Aggregate shall be crushed stone and shall consist of particles of clean, hard, tough, durable, uncoated rock fragments and shall be reasonably free from an excess of flat, elongated, soft or disintegrated pieces, organic or other objectionable matter and shall be free from lumps of clay. The bitumen shall be applied with a pressure-type power distributor. A prime coat shall be uniformly spread and allowed to set up. A second coat shall be applied followed immediately by an application of coarse aggregate which shall be uniformly rolled. A seal coat of bitumen and aggregate shall be applied after all loose and excess aggregate have been removed from the first coating. No materials shall be placed when either the temperature of the air or base on which the material is to be placed is 50 degrees Fahrenheit and falling or during unfavorable weather conditions.

3. *One Course Asphaltic Wearing Surface.* This surface shall consist of a wearing course composed of aggregate and bituminous materials mixed in a central plant. Liquid asphalt shall be of acceptable quality. Asphalt cement to be used in the asphaltic concrete shall be uniform in character, free from water and shall contain no mineral matter other than that naturally present. Aggregate shall consist of fine gravel and sand, distintegrated granite and other similar granular materials. The existing surface shall be cleaned before application of the tack coat by a pressure-type power distributor. The bituminous mixture shall be spread, raked and rolled in an acceptable manner. Longitudinal and transverse joints shall be well bonded and sealed. No asphalt material shall be laid when the temperature of the air is 50 degrees Fahrenheit and falling or during unfavorable weather conditions.

4. *Asphaltic Concrete Wearing Surfaces.* This surface shall consist of aggregate and bituminous materials mixed in a central plant. Asphalt cement to be used in the asphaltic concrete shall be uniform in character, free from water and shall contain no mineral matter other than that naturally present. Aggregate shall consist of fine gravel and sand, disintegrated granite or other similar granular materials. The bituminous mixture shall be spread, raked and rolled in an acceptable manner. Longitudinal and transverse joints shall be well bonded and sealed. No asphalt material shall be laid when the temperature of the air is 50 degrees Fahrenheit and falling or during unfavorable weather conditions.

e. All-weather surfaces, where acceptable, shall be designed to accommodate the projected traffic load. The subgrade and base shall be constructed in a manner similar to hard-surface roads so that hard surfacing can be easily accomplished at a later date. Materials for all-weather streets shall be acceptable for maintenance by the local authority and shall provide the best possible wearing surface. The following types are generally acceptable and other types may be used dependent upon local conditions:

1. *Layered Oil Surface.* This surface shall consist of aggregate and waste oil thoroughly mixed and compacted. The base shall be scarified and oil applied by a pressure-type power distributor. This process shall be repeated a number of times until the mixture is consistent to an acceptable depth. Final compaction shall provide a regular surface with the required density.

2. *Gravel Surface.* This surface shall consist of coarse and fine aggregates applied in a manner similar to gravel bases (paragraph IID8c). If the gravel wearing surface is for long-term usage, a permanent gravel or crushed stone base shall be covered with a layer of aggregate selected or treated to minimize dust in use. Where hard surfacing is anticipated within 24 months, a suitable gravel base may be used as a driving surface provided adequate maintenance is performed and the base is adequately repaired before application of the hard surfacing.

9. *Related Improvements.*

a. *Sidewalks.* Sidewalks at least five (5) feet in width shall be provided on each side of all arterial streets or designated state roads where determined by the State Director to be necessary for pedestrian and traffic safety. Where determined by the State Director to be necessary, sidewalks at least four (4) feet in width shall be placed on each side of marginal access streets except within industrial districts. The requirement for sidewalks will usually be waived on streets where the average lot size is in excess of twenty-thousand (20,000) square feet. Sidewalks should be a minimum of four (4) inches in thickness and constructed of concrete or other acceptable paving material. Sidewalks should be installed in accordance with local acceptable practice. Sidewalks should be installed prior to the final inspection of the project.

b. *Planting Strips.* Where required by local ordinances or where consistent with adjacent development, strips suitable for grass, shrubbery, or street trees shall be provided. In no case should the planting strip be less than twelve (12) inches in width. Plantings at intersections shall not interfere with lines of sight necessary for safe driving conditions.

c. *Street Trees.* Street trees which are in accordance with the standards adopted by the local governing body may be planted between the street and sidewalk.

d. *Street lighting.* Street lighting shall be provided when required by the local entity or necessary for safety purposes, and permanent maintenance and operation can be assured.

E. Hillside Development Standards

This Section provides standards for sites where the majority of the land area has slopes exceeding fifteen percent (15%) and special measures must be taken to provide adequate building sites with safe access and reliable utilities. These steep sites will be acceptable for FmHA financed housing only if the State Director determines there are no other suitable sites of lesser slope available in the area where the housing need exists.

When the applicable local authority has adopted steep site development standards based upon local design constraints differing from those contained herein, or in the absence of local standards, when differing standards are recommended by a qualified professional engineer, architect, or planner, the State Director with the consultation of the State Office Architect/Engineer may consider those standards acceptable on an individual basis, provided: (1) supportive data and information indicates that the proposed site cannot feasibly be developed in conformance with these standards; and (2) the intent of providing adequate building sites with safe access and reliable utilities prevails.

1. All existing or proposed slopes shall comply with Paragraph II A of this exhibit.

2. All manufactured slopes adjacent to the roadway shall normally be a maximum of two horizontal to one vertical (2:1) unless limited to existing topography or constructed in rock. Manufactured slopes of less than two to one (2:1) may be permitted where adequate slope control measures such as retaining walls or rip-rap embankment are utilized. The slope shall in no case exceed the natural angle of repose of the material. Cut and fill slopes should be constructed to eliminate sharp angles of intersection with the existing terrain and shall be rounded and contoured as necessary to blend with the natural topography to the maximum possible extent.

3. All manufactured slopes, other than those constructed in rock, should be planted or otherwise protected from storm erosion as soon as possible after construction. These slopes should be designed to control storm runoff and should be benched or terraced as necessary to provide for adequate stability. If, according to soil reports, the severity of the slope or the composition of the soil poses stability hazards, a qualified soils engineer should be consulted.

4. *Lot Areas.* The minimum area should be the minimum as prescribed by local authorities or § 1924.115(b) of this subpart and Section II C of this exhibit. As the slope of terrain increases, lot areas should be increased to provide adequate outdoor living area, driveways, allowance for slope maintenance, etc. Lots shall be of adequate size to meet the needs of occupants of the structures to be placed thereon.

5. *Lot Width.* The minimum lot width shall be that prescribed by local authorities or Section II C of this exhibit, and in all cases the width shall be sufficient to provide an acceptable building site and reasonable and safe access.

6. The design of storm drainage facilities shall ensure the acceptance and disposal of storm run-off (based on a 10-year storm frequency of 24 hours duration) without damage to the street or to adjacent properties. Full potential development of all contributing areas should be used as a basis for determination.The use of special structures to accept design storm run-off should be incorporated into the street design where appropriate.

7. Walkways shall be provided when locally required, when dwelling units have frontage on major streets and highways, or when considered necessary to provide

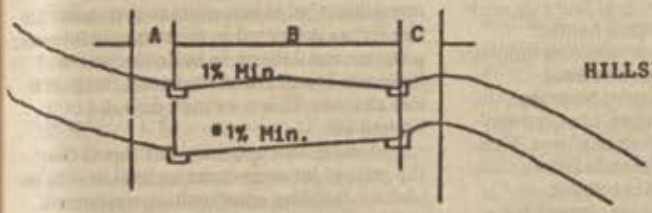
pedestrian safety along public streets. Slip resistant stepping stones or other durable materials acceptable to the State Director may be substituted for paved walks. Walkways should blend with the character of the hilly area to the maximum extent possible.

8. All streets shall be constructed to carry the anticipated traffic load without deterioration over the design life of the roadway. Streets constructed on a gradient in excess of eighteen percent (18%) should consist of an adequate base course, six (6) inches of concrete, and a roughened surface to minimize skidding or slipping of vehicles.

9. Driveways shall be designed to a grade and alignment that will provide the maximum safety and transition to prevent "bottoming out" in a manner which will not interfere with drainage or public use of the street and/or street area.

10. Where considered necessary for safety purposes and where permanent maintenance and operation can be assured, outdoor lighting and/or street lighting should be provided.

11. The following table provides the minimum dimensions which shall be used for hillside streets.



HILLSIDE STREET GEOMETRICS

*Adjust Cross Slope where super-elevation on curves is desirable.

Street Designation	(1) Min. A Feet	B Feet	(1) C Feet	Walk-Way	(4) Min. Right-Of-Way Width	(3) Maximum Grade Percent	(3) Minimum Curve Radii Ft.
COLLECTOR STREETS							
on-street parking prohibited (5)	3'	20'	3'	(1)	40'	14%	200
on-street parking - one side	3'	28'	3'		40'		
on-street parking - both sides	3'	36'	3'		50'		
LOCAL STREETS - Through Traffic							
on-street parking prohibited (5)	3'	18'	3'	(1)	30'	14%	100
on-street parking - one side	3'	26'	3'		35'		
on-street parking - both sides	3'	30'	3'		40'		
LOCAL STREETS - No Through Traffic							
on-street parking prohibited (5)	3'	18'	3'	(1)		22%	100
on-street parking - one side	3'	26'	3'		A+B+C		
on-street parking - both sides	3'	30'	3'				
OTHERS (2)							
access roads						14%	
one-way streets							
split level streets							
throroughfares							

1. Dimensions must be adjusted, as required, when walkways are provided.

2. Design based upon evaluation of specific cases for each type. Minimum width of 9 feet for traffic lanes and 8 feet for parking lanes should be maintained.

3. Grade and curve radii limitations may be modified subject to approval of the local authorities, provided safety for vehicular and pedestrian traffic is maintained.

4. Minimum right-of-way shall include drainage facilities, in the absence of curbs and gutters. Slope control easements should be granted to the local authorities to provide for slope protection in areas of cut and fill.

5. In the case of single family housing, adequate off-street parking shall be provided, with a minimum provision of two spaces per lot.

Exhibit C—Checklist of Visual Exhibits and Documentation for RRH, RCH, and LH Proposals

This Exhibit lists visual exhibits and documentation necessary for FmHA to properly evaluate proposed development. Intermediate consultation by the applicant, builder-developer and others hereafter referred to as the sponsor with the FmHA District or State Offices should be as frequent as necessary to reduce chances of misunderstandings and limit the amount of non-productive time and expense for all parties concerned.

I. Preapplication Submission Documents

The sponsor will submit the following information to the District Director to determine feasibility of the project and general conformance with FmHA policy:

A. *Form 1940-20, "Request for Environmental Information."* Portions of the form must be completed when the submission contains more than 4 dwelling units and the entire form must be completed when the submission contains more than 25 dwelling units. The form and guidance concerning assembly of the information is available at any FmHA office.

B. *Location Map.* A general site location map of the area indicating the adjacent land zoning and uses, the present and future access roads to the site as well as the proximity to shopping, schools, churches, and major transportation facilities with note of traffic volumes. If a satisfactory map of the locality is not available, a clear and preferably scaled rough sketch map that provides the required information will be sufficient.

C. *Property Survey Map.* A survey map of the project site showing the boundaries as well as all existing known features specifically including utilities, easements, access roads, floodplains, drainageways, rock outcroppings and wooded areas or specimen trees. If a current survey does not exist, the most accurate document which is available will be submitted.

D. *Soils Map and Report.* A complete soils map and report, including "site specific" interpretations and recommendations, from the local or county representative of the U.S. Department of Agriculture, Soil Conservation Service (SCS) Office will be included with the location and feasibility submission. A determination of whether or not any lands described in USDA Regulation 9500-3 are impacted by the proposed development should also be included. The local SCS office may provide recommendations for the development of suitable drainage and landscaping plans later in the planning process.

E. *Market Survey.* A market survey will be submitted in accordance with the requirements of the respective loan program as indicated in Part 1944, Subparts D and E and Part 1822, Subpart F (FmHA Instruction 444.7) of this chapter.

F. *Request for Exceptions.* Any need for State or National Office exception(s) should be identified at this stage in the processing. Appropriate exception(s) should be requested and obtained before proceeding to the preliminary submission.

G. *Other.* The applicant will need to submit any additional information that may be needed as indicated in Subpart D or Exhibit A-6 of Subpart E of Part 1944 of this chapter. This may include but is not limited to:

1. Schematic design drawings showing the proposed plot plan, typical unit plans, and elevations. If available, the proposed preliminary drawings and specifications may be submitted. This would be of assistance if it is determined that the loan must receive National Office authorization.

2. Type of construction.

3. The total number of living units and the number of each type of living unit proposed.

4. Type of utilities such as water, sewer, gas, and electricity and whether each is public, community, or individually owned.

II. Application Submission Documents

After it is determined by FmHA that the project is feasible and the location conforms with the intent of the funding program, the sponsor will submit the following information to the District Director in addition to those materials submitted previously.

A. *Property Survey.* A survey of the property lot showing the exact boundaries and corners of the property accompanied by a written description of said boundaries. Also, locations of predominant features such as utilities, easements, access points, floodplains, drainageways, rock outcroppings and wooded areas or specimen trees affecting the proposed development must be included. This document shall bear the seal of a professional surveyor or engineer. This survey could be a part of item D below.

B. *Topographic Map.* An accurate topographic map with a scale compatible with the size of the project. The site shall be shown at a reasonable scale with 5-foot contour intervals. Where the site is unusually level or steep, the contour intervals may be varied accordingly.

C. *Preliminary Site Plan.* A line drawing, to scale, showing proposed street locations with profiles and widths, lot layouts, major drainageways, and other development planned. Preliminary sections and details shall be provided for the street construction, curbs and gutters, drainageways, and other physical improvements.

D. *Preliminary Dwelling Drawings and Specifications.* Drawings of the dwelling units, preliminary floor plans and specifications, elevations and sample site plans showing the placement of the individual buildings should be submitted.

E. *Statement of Planning and Zoning Compliance.* Local, country and State approvals as applicable. If change of zoning or variance is required, the status of the variance or change of zoning shall be documented.

F. *Technical Service Contracts.* Executed contracts for the professional services of a site planner, architect, landscape architect, engineer, and/or soil engineer will be submitted as appropriate for the planning of the proposed development.

G. *Utility Approvals.* Statements of approval and feasibility for utility systems as follows:

1. Verification of adequate capacity and approval to tie-in with local existing water, wastewater disposal, electric, telephone, and other utility systems, as appropriate.

2. Tentative approval of local or State health authority for individual water and/or wastewater disposal systems when it is clear that central systems are unfeasible at this time. Use § 1924.108 (a)(5) of this Subpart when preparing information required.

H. *Facility Acceptance.* Evidence that the appropriate public body is willing to accept and maintain streets, common areas, lighting, fire hydrants, sidewalks, drainageways, and utilities, as appropriate, when dedicated to said body.

I. *Preliminary Specifications.* Outline specifications describing all the proposed materials to be used and how they are to be applied. These are only the materials used in the land development and construction of the streets, drainage, and utility work.

J. *Incremental Slopes Plan.* If areas of common slope are not identified elsewhere in adequate detail, this information should be provided in a separate plan.

K. *Preliminary Grading Plan.* This plan will indicate degree of work required to provide positive drainage of all building sites and control measures to be taken to eliminate soil erosion. Dwelling locations may be shown if they can be predetermined.

L. *Other.* The applicant will need to submit any additional information that may be needed as indicated in the respective loan program regulations as indicated in Part 1944, Subparts D and E and Part 1822, Subpart F this chapter. This may include but, not be limited to:

1. A detailed trade-item cost breakdown of the project for such items as land and right-of-way, building construction, equipment, utility connections, architectural/engineering and legal fees, and both on- and off-site improvements. The cost breakdown also should show separately the items not included in the loan, such as furnishings and equipment. This trade-item cost breakdown should be updated just prior to loan approval.

2. Information on the method of construction, on the proposed contractor if a construction contract is to be negotiated and on the architectural, engineering, and legal services to be provided.

3. For all projects containing over four units the applicant will submit an Affirmative Fair Housing Marketing Plan for approval by FmHA in accordance with § 1901.203 of Subpart E to Part 1901 of this chapter. The Affirmative Fair Housing Marketing Plan must be prepared in a complete, meaningful, responsive and detailed manner.

4. A description and justification of any related facilities (including but not limited to workshops, community buildings, recreation center, cooking and dining facilities, or other similar facilities to meet essential needs) to be financed wholly or in part with loan funds.

III. Technical Documents Necessary for the Obligation of Funds

All decisions regarding the conceptual design of the proposed project should be made prior to this submission. This effort is mainly to demonstrate that those agreed upon concepts have been transformed into construction documents and the necessary approvals have been granted. All items requiring revision or more detailed information as determined by the review of the preliminary submission will be resolved before the sponsor prepares the final submission. All documents shall be executed in a professional manner and shall carry the appropriate designation attesting to the professional qualifications of the land planner, architect, or engineer. All documents will be accurately drawn at an appropriate scale.

Dated: November 2, 1984.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 85-351 Filed 1-4-85; 8:45 am]

BILLING CODE 3410-07-M

Agricultural Marketing Service

7 CFR Part 920

Kiwifruit Grown in California; Extension of Time for Filing of Comments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing of comments.

SUMMARY: This extension of time is necessary to allow interested persons additional time to prepare and file written comments on proposals designed to implement the newly established kiwifruit marketing order. These proposals include reporting, inspection, and container requirements and the establishment of expenses and an assessment rate for the 1984–85 fiscal period.

DATE: The date by which written comments must be postmarked is extended to January 10, 1985.

ADDRESS: Interested persons may send four copies of written comments to the Hearing Clerk, Room 1077—South Building, U.S. Department of Agriculture, Washington, D.C. 20250, where they will be available for inspection during business hours.

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

SUPPLEMENTARY INFORMATION: Notice was given of this proposed rulemaking in the **Federal Register** on December 19, 1984 (49 FR 49302). The notice provided an opportunity to file written comments thereto by January 3, 1985.

The time for the filing of written comments is hereby extended to January 10, 1985.

List of Subjects in 7 CFR Part 920

Marketing agreements and orders, California, Kiwifruit.

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

Dated: January 3, 1985.

Thomas R. Clark,

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

[FR Doc. 85–573 Filed 1–4–85; 11:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 41267–4167]

15 CFR Part 377

Request for Public Comment on Revising the List of Commodities Subject to the Naval Petroleum Reserves Production Act of 1976

AGENCY: Office of Industrial Resource Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of proposed rulemaking and request for public comment.

SUMMARY: The Department issued a Federal Register Notice of June 29, 1984 requesting comments on a proposal to lift the validated licensing requirement on linear alpha olefins (49 FR 26751). The Department received a number of comments in response to this Notice. Subsequent to the close of the comment period, while the Department was reviewing the comments received, a number of additional comments were received which questioned the breadth of the list of commodities subject to the Naval Petroleum Reserves Production Act (NPRPA) export prohibition. The list of commodities subject to the NPRPA was established in 1976, and has not been reviewed since that time. The Department is soliciting comment from the public as to whether this list of commodities should be modified.

DATE: Comments must be received by February 6, 1985.

ADDRESS: Comments may be mailed to: Department of Commerce, Resource Assessment Division, P.O. Box 663, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John Richards, Director, Office of Industrial Resource Administration, International Trade Administration (Telephone: 202/377–4506).

SUPPLEMENTARY INFORMATION: In proposing revisions to the list of commodities subject to the NPRPA (supplement No. 3 to 15 CFR Part 377 of the Export Administration Regulations), commenters should note the following provisions related to the Administration of the NPRPA:

The NPRPA prohibits the export of any petroleum produced from the Naval Petroleum Reserves. Petroleum is defined in that Act as including "crude oil, gases (including natural gas), natural gasoline, and other related hydrocarbons, oil shale, and the products of any of such resources." The House Conference Report (No. 94–942) on the NPRPA expands the definition to include "crude oil, gases of all kinds (natural gas, hydrogen, carbon dioxide, helium and any others), natural gasoline, and related hydrocarbons (tar sands, asphalt, propane, butane, etc.), oil shale and the products of such resources."

Since 1976, the Department has applied the NPRPA export prohibition to hydrocarbons, but not their derivatives. The commodities subject to the NPRPA are listed below.

Schedule B Number	Commodity Description
401.0110	Benzene.
401.0120	Toluene.
401.0132	Ortho-xylene.
401.0134	Para-xylene.
401.0139	Other xylene.
415.2400	Helium.
415.2900	Hydrogen.
417.2000	Ammonia, aqueous.
423.1010	Carbon dioxide and carbon monoxide.
431.0210	Butadiene.
431.0220	Butylene.
431.0230	Ethylene.
431.0240	Isoprene.
431.0250	Propylene.
431.0270	Linear alpha olefins (C-6 to C-30 range).
431.0295	Acyclic organic compounds, n.s.p.f.
475.0710	Crude petroleum (including reconstituted crude petroleum), tar sands and crude shale oil.
475.0719	Petroleum, partly refined for further refining.
475.0720	Distillate fuel oils, having a Saybolt Universal viscosity at 100°F. of less than 45 seconds.
475.0740	Distillate fuel oils (No. 4 type) having a Saybolt Universal viscosity at 100°F. of 45 seconds or more, but not more than 125 seconds.
475.0760	Fuel oils, having a Saybolt Universal viscosity at 100°F. of more than 125 seconds.
475.1505	Natural gas, methane and mixtures thereof (including liquefied natural gas and synthetic or substitute natural gas).
475.1515	Ethane with a minimum purity of 95 liquid volume percent.
475.1525	Propane with a minimum purity of 90 liquid volume percent.
475.1545	Butane with a minimum purity of 90 liquid volume percent.
475.1570	Other natural gases (including mixtures), n.s.p.f. and manufactured gas.
475.2520	Gasoline, motor fuel (including aviation).
475.2530	Jet fuel, naphtha-type.
475.2550	Jet fuel, kerosene-type.
475.2560	Other motor fuel (including tractor fuel and stationary turbine fuel).
475.3900	Kerosene derived from petroleum, shale oil, natural gas, or combinations thereof (except motor fuel).
475.3500	Naphthas derived from petroleum, shale oil, natural gas, or combinations thereof (except motor fuel).
475.4000	Mineral oil of medicinal grade derived from petroleum, shale oil or both.
475.4100	Hydraulic fluids, including automatic transmission fluids.
475.4510	Aviation engine lubricating oil, except jet engine lubrication oil.
475.4515	Jet engine lubricating oil.
475.4520	Automotive, diesel, and marine engine lubricating oil.
475.4525	Turbine lubricating oil, including marine.
475.4530	Automotive gear oils.
475.4550	Steam cylinder oils.
475.4555	Insulating or transformer oils.
475.4560	Quenching or cutting oils.
475.4580	Lubricating oils, n.s.p.f., except white mineral oil.
475.5700	Greases.
475.6710	Carbon black feedstock oil.
475.6720	Natural gas liquids, including LPG, n.s.p.f.
475.6740	Petroleum jelly and petrolatum, all grades.
475.6750	White mineral oil, except medicinal grade.
475.6781	Other non-lubricating and non-fuel petroleum oils, n.s.p.f.
480.6540	Ammonia, anhydrous.
492.5210	Paraffin wax, crystalline, fully refined.
492.5220	Paraffin wax, crystalline, except fully refined.
492.5240	Paraffin wax, all others (including microcrystalline wax).
511.2500	Paving mixtures, bituminous, based on asphalt and petroleum.

Schedule B Number	Commodity Description
517.5120	Petroleum coke, calcined.
521.1120	Petroleum asphalt.
521.3150	Petroleum coke, except calcined.

The NPRPA is currently administered by the requirement that a non-Naval Reserve affidavit (attesting that the commodity to be exported was not produced from a Naval Reserve resource) accompany a validated license application. For the export of those commodities not subject to validated licensing, the affidavit must be retained in the exporter's files.

The Department is proposing to limit the applicability of the NPRPA to those commodities currently subject to a validated export license (Supplement No. 2 to 15 CFR Part 377, Commodity Groups A through N). Those commodities described in Group O in Supplement No. 2 to 15 CFR 377 which are presently subject to the requirements of general license, G–NNR on export, would then be eligible for export under general license G–DEST.

Of particular interest to the Department are comments directed to the administrative burden or difficulty of establishing whether a product is derived from Naval Reserve petroleum for purposes of the NPRPA affidavit, and whether the removal of restrictions on a product would lead to the significant exploitation of Naval Reserve petroleum as a source of supply for export markets. Parties submitting comments are asked to be as specific as possible. However, respondents are reminded that the Department is soliciting only information that may be used publicly. No "confidential business information" will be accepted. Any information so designated will be returned to the commenter.

After receiving public comments, the International Trade Administration will make a decision regarding this matter and issue an appropriate notice in the **Federal Register.** The period for submission of comments will close on (30 days from the publication of this notice). All comments received before the close of the comment period will be considered by the Department. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured. It is the Department's intention to announce its decision in the **Federal Register** within 30 days of the close of the comment period.

Public comments will become a matter of public record, and will be available for public inspection and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning this Notice will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20230. Records in this facility may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling 202/377–3031.

Rulemaking Requirements:

ITA has determined that this proposed rule is not a major rule within the meaning of section 1 of Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a Regulatory Impact Analysis will not be prepared.

The General Counsel of the Department has certified to the Small Business Administration that this proposed rule will not have a significant economic impact on a substantial number of small entities because it removes administrative burdens rather than imposing them.

The recordkeeping requirement associated with this proposed rule has been cleared under OMB control no. 0625–0104.

List of Subjects in 15 CFR Part 377

Exports.

Authority: Secs. 203, 206, Pub. L. 95–223, as amended (50 U.S.C. 1702, 1704); E.O. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984); Sec. 103, Pub. L. 94–163 as amended (42 U.S.C. 6212); F.O. 11912 of April 13, 1976 (41 FR 15825, as amended); Section 201(10), Pub. L. 94–258 amending 10 U.S.C. 7430.

Dated: January 2, 1985.

John A. Richards,

Director, Office of Industrial Resource Administration.

[FR Doc. 85–331 Filed 1–4–85; 8:45 am]

BILLING CODE 35N-DT-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR PARTS 1, 31, and 54

[LR–216–84]

Taxation of Fringe Benefits; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Proposed Rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the taxation of fringe benefits. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered by March 8, 1985. The regulations are proposed to be effective as of January 1, 1985.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T LR–216–84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. 20224, Attention: CC:LR:T (202) 566–3918 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Parts 1, 31, and 54 of Title 26 of the Code of Federal Regulations. The temporary regulations are designated by a "T" following their section citation. The final regulations, which this document proposes to base on those temporary regulations, would amend Parts 1, 31, and 54 of Title 26 of the Code of Federal Regulations.

The regulations provide guidance on the treatment of taxable and nontaxable fringe benefits, including the valuation

of taxable fringe benefits for purposes of income and employment tax withholding. In particular, the regulations provide special rules for valuing employer-provided automobiles, use of employer-provided automobiles for commuting, flights on employer-provided airplanes, and free or discounted flights on commercial airlines. In addition, the regulations provide guidance concerning when and in what manner employers must collect and pay income and employment taxes.

Sections 61, 3121, 3231, 3306, 3401, and 3501 of the Internal Revenue Code of 1954 (Code) were amended, and sections 132 and 4977 were added to the Code, by section 531 of the Tax Reform Act of 1984 (98 Stat. 877). The regulations are to be issued under the authority contained in sections 132 and 7805 of the Code (98 Stat. 878; 68A Stat. 917). For the test of the temporary regulations, see FR Doc. 85-292 [T.D. 8004] published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations contains a summary of the provisions of these regulations.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required by Chapter 6 of Title 5, United States Code.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Comments are invited concerning the administrability and appropriateness of the special rules contained in the temporary regulations relating to valuing employer-provided automobiles, use of employer-provided automobiles for commuting, flights on employer-provided airplanes, and free or discounted flights on commercial airlines. In particular, comments are requested on the manner in which employers and employees should elect to use these special valuations rules, including any necessary reporting requirements.

Comments are also requested relating to the need for other special rules for valuing taxable fringe benefits, such as the use of employer-operated eating facilities and athletic facilities, international flights on employer-provided airplanes, and use of employer-provided automobiles in foreign countries.

Comments are requested with respect to establishing a safe harbor for sales and service personnel that would eliminate some of the record-keeping requirements for business use of automobiles for such persons.

On December 27, 1984, the Service announced its intention to exclude certain special-purpose farm vehicles, such as tractors and combines, from the definition of "other means of transportation" under section 280F. In addition, the Service announced that it is considering under what circumstances pick-up trucks used in the business of farming may be excluded from the definition of "passenger automobile" under section 280F. Comments are requested on these announcements.

Comments are also requested relating to the definition of "employee" for purposes of the section 4977 election concerning the line-of-business restriction in section 132. Specifically, comments are requested as to whether, and to what extent, retirees should be included in the definition of employee.

Comments are also requested concerning the circumstances under which retirees should be treated as officers, owners, or highly compensated employees for purposes of the nondiscrimination rules contained in section 132.

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. Comments on those requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies to the Service.

Drafting Information

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

List of Subjects

26 CFR 61.1—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

26 CFR Part 54

Excise taxes, Pensions.

M. Eddie Heironimus,

Acting Commissioner of Internal Revenue.

[FR Doc. 85-293 Filed 1-2-85; 9:44 am]

BILLING CODE 4830-01-M

---

26 CFR Part 1

[LR-192-84]

Investments in Nonpurpose Obligations; Tax Exempt Status of Industrial Development Bonds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed regulations that relate to the tax exempt status of industrial development bonds. Changes to the applicable tax law were made by the Tax Reform Act of 1984 (Pub. L. 98-369; 98 Stat. 922). These regulations affect all purchasers, beneficiaries, and governmental issuers of tax exempt industrial development bonds. In addition, in the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations that relate to the tax exempt status of industrial development bonds. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 8, 1984. The regulations are proposed to be effective

for obligations issued after December 31, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–192–84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Mitchell H. Rapaport of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3740).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** contain temporary regulations under Part 1 of Title 26 of the Code of Federal Regulations. The final regulations, which this document proposes to be based on those temporary regulations, would be added to Part 1 of Title 26 of the Code of Federal Regulations. For the text of the temporary regulations, see FR Doc. —— (T.D. 8005) published in the Rules and Regulations portion of this issue of the **Federal Register.** The preamble to the temporary regulations explains the addition to the regulations.

The regulations interpret the provisions of section 103(c)(6) of the Code, which adds additional arbitrage requirements that industrial development bonds must meet in order to avoid being treated as obligations not described in section 103(a).

The proposed and temporary regulations provide that an issue does not qualify for the temporary investment exception to the rebate requirement if a reserve fund is maintained for the issue. Comments are requested concerning the potential advantages and disadvantages of permitting issuers to maintain a reserve fund in which all of the nonpurpose obligations were United States Treasury Securities—State and Local Government Series with a yield not greater than the yield on the issue and still qualify for the temporary investment exception to the rebate requirement.

The proposed and temporary regulations require that issuers rebate to the United States the amount described in section 103 (c)(6)(D) at least once every 5 years throughout the term of the issue based on the yield on the issue over its entire term. An issuer could be required to continue to make rebate calculations after all of the gross proceeds of an issue have been expended. Comments are invited concerning whether the final requlations should require or permit a final rebate payment to be made within a reasonable period of time after all of the gross proceeds of an issue are expended. If this rule were adopted, the relevant yield would be the yield on the issue during the period that the nonpurpose obligations were held. To the extent that other gross proceeds later become available requiring a rebate, the yield on the issue would have to be recalculated. Comments are also requested as to whether this recalculation of yield should apply to require a redetermination of amounts required to be paid with respect to previously held nonpurpose obligations. Finally, comments are also invited concerning whether for all purposes of determining the rebate on nonpurpose obligations the relevant yield should be the yield on the issue during the period coinciding with the period that the nonpurpose obligations were held rather than the yield over the entire term of the issue.

The proposed and temporary regulations provide detailed procedures for determining whether the acquisition of certificates of deposit and investment contracts involves a deflection of arbitrage to persons other than the United States. Comments are requested detailing any administrative or other difficulties that may arise under these procedures.

These regulations are proposed to be issued under the authority contained in section 103(c) and section 7805 of the Internal Revenue Code (98 Stat. 922, 26 U.S.C. 103(c); 68A Stat. 917, 26 U.S.C. 7805).

Nonapplicability of Executive Order 12291

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

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

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

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.** The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests persons submitting comments to OMB also to send copies of the comments to the Service.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85–329 Filed 1–2–85; 11:35]

BILLING CODE 4830–1–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulfur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) requests information on whether it should amend its Outer Continental Shelf (OCS) air quality rules by including special provisions for the OCS off the State of California. This Advance Notice of Proposed Rulemaking (ANPR) solicits comments on the established program and on modifications that could be considered

for rules for OCS areas adjacent to California.

DATE: Interested persons are invited to submit written comments and recommendations on the Advance Notice. Written comments must be postmarked or received on or before March 8, 1985.

ADDRESS: Responses should identify the subject matter and be directed to the Director, Minerals Management Service, Attention: Branch of Environmental Operations, Mail Stop 644, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; (703) 860–7916, (FTS) 928–7916.

BILLING CODE 4310-MR-M

AUTHORS: John T. Goll and Mitchell T. Baer, Branch of Environmental Operations, Offshore Environmental Assessment Division, Minerals Management Service; L. Poe Leggette, Office of the Solicitor, Department of the Interior; John V. Mirabella, Branch of Rules, Orders, and Standards, Offshore Rules and Operations Division, Minerals Management Service.

SUPPLEMENTARY INFORMATION:

Background

Section 5(a)(8) of the OCS Lands Act Amendments (OCSLAA), 43 U.S.C. 1334(a)(8), requires that the Secretary of the Interior prescribe regulations with provisions "for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), to the extent that activities authorized under this Act significantly affect the air quality of any State." The Department of the Interior (DOI) published a final rule on March 7, 1980 (45 FR 15128), establishing a program to implement section 5(a)(8) of the OCSLAA for the regulation of air pollutants emitted from OCS oil and gas operations on the OCS (30 CFR 250.57) adjacent to California.

Because of the many comments received from State and local government agencies during the rulemaking process for the final rules, the DOI reevaluated its position on the need for a more stringent program for OCS facilities located adjacent to California. In a FEDERAL REGISTER Notice published on March 7, 1980 (45 FR 15147), DOI proposed revisions to amend 30 CFR 250.57 to incorporate a separate set of exemption formulas and significance levels for these facilities. Comments were received on the scope and content of the revisions which were proposed in the Notice. After careful consideration, on April 16, 1982, a withdrawal of the proposed regulation was published in the FEDERAL REGISTER (47 FR 16349). On July 1, 1981, the State of California filed suit against the DOI in State of California v. Watt, Civ. No. 81-3234-CBM(MX), C.D. Cal., primarily alleging that the DOI/MMS air quality rules and the proposed special provisions were insufficient to protect California's onshore air quality. California expressed similar concerns in its comments on the DOI rules and on environmental impact statements (EIS's) for OCS Lease Sales Nos. 53, 68, 73, and 80 adjacent to California.

In an attempt to settle the litigation out of court and to exchange information on their viewpoints, the MMS and the State of California began a series of informal staff-level meetings in January 1984. The MMS and the State of California believe that it is appropriate to reopen the public record on the DOI air quality rules as they pertain to the OCS adjacent to California and to obtain comments from all interested parties. As a first step, this ANPR contains a regulatory framework that is being considered for future proposed rules. The framework restates much of the existing rule but contains several notable changes and would apply only to portions of the OCS adjacent to California.

In developing this framework, the DOI has considered the documents in the Administrative Record of the previous air quality rule-makings filed in the pending lawsuit as well as more recent EIS's prepared for OCS Lease Sales Nos. 73 and 80 and development and production plans from the OCS areas adjacent to California. Additionally, the DOI considered information obtained through the staff-level meetings between MMS and the State of California.

The MMS intends to meet with the State of California following receipt of comments on this ANPR. The MMS then will consider proposing rules for OCS facilities in areas adjacent to California and, based on the comments received in response to this ANPR and information available, will independently develop any proposed rules.

The regulatory framework in this Notice shows how rules applicable to portions of the OCS adjacent to California could be structured. This framework is intended as a reasonable approach which can serve to provide a focus for discussion of available alternate air quality control strategies. In addition to many sections which parallel the existing rules, the framework contains the following provisions which differ from the existing rules.

1. The framework deletes the distance-based exemption formulas presently in 30 CFR 250.57-1(d). The formulas are replaced with allowable emission levels above which the installation of best available control technology (BACT) and/or modeling of onshore impacts are required. The modeling results may require additional controls.

2. Exploration plans and development and production plans may be required to show projected air emissions on a daily basis. This would identify peaks in emissions which might not be revealed if plans showed only annual estimates of emissions. This would be needed to implement provisions in sections B.2(a)(1), B.2(a)(2)(i), B.2(a)(2)(ii), C.3, and C.7(b) of the framework which include emissions levels expressed both in terms of pounds per day and tons per year. Comments are solicited on the numerical level and averaging time for these quantities (see "Discussion and Questions" section). In developing a proposed rule, a decision concerning the numerical values and averaging time for these quantities would take into account the comments received and other available information.

3. The framework requires an assessment of cumulative onshore impacts from any proposed facility which would exceed the allowable emission levels for nitrogen oxides (NO_x), sulfur dioxide (SO_2), carbon monoxide (CO), or total suspended particulates (TSP). The assessment shall include all nearby facilities. A cumulative impact assessment is presently only required if the Regional Director determines that an otherwise exempt facility in combination with other facilities would significantly affect an onshore area.

The results of the cumulative assessment in the framework would be compared to the DOI significance levels to determine the level of control required. In the existing regulatory program, results of the assessment from an individual facility are compared to the significance levels.

4. The framework contains changes in the volatile organic compound (VOC) emission levels at which requirements would be imposed for BACT and for offsets. (Offsets are reductions of emissions of a pollutant from another source to compensate for emissions from the source being regulated.)

5. The framework requires the installation of BACT when cumulative impacts of offshore facilities exceed certain State ambient air quality standards (SAAQS).

6. The framework requires the submission of emissions inventories and annual updates for all regulated pollutants for all facilities.

7. The framework requires lessees to notify the Regional Supervisor in the event of malfunction of air-pollution-control equipment, including the nature of the malfunction and the time needed for correction. The lessee would be required to correct the malfunction within a specified time.

Two other proposals are being considered but are not included in the framework. These proposals are discussed in this section, and comments on the questions in the "Discussion and Questions" section are solicited.

1. One proposal involves the use of the onshore State Implementation Plan (SIP) tracking process to monitor the growth of basinwide air emission inventories. This proposal clarifies and formalizes an existing provision in the DOI air quality rules by which the State can request data for OCS facilities it believes are impacting onshore air quality or for which emission inventory data are required by the State agency. Under the SIP, California onshore air quality agencies keep a current inventory of all emission sources for each pollutant. When additional emission reductions of a particular pollutant are deemed necessary, a cost-effectiveness analysis is conducted. This analysis ranks the sources of the pollutant as to the cost per pound of pollution reduced. Additional controls may be required for the classes of sources that can most effectively reduce emissions until the desired reductions are realized.

Under this proposal, OCS sources would be included in this inventory. If it is determined that reductions of emissions from this class of sources were one of the more cost-effective means to reduce basinwide emissions of a particular pollutant, the MMS would be requested to require OCS facilities to apply the identified control technology. The MMS would assess whether the requirement was justified and, if so, would proceed with rulemaking and solicit public comment.

2. The other proposal is the inclusion of a regulatory provision for NO_x emission offsets. The DOI seeks comments on a control strategy involving the acquisition of emission offsets after the installation of BACT.

In the past few years, considerable study has been performed, and a number of computer modeling analyses have been completed to

assess the role of NO_x as a precursor in the formation of ozone. Although NO_x has long been accepted as a necessary reactant for ozone formation, its exact role has not been delineated, especially regarding satisfactory NO_x control strategies for ozone mitigation. The key relationship appears to be the ratio of hydrocarbons to NO_x. The MMS is presently participating with State of California, the U.S. Environmental Protection Agency (EPA), and the counties of Ventura and Santa Barbara in a modeling study to better understand the role of NO_x in the formation of ozone and to quantify the incremental contribution of emissions from OCS facilities on onshore ozone concentrations. A Joint Interagency Modeling Study is being conducted for the Santa Barbara Channel area. The study will be completed in the fall 1985. The results will be available for use in formulating the proposed rule and, along with other existing information, will be used to evaluate and possibly modify the control strategies concerning NO_x emissions.

The "Discussion and Questions" section requests comments on offset requirements for NO_x emissions. An approach under consideration includes the following three-step process:

1. After the application of BACT, lessees of nontemporary facilities that affect ozone nonattainment areas would compare the level of remaining NO_x emissions with emission level F = 550 pounds per day (or 100 tons per year).

2. If the maximum controlled emissions are greater than F, additional reductions in NO_x emissions would be required through the application of additional emission controls or through the acquisition of the following offshore or onshore emission offsets until the net level of NO_x emissions after mitigation by these additional controls or offsets is zero. Maximum offsets must be obtained through the first offset option before successive options could be utilized.

a. Traditional Offsets. These offsets involve similar or other industrial sources that emit NO_x and can be controlled with available emission reduction technology or are shut down permanently. These reductions would be obtained in a ratio of 1:1 for sources in the county or air-pollution-control district immediately affected (impacted) by the lessee's facility or in a ratio of 2:1 for an adjacent air basin, county, or air-pollution-control district to the area immediately affected by the facility. Maximum offsets would first have to be obtained in the district immediately affected by the facility before additional offsets were obtained in the adjacent district.

b. Innovative Technology. The lessee may install control technology which is determined by the Regional Supervisor to be innovative technology--control technology which is technologically more effective than BACT but is unproven and may not have been used in similar applications either offshore or onshore. If such technology does not perform satisfactorily, the lessee may, with approval of the Regional Supervisor, remove it after a reasonable period of use and would not have to secure equivalent emission

practicable, apply the maximum practicable level of control to any onshore facilities the lessee owns or operates in the area where offsets would be obtained, and must make all reasonable efforts to obtain offsets from third-party sources. Comments are requested on whether such an approach should be pursued. Comments are also solicited on the existing authority of California to collect such funds and administer this program.

Framework Under Consideration for Revised Rules

A. Definitions.

"Air pollutant" means any airborne agent or combination of agents for which the EPA has established national primary or secondary ambient air-quality standards pursuant to section 109 of the Clean Air Act.

"Attainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air-quality modeling (or other methods determined by the Administrator of EPA to be reliable) not to exceed any primary or secondary ambient air-quality standard established by EPA.

"Best available control technology" means any emission reduction achieved through the application of processes, systems, and techniques for the control of each air pollutant. The BACT is based on the maximum degree of reduction for each air pollutant subject to regulation, taking into account energy, environmental and economic impacts, and other costs. The Regional Supervisor offsets that would have been realized by the use of the innovative control technology.

c. Nontraditional Control Strategies. These strategies would include the nontraditional emission offsets such as the purchase and operation of buses, conversions of vehicle fleets to alternate energy uses (such as methanol or propane cars where gasoline is presently used), or the development of effective car-pooling or van-pooling programs. Other nontraditional control strategies could be suggested by the lessee.

d. Interpollutant Offset. The lessee may provide offsets by reducing emissions of a pollutant other than that emitted from the facility if the offsetting pollutant and the emitted pollutant are precursors of the same secondary pollutant. Such interpollutant offsets shall be at a ratio reflecting the relationship of each precursor to the secondary pollutant.

3. If sufficient emission offsets cannot be acquired, the lessee would be assessed a one-time fee. This fee would be based on the cost of applying BACT to similar sources in California that were recently controlled or would be the next sources to be controlled. The fee would be placed in a fund administered by the State and local air pollution control agencies. The agencies would use the fund to finance projects which would result in reductions in levels of the same pollutant for which offsets were originally required. Before this provision can be invoked, the lessee shall control emissions from the proposed facility to the maximum extent

will approve what constitutes BACT on a case-by-case basis. The BACT does not include the use of emission offsets.

"Emission offsets" means emission reductions obtained from facilities or emission sources, either onshore or offshore, other than the facility or facilities covered by the proposed exploration plan or development and production plan. Emission offsets must be permanent, enforceable, real, surplus, quantifiable, and contemporaneous.

"Facility" means any installation or device permanently or temporarily attached to the seabed of the OCS which is used for exploration, development, or production activities and which emits or has the potential to emit any air pollutant from one or more sources. During production, multiple installations or devices will be considered to be a single facility if the installations or devices are directly related to the production of oil or gas at a single site. Any vessel used to transfer production from an offshore facility shall be considered part of the facility while physically attached to the facility. Any vessel used to transfer supplies or personnel shall be considered part of the facility while located at the facility.

"Mobile drilling vessel" means any nonpermanent drilling platform used for the drilling of exploration or development of wells. These include jack-up drilling rigs, semisubmersible platforms, or dynamically positioned drillships.

"Modified facility" means any physical change in the method of operation or addition to an existing facility or any change in hours of operation or production rate which could change air-pollutant emissions from that facility.

"Nonattainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air-quality modeling (or other methods determined by the Administrator of EPA to be reliable) to exceed any primary or secondary ambient air-quality standard established by EPA.

"Projected emissions" means emissions that are forecasted to be released from a source or sources. Emissions are calculated based on the maximum design rate of the equipment, operated at 24 hours per day and 365 days per year, unless the lessee accepts conditions which limit the operational level of the equipment and/or installs and operates emission-control equipment.

"Revised plan" means any exploration plan or development and production plan that includes new sources of air pollutants, increases from existing sources, or changes in operations including location, scope, or level.

"Source" means an emission point including points emitting fugitive emissions. Several sources may be included within a single facility (on which all analyses are based).

"State Implementation Plan" means a plan submitted to and approved by the EPA, pursuant to section 110 of the Clean Air Act, which

provides for the implementation, maintenance, and enforcement of the national primary and secondary ambient air-quality standards within a State.

"Temporary" means activities which are conducted in one location for less than 3 years.

"Volatile organic compound," as specified by EPA, means any reactive organic compound which is emitted to the atmosphere as a vapor.

B. Environmental Information - Exploration Plan and Development and Production Plans.

B.1. For activities (including onshore activities and those within 3 miles of the coastline) which are directly associated with a proposed OCS facility, the lessee shall provide information on each source of air pollutant, listing the source, location of each source, chemical composition and quantity of air pollutants, and daily histogram of emissions (in pounds).

B.2.

B.2(a). For each proposed new or modified OCS facility, the lessee shall submit projected emissions for each year of operation and the bases for all calculations including the following:

(1) For each source--the description of the source, total annual amount of each air pollutant emitted in tons, maximum daily emission of each air pollutant in pounds, and daily histogram of emissions in pounds;

(2)(i) For each proposed facility--the description of the facility, total annual amount of each air pollutant emitted in tons, maximum daily total emissions of each air pollutant in pounds, and daily histogram of total facility emissions by air pollutant in pounds;

(2)(ii) For a modified facility--the total annual amount of each air pollutant emitted showing the original emission levels, new emission levels, and the incremental changes in tons; maximum daily emissions of each pollutant in pounds, and daily histogram of emissions in pounds;

(3) A detailed description of all processes, process equipment, and storage units that directly result in emission of air pollutants;

(4) Information on the type, amount, and specifications of fuels to be burned;

(5) A schematic drawing which identifies the location and elevation of each source on the facility;

(6) If projected emissions are based on the use of emission-reduction-control technology, a description of the controls providing the information required in section B.2(b)(5); and

(7) If a mobile drilling vessel has been described in an earlier plan, a reference to the information in that plan pertaining to sections B.2(a)(1), B.2(a)(2)(i), B.2(a)(3), B.2(a)(4), B.2(a)(5), and B.2(a)(6). If the drilling vessel has been modified from an earlier plan, the information required for a modified facility is in section B.2(a)(2)(ii).

B.2(b). For each new or revised facility, the lessee shall review the requirements of section C and submit those items listed below that are needed to make the appropriate findings in section C.

(1) The information shall include the distance of each proposed facility from the mean higher high water mark of California.

(2) The information shall include the model or models used to determine the effect on the onshore air quality due to emissions from each facility and from other facilities specified by the Regional Supervisor and the results obtained through the use of the model or models. The lessee shall use models approved for use by the Director.

(3) The information shall include meteorological information most representative of the location of the proposed facility and source and meteorological data required by the model or models used, stating the bases for the information and data selected.

(4) The information shall include the air quality status of any onshore air-pollution-control district where the air quality is significantly affected by the projected emissions from each facility proposed in the plan and onshore areas adjacent to these areas. The area shall be classified as nonattainment, attainment, or unclassified. The lessee shall list the status of each area with respect to the applicable NAAQS by air pollutant, Federal prevention of significant deterioration (PSD) class of attainment areas, background PSD pollutant level, and air-pollution-control agency whose jurisdiction covers the area identified. The area also shall be classified with regard to attaining or exceeding the California ambient air-quality standard for nitrogen dioxide (NO_2) and ozone (O_3).

(5) The information shall include the emission-reduction-control technology available to reduce any pollutant emissions requiring reductions, as required in sections C.6 and C.7, listing the source, pollutant controlled, emission control technology, amount of emissions reduction achieved, cost of the control technology, energy, environmental and economic impacts of the control technology, other applications of the control technology (onshore and offshore), and system used to monitor resulting emissions. If applicable, the lessee shall indicate which emission-reduction-control technology the lessee believes constitutes BACT and the basis for that opinion.

(6) The information shall include the ownership of the offshore and onshore source or sources of offsets and the amount of reduction obtainable from each source of offsets. The lessee

shall provide information showing the location of offsets, type of controls employed, any written agreements or contracts entered into by the lessee to obtain rights to those reductions, and the means, including revised permit conditions, by which the reductions will be enforced.

C. Air Quality Review.

C.1. New Plans. All new exploration plans and development and production plans shall include the information required to make the applicable findings under sections C.3 through C.12.

C.2. Revised Plan. All revised exploration plans and development and production plans that include new sources of air pollutants or increases in emission rates from sources described in the original plans shall include all the information required to make the applicable findings under sections C.3 through C.12.

C.3. Exemption From Air Quality Review. Except as provided for in section C.13, a facility described in a new or revised exploration plan or development and production plan is exempt from the requirements in sections C.4 through C.12 if, for each air pollutant calculated in section B.2(a)(1), the highest daily (or highest annual) emission level is less than or equal to the emission levels "E" contained in Table 1, Column B (Column C). (Two sets of levels are presented for discussion purposes. See "Discussion and Questions" section.)

Table 1
Emission Levels

A. Pollutant	B. Emission Level (E)	C. Emission Level (E)
Nitrogen oxides (NO_x)*	150 pounds/day	100 tons/year
Sulfur dioxide (SO_2)	150 pounds/day	100 tons/year
Total suspended particulates (TSP)	150 pounds/day	100 tons/year
Carbon monoxide (CO)	550 pounds/day	250 tons/year
Volatile organic compounds (VOC)	150 pounds/day	100 tons/year

* NO_x consist of nitrous oxide (NO) and nitrogen dioxide (NO_2).

C.4. NO_x BACT Controls. If the amount of NO_x emissions is greater than the emission level E, the emissions shall be reduced through the application of BACT. The emissions, as reduced, will be evaluated under section C.5.

C.5. Evaluation of Onshore Ambient Air-Quality Impacts--Non-VOC Air Pollutants. For a facility not exempt under section C.3, the lessee shall use an approved air-quality model to determine whether projected emissions of non-VOC air pollutants from the proposed facility in combination with other OCS facilities specified by the Regional Supervisor result cumulatively in an onshore ambient air concentration above the significance levels listed in Table 2.

Table 2
Significance Levels (ug/m^3)* for Pollutants

Air pollutant	Averaging time				
	Annual	24 hours	8 hours	3 hours	1 hour
SO_2	1	5		25	
TSP	1	5			
NO_2	1				
CO			500		2,000

*ug/m^3 - micrograms per cubic meter.

C.6. Significance Determinations and Controls for Non-VOC Air Pollutants. The projected emissions from any facility except a temporary facility which in combination with emissions from nearby facilities result in an onshore ambient air concentration above the significance level listed in Table 2 or that are identified as significant by section C.13 shall be deemed to significantly affect the air quality of the onshore area for that air pollutant and shall be controlled as follows:

C.6(a). Nonattainment Onshore Areas. The projected emissions of any air pollutant which significantly affect the air quality of a nonattainment area shall be fully reduced. (The net level of emissions shall be zero.) This shall be done through the application of BACT and, if additional reductions are necessary, through the application of additional (non-BACT) emission controls and/or through the acquisition of offshore or onshore offsets.

C.6(b). Attainment or Unclassified Onshore Areas.

C.6(b)(1). The projected emissions of any air pollutant which significantly affect the air quality of an attainment or unclassified area shall be reduced through the application of BACT.

C.6(b)(2). Except for temporary facilities, the lessee shall use an approved air-quality model to demonstrate that the onshore impacts from TSP and SO_2 emissions that remain after the application of BACT will not exceed the available increments of the maximum allowable increases listed in Table 3.

Table 3
Maximum Allowable Increases (ug/m^3)

PSD class and air pollutant	Averaging time		
	Annual mean[1]	24-hour maximum	3-hour maximum
Class I:			
TSP	5	10	
SO_2	2	5	25
Class II:			
TSP	19	37	
SO_2	20	91	512
Class III:			
TSP	37	75	
SO_2	40	182	700

[1]For TSP - geometric. For SO_2 - arithmetic.

C.6(b)(3). For any period other than annual, the applicable maximum allowable increase may be exceeded during one such period in any air-pollution-control air basin. If the maximum allowable increases are exceeded beyond this limitation, the lessee shall apply whatever additional emission controls are necessary to reduce or offset the remaining emissions of TSP or SO_2 so that concentrations in the onshore ambient air of an attainment or unclassified area do not exceed the maximum allowable increases.

C.7. Significance Determination and Controls for VOC Emissions. The projected emissions of VOC from any facility which are not exempt under section C.3 for that air pollutant or that are identified as significant by section C.13 shall be deemed to significantly affect the air quality of the onshore area for ozone and shall be controlled according to the following provisions:

C.7(a). The projected emissions of VOC from any facility, which exceed E (see Table 1) shall reduce the emissions through the application of BACT.

C.7(b). Nonattainment Onshore Areas. After the application of BACT, lessees of facilities, except temporary facilities, that affect nonattainment onshore areas for ozone shall compare the level of controlled VOC emissions with emission level F = 550 pounds per day (100 tons/year is an alternative level presented for discussion purposes). If the controlled emissions are greater than F, additional reductions of VOC emissions shall be applied through the application of additional (non-BACT) emission controls or through the acquisition of offshore or onshore emission offsets until the net level of VOC emissions after mitigation by these additional controls or offsets is zero.

C.8. Protection of National Ambient Air Quality Standards (NAAQS).

C.8(a). Except for temporary facilities, the lessee shall provide an evaluation of the onshore impacts of facility emissions in

combination with emissions from nearby OCS facilities specified by the Regional Supervisor on the applicable NAAQS.

C.8(b). If any NAAQS is projected to be exceeded, reductions in the emissions of the contributing pollutant are required through the application of emission controls or through the acquisition of offshore or onshore emission offsets sufficient to ensure that the NAAQS will not be exceeded.

C.9. Protection of California SAAQS.

C.9(a). The lessee shall determine the cumulative impacts of the proposed facility and other OCS facilities specified by the Regional Supervisor on the SAAQS listed in Table 4.

Table 4
California State Ambient Air Quality Standards

Air Pollutant	Averaging Time	Standard
NO_2	1 hour	470 ug/m^3
Oxidants	1 hour	.10 parts per million

C.9(b). If the SAAQS for NO_2 is projected to be exceeded, the lessee shall install BACT for NO_x emissions.

C.9(c). If the SAAQS for oxidants is projected to be exceeded, the lessee shall install BACT for VOC emissions.

C.10. Multiple Onshore Affected Areas.

C.10(a). If projected emissions from a facility significantly affect the onshore air quality of both a nonattainment and either an attainment or an unclassified area, the regulatory requirements applicable to projected emissions significantly affecting a nonattainment area shall apply.

C.10(b). If projected emissions from a facility significantly affect the onshore air quality of more than one PSD class of attainment area (described in section C.6(b)(2)), the lessee shall reduce projected emissions to meet the requirements specified for the most restrictive PSD class affected.

C.11. Controls Required on Temporary Facilities. The lessee shall apply BACT to reduce projected emissions of any air pollutant from a temporary facility which significantly affect the air quality of an onshore area of a State. Emission offsets will not be required for temporary facilities.

C.12. Emission Offsets. When emission offsets are required, the lessee shall demonstrate the following: (a) The emission offsets are equivalent in nature and quantity (in a ratio of 1:1) to the projected emissions that must be reduced after the application of BACT; (b) A binding commitment exists between the lessee and the owner or owners of the source or sources from which the offsets are obtained; (c) The appropriate air-quality-control agency has been notified to place appropriate conditions on the source or

sources of emission offsets to ensure that the offsets are real, surplus, permanent, quantifiable, enforceable, and contemporaneous; and (d) The required offsets come from sources within an air quality control district significantly affected by the lessee's OCS operations. (Also, see the "Background" and "Discussion and Questions" sections for an option for NO_x offsets for ozone mitigation.)

C.13. Review of Facilities with Emissions Below the Emission Level. If during the review of a new or revised exploration plan or development and production plan the Regional Supervisor determines or an affected State submits information to the Regional Supervisor which demonstrates, in the judgment of the Regional Supervisor, that projected emissions from an otherwise exempt facility will, either individually or in combination with other facilities in the area, significantly affect (as defined in sections C.6 and C.7) the air quality of an onshore area, then the Regional Supervisor shall require the lessee to submit additional information to determine whether emission-control measures are necessary. The lessee shall be given the opportunity to present information to the Regional Supervisor which demonstrates that the exempt facility is not significantly affecting the air quality of an onshore area of the State. If the Regional Supervisor determines, after taking into account any new information, that the projected emissions will significantly affect the air quality of an onshore area, the lessee shall comply with sections C.5 through C.12.

C.14. Emission Monitoring Requirements.

C.14(a). All lessees shall monitor emissions from each facility in a manner approved or prescribed by the Regional Supervisor. The lessee shall submit these emissions data of each pollutant every month in a manner and form approved by the Regional Supervisor.

C.14(b). The lessees of all facilities shall submit an inventory of all air pollutant emissions for their facilities. This inventory shall be updated every year on a time schedule set by the Regional Supervisor.

C.15. Collection of Meteorological Data. The Regional Supervisor may require the lessee to collect and submit meteorological data from a facility for a period of time and in a manner approved by the Regional Supervisor.

C.16. Upset Condition.

C.16(a) If the air-pollution-control equipment fails to operate properly, the lessee shall notify the Regional Supervisor within 48 hours of initial malfunction. The notification shall include the following:

1. Time of initial equipment malfunction,
2. Equipment involved,
3. Location of equipment,
4. Cause or probable cause,

5. Time needed to correct the malfunction, and

6. Assessment of risk to life, property, public health, or environment if a shutdown were to be initiated or if no shutdown were to be initiated.

C.16(b). The pollution-emitting equipment shall be shut down within 96 hours of initial malfunction unless the Regional Supervisor has issued a variance.

C.16(c). If the equipment malfunction requires more than 24 hours to correct, the Regional Supervisor may issue a variance containing a schedule of increments of progress towards correction of the malfunction. The lessee shall comply with the variance and shall use good engineering and management practices to reduce emissions during the period of the variance.

C.17. Inspection of Facilities and Enforcement. Lessees shall be required to submit a plan for monitoring the effectiveness of installed air-pollution-control systems. The Regional Supervisor shall review the plan to determine whether it is appropriate for determining compliance with applicable air-quality regulations and permit conditions. Whenever the Regional Supervisor finds that the lessee(s) is not in compliance with applicable air-quality regulations and/or permit conditions, the provisions of 30 CFR 250.80 shall be applied.

Discussion and Questions

The MMS wishes to obtain information on each part of this framework and on whether alternatives are desirable. For each part, the MMS solicits comments on the (a) need for the requirement, (b) economic cost of the requirement or the suggested alternative, (c) environmental benefit (including information supported by computer modeling to assess onshore air-quality impacts from residual emissions), (d) feasibility of the approach, (e) reasonable alternatives, (f) experience with similar requirements (or the suggested alternatives), and (g) incremental benefits to onshore air quality above those achieved by the existing DOI air-quality rules. Although comments are solicited for all parts of the framework, the MMS wishes to obtain information especially pertaining to the following aspects of the framework. Supporting documentation is requested as appropriate. Documents known to be reasonably available to the MMS need not be attached but may be incorporated by reference.

1. What air pollutants should be addressed? For each air pollutant, what is the present effect of offshore facilities on onshore air quality?

2. Are the suggested definitions appropriate? What definitions do other air-pollution-control agencies use? Should a(n) facility, attainment area, nonattainment area, and temporary activity be defined? Should multiple platforms be defined as one facility or as separate facilities?

3. The present rules and the proposed framework require that temporary facilities only apply BACT if they require controls and do not require offsets if they impact a nonattainment area. Should temporary facilities be treated in a similar manner to permanent facilities? If the same regulatory approach as contained in the framework for nontemporary facilities is applied to temporary facilities, how many temporary facilities would be required to install controls and obtain emission offsets? What are the costs for the controls and offsets? How should the short-term nature of these activities be considered if offsets need to be obtained? How are temporary activities defined and treated onshore? How should temporary facilities be regulated when they are predicted to contribute to the violations of ambient air-quality standards?

4. Section B.2 defines the information required for submission. Should additional or less information be required for submissions?

5. A change under consideration from the existing regulatory program would replace the emission exemption formulas with emission levels stated in either pounds per day or tons per year (both options are under consideration). Should the present review process be maintained or replaced by the emission levels? What would be the appropriate emission level and averaging time to require the use of BACT or the acquisition of emission offsets? What would be the effect on the onshore air quality if the suggested approach in the framework was adopted? What are the costs associated with the emission level suggested by the reviewer?

The highest daily emissions of a particular pollutant would be compared with the proposed emission levels. What is the appropriate averaging time for emissions? Should "highest daily emissions" be retained or be replaced with another measure such as "average daily emissions"? What is the justification for the recommended averaging timeframe?

6. A change is outlined that would require lessees of all facilities, both exploration and development and production, to perform air quality modeling that would include nearby OCS facilities in a cumulative assessment of onshore air quality impacts. Assuming the approach presented in section C.5 is used, what criteria should be used to determine (1) what and (2) how "other facilities" should be included in the cumulative impacts assessment? Should cumulative modeling be required for inert pollutants, photochemical pollutants, exploration activities, and development and production activities? For each category, comment on the feasibility of modeling and the appropriateness of the modeling results. If there are other types of evaluations that would provide the information necessary for decisions on the need for controls, what are the benefits and disadvantages, including accuracy and costs, of these other methods?

7. Which areas adjacent to California should be covered by a revised rule?

8. If more stringent requirements than the existing DOI rules were to be adopted, should these requirements be written to provide for more reductions from a few of the largest facilities or to provide for lesser reductions from a larger number of facilities?

9. If new air-quality regulations are adopted for portions of the OCS adjacent to California, when should the new requirements be effective? How should MMS treat those facilities approved between June 2, 1980, and the effective date of any new regulations? (Facilities approved prior to June 2, 1980, are considered "existing facilities" under current regulations which became effective on June 2, 1980.) Should changes be made to the rules concerning facilities approved prior to June 2, 1980?

10. In section C.3, a change under consideration would alter the initial screening test used to determine which pollutants for a facility must be further reviewed. The present distance-based exemption formulas would be replaced by a single value which would initiate modeling assessments and/or immediate controls. The framework under consideration contains two options for possible emission levels.

The MMS believes that its air quality regulations, consistent with section 5(a)(8) of the OCSLAA, should address "activities (that) significantly affect the air quality of any State." A link must be established between offshore activities and a significant effect onshore.

Is it necessary or appropriate, in determining the link between OCS activities and onshore effects for regulatory purposes, that a facility-by-facility analysis be conducted? Would it be consistent with section 5(a)(8) of the OCSLAA for a determination to be made that OCS activities offshore California, in the aggregate, significantly affect the air quality of California? What would be the implications of such a finding for DOI's regulatory program?

Comments are solicited on the two suggested emission levels ("B" and "C" in section C.3) and other values that could be considered. Information is requested on the technical bases for any proposed level. The discussion should include why a particular level (either alone or in conjunction with the existing significance levels) is considered as defining a "significant effect" within the meaning of the OCSLAA. Considering present and future development off California, include a discussion of how many facilities, both exploration and development and production, would likely be exempt under various emission levels. What is the cost impact of each suggested emission level?

11. Based on the amount of emissions expected from OCS facilities, likely onshore impacts, and current onshore air quality levels, is it necessary to regulate the following pollutants: NO_x, SO_2, TSP, VOC, and CO? Should other pollutants also be regulated? Why?

12. A change is under consideration to require BACT for NO_x emissions greater than the emission-level E. This requirement would be independent of a case-specific air-quality analysis of onshore impact. Should NO_x controls be required for all facilities based on potential generic impact, or should controls be applied based on a case-by-case determination for which modeling shows a need (section C.5)? Should NO_x be considered as a precursor to ozone that must be controlled for the purpose of preventing "significant effects" on onshore ozone concentrations or for other reasons? On what sources of NO_x should BACT be placed? What NO_x controls are reasonably available for OCS facilities? What are their cost and effectiveness in reducing NO_x? How many more facilities are likely to require controls under the framework than under the current rules? What are the costs?

13. The proposed framework proposes to clarify that the "significance test" is based on cumulative impacts rather than on impacts from an individual facility. This means that if emissions from a proposed facility in conjunction with emissions from nearby facilities cause a "significant" onshore impact, the proposed facility would be required to install controls for the analyzed pollutant.

Is this approach reasonable? How close should the nearby facilities be to be considered in the modeling assessment? Are the current significance levels appropriate to address the requirements of section 5(a)(8) for cumulative impacts from OCS facilities?

14. There is presently no significance level in the rules for onshore increases to ozone concentrations from VOC emissions from OCS facilties. Should a significance level for onshore ozone conentration increases be included in the proposed framework? How should ozone impacts be assessed? What are the appropriate air-quality models for this assessment? Discuss the following topics for each model: uncertainty, cost, reliability and accuracy, and the type and availability of the modeling input data.

15. Because ozone is a regional pollutant, what methods can be used to determine whether an ozone nonattainment area is affected or the ozone NAAQS is being exceeded by a particular facility? Is there a distance beyond which the effects on a nonattainment area can be considered insignificant?

16. The proposed framework includes emission levels for the installation of controls and the acquisition of offsets for VOC emissions. How many more facilities, both exploration and development and production, are likely to require controls and offsets under this approach versus the present approach? What is the effectiveness of controls for VOC emissions? What offsets are available for VOC emissions?

17. The proposed framework includes a provision to provide protection for two California SAAQS (section C.9). Should

SAAQS be protected? If yes, which ones should be protected and why? Which SAAQS do OCS emissions impact? Should precursors to pollutants covered by an SAAQS be regulated? For example, should both VOC and NO_x emissions be controlled if significant onshore impacts to ozone concentrations are predicted?

Is the suggested approach to protect SAAQS reasonable? How many facilities are likely to require controls to protect SAAQS beyond those that would already require controls under (1) the present DOI rules and (2) the proposed framework under consideration? What would be the cost of the required controls? What impacts to onshore development will occur if SAAQS are not met? What are the implications if SAAQS are not met?

18. What will be the impact on onshore development from the proposed framework and the existing DOI regulatory program? Should there be different regulatory requirements for similar industries on the OCS adjacent to California and in onshore areas of California? What impacts on economic activity in California will the proposed framework have? What are the indirect costs imposed by more stringent regulations?

19. The "Upset Conditions" section provides for the notification of the Regional Supervisor if a lessee's emission-control equipment fails to properly operate; it also provides a mechanism by which such conditions will be addressed. What are reasonable lengths of time for an operator to be required to notify the Regional Supervisor of such conditions, the lessee to correct a problem, and the Regional Supervisor to take action against the lessee?

20. What alternate approaches to air-quality protection are feasible? What are the estimated costs of compliance of other approaches? How effective would the other approaches be?

21. Though no language on vessels in transit is included in the framework, the DOI is considering whether to require emission controls on tankers, crew boats, and supply boats used in OCS activities when unattached to OCS facilities. What regulatory program is appropriate for these sources?

What pollutants do these vessels emit? What are the quantities of these emissions? What incremental contributions do they add to onshore air-quality concentrations? What control technologies are available for emissions from these vessels? How effective and how costly are these controls? How are similar vessels using California ports regulated under the SIP?

Are other methods of regulating these emissions lawful and desirable? For example, should the DOI include emissions from associated vessels in transit in the projected emissions of a given facility?

22. The body of scientific information indicates that NO_x serves a role as a precursor in the formation of ozone and that the ratio of hydrocarbons to NO_x is important in determining the rate of formation of ozone. Because of the importance of the

hydrocarbon/NO_x ratio in the formation of ozone, control strategies are less straightforward or certain for the ozone precursors than for the primary regulated pollutants such as TSP or CO. Any recent experimental data that can provide further insight to the formation of ozone are requested.

23. Comments are solicited on the provisions of the framework to include an explicit offset requirement for NO_x emissions as described in the "Background" section. Comments are solicited on the following items:

(a) The emission level and the appropriate averaging time. (550 pounds/day is approximately 100 tons/year)

(b) The availability and costs of the suggested offset options.

(c) The ratios for acquisition of offsets required in areas directly affected by a facility's emissions and in adjacent air basins or air-pollution-control districts.

(d) The securing of emissions offsets in onshore areas immediately adjacent to the air basin affected by the OCS facility.

(e) The use of innovative control technology, interpollutant offsets, or nontraditional offsets as part of the alternative approach.

(f) The concept of the fee as a final option and the administration of the funds collected.

(g) Does the State of California have legal authority to accept and administer these funds?

24. How should OCS facilities be integrated into the existing SIP tracking process? Should existing facilities be subject to additional controls? What other factors besides costs and benefits should be used when MMS considers the possible imposition of additional controls on OCS facilities as a result of the ongoing analysis in the SIP tracking process?

How should these factors be quantified, and what is the underlying technical basis for such controls?

25. What special factors, including costs, prior installation and use, space, feasibility, and worker safety should be considered in determining the definition of BACT for OCS sources?

26. Please provide any other comments, suggestions, or recommendations you may have relative to air-quality controls on offshore facilities adjacent to California without regard to whether the specific issues involved were mentioned above.

January 2, 1985
Date

Wm D Bettenberg

Director, Minerals Management Service
William D. Bettemberg

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CCGD8-84-23]

Special Anchorage Area; Destin, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering establishing a Special Anchorage Area in the vicinity of Destin, Florida to be called the Destin Harbor (Old Pass Lagoon) Anchorage. This action is necessary to provide a designated anchorage space for small vessels.

DATE: Comments must be received on or before February 21, 1985.

ADDRESSES: Comments should be mailed to Commander, Eighth Coast Guard District (mps), Hale Boggs Federal Building, 500 Camp St., New Orleans, LA 70130. The comments and other materials referenced in this notice will be available for inspection or copying in Rm. 1341 at the above address. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG K.D. Christopher, Project Officer, Commander, Eighth Coast Guard District, 500 Camp St., New Orleans, LA 70130, Tel: (504) 589-6901.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and address, identify this notice (CCGD-8-84-23) and the specific section of the proposal to which their comments apply, and give the reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

These regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG K.D. Christopher, Eighth Coast Guard District Marine Safety Division and LCFR W.B. Thomas, project attorney, Eighth Guard District Legal Office.

Discussion of Proposed Rule

The Coast Guard received a request from the Board of Commissioners, Okaloosa, Florida, in September 1982 for establishment of a Special Anchorage Area in Destin Harbor (Old Pass Lagoon). Their request stated: "This area traditionally has been and will continue to be a popular and useful anchorage for commercial and pleasure craft." The proposed Special Anchorage Area is the only protected anchorage for approximately 100 miles between Pensacola, Florida, and Panama City, Florida. Choctawhatchee Bay is restricted to vessels with less than 50 foot mast height by U.S. Highway 98 fixed bridges. Choctawhatchee Bay lacks well protected locations near shore suitable for anchorage of vessels.

As a result of the anchorage request, the Coast Guard surveyed vessels anchored in Destin Harbor (Old Pass Lagoon) from July 20, 1984 to August 4, 1984. The results of this survey indicate that there was an average of three to four vessels anchored daily during this time, with six vessels being the maximum observed on any one occasion. Almost without exception, vessels were anchored in the southwestern corner of the lagoon in the general area of the proposed Special Anchorage. During the survey 90% of the vessels transiting the area did so by passing north of the proposed anchorage area.

The Coast Guard believes that formalizing the general practice followed in the area and already widely publicized by such publications as the United States Coast Pilot is required for the advancement of safe navigation. The proposed designation would advise mariners of the likely presence of anchored vessels and concentrate anchored vessels in a limited area.

Subsequent to the Coast Guard receiving the request for the proposed Special Anchorage Area, the U.S. Army Corps of Engineers received four permit applications for three marinas and a private dock. All of these proposed projects either overlapped or were adjacent to the proposed Special Anchorage.

Captain of the Port, Mobile, Alabama, informed the Corps of Engineers of his objections to having piers located inside of or close to a Special Anchorage Area. The Captain of the Port, Mobile referenced Part 109.10 of Title 33, Code of Federal Regulations, which states: "The areas so designated should be well removed from the fairways and located where general navigation will not endanger or be endangered by unlighted vessels." The Captain of the Port, Mobile stated: "Should the special anchorage not be so designated as a result of the rulemaking process, this office would then not probably object to the marina proposal."

The Corps of Engineers deactivated the private dock and two marina permit applications because of a conflict with the proposed Special Anchorage Area. The Corps of Engineers will take no further action until conflicts concerning them have been settled. The Corps of Engineers approved on April 29, 1983 the other permit application, #82G-0373. The Coast Guard did not comment separately on this permit application prior to its approval. This permit application, by M&B Properties, proposed a 39 slip marina that fell within the proposed Special Anchorage Area. The Coast Guard informed the Corps of Engineers of its concern on 23 May 1984.

The Coast Guard has received numerous comments from individuals that are for or against the proposed Special Anchorage Area. After reviewing comments received and surveying the area, the Coast Guard believes that a Special Anchorage Area may be needed. Also, the Coast Guard is inviting comments on the possibility of co-locating the Special Anchorage and the proposed marinas.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Establishment of this proposed Special Anchorage Area will not require dredging or result in increased costs to any segment of the public. Designation of this area as a Special Anchorage Area would acknowledge a traditional practice and not create a new use for the area to be designated.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds, Special Anchorage Area.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations, by adding a new section 33 CFR 110.74c to read as follows:

§ 110.74c Destin Harbor (Old Pass Lagoon), Destin, Fla.

The area of the southwest corner of Destin Harbor (Old Pass Lagoon) beginning at a point on the shoreline at latitude 30°23'26" N., longitude 86°30'38" W.; thence 105° T to latitude 30°23'20" N., longitude 86°30'13"W.; thence 188° T to a point on the shoreline at latitude 30°23'14" N.; longitude 86°30'14" W.; thence along the shoreline to the point of beginning.

Note.—This area will be principally for use by yachts and other recreational craft. Temporary floats or buoys for marking anchors are allowed. Fixed mooring piles or stakes are prohibited. All moorings shall be so that no vessel, when anchored, shall at any time extend beyond the limits of the area. Anchoring of vessels in Destin Harbor (Old Pass Lagoon) outside of the area so designated is prohibited. Vessels may not anchor for more than 72 hours at any one time without permission from the harbormaster. The anchoring of vessels will be under the jurisdiction and at the discretion of the local harbormaster: Destin, Florida. Discharges of any material, sewage, garbage, oil, etc., except as permitted under the Clean Water Act, Title 33, United States Code, section 1251 et seq., are strictly prohibited upon penalty of law.

(33 U.S.C. 2030, 2035, and 2071; 49 CFR 1.46; and 33 CFR 1.05-1(g))

Dated: December 31, 1984.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85-466 Filed 1-4-85; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 117

[08-84-10]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Harvey Canal Route, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana House of Representatives and the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the double leaf bascule span bridge over the Harvey Canal, mile 0.24, on LA 18 (Fourth Street) in Harvey, Jefferson Parish, Louisiana, to provide that the draw need not open for the passage of vessels from 6:15 a.m. to 8:15 a.m. and from 4:30 p.m. to 5:45 p.m. Monday through Friday except holidays. The draw would continue to open on signal outside these rush hour periods. Presently, the draw is required to open on signal at all times. This proposal is being made because openings for vessels are contributing to overland traffic congestion during these rush hours. This action should accommodate the needs of vehicular traffic during peak morning and afternoon traffic periods, while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before February 21, 1985.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Proposed Regulation

Navigation through the bridge is almost exclusively barge tows and single tug boats, with an occasional dredge, commercial fisher, scheduled cruise vessel or pleasure craft. Vertical clearance of the span in the closed position is 12.2 feet above high water and 15.3 feet above low water, with unlimited clearance in the open position. Data submitted by the LDOTD show that:

(1) The peak vehicular traffic period in the morning is from 6:15 to 8:15. For the period 10 September 1984 through 8 October 1984, Monday through Friday excluding holidays, the daily average number of vehicles crossing the bridge during the peak morning traffic period was 2406—or an average of 301 vehicles every 15 minutes.

(2) The peak vehicular traffic period in the afternoon is from 4:30 to 5:45. For the perid 10 September 1984 through 8 October 1984, Monday through Friday excluding holidays, the daily average number of vehicles crossing the bridge during the peak afternoon traffic period was 1718—or an average of 344 vehicles every 15 minutes.

(3) For the period 1 January 1984 through 30 June 1984, Monday through Friday excluding holidays, there were 200 bridge openings during the morning peak vehicular traffic period—an average of 1.6 openings per day; and 173 bridge openings during the peak afternoon traffic period—an average of 1.4 openings per day.

Based on these data, the Coast Guard feels that this proposal will provide relief to overland traffic during weekday peak rush hours, while still meeting the reasonable needs of navigation.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels will be affected by the proposed bridge closure periods, as evidenced by the bridge opening statistics which show that the bridge averages 1.5 openings per rush hour period. These vessels are mainly repeat users and scheduling their transit through the bridge outside the rush hours should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by renumbering the existing § 117.451 (a) through (d) as § 117.451 (b) through (e), respectively, and adding a new § 117.45 (a) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.451 Gulf Intracoastal Waterway.

(a) The draw of the LA 18 (Fourth Street) Bridge, Harvey Canal Route, mile 0.24 at Harvey, shall open on signal; except that, from 6:15 a.m. to 8:15 a.m. and from 4:30 p.m. to 5:45 p.m. Monday through Friday excluding holidays, the draw need not be open for the passage of vessels. Public vessels of the United States and vessels in distress shall be passed without delay.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: December 21, 1984

W.H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85-411 Filed 1-4-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[08-84-13]

Drawbridge Operation Regulations; Kelso Bayou, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Proposed Rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the swing span bridge over Kelso Bayou, mile 0.7, on LA27 at Hackberry, Cameron Parish, Louisiana, by requiring that at least four hours advance notice be given for an opening of the draw from 22 December to around 25 May, and on signal at all other times. Presently, the draw is required to open on signal at all times. This proposal is being made because of infrequent requests for opening the draw during the proposed four hours advance notice period. This action should relieve the bridge owner of the burden of having a person constantly available at the bridge to open the draw during said period, while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before February 21, 1985..

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other material referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Proposed Regulation

The LDOTD originally had proposed that this bridge be operated on four hours advance notice from 9 p.m. to 5 a.m. and on signal outside these hours, throughout the year, as part of a broader proposed rule covering nine drawbridges (48 FR 26625; June 9, 1983), subsequently withdrawn. In view of the objections received to that contemplated operation, past bridge openings were restudied in detail. That study showed that shrimp/fish boats account for about 90% of the openings of the Kelso Bayou bridge, while oil field service boats essentially account for the balance. Because of the dominance of the shrimp/fish boats, which are active during the shrimping season set by the Louisiana Department of Wildlife & Fisheries, and not active otherwise, there are not many bridge openings outside of the season.

A bridge opening schedule would appear to be in order that would track the state set shrimping season for Zone 3 by having the bridge open on signal during the season, and on four hours advance notice outside the season. This non-shrimping season is from 22 December, the first day after the end of the white shrimp season, to around 25 May, the start date of the brown shrimp season. The exact start date is set by the state and may vary by several days from year to year. The LDOTD has agreed to switch from the advance notice to the on signal operation on whatever date is set each year.

Vertical clearance of the bridge in the closed position is 3.4 feet above high water and 9.0 feet above low water. Navigation through the bridge consists of shrimp/fish boats and oilfield service boats. Data submitted by the LDOTD show that the waterway traffic through the bridge is infrequent during the proposed advance notice period, coinciding with the non-shrimping season, as noted below:

(1) During the non-shrimping season from 22 December 1983 to 25 May 1984, there were 105 bridge openings, an average of only two openings every three days.

(2) For the comparable non-shrimping season of 1982-83, there were 77 bridge openings, an average of just one opening every two days, while for that of 1981-82, there were 102 openings, an average of only two openings every three days.

Considering the few openings involved during the non-shrimping seasons, the Coast Guard feels that four hours advance notice for an opening during that period will provide relief to the bridge owner, while still reasonably providing for the needs of naviagation. During the shrimping season, the draw would continue to open on signal.

The advance notice for opening the draw would be given by placing a collect call at any time to the LDOTD District Office at Lakes Charles. From ashore, call (318) 439-2406. From afloat, this contact may be made by radiotelephone through a public coast station.

The LDOTD recognizes that during the proposed advance notice period there may be an unusual occasion to open the bridge on less than four hours notice for a bonafide emergency or to operate the bridge on demand for an isolated by temporary surge in waterway traffice, and has committed to doing so if such an event should occur.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the

Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that there are few vessels that pass this bridge during the non-shrimping season. As evidenced by the statistics previously cited for the bridge, openings have been infrequent, averaging two openings every three days in the 1983–84 and 1981–82 non-shrimping season and one opening every two days in the 1982–83 non-shrimping season. These vessels can reasonably give four hours advance notice for a bridge opening by placing a collect call to the bridge owner at any time from ashore or afloat. Mariners requiring the bridge openings are mainly repeat users and scheduling their arrival at the bridge at the appointed time should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by redesignating § 117.459 as § 117.458 and adding a new § 117.459 to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.458 Inner Harbor Navigation Canal, New Orleans.

* * * * *

§ 117.459 Kelso Bayou.

The draw of the S27 bridge, mile 0.7 at Hackberry, shall open on signal; except that, during the non-shrimping season of 22 December to a date around 25 May, as set by the state yearly, the draw shall open on signal if at least four hours notice is given.

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3)).

Dated: December 21, 1984.

W. H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eight Coast Guard District.

[FR Doc. 85-412 Filed 1-4-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Docket No. AM055MD; A-3-FRL-2751-2]

Approval and Promulgation of Implementation Plans; Approval of a Revision to the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Maryland Air Management Administration (MAMA) has submitted amendments to its air quality control regulations and has requested that they be reviewed and processed by EPA as a revision to the Maryland State Implementation Plan (SIP). This revision, submitted on March 14, 1984, amends existing Fuel Burning Equipment and Stationary Internal Combustion Engine regulations. The main purpose of these amendments is to provide an exception procedure for persons wishing to construct and operate small solid fuel burning equipment. Other amendments involve rearranging existing language and correcting an error in the codification of the regulations. This notice summarizes the amendments and proposes EPA approval as the proposed revision meets all of the requirements of the Clean Air Act and the Code of Federal Regulations (CFR).

DATE: EPA must receive any comments within February 6, 1985.

ADDRESSES: Copies of the revision and the accompanying support documents are available during normal business hours at the following offices:

U.S. Environmental Protection Agency; Region III, Air Programs Branch (3AM 10), Curtis Building, Sixth & Walnut Streets, Philadelphia, PA 19106, ATTN: James Topsale, P.E.

Maryland Air Management Administration, Maryland Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201, ATTN: George Ferreri, Director.

All comments on the proposed revision submitted on or before February 6, 1985 will be considered and should be submitted to Mr. James Topsale at the EPA Region III address stated above. Please reference the EPA docket number found in the heading of this Notice in any correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. James Topsale, P.E. or Mr. Paul Racette at the address for EPA Region III, or telephone (215) 597-4553.

SUPPLEMENTARY INFORMATION:

Background

On March 14, 1984, the MAMA submitted to EPA Region III amendments to its Code of Maryland Regulations (COMAR) for the Control of Fuel Burning Equipment and Stationary Internal Combustion Engines (COMAR 10.18.09). EPA has been requested to review the amendments and to approve them as a revision to the Maryland SIP. The MAMA provided proof that, after adequate public notice, public hearings were held on December 15 and December 16, 1983 in Cumberland and Baltimore, Maryland regarding these amendments.

EPA Evaluation

The major purpose of these amendments is to provide an exception procedure for persons wishing to construct and operate small solid fuel burning equipment. In the Metropolitan Baltimore and National Capital regions (Areas III and IV respectively), the exception procedure will be applicable to solid fuel burning equipment that has a rated heat input of less than 35 million BTU (37 gigajoules) per hour. In the rest of the State, the exception procedure will be applicable to solid fuel burning equipment that has a rated heat input of less than 13 million BTU (13.7 gigajoules) per hour. Construction and operation of these small boilers are prohibited under the existing regulations.

The amendments also establish particulate matter emission standards for these small boilers. Other amendments are not substantive, and simply correct a codification error and rearrange existing language. The proposed amendments and EPA's evaluation are as follows:

A. COMAR 10.18.09.04 Prohibition of Certain New Fuel Burning Equipment

Regulation .04 is proposed to be amended to allow an opportunity for a source to request an exception to the prohibition of small solid fuel burning equipment. The prohibited sizes are less than 35 million BTU per hour for Areas III and IV, and less than 13 million BTU per hour for Areas I, II, V, and VI (the remainder of the State). The exception procedure involves submitting an application to the Maryland Air Management Administration (MAMA) to assess the potential impact of the new or modified solid fuel burning equipment. The application shall include a description of the proposed construction or modification, including the type and manufacture of the fuel

burning equipment, fuel specifications, expected annual fuel consumption, type and manufacture of any control equipment, stack height, and a contour map of the area noting property lines and a description of the surrounding terrain.

The MAMA shall make a preliminary determination to proceed with the processing of an application, and notify the applicant of this decision within 10 days. The applicant shall then notify the public of their request for an exception, and allow for a 30 day comment period. The MAMA will review each application on a case-by-case basis. The review procedures must determine that there will be no violation of ambient air quality standards or Prevention of Significant Deterioration (PSD) requirements. In addition, there must be no violation of applicable emission standards, a minimum potential for the creation of a nuisance, and reasonable assurance of fuel quality control. The review procedures also provide for an air quality impact evaluation of each exception, including impacts on PSD and nonattainment areas. By letter of November 29, 1984, the MAMA clarified that exempted sources would still be subject to new source review permitting requirements to the extent applicable.

Within 60 days after the public comment period, the MAMA will issue its final determination in the form of an order. If an application is approved, the order will specify any reasonable control measures to be taken by the source to minimize emissions. The opportunity to request an exception will be made available to new sources and existing sources that have been constructed since 1972. Existing sources constructed prior to 1972 were not subject to the prohibited size regulation and may continue with solid fuel burning, provided that emission standards are met. Replacement or reconversion of these existing units, however, constitutes a new source construction and the prohibition regulation would apply. The MAMA has estimated that approximately six small solid fuel burning units will be constructed or converted from some other fuel each year for the next three years. By reviewing each application on a case-by-case basis, and by assuring that any exempted source meets the newly expanded emission standards for particulate matter, the MAMA has determined that there will be no significant increase in emissions because of this proposed amendment. Because the exception procedure will not result in any adverse impacts on the attainment or maintenance of air quality, EPA is proposing approval of this amendment.

B. COMAR 10.18.09.05 Visible Emissions (VE)

Regulation .05 is revised to insure that any type of fuel burning equipment is covered by the VE regulation. Because this action will not adversely impact the attainment or maintenance of air quality, EPA is proposing approval of this amendment.

C. COMAR 10.18.09.06 Control of Particulate Matter

Regulation .06 proposes to expand emission standards for particulate matter to set forth requirements for fuel burning equipment that has been granted an exception to the prohibited size regulation. This standard is established at .03 grains per dry standard cubic foot (gr/scfd). This standard is consistent with the present standards that have been set for solid fuel burning equipment of any size range.

This amendment also proposes to change the term "installation" to "equipment". Since these actions do not adversely impact the attainment or maintenance of air quality, EPA is proposing their approval.

D. COMAR 10.18.09.07 Control of Sulfur Oxides From Fuel Burning Equipment

This amendment to Regulation .07 corrects an error in the codification of the regulation and does not alter its original purpose. Since this action does not adversely impact the attainment and maintenance of air quality, EPA is proposing its approval.

E. COMAR 10.18.09.08 Nitrogen Oxides From Fuel Burning Equipment

Regulation .08 is amended to change the term "installation" to "equipment." Since this action does not adversely impact the attainment and maintenance of air quality, EPA is proposing its approval.

F. COMAR 10.18.09.06 Table I and Figure 2, Control of Particulate Matter

Table I and Figure 2 are amended to include the revised particulate matter standards for any exceptions to the prohibited size regulation. These revised standards are discussed in Section C of this Notice. EPA proposes approval of these amendments.

Conclusion

The Regional Administrator's decision to propose approval of this SIP revision is based on a determination that the amendments meet the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

The public is invited to submit to the address stated above, comments on whether the proposed amendments to the MAMA's air pollution control regulations should be approved as a revision to the Maryland SIP.

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

Under 5 U.S.C. 605(b) the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 48 FR 9809).

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides, Nitrogen dioxide, Lead, Particulate Matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(42 U.S.C. 7401–7642)

Dated: December 31, 1984.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 85–383 Filed 1–4–85; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[EPA Document Number AM054MD; A-3-FRL-2750-4]

Approval and Promulgation of Implementation Plans; Approval of a Revision to the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Department of Health and Mental Hygiene (DHMH) has submitted amendments to its air quality control regualtions and has requested that they be reviewed and processed by EPA as a revision to the Maryland State Implementation Plan (SIP). This revision, submitted on March 14, 1984, amends existing Code of Maryland Regulations (COMAR) that deal with the control fo incinerators. The revision consists of amendments to Section 10.18.02, Permits, Approvals, and Registration and Section 10.18.08, Control of Incinerators. These amendments set emission standards for hazardous waste incinerators and exempt them from obtaining an air quality permit to construct. They also

prohibit the construction or use hazardous waste incinerators except in accordance with applicable hazardous waste and air quality regulations. These facilities are required to obtain hazardous waste facility permits which are issued by the DHMH under COMAR 10.51.07. This Notice summarizes the amendments and proposes EPA approval.

EFFECTIVE DATE: Comments must be submitted on or before February 6, 1985.

ADDRESSES: Copies of the proposed revision and the accompanying support documents are available during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Air Programs Branch (3AM10), Curtis Building, 6th & Walnut Streets Philadelphia, PA 19106. Attn: Mr. James Topsale, P.E.

Maryland Air Management Administration, Maryland Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201. Attn: Mr. George Ferreri, Director

All comments on the proposed revision submitted on or before February 6, 1985, will be considered and should be submitted to Mr. James Topsale at the EPA Region III address stated above. Please reference the EPA docket number found in the heading of this Notice in any correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. James Topsale, P.E. or Mr. Paul Racette at the address for EPA Region III, Or telephone (215) 597–4553.

SUPPLEMENTARY INFORMATION:

Background

On March 14, 1984, the DHMH submitted to EPA Region III amendments to its Code of Maryland Regulations (COMAR) for Permits, Approvals, and Registration (COMAR 10.18.02) and for the Control of Incinerators (COMAR 10.18.08). EPA has been requested to review the amendments and to approve them as a revision to the Maryland SIP. The DHMH provided proof that, after adequate public notice, a public hearing was held on December 12, 1983 in Baltimore, Maryland regarding these amendments.

EPA Evaluation

These amendments to COMAR 10.18.02 and .08 are concerned with hazardous waste incinerators. The amendments set emission standards for hazardous waste incinerators and exempt them from obtaining an air quality permit to construct. They also prohibit the construction or use of hazardous waste incinerators except in accordance with applicable hazardous waste and air quality regulations. Other amendments provide definitions for "incinerator" and "hazardous waste incinerator", and set a Visible Emission (VE) standard for hazardous waste incinerators. The proposed amendments and EPA's evaluation are as follows:

A. COMAR 10.18.02.03 Permits, Approvals, and Registration

Regulation .03 is proposed to be amended to exempt hazardous waste incinerators from having to obtain an air quality permit to construct. These facilities are required to obtain a hazardous waste facility permit which is issued by the DHMH under COMAR 10.51.07. Under COMAR 10.51.05.15–1F(5), the substantive requirements of all air quality regulations (COMAR 10.18) must be met before a permit to construct or a permit to operate can be issued. This includes meeting the requirements of COMAR 10.18.02.03(A) for New Sources Impacting on a Nonattainment Area (NSINA's) and Prevention of Significant Deterioration (PSD) Sources.

The amendment consolidates the Clean Air Act (CAA) and Resource Conservation and Recovery requirements, resulting in one state permit. This permitting procedure will not exempt a source from any air quality regulation requirements.

The Maryland Air Management Administration (MAMA) will continue to provide all of the technical review and enforcement actions dealing with the incinerator design and operation. This review is being done under an agreement between the MAMA and the Maryland Waste Management Administration.[1] By letter of November 29, 1984, the MAMA clarified that permit applications would only be accepted from incinerators subject to the hazardous waste facility regulations and that hazardous waste facility permits would be treated as air quality permits for all purposes.

This action involves only a procedural amendment, and will not result in any adverse impacts on the attainment or maintenance of air quality. EPA is proposing approval of this amendment.

B. COMAR 10.18.08.01 Control of Incinerators, Definitions

This regulation is amended to redefine the term "incinerator" and to insert the definition for "hazardous waste incinerator" as it is defined in COMAR 10.51.01.03B(26.2). This action is only concerned with the definition of terms. Because it will not result in any adverse impacts on the attainment or maintenance of air quality, EPA is proposing approval of this amendment.

C. COMAR 10.18.08.04 Visible Emissions (VE)

This regulation is amended to include hazardous waste incinerators in the VE regulations. The amendment prohibits visible emissions, other than water in an uncombined form, which are visible to human observers. Because the amendment will not result in any adverse impacts on the attainment or maintenance of air quality, EPA is proposing its approval.

D. COMAR 10.18.08.05 Particulate Matter

This regulation defines particulate emission standards for incinerators. It is being amended to include hazardous waste incinerator particulate standards. The amendment adopts a .03 grain per dry standard cubic foot (gr/SCFD) emission standard. This standard is consistent with the .03gr/SCFD standard set in Areas III and IV in Maryland for all incinerators except for infectious waste incinerators, which have a standard of .10 gr/SCFD. It is more stringent than the previous .10 gr/SCFD standard set in Areas I, II, V, and VI for all incinerators built after 1972.

Because this amendment maintains the previous standard set in Areas III and IV, and sets a stricter standard in Areas I, II, V and VI EPA has determined that no adverse impacts on the attainment or maintenance of air quality will occur. EPA is proposing approval of this amendment.

E. COMAR 10.18.08.06 Prohibition of Unapproved Hazardous Waste Incinerators

This is a new regulation that assures that with this new permitting procedure, all air quality and hazardous waste regulation requirements will continue to be met. The amendment prohibits the operation or construction of any hazardous waste incinerator that does not meet the requirements of all COMAR 10.51.05.15 and COMAR 10.18.08 regulations. EPA is proposing approval of this regulation.

Conclusion

The Regional Administration's decision to propose approval of this SIP revision is based on a determination that the amendments meet the requirements of Section 110(a)(2) of the

[1] On July 9, 1984, EPA delegated interim authorization to the State of Maryland to issue Resource Conservation and Recovery Act (RCRA) hazardous waste incinerator permits, based on the fact that Maryland's hazardous waste regulation are substantially equivalent to RCRA requirements.

Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans. The public is invited to submit to the address stated above comments on whether the proposed amendments to the DHMH's air pollution control regulations should be approved as a revision to the Maryland SIP.

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

Under 5 U.S.C 605(b) the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial numbert of small entities. (See 48 FR 9809.)

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon, monoxide, Hydrocarbons, Intergovernmental relations.

(42 U.S.C. 7401–7642)

Dated: December 31, 1984.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 85–378 Filed 1–4–85; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[A-5-FRL-2750-2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed Rulemaking; Extension of the Public Comments Period.

SUMMARY: On November 15, 1984 (49 FR 45178), USEPA reproposed rulemaking on the Indiana opacity plan. The State and outside counsel for a steel company that has a facility in Indiana requested an extension to the public comment period. USEPA is extending the public comment period to February 15, 1985, based upon these requests.

DATE: Comments must be postmarked on or before February 15, 1985.

ADDRESSES: Comments should be submitted to:

Gary V. Gulezian, Chief, Regulatory Analysis Section (5AR–26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 S. Dearborn Street, Chicago, Illinois 60604

Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Robert B. Miller, at (312) 886–6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Air and Radiation Branch, Region V (5AR–26), 230 S. Dearborn Street, Chicago, Illinois 60604

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

FOR FURTHER INFORMATION CONTACT:

Robert B. Miller (312) 886–6031.

Authority: 42 U.S.C. 7410, 7502, and 7601.

Dated: December 19, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85–377 Filed 1–4–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[Gen. Docket No. 83–26; RM–4121; RM–4782; FCC 84–559]

Creation of an Additional Private Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of petition.

SUMMARY: The Commission has adopted a Report and Order declining to establish the Private Radio Communications Service (PRCS) as proposed in the NPRM adopted January 20, 1983. This action is necessary to accommodate higher priority needs for spectrum.

FOR FURTHER INFORMATION CONTACT: Stuart Overby or Joseph Levin, Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Business and industry, Civil defense, Common carriers, Emergency medical services, Handicapped, Radio, Reporting and recordkeeping requirements.

Report and Order

In the Matter of Creation of an Additional Private Radio Service, General Docket No. 83–26, Rm–4121, RM–4782.

Adopted: November 21, 1984.

Released: December 28, 1984.

By the Commission.

Introduction

1. On January 20, 1983, in response to a petition filed by the General Electric Company, the Commission adopted a *Notice of Proposed Rule Making (Notice)* proposing to allocate 8 MHz of spectrum for a new mobile radio service.[1] As proposed, this service was primarily designed to satisfy the personal communications requirements of the general public, including mobile to mobile radio service and interconnected mobile telephone service. Approximately 100 parties submitted comments in response to the Notice.[2] We have analyzed these comments and, for the reasons discussed below, conclude that the overall public interest would not be served by the creation of this new private radio communications service (PRCS) at the time. This decision is based largely on the fact that spectrum at 900 MHz is a limited resource.[3] After evaluating the record in this and related proceedings which address the appropriate use of the 900 MHz spectrum reserve, we conclude that other uses of the spectrum will better serve the public interest, convenience, and necessity.[4]

Background

2. There is presently 41 MHz of radio spectrum remaining in the 900 MHz land mobile reserve which the Commission set aside in 1974.[5] We presently have before us requests to use over 80 MHz of spectrum for the following applications: (1) to relieve congestion and accommodate growth in the traditional private land mobile services, including public safety, land transportation, business, industrial and commercial use by large and small companies and state and local governments[6]; (2) for cellular

---

[1] *Notice of Proposed Rule Making*, Gen. Docket No. 83–26, 48 FR 12228 (March 23, 1983). This *Notice* also requested comments on the feasibility of providing for cordless telephones within this allocation. Since we are declining to adopt the proposed service, the issue of an allocation for cordless telephone use will be dealt with in a separate proceeding.

[2] A partial list of parties that submitted comments or reply comments is included in Appendix A. We note that Wang Laboratories, Inc. (Wang) has filed a Petition for Acceptance of Late-Filed Comments. No opposition to the acceptance of these late filed comments was received. Wang's petition is granted because inclusion of its discussion regarding digital data distribution in the PRCS established a more complete record in that area.

[3] For simplicity we will refer to the spectrum between 806 and 947 MHz as the 900 MHz band.

[4] 5 U.S.C. 302, 303.

[5] *Second Report and Order*, Docket No. 18262, 46 FCC 2d 752 (1974); *Memorandum Opinion and Order*, 51 FCC 2d 945 (1975).

[6] *Petition for Rule Making*, RM–4829, submitted by the Land Mobile Communications Council, June 18, 1984.

radio systems to provide mobile telephone service to the public[7]; (3) for creation of a mobile satellite service to provide, among other uses, public telephone service to persons in rural and remote regions[8]; (4) for creation of an air-to-ground radio service and a railroad radio service to offer public telephone capabilities on commercial airlines and railways[9]; (5) for cordless telephone use by the American public[10]; (6) for a shared government/non-government fixed point-to-point service[11]; (7) to provide rural broadcast studio to transmitter links (STL) and intercity relay stations[12]; and (8) for two proposals for new personal radio services to provide relatively short range telephone and mobile radio service to the American public on a non-common carrier basis.[13] [14] All of the proposals, except the 6 MHz fixed government allocation and the broadcast STL request, require that spectrum be paired for mobile operation. However, of the 41 MHz of spectrum available, only 32 MHz is readily pairable for such use. Clearly, all of these requests cannot be satisfied.

3. Turning now to the specifics of the personal radio service, in our *Notice*, we proposed to allocate 8 MHz of 900 MHz band spectrum to provide a total of 133 channel pairs primarily for directed communications of a personal or business nature. Under the proposal, an individual user would have a base station located in the home of office, and a mobile station in the vehicle. The user would have a communications range over this system of approximately three to five miles. We also proposed to provide for implementation of repeater stations which would be located in such a way as to increase the effective communicating range of user stations to approximately fifteen miles. The home/office base station would use decentralized frequency trunking techniques and would be capable of complete operability independent of a repeater station.[15] These base and mobile stations would not be individually licensed. The repeater stations, however, were to be individually licensed and regulated by the Commission. Also, we proposed to license repeaters to individuals for their own use, to cooperatives for shared use, or to commercial entrepreneurs for operation on a private carrier basis. In the *Notice*, the Commission proposed assignment of frequencies for repeater operation on a open-entry, non-exclusive basis. Under this approach, there would be no rules specifying minimum mileage separations between co-channel assignments or setting forth a specific minimum or maximum number of channels that could be authorized to each repeater operator, nor limiting in any way the number of sites at which such repeaters could be located. Interference would be controlled by an automatic monitoring mechanism built into the equipment which would detect co-channel operations prior to transmission. Additionally, as proposed, communications could take place between mobile stations and the wireline telephone system since a user's base station would be allowed to interconnect with the public switched telephone network.

4. The Comments indicate there is some public support for the proposal. Many parties stated their belief that there is a mobile communications need which currently is not being met by existing private and common carrier land mobile systems, either because of the high cost of these latter types of systems or their absence in many non-urban areas. As a group, the supporting comments demonstrated public sentiment for the creation of a radio service which would allow the typical American and citizen to install low cost unit in an automobile that would permit personal and business communications: (1) Between a vehicle and the home or office; (2) between a vehicle and the public telephone network; (3) with other specified vehicles; and (4) in some instances, with a group of vehicles simultaneously.

5. The majority of those who commented in favor of this service also felt the public demand for such a communications capability is not now being met and claimed that no currently available radio system, private or common carrier, can satisfy all of these needs. For example, in its comments on behalf of the radio manufacturing industry, the Personal Communications Section, Telecommunications Group of the Electronics Industries Association stated regarding existing personal communications services: "It is quite clear that a void exists within the array of radio services which are now available to the mass market." As the record of this proceeding shows, support for the creation of a new communications service came from many segments of our society, including individuals, businesses, and representatives of the elderly, handicapped persons, minorities, and public safety interests.

6. Most of those who commented identified personal uses of radio that such a service could satisfy. For example, Louis Blatnick stated: "With schools dismissing children at different hours within different age groups and activities occurring in many different locations such as churches, YMCA's, Scouts and parks, transportation delays due to weather, illness, vehicle breakdowns or other causes can occur and it would be a simple matter for parents to request help or notify a child who may be waiting for a parent that there will be a delay."

7. On behalf of the elderly and/or the handicapped, the National Council on Aging, the Urban Elderly Coalition, the American Association of Retired Persons, and the Federation of Handicapped Individuals—Quad Cities all endorsed the need for PRCS. They all viewed such a radio service as a vital communications link which could improve the provision of various services to the elderly and handicapped, including transportation, home care, and medical assistance.

8. Some minority interests also supported PRCS and urged the Commission to authorize it.[16] The National Council of Negro Women, for example, indicated that PRCS would offer a sense of security, especially to women traveling alone, by providing a link from the automobile to the home telephone.

9. Favorable comments were also received from representatives of small business, and individuals that spend a great deal of time in their cars as part of their jobs, such as salespeople, realtors, and small contractors. Typical of the comments of these types of service providers are those of Peggy Batch of the National Association of Professional Saleswomen: "There are so many times when I am 'stuck' in my car looking for a

[7] *Petition for Rule Making*, RM-4812, submitted by Ameritch, June 1, 1984.

[8] *Petition for Rule Making*, RM-4227, submitted by National Aeronautics and Space Administration, November 24, 1982.

[9] *Notice of Proposed Rule Making*, Gen. Docket 83-30, 48 Fed. Reg. 12253 (March 23, 1983); *Petitionfor Rule Making*, RM-4591, submitted by Railfone, Inc., August 8, 1983.

[10] *Petition for Rule Making*, RM-4780, submitted by Personal Communications Group, Electronics Industries Association, March 1, 1984.

[11] *Further Notice of Proposed Rule Making*, Gen. Docket 82-243, 48 Fed. Reg. 12267 (March 23, 1983).

[12] *Petition for Rule Making*, RM-2697, submitted by the National Association of Broadcasters, March 3, 1976.

[13] *Notice of Proposed Rule Making*, Gen. Docket 83-26, *Supra*.

[14] *Petition for Rule Making*, RM-4782, submitted by MURA Corporation, February 10, 1984.

[15] Decentralized frequency trunking is a mode of operation in which frequency selection is controlled solely by a microprocessor within the mobile or base station which scans the available frequencies and uses the first one which is unoccupied. PRCS repeater stations would use centralized trunking, a mode of operation in which frequency selection is controlled by the repeater station which signals the mobile or base station microprocessor to use a specified frequency.

[16] National Bar Association, National Black Child Development Institute Inc., National Conference of Black Mayors, Inc., and the National Council of Negro Women, Inc.

phone in a strange area or in traffic hoping to fine an exit to call a customer or a prospect who is waiting for me. Please make an effort on behalf of those who could use the convenience of an auto phone unit but do not have the resources to invest in expensive equipment."

10. As an example of the public safety interest, the National Crime Prevention Council, the American Association of State Highway and Transportation Officials, Inc., the National Ski Patrol System, Inc., the American Federation of Police, and REACT International all urged the Commission to act favorably on the PRCS proposal. The National Crime Prevention Council stated that "* * * an inexpensive mobile communications service would have a broad range of application in the area of crime prevention. PRCS would make it easier and cheaper to report crimes and emergencies."

11. In sum, the comments indicate there is diverse support for a new radio service to meet various communications needs which many who commented feel are not being met. Ford Motor Company captures the sentiment of many PRCS supporters with its observation: "PRCS can meet at least three consumer needs not available from the Cellular Mobile type service. These are low cost, timely implementation, and usability in areas not serviced by cellular services."

12. On the other hand, there was also substantial opposition to the creation of this service. This came from private and cellular 800 MHz system licensees, user organizations and radio equipment manufacturers, as well as applicants with proposals for new systems at 900 MHz which competed with PRCS for spectrum. Those who opposed PRCS generally argued one or more of the following points: (1) Adequate alternatives such as common carrier cellular systems already exist and therefore further public options are unnecessary; (2) the spectrum allocation proposed is insufficient to serve the estimated market; and (3) the allocation of land mobile reserve spectrum to PRCS is contrary to the public interest in light of the projected needs of existing land mobile services.[17]

13. Regarding the first issue, the comments of those who oppose the creation of this service generally suggest that existing land mobile communications services can satisfy most of the needs identified by the Commission in this proceeding. They argue that further alternatives are not necessary and, therefore, the public interest would not be served by allocating scarce land mobile reserve spectrum to accommodate the creation of a new personal communications service. For example, the Land Mobile Communications Council argues that common carrier cellular systems can provide a higher quality service than PRCS at a comparable price, especially in the major market areas. LMCC also argues that sufficient conventional mobile telephone capacity is available to meet existing public needs in the smaller markets where cellular service may not be available. LMCC therefore concludes it is undersirable and unnecessary to allocate valuable land mobile reserve spectrum to create this new radio service. Many who opposed the service also claimed that alternative private land mobile or personal radio services exist which can satisfy the identified communications demand. They cite private land mobile systems at 800 MHz, Citizens Band, and the General Mobile Radio Service as examples of alternatives which already exist. They argue that further choices are unnecessary and contrary to sound public policy in light of the scarce radio spectrum at 900 MHz.

14. Further, the adequacy of the 8 MHz of spectrum proposed for PRCS was questioned by Motorola and several other parties. They suggested that the proposed services would be so overcrowded in the major urban markets that the waiting periods at peak usage times would be intolerable. Based on the market projections provided by the General Electric Company, Motorola asserted that a substantial number of prospective users of the PRCS system would be unable to secure a channel on which to communicate, especially in areas of high population density. As a consequence, members of the public who purchased a PRCS radio expecting to obtain a reasonably high quality mobile telephone-type service might find the level of service so poor that they could not meet their communications needs.

15. Opponents of the proposal also questioned the appropriateness of allocating land mobile reserve spectrum for PRCS. The comments suggest that even if PRCS could fill an unmet communications requirement, that requirement is not of sufficient priority to justify use of scarce land mobile reserve spectrum. Commenters referenced the PR Docket 82-10 study of future private land mobile requirements, which projected significant spectrum shortages in major markets.[18] They urged that the land mobile spectrum reserve be allocated to accommodate the growth of existing types of private and common carrier land mobile radio systems. LMCC, for example, stated that "The burgeoning growth of land mobile communications, both private and common carrier, coupled with the limited amount of spectrum available underscore the need for ensuring that all land mobile reserve spectrum is allocated solely to existing land mobile services."

Discussion

16. The Commission is required by Sections 4 and 303 of the Communications Act of 1934, as amended, among other things: (1) To "classify radio stations" and "prescribe the nature of the service to be rendered by each class of licensed station;" (2) to "assign bands of frequencies to the various classes of stations and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;" (3) to "make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations;" and (4) to "study new uses of frequencies, and generally encourage the larger and more effective use of radio."

17. In keeping with these statutory obligations, we have addressed the general questions of the allocation of frequencies throughout the 900 MHz band land mobile reserve. Throughout these proceedings, we have recognized the fact that all proposals were subject to comprehensive and inter-related analysis of their merits as they competed for the limited spectrum available, and that it would not be possible to approve all of the systems being proposed. From the beginning, therefore, we have recognized that we would have to balance the various proposals against each other, and make some judgment as to which had the greatest public interest value.

18. Such a process is not new to us, and as we noted in 1949 in similar circumstances:

[17] These issues were raised by representatives of existing private and public land mobile radio services, including the American Telephone and Telegraph Co., the Land Mobile Communications Council (LMCC), Motorola, Inc., the American Petroleum Institute, the National Association of Business and Educational Radio, the Special Industrial Radio Service Association, and Telocator Network of America.

[18] *Future Private Land Mobile Telecommunications Requirements:* Final Report, Planning Staff, Private Radio Bureau, FCC, Washington, DC, August 1983.

Establishment of new services intensifies the problem of finding frequency space and of regulating operations. As each new use of radio emerges from the experimental stage, spectrum space must be sought and procedures must be inaugurated to handle the new comer in the light of international as well as domestic considerations as public interest may require.[19]

19. In our *Notice* in this proceeding we recognized the possibility that there may be inadequate spectrum to satisfy all requests for 900 MHz spectrum. Furthermore, subsequent to the release of the *Notice*, petitions were filed which requested an additional 39 MHz from the land mobile spectrum reserve. This brought the total spectrum required to meet all the pending proposals for the 900 MHz land mobile reserve to over 80 MHz. Since only 41 MHz of spectrum was available, and since only 32 MHz of this spectrum was suitable to be paired for mobile communications, it was necessary to carefully balance all the competing proposals and their respective public interest implications.

20. After weighing a number of factors, we have concluded that traditional private land mobile and cellular services as well as a mobile satellite service must take priority over a personal radio service. While our reasons for assigning priority to these enunicated services are set out in the pertinent documents which we have adopted today as part of our consideration of how to allocate the 900 Mhz spectrum, essentially our reasons are as follows.[20]

21. First, when we reallocated broadcast spectrum in 1974 for private land mobile and cellular systems, the reserve was specifically established to accommodate the future growth of these systems. Since there has been substantial investment by the industry and the public in the expectation that this land mobile reserve would be available to accommodate future land mobile growth, diversion of the reserve for other uses could signifcantly increase the cost of existing services to the American public.

22. Second, we recognize that cellular and trunked private communications systems serve large numbers of end users by utilizing computer and trunking technologies to provide an efficient, effective, and high quality service. Both a personal radio communications service and a mobile satellite service also have the potential to serve a substantial number of users. However, it appears that a number of substitutes are available to serve many of the needs identified for PRCS, while no such alternatives for the land mobile satellite service apparently exist. Although the cost of cellular and trunked SMR systems is higher than that estimated for PRCS, the prices of these substitutes have been decreasing faster than had been anticipated. In addition, the rate of implementation of cellular and trunked SMR systems has been rapid, thus making these systems more widely available to meet needs identified in this proceeding.

23. Third, it appears that PRCS, despite the possibility of its widespread appeal, is in the nature of a luxury or convenience, given the alternatives available. While we do not question the claims made by PRCS proponents that this service could have some safety of life and property utility, in our estimation the predominant use would be for lower priority communications. We are confident that such safety related communications which could have been carried by PRCS can be accommodated on other currently available radio systems.

24. Based on the foregoing considerations, we conclude that the private land mobile, cellular, and mobile satellite services must all be afforded a higher priority than PRCS in deciding how to apportion the remaining 900 MHz band land mobile reserve spectrum. In light of these priorities, and in recognition of the fact that insufficient spectrum exists to accommodate all of the pending requests, we decline to adopt final rules creating a new 900 MHz band personal communications service at this time. However, in two related proceedings adopted today we have solicited comments on the feasibility of geographically sharing the proposed spectrum allocations for private land mobile and cellular to implement a personal communications service outside major population centers.[21]

25. In a related matter, the Commission also has before it a *Petition for Rule Making*, submitted by MURA Corporation (MURA) on February 10, 1984, to create a new 900 MHz personal communications service. MURA's proposed service is similar in nature to the service being considered in this proceeding. Therefore, for the same reasons enunciated above, we conclude that the public interest would not be served by initiating a proceeding to authorize the new personal communications service proposed by MURA.

26. Accordingly, it is ordered, that this proceeding is terminated, and That the MURA *Petition for Rule Making*, RM-4782, is dismissed.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Academy of Model Aeronautics
Aeronautical Radio, Inc.
Airfone, Inc.
American Association of Certified Appraisers
American Association of State, Highway and Transportation Officials, Inc.
American Farm Bureau Federation
American Petroleum Institute
American Planning Association
American Telephone and Telegraph Company
Apple Computer, Inc.
Association of Maximum Service Telecasters, inc.
Automotive Service Councils, Inc.
Cellutron, Inc.
Dynascan Corporation
Electronic Industries Association
Ford Motor Company
General Electric Company
General Motors Corporation
GTE Sprint Communications Corporation
International Association of fire Chiefs, Inc.
Land Mobile Communications Council
Motorola, Inc.
MURA Corporation
National Association of Broadcasters
National Association of Business and Educational Radio, Inc.
National Association of Neighborhoods
National Association for Professional saleswomen
National Bar Association
National Black Child Development Institute, Inc.
National Conference of Black Mayors, Inc.
National Council on the Aging
National Council of Negro Women, Inc.
National Crime Prevention Council
National Federation of Licensed Practical Nurses
National Independent Dairy-Foods Association
National Ski Patrol System, Inc.
National Urban Coalition
National Urban League, Inc.
Partners for Livable Places
Personal Radio Steering Group
REACT International, Inc.
Society of Broadcast Engineers
Special Industrial Radio Service Association, Inc.
Telocator Network of America
Uniden Corporation of America
U.S. Department of Transportation
Wang Laboratories, Inc.

[FR Doc. 85-355 Filed 1-4-85; 8:45 am]
BILLING CODE 6772-01-M

[19] *General Mobile Radio Service et. al.* 13 FCC 1190, 1191 (1949).

[20] *Notice of Proposed Rule Making*, Gen. Docket No. 84-1231, adopted November 21, 1984, *Notice of Proposed Rule Making*, Gen. Docket No. 84-1233, adopted November 21, 1984, and *Notice of Proposed Rule Making*, Gen. Docket No. 84-1234, adopted November 21, 1984.

[21] *Notice of Proposed Rule Making*, Gen. Docket 84-1231, *supra*, and *Notice of Proposed Rule Making*, Gen. Docket 84-1233, *supra*.

Notices

Federal Register
Vol. 50, No. 4
Monday, January 7, 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

Office of the Secretary

Office of International Cooperation and Development; Privacy Act of 1974; Systems of Records

Notice is hereby given that the Department of Agriculture, in accordance with 5 U.S.C. 552a (e)(4) and (11), intends to adopt the notice of an additional system of records set forth below. Although the Privacy Act requires only that the portion of each system which describes the "routine uses" of that system be published for public comment, USDA invites such comment on all portions of this notice.

Interested persons may submit written comments on this notice to: Mr. Charles H. Cook, Acting Assistant Administrator for Administration, Office of International Cooperation and Development, U.S. Department of Agriculture, Washington, DC. 20250, on or before February 6, 1985. All comments submitted will be available for public inspection during regular business hours in Room 4119 Auditors Building, USDA, 14th Street and Independence Ave., SW., Washington, DC., 20250. This notice will be adopted without further publication as set forth below on or before February 6, 1985, unless modified by a subsequent notice to incorporate comments received from the public.

Privacy Act of 1974; System of Records

AGENCY: Office of International Cooperation and Development, U.S. Department of Agriculture.

ACTION: Notification of new system of records under the Privacy Act of 1974.

SUMMARY: This system will contain information on those interested in international agricultural development activities and will be used by agency officials as a basis for identification, competition, and selection. Use of these records is restricted to persons who have a legitimate need to review such records in the performance of official duties.

EFFECTIVE DATE: February 6, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Charles H. Cook, Acting Assistant Administrator for Administration, Office of International Cooperation and Development, Washington, DC. 20250. (202) 475–5246.

The new system is as follows:

USDA/OICD–1

SYSTEM NAME:

Automated Skills Inventory System (ASIST).

SYSTEM LOCATION:

Office of International Cooperation and Development, United States Department of Agriculture, 14th and Independence Ave., SW., Washington, DC. 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and/or firms from the private sector, university community and federal agencies who are seeking assignments with OICD.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of a summary of applicant qualifications, a resume or other documentation providing detailed information relative to education and/or experience, an assessment of his/her performance of OICD assignments (if applicable), and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 3191.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information is made available to agency contracting officers to determine if Federal employees with required qualifications are available and, if not, to initiate development of an acquisition and to facilitate competitive selection in the issuance of agency acquisitions. Referral of information is made to (1) authorized individuals of other Federal agencies or international organizations seeking technically qualified individuals/firms in the field of agriculture; (2) accredited investigative agents of any Federal agency to carry out investigative functions; (3) current and former contractors to review their own records; (4) appropriate agencies, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when available information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation or order issued pursuant thereto; and (5) a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or is sought in the course of discovery.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders at the agency address listed above; qualification summaries are maintained in an automated database for easy retrieval.

RETRIEVABILITY:

Paper records are indexed alphabetically and/or by identification number. Automated records may be retrieved by education, experience, language capability or other criteria required for the successful conduct of proposed assignments or acquisitions.

SAFEGUARDS:

All records containing personal information are maintained in secured file cabinets and in secured computer terminal rooms.

RETENTION AND DISPOSAL:

Records are maintained indefinitely for active applicants. If an applicant is not selected for three (3) years after receipt of his/her application, the application will be destroyed in conformance with approved records schedules.

SYSTEMS MANAGER(S) AND ADDRESS:

Assistant Administrator for Administration, Office of International Cooperation and Development, United

States Department of Agriculture, 14th and Independence Ave., S.W., Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

A request for information should be addressed to the Assistant Administrator for Administration, Office of International Cooperation and Development (address above).

RECORDS ACCESS PROCEDURES:

Individuals or firms who wish to gain access to or amend records pertaining to themselves should submit a written request to the Assistant Administrator for Administration, Office of International Cooperation and Development (address above).

CONTESTING RECORD PROCEDURES:

Same as record access procedures.

RECORD SOURCE CATEGORIES:

Information in this system comes from applicants for agency acquisition or Federal employees interested in agricultural development assignments; evaluations are made by responsible Federal officials.

Signed at Washington, D.C., on December 31, 1984.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85-432 Filed 1-4-85; 8:45 am]

BILLING CODE 3410-DP-M

Soil Conservation Service

South Fork Watershed, KS

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Availability of a Record of Decision.

SUMMARY: John W. Tippie, responsible Federal official for projects administered under the provisions of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the State of Kansas, is hereby providing notification that a record of decision to proceed with the installation of the South Fork Watershed project is available. Single copies of this record of decision may be obtained from John W. Tippie at the address shown below.

FOR FURTHER INFORMATION CONTACT: John W. Tippie, State Conservationist, Soil Conservation Service, 760 South Broadway, Salina, Kansas 67401, telephone 913-823-4565.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. State and local review procedures for Federal and federally assisted programs and projects are applicable)

Dated: December 27, 1984.

John W. Tippie,

State Conservationist.

[FR Doc. 85-414 Filed 1-4-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-429-009; A-485-010; A-461-011]

Pig Iron From Romania, the U.S.S.R., and East Germany; Final Results of Administrative Review and Revocations of Antidumping Findings

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of administrative review and revocations of antidumping findings.

SUMMARY: On August 15, 1984, the Department of Commerce published the preliminary results of its administrative review and tentative determinations to revoke the antidumping findings on pig iron from Romania, the U.S.S.R., and East Germany. The review covered the three known exporters of this merchandise to the United States and the period October 1, 1982, through September 30, 1983. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

Interested parties were provided an opportunity to submit oral or written comments on the preliminary results and tentative determinations to revoke. We received no comments. We also determined that there were no shipments of this merchandise to the United States from these countries during the period October 1, 1983 through the date of publication of the tentative determinations to revoke. We advised all interested parties of this and provided an additional opportunity to comment. Again we received no comments.

Accordingly, these final results cover through the date of our tentative determinations to revoke and we revoke the antidumping findings on pig iron from Romania, the U.S.S.R., and East Germany.

EFFECTIVE DATE: January 7, 1985.

FOR FURTHER INFORMATION CONTACT: Alfredo R. Montemayor or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 377-5505/3601.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 32635) the preliminary results of its administrative review and tentative determinations to revoke the antidumping findings on pig iron from Romania, the U.S.S.R., and East Germany (33 FR 15904, October 29, 1968). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of pig iron, which are used in steel production and in the iron foundry industry for making iron castings such as pipe, automobile castings, and machine parts. Such merchandise is currently classifiable under items 606.1300 and 606.1500 of the Tariff Schedules of the United States Annotated.

The review covers the three known exporters of Romanian, Soviet, and East German pig iron to the United States, Metalimport (Romania), Promsyrioimport (U.S.S.R.), and Deutsche Stahl Metal (East Germany), and the period October 1, 1982, through September 30, 1983. The Department has also determined that there were no shipments of this merchandise to the United States from these countries during the period October 1, 1983, through August 15, 1984, the date of publication of the tentative determinations to revoke.

Final Results of Review and Revocations

We invited interested parties to comment on the preliminary results and tentative determinations to revoke. We received no comments or requests for a hearing. The Department provided to all interested parties further preliminary results for the period up to the date of the tentative determinations to revoke, and gave interested parties an additional opportunity to comment. Again we received no comments. Based on our analysis, the final results of our review are the same as those presented in the preliminary results.

As a result of this review, the Department revokes the antidumping findings on pig iron from Romania, the U.S.S.R., and East Germany. These revocations apply to all unliquidated entries of Romanian, Soviet, and East German pig iron entered, or withdrawn from warehouse, for consumption on or after August 15, 1984.

These administrative reviews, revocations, and notice are in accordance with sections 751 (a)(1) and

(c) of the Tariff Act of 1930 (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

December 27, 1984.

[FR Doc. 85-401 Filed 1-4-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Issuance of Permit for Marine Mammals; Belfast Zoological Gardens

On September 28, 1984, notice was published in the **Federal Register** (49 FR 38324) that an application had been filed with the Belfast Zoological Gardens, Antrim Road, Belfast, Northern Ireland, for a Permit to take four (4) California sea lions (*Zalophus californianus*) for the purpose of public display.

Notice is hereby given that on December 21, 1984 and; as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above importation to the Belfast Zoological Gardens, subject to certain conditions set forth therein.

This Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: December 21, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation; National Marine Fisheries Service.

[FR Doc. 85-341 Filed 1-4-85; 8:45 am]

BILLING CODE 3510-22-M

Issuance of Permit for Marine Mammals; Knie's Kinderzoo

On August 31, 1984, notice was published in the **Federal Register** (49 FR 34552) that an application had been filed with the Knie's Kinderzoo, 8640 Rapperswill, Switzerland, for a Permit to take two (2) Atlantic bottlenose dolphins (*Tursiops truncatus*) for the purpose of public display.

Notice is hereby given that on December 21, 1984 and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking to Knie's Kinderzoo, subject to certain conditions set forth therein.

This Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: December 21, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-342 Filed 1-4-85; 8:45 am]

BILLING CODE 3510-22-M

International Trade Administration

Export Trade Certificate of Review; Issuance

AGENCY: International Trade Administration, Commerce

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to International Continental Agri-Tech, Inc. ("Agri-Tech"). This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on the certificate. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificate as "Export Trade Certificate of Review, application number 84-00033."

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Trade Development, 202-337-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 48 FR 10595-10604 (March 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and government criminal and civil suits under Federal and State antitrust laws for the export conduct specified in certifiate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant; and

4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937-15940 (April 13, 1983).

The Office of Export Trading Company Affairs received an application for an export trade certificate of review from Agri-Tech on September 28, 1984. The application were deemed submitted on October 5, 1984. A summary of the application was published in the **Federal Register** on October 18, 1984 (49 FR 40943 (1984)).

Description of Certified Conduct

Based on analysis of the application and other information in their possession, the Department of Commerce has determined, and the Department of Justice concurs, that the following export trade, export trade activities, and methods of operation specified by Agri-Tech meet the four standards of the Act:

Agri-Tech—Application No. 84–00033

Export Trade

a. *Products.* All agricultural produce, fish and fish products (including all processed goods and kindred products), forest products, metallic minerals (ores), lignite, anthracite and bituminous coal, work clothing and footwear, paper and allied products, educational materials, rubber and miscellaneous plastics products, stone, clay and glass products, fabricated metal products, machinery, instruments and related products [SIC #38], transportation equipment, lumber and wood products (excluding furniture), and chemicals and allied products.

b. *Services.* All services related to the growing, harvesting, and storage of agricultural products.

c. *Export Trade Facilitation Services.* Accounting, advertising, architectural services, brokerage, clerical services, communications, consultation, currency conversion, custom documentation, engineering, feasibility studies, financial services, freight forwarding, insurance, investment services, legal services, management services, marketing and sales service, packaging, product design, real estate services, translation, transportation, and warehousing.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. Agri-Tech may enter into nonexclusive agreements with individual suppliers to act as an Export Intermediary for Export Trade.

2. Agri-Tech may enter into agreements with individual suppliers of Export Trade, wherein:

a. Agri-Tech agrees not to represent any competitors of such suppliers as an Export Intermediary unless authorized by the supplier; and/or

b. the supplier agrees not to deal in Export Trade, directly or indirectly through any other Export Intermediary, into the Export Markets in which Agri-Tech represents the supplier as an Export Intermediary.

3. Agri-Tech may enter into agreements with individual Export Intermediaries, wherein:

a. Agri-Tech agrees to deal in Export Trade in the Export Markets only through that Export Intermediary, and/or

b. that Export Intermediary agrees not to deal in Export Trade in any Export Markets with anyone except Agri-Tech.

4. Agri-Tech may enter into agreements with individual customers in any Export Market whereby the customer agrees not to buy Export Trade from anyone except Agri-Tech.

5. The agreements described in paragraphs (2), (3), and (4) above may contain price, territorial, quantity, and/or customer restrictions for the Export Markets.

6. Agri-Tech may terminate any of the agreements described in paragraphs 1 through 5.

7. For invitations to bid or sales opportunities in the Export Markets, Agri-Tech may:

a. contact individual suppliers of the Export Trade specified in the invitation to bid or the purchase specifications;

b. distribute to each supplier separately bid requirements, bidding dates, purchase specifications and any other information provided by the prospective purchaser (subject to Term and Condition (a) below);

c. solicit and receive independent quotations for the Export Trade from individual suppliers;

d. enter into agreements with individual suppliers whereby Agri-Tech will submit a response to the invitation to bid or rquest for quotation.

e. any combination of (a) through (d) above.

Members

Mr. R.S. Norworthy, Florence, Mississippi; Mr. G.F. Corcoran, New Orleans, Louisiana.

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(c), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.10(a), any person aggrieved by the Secretary's determination may, within 30 days of the days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of each certificate will be kept in the International Trade administration's Freedom of Information Records Inspection Facility, Room 4104, U.S. Department of Commerce, 14th Street and Constitution avenue, NW., Washington, D.C. 20230. The certificates may be inspected and copied in accordance with regulations published in 15 CFR Part 4. Information about the inspection and copying of records at this facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling 202–377–3031.

Dated: January 2, 1985.

Irving P. Margulies,

General Counsel.

[FR Doc. 85–337 Filed 1–4–85; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Union Oil Company From California Coastal Commission Objection

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of decision by the Secretary of Commerce.

SUMMARY: In accordance with NOAA regulations at 15 CFR 930.130, notice is hereby given of the decision by the Secretary of Commerce (Secretary) in the appeal by Union Oil Company (Union) under subparagraphs (A) and (B) of section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456(c)(3) (A) and (B), from the objection of the California Coastal Commission (Commission) to Union's certification that its amended exploration plan to drill two wells within the boundaries of the Santa Barbara Channel Islands National Marine Sanctuary is consistent with the California Coastal Management Program.

On November 9, 1984, the Secretary of Commerce sustained Union's appeal because he found that Union's exploratory drilling as mitigated under its amended exploration plan met the requirements set forth in 15 CFR 930.121 and therefore was consistent with the objectives of the CZMA. Notwithstanding the objection of the Commission, Federal agencies may approve Union's exploration activities as described in its amended exploration plan. This decision is final agency action for purposes of judicial review.

Copies of the Secretary's findings and decision may be obtained from the Office of the Assistant General Counsel for Ocean Services, 2001 Wisconsin Avenue, NW., Room 270, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: David Drake at the above address, or phone (202) 254–7512.

SUPPLEMENTARY INFORMATION: Notice of the appeal was published in the Federal Register on December 23, 1983 (48 FR 56818).

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: December 21, 1984.

Robert J. McManus,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 85-338 Filed 1-4-85; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Oregon Department of Fish and Wildlife; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammals Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Oregon Department of Fish and Wildlife.

b. Address: Marine Region, Marine Science Drive, Bldg #3, Newport, Oregon 97365.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals:

Harbor seal (*Phoca vitulina*) 19,700 per year.

Northern seal lion (*Eumetopias jubatus*) 1100 per year.

Northern elephant seal (*Mirounga angustirostris*) 60 per year.

California sea lion (*Zalophus californianus*) 4500 per year.

4. Type of Take: The animals will be surveyed, tagged, and fecal samples will be collected to provide a more comprehensive evaluation of the pinniped populations.

5. Location of Activity: West coast of Oregon and Washington.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publications of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices.

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: December 28, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-347 Filed 1-4-85; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 2 to Permit No. 334]

Ocean World Associates; Marine Mammals Permit

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 334 issued to Ocean World Associates, 17th Street Causeway, Fort Lauderdale, Florida on May 8, 1981, (46 FR 26673), as modified on October 6, 1982 (47 FR 44830) is further modified as follows:

Section B-2 is modified by substituting the following:

"2. This Permit is valid with respect to the taking authorized herein until December 31, 1985."

This modification is effective on December 31, 1984.

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administration for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: December 28, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-404 Filed 1-4-85; 8:45 am]

BILLING CODE 3510-22-M

West Coast Whale Research Foundation P349; Notice of Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name: West Coast Whale Research Foundation P349.

b. Address: Applied Sciences 273, Center for Marine Studies University of California at Santa Cruz, Santa Cruz, California 95064.

2. Type of Permit: Scientific research/Scientific purposes.

3. Name and Number of Animals: Humpback whales (*Megaptera novaeanglie*) 1,000.

4. Type of Take: Potential harassment while conducting behavior studies.

5. Location of Activity: West Coast of Maui, Hawaii.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, Southwest Region, National Marine Fisheries Service, 300

South Ferry Street, Terminal Island, California 90731.

Dated: December 28, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-403 Filed 1-4-85; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, January 8, 1985; Tuesday, January 15, 1985; Tuesday, January 22, 1985 and Tuesday, January 29, 1985 at 10:00 a.m. in Room 1E801, the Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Installations and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, D.C. 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 31, 1984.

[FR Doc. 85-319 Filed 1-4-85; 8:45 am]

BILLING CODE 3810-01-M

Submission of Public Information Collection Requirement to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision:

DOD FAR SUPPLEMENT PART 22 and RELATED CLAUSES IN PART 52.222 and DD Forms 1565 and 1567

Information concerns certain data required to ensure compliance with various labor laws

Reporting is necessary for compliance with the requirements of various labor laws

Businesses or others for profit/small businesses or organizations

Responses: 40,300

Burden Hours: 10,243

Addresses: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, Room IC535, Pentagon, Washington, D.C. 20301-1155, telephone (202) 694-0187.

Supplemental Information: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, OUSDRE(AM)CP, Room 3D116, Pentagon, Washington, D.C. 20301, telephone (202) 697-8334. This is a revision of an existing collection.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 24, 1984.

[FR Doc. 85-394 Filed 1-4-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Nuclear Agency (DNA)

Scientific Advisory Group on Effects (SAGE); Notice of Meeting

The Scientific Advisory Group on Effects (SAGE) will meet in closed session January 29 to January 31, 1985 at the Ballistic Missile Office, Norton AFB, California. AGENDA: January 29 to January 31 (0900-1700): Presentations, Discussions and Executive Sessions on Issues Related to the Technology Programs which support Basing of the Small ICBM. The presentations and discussions in the above cited agenda will focus on current and planned activities of the Defense Nuclear Agency (DNA), the Ballistic Missile Office and others in regards to implementing Department of Defense Instruction 4245.4. Executive sessions will be held for the primary purpose of advising the Director, DNA, as to the adequacy of ongoing and planned activities. All planned presentations, discussions, and executive sessions may include classified defense information; therefore, under the provisions of Sections 552b(c)(1) and (3), Title 5, U.S.C., this meeting is closed to the public.

Any additional information concerning the meeting may be obtained from: Lt Col Gary C. Gibson, USAF, Scientific Secretary, SAGE, Headquarters, Defense Nuclear Agency, ATTN: DDST, Washington, DC 20305-1000.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 31, 1984.

[FR. Doc. 85-318 Filed 1-4-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Addendum to Environmental Assessment for the Construction of the Transmitter Facility, Navy Extremely Low Frequency (ELF) Program; Finding of No Significant Impact

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act (§ 1508.13 of Title 40, *Code of Federal Regulations*), the Department of the Navy gives notice that an environmental impact statement is not being prepared for the proposed construction of grounds systems (No.'s 1, 2, 4, 5 and 6) for the Navy Extremely Low Frequency (ELF) program, Michigan Transmitter Facility, Republic, Michigan. This proposed action is being undertaken to complete the ground systems required for program operation. On 21 October 1983 the Chief of Naval Operations (CNO) published a finding of no significant impact and a decision not to prepare an environmental impact statement for the Michigan facility construction and grounds system No. 3 in the Federal Register, Volume 48, No. 205 of Friday, October 21, 1983.

The intent to the addendum was to identify the location of the remaining 5 ground systems and to assess the specific effects of construction of these systems and the sham rights-of-way used for biological and ecological studies. Since the construction methods proposed for the remaining grounding systems will not differ from those discussed previously and used for the construction of Ground System No. 3 (which is now complete), significant adverse impacts from construction of the remaining grounds are not anticipated.

Construction of the five ground systems will call for altering approximately 200 acres of currently undeveloped land. The majority of the land is State property, however, portions of Grounds No.'s 1 and 6 are on private or corporate land which will be acquired by the Navy.

Generally, the ground systems are located in areas of varying vegetation which includes stands of Poplar, Spruce, Jack Pine, Norway Pine, White Birch, Oak, Maple, and Basswood. The terrain varies with low wet areas, flat open grasslands, densely forested areas, and high rocky areas typical of this area of Michigan. Elevations range from 1,170 feet to 1,520 feet per U.S.G.S. data. The proposed alterations are not considered severe nor irreversible. Some vegetation will be removed, but the proposed development is sensitive to the existing landscape. The loss of vegetation is not necessarily considered adverse by the Michigan Department of Natural Resources (DNR) as forested areas are sometimes cleared in an effort to create feeding habitats for certain wildlife species. The restoration and revegetation plans for the clear-cut rights-of-way (ROW) provide for replanting with species considered ideal for area wildlife. Supplemental clearing for control and test plots is considered insignificant and would only be a short-term alteration. Neither is the loss of vegetation expected to adversely affect the area forest productivity. Field surveys for cultural resources and threatened and endangered plant species were conducted along the proposed system ROWs, and completed survey reports are included as appendices to the environmental assessment. The results of these surveys are summarized as follows:

The apparent absence of other threatened and endangered species other than Canada Ricegrass (only located at Ground No. 2) in the search area can partially be explained by the disturbed nature of many of the woodlands along the route, due primarily to past timbering operations. Many habitats potentially suitable for harboring species of concern have been avoided in the antennae routing process, as well. The antennae routes circumvent many bogs, and multiple stream crossings have been avoided. Additionally, prairies, which are suitable habitat for species such as *Viola pedatifida* and *Silphium laciniatum*, were not encountered during the surveys.

Four historic sites were recorded during the survey. Based on the present state of investigation three can be classified as potentially eligible to the National Register of Historic Places because they may yield information important for a full understanding of historical resource development and land use of interior areas of the Upper Peninsula. The fourth site probably predates 1940 but contains little that would qualify it for the National Register. All sites will be segregated, will be avoided during construction, and they will not be impacted during systems installation.

Upon completion of grounds work efforts, comprehensive plans for the restoration of the corridor areas, developed in conjunction with the Michigan DNR, will be implemented. This will restore that corridor areas to a condition suitable for area wildlife.

Construction operations in wetlands show the greatest potential for environmental effect. Therefore, construction in wetlands is expected to take place during winter months when the areas are frozen. Additionally, construction specifications require that the contractor submit plans for each stream crossing and wetland construction methods to the Michigan DNR for review.

The alternative of placing the grounds in areas other than those selected would not facilitate a lesser impact due to the care already expended in design, construction mitigation and post-installation efforts. The "no action" alternative would not satisfy the mission requirements of the Navy.

The Environmental Assessment prepared by the Navy addressing this action is on file and may be obtained by interested parties at both the point of origin, Commanding Officer, Northern Division, Naval Facilities Engineering Command, Building 77–L, Naval Base, Philadelphia, PA 19112 (ATTN: Mr. Kenneth Petrone, Code 202), telephone (215) 443–6292, or at the Environmental Protection, Safety and Occupational Health Division (OP–45), Office of the Deputy Chief of Naval Operations, Building 200, Wing 3–S, Washington Navy Yard, Washington, D.C. 20374, telephone (202) 433–2426.

Dated: January 2, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85–396 Filed 1–4–85; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations, Executive Panel Advisory Committee, Special Warfare Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Special Warfare Task Force will meet January 23–24, 1985, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to examine special-warfare forces missions and roles. The entire agenda for the meeting will consist of discussions of key issues related to special warfare and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the

public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, Virginia 22311. Phone (703) 756-1205.

Dated: January 2, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-397 Filed 1-4-85; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee, Naval Ocean Systems Center Review Team of the Panel on Laboratory Oversight; Cancellation of Meeting

This notice is given to advise of the cancellation of the meeting of the Naval Research Advisory Committee Panel on Laboratory Oversight's Naval Ocean Systems Center Review Team on January 10-11, 1985, as published in the issue of December 26, 1984 (49 FR 50070).

Dated: December 31, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-398 Filed 1-4-85; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Joint C^3 Interoperability Panel of the Naval Research Advisory Committee will meet on January 22-23, 1985, at TRW, Systems Engineering and Applications Division Building, 7600 Colshire Drive, McLean, Virginia. The agenda will include technical briefings from the individual military services on their respective command and control systems, requirements and infrastructure capability. The first session will commence at 8:30 a.m. and terminate at 5:00 p.m. on January 22. The second and final session will commence at 8:00 a.m. and terminate at 4:30 p.m. on January 23. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the quality of joint command and control systems, and assess future requirements and infrastructure capability. The entire meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: January 2, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-399 Filed 1-4-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of Subcommittee A of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on January 14, 1985, at the offices of British Petroleum p.l.c., Britannic House, Moor Lane, London, England, beginning at 10:00 a.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. Fifth Allocation Systems Test issues, including duration of test and cost/benefits associated with one versus two cycles.
3. Stocks and supply disruptions, including minimum operating stock requirements.
4. Voluntary offers of "extra oil."
5. Indigenous production.
6. IAB organization, leadership and succession.
7. Future work program.

II. A meeting of Subcommittee C of the IAB will be held on January 14-15, 1985, at the offices of British Petroleum p.l.c., Britannic House, Moor Lane, London, England, beginning on January 14 following the conclusion of the meeting of Subcommittee A of the IAB which is being held at the same location on that date.

The agenda for the meeting is as follows:

1. Opening remarks.
2. U.S. Plan of Action.
3. Status of U.S. legislation.
4. IAB organization, leadership and succession.
5. Breach of contract defense.
6. Dispute Settlement Centre.
7. Future work program.

III. A meeting of the IAB will be held on January 15-16, 1985, at the offices of British Petroleum p.l.c., Britannic House, Moor Lane, London, England, beginning on Janaury 15 at 10:00 a.m. or upon the conclusion of the Subcommittee C meeting to be held at the same location on January 14-15, whichever last occurs. The agenda for the meeting is as follows:

1. Opening remarks.
2. Approval of Record Note of IAB meeting of October 9-10, 1984.
3. Correspondence and communications with IEA and Reporting Companies.
4. Report from Subcommittee A.
5. Report from Subcommitte C, including recommendations regarding latest draft of U.S. Plan of Action.
6. Fifth Allocation Systems Test issues, including duration of test and cost/benefits associated with one versus two cycles.
7. Stocks and supply disruptions.
8. Voluntary offers of "extra oil."
9. Emergency increases in Member Countries' indigenous production (proposed Emergency Management Manual amendment).
10. Review of emergency response programs of Denmark and Switzerland.
11. Oil statistical reports.
12. Industry Supply Advisory Group staffing and work program.
13. IAB organization, leadership an succession.
14. Date of next meeting and future business.

IV. A meeting of the IAB will be held on January 17, 1985, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 10:00 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is being held at the offices of the IEA on that date. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the draft agenda.
2. Summary record of the 49th meeting.

3. Fifth Allocation Systems Test:
(a) Report of Technical Sub-Group; and
(b) Duration of test.
4. Emergency preparedness:
(a) Follow-up on stocks and supply disruptions:
(i) Minimum operating stock requirements;
(ii) Costs of stocks;
(iii) Logistical constraints;
(iv) Effectiveness and consequences of oil consumption reduction methods; and
(v) Fuel switching.
(b) Emergency increases in Member Countries' indigenuous production;
(c) Voluntary offers of "extra oil"; and
(d) Review of emergency response programs of Denmark and Switzerland.
5. Oil supply and demand:
(a) End December oil market report;
(b) Current oil market situation;
(c) Quarterly Oil Forecast (First Quarter 1985—Fourth Quarter 1985); and
(d) Base Period Final Consumption (Fourth Quarter 1983—Third Quarter 1984).
6. Any other business.
7. Date of next meeting.

As provided in section 252(c)(A)(ii) of the Energy Policy and Conservation Act, the IAB meetings are open only to representatives of members of the IAB, their counsel, employees of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of committees of Congress, employees of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB or the IEA. The SEQ meeting is open only to the aforesaid persons, representatives of members of the SEQ, representatives of members of the IEA Group of Reporting Companies, and invitiees of the SEQ.

Issued in Washington, D.C., January 4, 1985.

Theodore J. Garrish,

General Counsel.

[FR Doc. 85-580 Filed 1-4-85; 12:54 pm]

BILLING CODE 6450-01-M

West Valley Demonstration Project; Availability of Project Plan

AGENCY: Department of Energy.

ACTION: Notice of submission of Project Plan for the West Valley Demonstration Project to the Nuclear Regulatory Commission for comment and its availability for public inspection.

SUMMARY: The West Valley Demonstration Project Act, Public Law 96-368 (October 1, 1980), directs the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Nuclear Service Center in West Valley, New York. The purpose of the project is to demonstrate the solidification and preparation of high-level radioactive waste for placement in a federal respository for permanent disposal. The Act requires the Department to submit to the Nuclear Regulatory Commission, for its review and comment, a plan for the solidification of the high-level radioactive waste at the Center, the removal of the waste for purposes of its solidification, the preparation of the waste for disposal, and the decontamination of the facilities to be used in solidifying the waste. The Act also specifies that upon submission of the plan to the Commission, the Department publish a notice in the **Federal Register** of the submission of the plan and of its availability for public inspection. The Project Plan has been submited by the Department to the Commission for its review and is available for public inspection at the locations noted below.

Availability: Copies of the Project Plan are available for public inspection at the following locations:

U.S. Department of Energy, Freedom of Information Reading Room, Room IE-190, Forrestal Building, 1000 independence Avenue, N.W., Washington, D.C. 20585

U.S. Department of Energy, West Valley Demonstration Project Public Reading Room, Rock Springs Road, West Valley, New York 14171

For Further Information You May Contact:

Dr. William H. Hannum, Director, West Valley Demonstration Project, U.S. Department of Energy, P.O. Box 191, West Valley, New York 14171

Mr. James A. Turi, Program Manager, West Valley Demonstration Project, U.S. Department of Energy, Mail Stop NE-25, GTN, Washington, D.C. 20545

Issued in Washington, D.C., December 28, 1984.

William R. Voigt, Jr.,

Acting Director, Office of Terminal Waste Disposal and Remedial Action, Office of Nuclear Energy

[FR Doc. 85-367 Filed 1-4-85; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council; Oil Supply/Demand Task Group; Meeting

Notice is hereby given that the Oil Supply/Demand Task Group will meet in January 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Oil Supply/Demand Task Group will address previous Council refining studies and evaluate further refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Oil Supply/Demand Task Group will hold its second meeting on Wednesday, January 9, 1985, starting at 9:00 a.m., in the Livingston Room of the Four Seasons Hotel, Houston Center, 1300 Lamar Street, Houston, Texas.

The tentative agenda for the Oil Supply/Demand Task Group meeting follows:

1. Opening remarks by the Chairman and Government Co-Chairman.

2. Discuss the scope of the overall study.

3. Discuss the study assignment of the U.S. Oil Supply/Demand Task Group.

4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Oil Supply/Demand Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Oil Supply/Demand Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Carolyn B. Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on December 28, 1984.

William A. Vaughan,

Assistant Secretary for Fossil Energy.

[FR Doc. 85-426 Filed 1-4-85; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council; Petroleum Refining Coordinating Subcommittee on U.S. Petroleum Refining; Meeting

Notice is hereby given that the Coordinating Subcommittee on the U.S. Petroleum Refining will meet in January 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Coordinating Subcommittee on the U.S. Petroleum Refining will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The U.S. Petroleum Refining Coordinating Subcommittee will hold its third meeting on Friday, January 25, 1985, starting at 9:00 a.m., in the Livingston Room of the Four Seasons Hotel, 1300 Lamar Street, Huston, Texas.

The tentative agenda for the U.S. Petroleum Refining Coordinating Subcommittee meeting is as follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discuss study assignments.
3. Review task group assignments.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the U.S. Petroleum Refining Coordination Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the U.S. Petroleum Refining Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on December 28, 1984.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 85-427 Filed 1-4-85; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council; Worldwide Refining Trends Task Group; Meeting

Notice is hereby given that the Worldwide Refining Trends Task Group will meet in January 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Worldwide Refining Trends Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Worldwide Refining Trends Task Group will hold its second meeting on Thursday, January 24, 1985, starting at 9:00 a.m., in the Livingston Room of the Four Seasons Hotel, Houston Center, 1300 Lamar Street, Houston Texas.

The tentative agenda for the Worldwide Refining Trends meeting follows:

1. Opening remarks by Chairman and Government Cochairman.
2. Discuss the individual study assignments of the Worldwide Refining Trends Task Group.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Worldwide Refining Trends Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Worldwide Refining Trends Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353/2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on December 28, 1984.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 85-428 Filed 1-4-85; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council; Refinery Survey Task Group; Meeting

Notice is hereby given that the Refinery Survey Task Group will meet in January 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Refinery Survey Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Refinery Survey Task Group will hold its third meeting on Thursday, January 17, 1985, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW, Suite 600, Washington, D.C.

The tentative agenda for the Refinery Survey Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.
2. Discuss the development of the Refinery Capabilities Survey questionnaire.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Refinery Survey Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Refinery Survey Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353/2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading

Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on December 28, 1984.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 85-431 Filed 1-4-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 84-19-NG]

Natural Gas Imports; Tenngasco Exchange Corp. and LHC Pipeline Co.; Application To Import Natural Gas From Canada for Short-Term and Spot Sales

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application for "Blanket" Authorization to Import Natural Gas from Canada for Short-term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 7, 1984, of an application from Tenngasco Exchange Corporation (TGX) and LHC Pipeline Company (LHC) for a "blanket" authorization to import Canadian natural gas for individual short-term and spot sales. Authorization is required for a period of four years beginning on the date of first delivery of the import.

The applicants request approval to import a volume not to exceed 110 Bcf of gas for the first two years, and a volume not to exceed 120 Bcf for the next two-year period.

The application does not identify specific supplier(s) and customer(s), or the natural gas delivery and end-use points. TGX and LHC propose to submit within 40 days following each calendar quarter, reports showing the quantities of gas imported, suppliers, purchasers (when acting as their agents), and the average price paid per MMBtu.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than Feburary 6, 1985.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-033, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-8162

Diane Stubbs, (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: TGX and LHC, affiliates of Tenngasco Corporation, a wholly owned subsidiary of Tenneco Corporation, which is a subsidiary of Tenneco Inc., are requesting a "blanket" authorization to import quantities of natural gas from Canada that they intend to sell to prospective customers who will purchase specific quantities of the gas to meet short-term needs. TGX and LHC state that they intend to purchase the natural gas from reliable Canadian sources, including various individual producers, producer groups or associations, such as Conterra, KANGAZ, Petro-Canada, and ProGas. Agreements executed between TGX and LHC and their supplier(s) would not exceed four year initially and might be renewable thereafter. In the alternative, TGX and LHC will act as agents for the account of various Canadian producers and pipelines desiring to sell gas, or as agents for the account of various U.S. customers in need of natural gas. TGX and LHC indicate that volumes imported under the authorization would not exceed 110 Bcf for the first two years and 120 Bcf for the next two-year period. TGX and LHC note further that agreements with Canadian suppliers will be subject to requirements established by the Canadian National Energy Board.

TGX will not become a regulated natural gas company under the Natural Gas Act and anticipates purchasing and selling only gas supplies which are not within the jurisdiction of the Federal Energy Regulatory Commission (FERC). LHC is a regulated natural gas company and will undertake any jurisdictional purchases and sales.

In their application, TGX and LHC state that an arrangement with a supplier for delivery of natural gas will be based on the market needs of TGX and LHC customers. Agreements will be negotiated individually at arm's length and will reflect the competitive realities of a given market at the time, specifying the price, duration of deliveries, and delivery schedule. The volume delivered would meet the identified needs of a customer for a particular period of time. TGX and LHC expect their customers to include pipelines, distribution companies, industrial users and other end users who are seeking competitively priced natural gas.

The applicants state that their experience in the spot and short-term markets suggests that customers for the imported supplies will use them to meet incremental needs, to displace alternate fuels, or to displace higher priced interruptible gas supplies. TGX and LHC emphasize that their proposed import arrangements will be of a short-term, market-responsive nature. Most sales under the proposed authorization would be for periods of less than four years, subject to renewal by the parties.

TGX and LHC claim that the individual agreements under the proposed blanket authorization will result in delivered gas prices which will be competitive with domestic supplies of natural gas available to their customers. The applicants state that no environmental impact is anticipated because no new facilities are required to accomplish the import of this gas.

TGX and LHC state that they will not utilize the proposed blanket import authorization unless the natural gas to be imported will be needed, competitive and marketable. TGX and LHC will not enter into short-term sales agreements absent reasonable assurance of available supply to meet their obligations under such agreements.

Under the proposed blanket authority, TGX and LHC request the ability to import gas pursuant to individual short-term sales contracts without each being subjected to a specific ERA regulatory proceeding and approval. TGX and LHC propose to file with the ERA within 40 days following each calendar quarter, reports showing the quantities of gas imported, suppliers, and the average price paid per MMBtu. The inclusion of take-or-pay or make-up provisions, if any, in supplier contracts also will be reported. Where the applicants act as agents on behalf of Canadian sellers or U.S. purchasers, the sellers, purchasers and import prices will be reported. TGX and LHC believe blanket approvals are essential to the establishment of efficient short-term and spot markets for Canadian gas.

The applicants assert that the type of transactions they intend to arrange require speed, efficiency and certainty. They claim that buyers and sellers in a short-term market must be able to enter into buy-sell agreements quickly, with relative ease, confidence and low transaction costs. To be effective in such a market, they say it is vital to make "on-the-spot" matches of sure supplies with immediate demand to consummate

transactions. Because of these particular characteristics of the short-term and spot markets and the greater market flexibility offered by the addition of Canadian sources of supply, the applicants contend that the limited blanket import authority, as requested, should be granted by the ERA.

This application is one of several received by ERA concerning purchases of imported gas for spot and short-term market opportunities. The authorization sought would provide TGX and LHC a blanket or umbrella import approval, with volume and term constraints, under which to negotiate and transact individual spot and short-term arrangements without further regulatory action. In certain respects, this application is similar to applications the ERA received from Cabot Energy Supply Corporation on August 31, 1984, and from Northwest Alaskan Pipeline Company on October 16, 1984. Comments have been requested by ERA in each case (49 FR 44011, November 1, 1984, and 49 FR 45643, November 19, 1984, respectively).

Spot and short-term purchases and sales of gas are generally in response to unique market demands and opportunities, and to be effective normally require prompt action. Although their application does not identify specific suppliers, customers, price, or delivery and end-use points, TGX and LHC indicate that any transaction under the requested blanket authorization will take place only if it is market competitive and thus made in a manner fully consistent with the policy and regulatory guidelines applied by ERA in authorizing gas imports.

Because spot and short-term trading represents a new and growing activity within the U.S. gas market, the public comments on this application will be especially useful in determining the regulatory approach to these types of import authorizations.

This application is subject to the policy considerations now used to evaluate traditional gas import arrangements, as set forth by the Secretary of Energy last February (49 FR 6687, February 22, 1984). This policy, with its strong emphasis on competitive arrangements and contract flexibility, has as an objective the freeing of commercial parties from undue government interference in determining contract terms and reflects the importance of buyer-seller negotiation.

Public comment on this application is encouraged and the views expressed by interested parties will be given careful and thorough consideration in evaluating the TGX and LHC application. Parties providing comments or opposing this application should address any legal, precedural, or policy issues raised by this application, including, for example, its consistency with the considerations set forth in the Secretary's policy guidelines, with emphasis on its competitiveness.

Other Information

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applcable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received by persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the National Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-033, RG-43, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., February 6, 1985.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of TGX and LHC's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-033-B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on December 20, 1984.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-429 Filed 1-4-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board; Materials Facilities Ad Hoc Review; Open Meeting

Notice is hereby given of the following meeting:

Name: Materials Facilities Ad Hoc Review of the Energy Research Advisory Board (ERAB).

Date and time: January 25, 1984, 9 a.m. to 9:00 p.m.

Place: O'Hare Hilton, Room 2031, 8535 West Higgins Road, Chicago, IL 60631.

Contact: Charles E. Cathey, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252-5444.

Purpose of the Parent Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department. The Ad-Hoc Review is examining the National Research Council report on materials facilities and assessing its significance in terms of the Department's research programs.

Tentative Agenda

- Discussion of DOE priorities relative to National Research Council report "Major Facilities for Materials Research and Related Disciplines"
- Discussion and presentations on neutron sources and synchrotron radiation sources
- Draft preliminary report for submission to ERAB
- Public Comment (10 minute rule)

Public Participation

The meeting is open to the public. Written statements may be filed with the Subpanel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Review is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on December 24, 1984.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 85–430 Filed 1–4–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER85–189–000]

Appalachian Power Co.; Filing

January 2, 1985.

The filing Company submits the following:

Take notice that on December 18, 1984, Appalachian Power Company (APCO), tendered for filing new power sales agreements executed by APCO with the following West Virginia wholesale customers: Black Diamond Power Company, Elk Power Company, Elkhorn Public Service Company, Kimball Light and Water Company, United Light and Power Company, Union Power Company and War Light and Power Company. These agreements are intended to replace the existing service agreements between APCO and these customers which expired by their own terms on April 30, 1984.

APCO requests a proposed effective date for the tendered agreement of December 1, 1984 and therefore requests waiver of the Commission's notice requirements. Copies of the filing were served upon the affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 14, 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. 85–442 Filed 1–4–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–435–001]

Arkansas Louisiana Gas Co., a Division of Arkla, Inc.; Application Amendment

January 2, 1985.

Take notice that on November 29, 1984, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP84–435–001 an amendment to its application filed in Docket No. CP84–435–000 pursuant to section 7(c) of the Natural Gas Act so as to reflect revision of the facilities proposed to be constructed therein and to request pursuant to section 7(b) of the Natural Gas Act permission and approval to abandon five compressor units at the Beirne compressor station (Beirne), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, Arkla proposes to amend its application, as follows:

1. Construct and operate five 2600 horsepower compressor units at the proposed Clark County compressor station (Clark) instead of the three 2250 horsepower compressor units as originally proposed.

2. Eliminate ten miles of 24-inch loop proposed to be constructed between the Taylor compressor station and the Hamilton Products Extraction Plant.

Arkla states that the design of the project contemplated by the application included the reconditioning (for which certification is not necessary) of five existing old compressor units at Beirne at an approximate cost of $8,428,000 and would have also required the installation of ten miles of 24-inch loop (No. 2 above).

Arkla indicates that substantial cost savings and more efficient operation can be achieved by installing additional horsepower at Clark instead of reconditioning the compressor units at Beirne. Arkla states further that the additional horsepower also eliminates the need for the above described 24-inch loop. Arkla explains that as a result of the additional horsepower proposed at Clark, the reconditioning of the five compressor units is no longer necessary at Beirne and, therefore, Arkla requests permission and approval to abandon the five compressor units at Beirne. It is indicated that the total estimated cost of the facilities, as revised is $231,361,000 or a decline of $207,000 from the application.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before January 22, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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 parties to the 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. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–443 Filed 1–4–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. G–10139–003, et al.]

CanadianOxy Offshore Production Co. Corpororate Name Change

January 2, 1985.

Take notice that on July 18, 1984, CanadianOxy Offshore Production Co. (CanadianOxy), of Post Office Box 300, Tulsa, Oklahoma 74102 filed in Docket No. G–10139–003, et al., an application to amend certificates of public convenience and necessity issued to Cities Offshore Production Co. and for redesignation of the related Rate Schedules, as listed in the attached Appendix, to reflect a change of name from Cities Offshore Production Co. to CanadianOxy Offshore Production Co.

Effective February 27, 1984, Cities Offshore Production Co. changed its name to CanadianOxy Offshore

Prosuction Co. CanadianOxy ameanded its Certificated of Incorporation with the State of Delaware to reflect its new corporate name.

Notice is hereby given that all the certificates and rate schedules as listed in the attached Appendix are hereby redisignated to reflect the corporate name change from Cities Offshore Production Co. to CanadianOxy Offshore Production Co. effective February 27, 1984.

Kenneth F. Plumb,

Secretary.

APPENDIX

R.S. No.	Purchaser	Certificate Docket
1	Tennessee Gas Pipeline Co	G-10139
2	Trunkline Gas Co	CI69-806
3	Tennessee Gas Pipeline Co	CI73-457
4	do	CI77-19
5	Southern Natural Gas Co	CI78-310
6	Texas Eastern Transmission Corp	CI79-405
7	ANR Pipeline Co	CI79-541
8	Tennessee Gas Pipeline Co	CI80-4d71
9	do	CI83-132

[FR Doc. 85-444 Filed 1-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-226-001]

Columbia Gas Transmission Corp. and Columbia Gulf Tansmission Co., Request Under Blanket Authorization

January 2, 1985.

Take notice that on December 4, 1984, as amended December 11, 1984, Columbia Gas Transmission Corporation (Columbia Transmission), P.O. Box 1273, Charleston, West Virginia 25325-1273 and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP84-001 a joint request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for Authorization to transport natural gas on behalf of Westvaco Corporation (Westvaco) for use as boiler fuel under certificates issued in Docket Nos. CP73-76-000 and CP83-496-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Transmission and Columbia Gulf propose to transport up to 4,625 million Btu of natural gas per day for Westvaco until June 30, 1985. It is stated that the gas to be transported would be purchased from the Exxon Corporation (Exxon) and the Delhi Gas Pipeline Corporation (Delhi). It is stated that Exxon and Delhi would deliver the natural gas to Columbia Gulf and Columbia Gulf would transport and deliver equivalent volumes to Columbia Transmission. It is further stated that in turn Columbia Transmission would transport and deliver equivalent volumes of natural gas to Mountaineer Gas Company (successor to Columbia Gas of West Virginia, Inc.), the distribution company serving Westvaco. Columbia Transmission states it has released the Exxon gas and that these supplies are subject to the ceiling price provisions of Sections 102 and 103 of the Natural Gas Policy Act of 1978. It is also stated that the gas sold by Delhi to Westvaco would not be release gas.

For this transportation service it is stated that Columbia Gulf would charge Westvaco its average system-wide onshore or offshore transmission costs, exclusive of company-use and unaccounted-for gas, currently 26.19 cents per dt equivalent and 44.63 cents per dt equivalent, respectively. Columbia Gulf would retain 2.58 percent and 3.33 percent of the gas delivered to it from onshore and offshore, respectively, for company-use and unaccounted-for gas. It is also stated that Columbia Transmission would charge Westvaco its average system-wide storage and transmission cost, exclusive of company-use and unaccounted-for gas, currently 40.11 cents per dt. In addition Columbia Transmission would retain 2.85 percent of the gas delivered to it for company-use and unaccounted-for gas. Columbia Transmission also states that it would collect the GRI funding charge of 1.21 cents per dt.

The proposed service is a continuation of the authorization obtained previously in Docket No. CP84-226-000 which authorization terminated November 30, 1984.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 ays after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-446 Filed 1-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-143-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

January 2, 1985.

Take notice that on December 3, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-143-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Harbison-Walker Refractories, Division of Dresser Industries (Harbison-Walker), under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 1.5 billion Btu equivalent of natural gas per day for Harbison-Walker through June 30, 1985. Columbia states that the gas to be transported would be purchased from Texaco Inc. (Texaco) and would be used as process gas and boilder fuel in Harbison-Walker's Baltimore, Maryland, plant.

It is indicated that Harbison-Walker has made arrangements to purchase this gas from Texaco. Columbia states that it would receive the gas from Texaco and redeliver the gas to Baltimore Gas & Electric Company (BG&E), the distribution company serving Harbison-Walker, near Baltimore, Maryland. Further, Columbia states that it would charge 29.93 cents per dt equivalent, as set forth in Columbia's Rate Schedule TS-1. Columbia states that it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS-1.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 fo the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the

time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-447 Filed 1-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-145-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

January 2, 1985.

Take notice that on December 3, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-145-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of DiversiTech General-Division of GenCorp, Inc. (GenCorp), under the certificate issued Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to inspection.

Columbia proposes to transport up to 720 million Btu equivalent of natural gas per day for GenCorp through June 30, 1985. It is stated that the gas to be transported would be purchased from Victory Development Company (Victory) and would be used as boiler fuel in GenCorp's Jeanette, Pennsylvania, plant.

It is indicated that Columbia has released certain gas supplies of Victory and that these supplies are subject to the ceiling price provisions of sections 102 and 103 of the Natural Gas Policy Act of 1978. It is further indicated that GenCorp has made arrangements to purchase this released gas from Victory. Columbia states that it would receive the gas from Victory and redeliver the gas to Columbia Gas of Pennsylvania, Inc., The distribution company serving GenCorp, near Jeanette, Pennsylvania.

Columbia asserts that it would charge 29.23 cents per dt equivalent for the transportation service, exclusive of company-use and unaccounted-for gas. Columbia asserts further that it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-448 Filed 1-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-11-000]

Hamilton Brothers Oil Co.; Petition for Adjustment

Issued: January 2, 1985.

On December 24, 1984, Hamilton Brothers Oil Company (Hamilton) filed with the Federal Energy Regulatory Commission a petition for an adjustment under section 502(c) of the Natural Gas Policy Act of 1978 and § 385.1103 of the Commission's rules, wherein Hamilton and its affiliates be granted an extension of time to comply with the refund provisions of Order No. 399-A. Hamilton requests that it be allowed until August 30, 1985, to make refunds to pipelines required of first sellers by Order No. 399-A.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure.

Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-449 Filed 1-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-192-000]

Kansas City Power & Light Co.; Filing

January 2, 1985.

The filing Company submits the following:

Take notice that on December 21, 1984, Kansas City Power & Light Company (KCPL) tendered for filing with the Commission proposed changes in the Fuel Adjustment Clauses in Service Schedules for Load Regulation and Displacement Energy Service to supersede and replace Service Schedules for such service in contracts and agreements with the following wholesale customers:

1. City of Marshall, Missouri (Marshall), FPC No. 83
2. City of Baldwin City, Kansas (Baldwin), FERC No. 85
3. City of Carrollton, Missouri (Carrollton), FERC No. 78
4. City of Garnett, Kansas (Garnett), FPC No. 78
5. City of Osawatomie, Kansas (Osawatomie), FPC No. 77
6. City of Ottawa, Kansas (Ottawa), FERC, No. 90

The proposed changes would modify the Fuel Adjustment Clauses in such Schedules so that the fuel adjustment charges will not be affected by energy produced by facilities undergoing test operation. The changes are required to ensure that the value of test energy produced by KCPL's nuclear fueled Wolf Creek Generating Station during its test operation in early 1985 will be accounted for properly.

KCPL requests an effective date of January 9, 1985, and therefore requests waiver of the Commission's prior notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to invervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 15, 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. 85-450 Filed 1-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-160-000]

Louisiana-Nevada Transit Co.; Application

January 2, 1985.

Take notice that on December 7, 1984, Louisiana-Nevada Transit Company (Applicant), P.O. Box 8789, Denver, Colorado 80201, filed in Docket No. CP85-160-000 an application pursuant to section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction, acquisition, and operation of certain facilities and the transportation and sale of natural gas and for permission and approval to abandon certain facilities and service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 22, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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 parties to the 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-451 Filed 1-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-161-000]

National Fuel Gas Supply Corp.; Application

January 2, 1985.

Take notice that on December 7, 1984, National Fuel Gas Supply Corporation (Applicant), 10 Lafayette, Square, Buffalo, New York 14203, filed in Docket No. CP85-161-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas for resale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell 60,000 dt equivalent of natural gas per day under the following terms and conditions: (1) On a firm basis commencing at the latter of the date this proposal is authorized or February 1, 1985; (2) for ten years and year-to-year thereafter until terminated by the parties; (3) at the effective rate contained in Applicant's Rate Schedule RA; and (4) the service would be converted to a service under Applicant's FERC Gas Tariff, Volume No. 1, no later than January 1, 1987.

Applicant states that the proposed purchasers are the same as those involved in Tennessee Gas Transmission Company, a Division of Tenneco Inc.'s Docket No. CP84-441-000, Texas Eastern Transmission Corporation's Docket No. CP84-429-000, and Algonquin Gas Transmission Company's Docket No. CP84-654-000, which are currently pending before the Commission. It is indicated that the proposed purchasers are The Brooklyn Union Gas Company, Public Service Electric and Gas Company, Algonquin Gas Transmission Company, Bay State Gas Company, Connecticut Light & Power Company, Consolidated Edision Company of New York, Inc., New Jersey Natural Gas Company, Philadelphia Electric Company, Philadelphia Gas Works, National Gas & Oil Corporation, T. W. Phillips Gas & Oil Company, Elizabethtown Gas Company, The Berkshire Gas Company, Boston Gas Company, Central Hudson Gas & Electric Corporation, Colonial Gas Company, Commonwealth Gas Company, Concord Natural Gas Corporation, Connecticut Natural Gas Corporation, Energy North, Inc., Essex County Gas Company, Fitchburg Gas and Electric Light Company, Holyoke Gas & Electric Department, Long Island Lighting Company, Orange and Rockland Utilities, Inc., The Southern Connecticut Gas Company, Valley Gas Company, and Westfield Gas & Electric Light Department.

Applicant states that its currently effective commodity rate is $3.73 per dt equivalent of gas while its currently effective 100 percent load factor rate is $3.91 per dt. In this regard, Applicant states that the sales quantities and the revenues resulting from the proposed sales would be considered in establishing representative sales levels and revenue requirements in future rate proceedings under the Natural Gas Act.

Applicant states that the gas proposed to be sold herein is part of Applicant's present system supply and that no new facilities need to be constructed by Applicant in order to make the proposed sales. Applicant states that the purchasers are responsible for securing transportation arrangements from Applicant's facilities to their respective market areas.

Applicant alleges that the record in the proceedings currently pending before the Commission in Docket Nos. CP84-441-000, CP84-429-000 and CP84-654-000 demonstrates that a market exists for the gas, which Applicant herein proposes to sell, and that the proposed purchasers need such volumes to meet the requirements of their customers during the period covered by this proposal.

In addition, Applicant alleges that its proposal to set its annual miminum bill at a fifty percent level provides the proposed purchasers with operating flexibility that is superior to the proposals in Docket Nos. CP84-441-000, CP84-429-000 and CP84-654-000. Applicant explains that this provision contemplates minimum bill payments of only the fixed costs in the commodity component of Applicant's RQ rate in accordance with Commission Order No. 380 in the event the purchasers take less than the minimum level on an annual basis. Thus, Applicant states that it is willing and able to provide the customers with the needed volumes under favorable terms and conditions.

Applicant states that its proposal is integrally related to the proceedings in

Docket Nos. CP84-441-000, CP84-429-000, and CP84-654-000 because of the need for additional transportation capacity to facilitate applicant's proposal. Accordingly, Applicant proposes to provide the purchasers with the needed volumes commencing on February 1, 1985, on a best-effort basis, until firm transportation service can commence.

Applicant alleges that its proposal herein is also to the advantage of its present customers. Applicant states that its current sales have fallen below historical levels which means that the proposed sales would enable Applicant to purchase more gas from its pipeline suppliers which would increase Applicant's load factor and thereby reduce the unit costs of gas purchased for its present customers. Additionally, Applicant alleges that the proposed sales would enable Applicant to purchase more gas from domestic producers and to maintain a level of demand sufficient to promote natural gas exploration and development activities, which is necessary for the development of adequate long-term supplies.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 22, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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 parties to the 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natual Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-452 Filed 1-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-188-000]

Niagara Mohawk Power Corp.; Filing

January 2, 1985.

The filing Company submits the following:

Take notice that on December 17, 1984, Niagara Mohawk Power Corporation (Niagara) tendered for filing as a rate schedule an agreement between Niagara and Long Island Lighting Company (LILCO) dated October 1, 1984.

Niagara presently has on file an agreement with LILCO dated February 14, 1975 last amended May 17, 1983. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 91 with Supplement 5. The new agreement is being transmitted as a supplement to the existing agreement.

This supplement revises the transmission rate for transmitting Fitzpatrick power and energy from the Power Authority of the State of New York to Long Island as provided for in the terms of the original agreement. Niagara requests the Commission allow said agreement to become effective as of September 1, 1984.

Copies of this filing were served upon the Long Island Lighting Company and the Public Service Commission State of New York.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 14, 1985. Protest 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. 85-453 Filed 1-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP61-139-011]

Northern Natural Gas Company, Division of InterNorth, Inc.; Petition To Amend

January 2, 1985.

Take notice that on November 30, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Petitioner), 223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP61-139-011 a petition to amend the order issued in Docket No. CP61-139-000 on January 11, 1965 [1], as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize the establishment of (1) two new delivery points between Petitioner and El Paso Natural Gas Company (El Paso), (2) a specified area of interest and the exchange of natural gas from such area under the authorized exchange arrangement between Petitioner and El Paso, and (3) blanket authorization for the addition and deletion of delivery points from time to time, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by Commission order issued January 11, 1965, as amended, in Docket Nos. CP61-139 and CP61-92, Petitioner and El Paso, respectively, received certificate authorization to construct and operate certain facilities and deliver natural gas, on an exchange basis, by use of existing capacity in either Petitioner's or El Paso's gathering system at certain designated points in Moore, Ochiltree, Hemphill, Hockley and Yoakum Counties, Texas, and Beaver, Roger Mills and Woodward Counties, Oklahoma, all pursuant to a 1963 service agreement, dated August 17, 1962 between Petitioner and El Paso.

Petitioner further states that it has advised El Paso that it has certain quantities of natural gas, which quantities of natural gas have been acquired by Petitioner under various gas purchase agreements, that Petitioner desires to make available for delivery to El Paso under the 1963 service agreement. It is said that in order that Petitioner may deliver its natural gas

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

volumes available from the Arrington 4–64 and 4–53 wells located in Hemphill County, Texas, to El Paso under the 1963 service agreement. Petitioner and El Paso have entered into an amendatory agreement, dated July 26, 1983, wherein the parties have agreed to revise Exhibit A to the 1963 service agreement to reflect the proposed additional delivery points. It is said further that natural gas delivered by Petitioner to El Paso at the Arrington 4–64 and Arrington 4–53 wells would be commingled with natural gas purchased by El Paso and delivered into El Paso's system through existing facilities owned and operated by El Paso; therefore, no additional facilities are required.

Petitioner states that as set forth in the proposed Sixth Revised Exhibit A to special Rate Schedule Z–1, Petitioner may cause the delivery of up to 1,000 Mcf of natural gas per day to El Paso at each of the two delivery points, which gas El Paso would receive and subsequently transport and redeliver to Petitioner as a part of the total exchange volumes now authorized under special Rate Schedule Z–1.

Petitioner further states that inasmuch as Petitioner and El paso contemplate having available additional gas supplies which would be located in close proximity to the other party's respective existing gathering system, Petitioner and El paso have entered into an amendatory agreement dated January 13, 1984, further amending the 1963 service agreement to establish a specified "area of interest" provision. Therefore, Petitioner requests that the amended authorization requested therein, when issued, specifically permit (i) the exchange of natural gas from additional delivery points which may be attached to the respective gathering system of each party as the natural gas at such point becomes available to Petitioner and El Paso in the area of interest including the Arrington 4–64 and Arrington 4–53 wells located in Hemphill County, Texas, and (ii) the addition of such points of interconnection as may be required between the parties in the area of interest. In addition, Petitioner requests blanket authorization for the deletion of delivey points and points of interconnection from the exchange arrangement as may be mutually agreed to from time to time by Petitioner and El Paso. It is said that in the event facilities subject to the jurisdiction of the Commission are required to be installed by Petitioner for the purpose of effectuating the exchange of natural gas from additional delivery points or points of interconnection in the specified area of interest, as requested, Petitioner would propose to do so under its existing blanket authorization granted in Docket No. CP82–401–000 by order issued September 1, 1982.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 22, 1985, file with the Federal Energy Regulatory Commission, Washingon, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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 parties to the 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.

[FR Doc. 85–454 Filed 1–4–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–141–000]

Northwest Pipeline Corp.; Application

January 2, 1985.

Take notice that on December 3, 1984, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP85–141–000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing certain changes in natural gas storage service for certain customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it was authorized Docket Nos. CP74–46, as amended, CP75–286 and CP76–106, to render liquefaction and storage service under its Rate Schedule LS–1. It now proposes to change such service to allow it to offer its LS–1 customers the option of nominating less than their storage capacity volume of gas for liquefaction and storage.

It is explained that Section 6 of Applicant's Rate Schedule LS–1 currently requires customers to purchase and tender volumes for liquefaction based on their full storage capacity volume and that there is no option to purchase and tender lesser quantities. Applicant proposes to revise its LS–1 Rate Schedule to allow customers the flexibility of nominating storage volumes less than the storage capacity volumes specified in their LS–1 service agreements.

Applicant states that the proposed modification to its Rate Schedule LS–1 service would provide LS–1 customers with increased flexibility and would not affect the storage demand volumes and storage capacity volumes or the associated monthly demand and capacity charges which are designed to recover the fixed costs for LS–1 service.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 22, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedue (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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 parties to the 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-455 Filed 1-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-190-000]

Pacific Power & Light Co.; Filing

January 2, 1985.

The filing Company submits the following:

Take notice that on December 17, 1984, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 124 between Pacific and Washington Water Power Company (Washington). Pacific states that Washington's Rate Schedule FERC No. 124 and Pacific's Rate Schedule FERC No. 218, is a December 7, 1981 Letter Agreement between Washington and Pacific. Pacific further states that such Letter Agreement expired by its own terms.

In addition Pacific states that Washington's September 27, 1984 filing included a Notice of Cancellation of Washington's Rate Schedule FPC No. 50, which has been superseded by Washington's Rate Schedule FERC No. 97, Pacific's Rate Schedule FERC No. 160 (Pacific Northwest Coordination Agreement). Pacific finds no record of a Rate Schedule designation corresponding to Washington's Rate Schedule FPC No. 50. Accordingly, Pacific considers any filing unnecessary at this time with respect to Washington's cancellation of its Rate Schedule FPC No. 50.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 14, 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. 85-456 Filed 1-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-191-000]

Pacific Power & Light Co., an Assumed Business Name of PacifiCorp; Cancellation

January 2, 1985.

The filing Company submits the following:

Take notice that on December 18, 1984, Pacific Power & Light Company, an assumed business name of PacifiCorp, (Pacific) tendered for filing Notices of Cancellation of bilateral Rate Schedule FPC/FERC Nos. 79, 80, and 109. Pacific states that these Rate Schedules have been terminated by mutual agreement or appropriate notice in accordance with the terms of the agreements.

Pacific requests an effective date of sixty days after date of filing.

Copies of the respective cancellations have been served upon the parties and public utility commission(s).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 15, 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. 85-436 Filed 1-4-85 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-120-000]

Panhandle Eastern Pipe Line Co.; Application

January 2, 1985.

Take notice that on November 19, 1984, Panhandle Eastern Pipe Line Company (Panhandle), 3000 Bissonnet, Houston, Texas 77005, and 3444 Broadway, Kansas City, Missouri 64111, filed in Docket No. CP85-120-000 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon by sale to Indiana Gas Company (Indiana Gas) Panhandle's Anderson lateral and related facilities and for a certificate of public convenience and necessity authorizing the establishment of two new delivery points and the construction and operation of two new measuring stations for deliveries of gas to Indiana Gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle seeks authorization to (1) abandon by sale to Indiana Gas the Anderson lateral and related facilities, (2) abandon and assign all existing farm taps on this lateral to Indiana Gas, (3) abandon existing delivery points to Indiana Gas located on the Anderson lateral and (4) establish two new delivery points to supply Indiana Gas. Panhandle states that it would retain the right to transport gas to existing customers on the lateral and that there would be no change in Indiana Gas contract demands or gas entitlements. All facilities involved are located in Hamilton, Madison, Hancock, Marion and Delaware Counties, Indiana, it is explained. Panhandle contends that the proposal would allow Indiana Gas and itself to utilize their systems more efficiently.

Panhandle states that the book value of the facilities is $1,629,823. Construction of measuring facilities at the two new delivery points is estimated to cost $300,000. That cost would be financed with funds generated from Panhandle's business operations.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 22, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene of a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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 parties to the 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the

certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-437 Filed 1-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-158-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

January 2, 1985.

Take notice that on December 7, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85-158-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport gas for Natural from a point of receipt in East Cameron Block 71A, offshore Louisiana, at the interconnection of Applicant's existing pipeline and the lateral jointly owned by Applicant and Natural extending from East Cameron Block 58, for delivery to Natural at existing interconnections between the facilities of Applicant and Natural near Hungerford, Texas, or, upon mutual agreement, the outlet side of Mobil Oil Corporation's Cameron Meadows processing plant, Cameron Parish, Louisiana, or any other point mutually agreed to in writing. Applicant states that the gas may be processed at the Grand Chenier plant. Applicant states further that the volumes to be transported would be up to 4,500 Mcf of gas per day and would be on a best-effects basis. It is asserted that such service is pursuant to a gas transportation agreement dated April 3, 1981.

The proposed service, it is said, would provide Natural with a means of transporting an additional supply of natural gas without its having to construct and operate duplicative facilities.

Applicant states that Natural would pay a volume charge equal to the product of 22.23 cents mutiplied by the total volume in Mcf of gas received during the month for delivery to Natural. It is further stated that the agreement contains a provision for a minimum monthly bill.

Applicant states further that Natural would pay a liquids transportation charge of 47.82 cents per barrel for the transportation of liquids.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 22, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by its in determining the appropriate action to be taken but will not serve to make the protestants parties to the 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided, for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-438 Filed 1-4-85; 8:45 am]

BILLING CODE 6717-01

[Docket No. CP85-142-000]

Trunkline Gas Co.; Application

January 2, 1985.

Take notice that on December 3, 1984, Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-142-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport natural gas for Southern pursuant to the terms of a gas transportation agreement (Agreement) between Applicant and Southern dated September 20, 1984. Applicant avers that it has commenced transportation for Southern pursuant to Part 284, Subpart G, of the Commission's Regulations and the Agreement. Applicant states that pursuant to the terms of the Agreement, Applicant has agreed to transport on an interruptible basis, up to 30,000 Mcf of natural gas per day on behalf of Southern. Applicant states it would receive volumes for Southern's account at a point of receipt with Natural Gas Pipeline Company of America in Cameron Parish, Louisiana, and redeliver the volumes to Southern at an existing point of interconnection in St. Mary Parish, Louisiana.

Applicant states that for such transportation service Southern would pay Applicant a unit rate of 3.79 cents per Mcf.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 22, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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 parties to the 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by

sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-439 Filed 1-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-129-000]

Zenith Natural Gas Co.; Application

January 2, 1985.

Take notice that on November 26, 1984, Zenith Natural Gas Company (Applicant), South Hutchinson, Kansas 67505, filed in Docket No. CP85-129-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the metering facilities and the transportation necessary to make an interruptible sale for resale of excess natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it proposes to make an interruptible sale for resale of excess natural gas to Reno Enterprises, which would sell and distribute such excess natural gas to industrial end-users in Kansas. Deliveries would be made by Panhandle Eastern Pipe Line Company (Panhandle), from gas it now transports for Applicant, to Getty Pipeline Company (Getty) at an existing delivery point in Kansas by the construction and operation of additional metering facilities by Panhandle. It is stated that Reno Enterprises would reimburse Panhandle for the metering facilities and would take deliveries from Getty. Estimated maximum day and annual deliveries are 1,000 and 150,000 Mcf, respectively.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 22, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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 parties to the 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-440 Filed 1-4-85; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 28, 1984.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submissions are available from Doris Peacock, Agency Clearance Officer, (202) 632-7513. Persons wishing to comment on these information collections should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-4814.

OMB Number: 3060-0176
Title: Section 73.1510, Experimental Authorizations
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 100 Respondents; 200 Hours
OMB Number: 3060-0185
Title: Section 73.3613, Filing of Contracts
Action: Extension
Respondents: Businesses (including small businesses) and non-profit institutions
Estimated Annual Burden: 11,246 Respondents; 5,357 Recordkeepers; 11,439 Hours
OMB Number: 3060-0171
Title: Section 73.1125, Station Main Studio Location
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 30 Respondents; 30 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-356 Filed 1-4-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[Docket No. 84-785]

Earnings Based Accounts

Dated: December 31, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a new information collection request, "Earnings Based Accounts", to the Office of Management and Budget for expedited approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 10 days of publication of this notice in the **Federal Register.** Comments regarding the paperwork-burden aspects of the request should be directed to:

Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503; Attention: Desk Officer for the Federal Home Loan Bank Board

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below:

Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Phone: 202-377-6933

FOR FURTHER INFORMATION CONTACT: Christopher Bolle, Office of General Counsel. Phone: 202-377-7057.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 85-402 Filed 1-4-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

First Union Bancorp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have 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 225.14) 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)).

Each 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 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 25, 1985.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Union Bancorp.*, Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First Union National Bank, Denver, Colorado.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas First Financial Corporation*, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Dallas International Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, January 2, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-350 Filed 1-4-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Inspector General; Delegation of Authority to Issue Subpoenas

Notice is hereby given of delegation by the Inspector General to the Deputy Inspector General, the Assistant Inspector General for Investigations, the Assistant Inspector General for Audit, the Assistant Inspector General for Program Inspections, the Assistant Inspector General for Health Financing Integrity, the Regional Inspectors General for Investigations, the Regional Inspectors General for Audit, the Regional Inspectors General for Program Inspections and the the Regional Inspectors General for Health Financing Integrity, of the authority vested in the Inspector General by section 205(a)(3) of Pub. L. 94-505 (42 U.S.C. 3525). Section 205(a)(3) authorizes the Inspector General to subpoena the production of all information, documents, reports, answers, records, accounts, papers and other data and documentary evidence necessary to carry out any investigation, audit or other proceeding authorized or directed under title II of Pub. L. 94-505.

The delegation prohibits redelegation.

The delegation supersedes the prior delegation of authority to issue subpoenas published at 48 FR 30189 (June 30, 1983).

The Inspector General has not limited his authority to issue subpoenas by this delegation.

The delegation is effective immediately upon publication of this notice in the **Federal Register**.

Dated: December 27, 1984.

John J. O'Shaughnessy,

Assistant Secretary for Management and Budget.

[FR Doc. 85-352 Filed 1-4-85; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Immunization Practices Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following Committee meeting:

Name: Immunization Practices Advisory Committee.

Date: January 31-February 1, 1985.

Place: Conference Room 207, Centers for Disease Control, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Time: 8:30 a.m.

Type of Meeting: Open.

Contact Person: Jeffrey P. Koplan, M.D., Executive Secretary of Committee, Centers for Disease Control (1-2047), 1600 Clifton Road, NE, Atlanta, Georgia 30333, Telephones: FTS: 236-3751, Commercial: 404/329-3751.

Purpose: The Committee is charged with advising on the appropriate uses of immunizing agents.

Agenda: The Committee will review and discuss recommendations on: immune globulins for protection against viral hepatitis, meningococcal polysaccharide vaccine, diphtheria, tetanus, and pertussis vaccine, varicella zoster vaccine, influenza vaccine, *Haemophilus influenzae* vaccine, hepatitis B vaccine, and vaccinia statement.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: December 28, 1984.

James O. Mason,

Director, Centers for Disease Control.

[FR Doc. 85-214 Filed 1-4-85; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A-20242]

Exchange of Public and State Lands in Navajo, Apache, and La Paz Counties, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action—Exchange of Public and State Lands in Apache, Navajo, and La Paz Counties

SUMMARY: The following described lands are being considered for disposal by exchange under the following authorities:

a. Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

b. Sections 4 and 28 of the Navajo and Hopi Indian Relocation Amendment Act, 11980, 25 U.S.C. 640d–10 and 25 U.S.C. 640d–26.

c. Section 2 of Pub. L. 98–408 of August 28, 1984 (98 stat. 1533).

Gila and Salt River Meridian, Arizona

T. 7 N., R. 13 W.,
Sec. 6, all.
T. 7 N., R. 14 W.,
Sec. 2, lots 1, 2, 3, 4, S½N½, S½SW¼, SW¼SE¼, E½SE¼;
Sec. 3, lots 1, 2, 3, 4, S½N½, S½;
Sec. 4, lots 1, 2, 3, 4, S½N½, S½;
Sec. 5, lots 1, 2, 3, 4, S½N½, S½;
Sec. 6, lots 1, 2, 3, 4, 5, 6, 7, S½NW¼, SW¼NW¼, E½SW¼, SE¼;
Sec. 7, NE¼, NE¼NW¼;
Sec. 8, E½, NW¼, N½SW¼;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 14, all;
Sec. 15, all;
Sec. 21, all;
Sec. 22, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1, 2, 3, 4, E½W½, E½;
Sec. 31, lots 1, 2, 3, 4, E½W½, E½.
T. 7 N., R. 15 W.,
Sec. 1, lots 1, 2, 3, 4, S½N½, N½SW¼;
Sec. 8, SE¼
Sec. 20, E½, E½W½;
Sec. 21, S½;
Sec. 22, NW¼, S½S½;
Sec. 25, all;
Sec. 26, all;
Sec. 36, W½W½, NE¼NW¼, E½SW¼;
T. 8 N., R. 13 W.,
Sec. 2, lots 1, S½;
Sec. 5, lots 1, 2, 3, 4, S½;
Sec. 6, lots 1, 2, 3, 4, 5, 6, E½SW¼, SE¼;
Sec. 7, lots 1, 2, 3, 4, E½W½, E½;
Sec. 8, all;
Sec. 9, all;
Sec. 10, all;
Sec. 15, all;
Sec. 16, all;
Sec. 17, all;
Sec. 18, lots 1, 2, 3, 4, E½W½, E½;
Sec. 19, lots 1, 2, 3, 4, E½W½, E½;
Sec. 20, all;
Sec. 21, all;
Sec. 29, all;
Sec. 30, lots 1, 2, 3, 4, E½W½, E½;
Sec. 31, lots 1, 2, 3, 4, E½W½, E½;
Sec. 32, all;
T. 8 N., R. 14 W.,
Sec. 1, lots 1, 2, 3, 4, S½;
Sec. 8, E½;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 16, all;
Sec. 17, N½;
Sec. 18, lots 1, 2, E½NW¼, NE¼;
Sec. 19, lots 1, 2, 3, 4, E½W½, E½;
Sec. 20, all;
Sec. 22, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1, 2, 3, 4, E½W½, E½;
Sec. 31, lots 1, 2, 3, 4;
Sec. 32, all;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all;
Sec. 36, all.
T. 8 N., R. 15 W.,
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, all;
Sec. 33, NE¼, W½, N½SE¼;
Sec. 34, E½, E½W½, W½NW¼, NW¼SW¼
Sec. 35, all;
Sec. 36, all.
T. 9 N., R. 12 W.,
Sec. 8, all:
Sec. 17, W½;
Sec. 18, lots 1, 2, 3, 4, E½W½, E½;
Sec. 19, lots 1, 2, 3, 4, E½W½, E½.
T. 9 N., R. 13 W.,
Sec. 13, all;
Sec. 14, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, all;
Sec. 31, all;
Sec. 32, all;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all.
T. 9 N., R. 14 W.,
Sec. 36, all.

The above described public lands comprise approximately 58,862.00 acres.

In exchange for these lands the United States will acquire certain presently undescribed lands in Apache and Navajo counties. In addition, the United States may acquire other lands throughout the State.

The offered State lands are within the Navajo-Hopi relocation and Zuni Heaven areas, and the acquisition of these lands is necessary in order to comply with the provisions of the Navajo and Hopi Relocation Amendment Act and Pub. L. 98–408 (Zuni Heaven). Also this exchange will allow the BLM to acquire state lands that have high public values and to develop a more manageable land ownership party.

The purpose of this Notice of Realty Action is two-fold. First, this action will provide a response period of forty-five (45) days during which public comments will be accepted. Secondly, this action, as provided in 43 CFR 2201.1(b), shall segregate the public lands described herein to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not the mineral leasing laws. This segregative effect shall terminate upon issuance of patent to such lands, upon publication in the **Federal Register** of a termination of the segregation, or two years from the date of this publication, whichever occurs first.

In addition to the previously described lands the following lands are also being considered for exchange, but are currently under Withdrawal Applications AR–031307 and A–997. The segregation previously described in this Notice will apply to the following described lands upon the termination of the withdrawal applications.

Gila and Salt River Meridian, Arizona

T. 7 N., R. 15 W.,
Sec. 27, W½SW¼, SW¼NW¼;
Sec. 28, those public lands lying north of the Central Arizona Project.
Sec. 29, those public lands lying north of the Central Arizona Project.

These lands comprise approximately 760.00 acres of public lands.

This action is necessary to avoid the occurance of mining claims that could encumber the public lands while the preparation of an environmental assessment is ongoing. Upon completion of the environmental assessment and land use decision, a Notice of Realty action will be published specifying the lands to be exchanged and any reservation of record.

Supplementary information, detailed information concerning the exchange, is available for review at the Phoenix District Office, 2105 W. Deer Valley Road, Phoenix, Arizona 85027.

For a period of 45 days, interested parties may submit comments to the District Manager, Phoenix District Office.

Dated: December 27, 1984.

Marlyn V. Jones,
District Manager.

[FR Doc. 85–340 Filed 1–4–85; 8:45 am]

BILLING CODE 4310–32–M

Monument Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Proposed Resource Management Plan and Final Environmental Impact Statement.

Notice of Proposed Area of Critical Environmental Concern (ACEC) designations.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 and 43 CFR Part 1600, the Bureau of Land Management has prepared a proposed Resource Management Plan, known as the Monument RMP, and a final Environmental Impact Statement covering approximatey 1,179,000 acres in southcentral Idaho. Included in the proposed Monument RMP are preliminary recommendations for six wilderness study areas and recommendations concerning four tracts being considered for Area of Critical Environmental Concern (ACEC) designation.

The draft Monument RMP/EIS was made available to members of the public in May of 1984. Comments on the draft were considered in preparing the final EIS. Any person who participated in the planning process and has an interest which is or may be affected by approval of the Monument RMP may file a protest. *Note that recommendations on wilderness study areas may not be protested since BLM and the Secretary of the Interior are merely making recommendations to the President.*

DATES AND ADDRESSES: Protests must be filed by February 4, 1985. Protests should be filed with the Director (202), Bureau of Land Management, U.S. Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Ervin Cowley, Project Manager, Bureau of Land Management, P.O. Box 2 B, Shoshone, Idaho 83352. Telephone (208) 886-2206.

SUPPLEMENTARY INFORMATION: The final EIS analyzes four alternative plans, and one sub-alternative, for managing natural resources in the Monument Planning Area over the next 15 to 20 years. One alternative has been identified as the proposed Monument Resource Management Plan.

The alternative plans presented in the EIS are designed to resolve the planning issues identified earlier through public involvement. The general topics covered by the planning issues are retention or disposal of public lands, wilderness designation, livestock grazing, range improvements, fire management, soil erosion, wildlife habitat management, minerals, off-road vehicles, recreation, cultural and historic values, and lands for local and State government and other needs. The alternative plans include different resource use levels and constraints to address the planning issues. One alternative is a "No Action" alternative, designed to represent a continuation of present resource use levels or systems.

The RMP includes recommendations for six wilderness study areas (WSAs) covering a total of 154,015 acres of public land. The WSAs are located in Blaine, Lincoln, and Minidoka counties, Idaho. The alternatives cover the range from all WSAs recommended non-suitable for wilderness designation to all WSAs recommended suitable for wilderness designation. The proposed Monument RMP would recommend to the Secretary of the Interior that 87,902 acres of public land in two WSAs are suitable for wilderness designation and 66,113 acres are non-suitable for wilderness designation. Only Congress can add an area to the National Wilderness Preservation System. BLM and the Secretary of the Interior make suitability recommendations to the President, who in turn makes recommendations to Congress. A separate final EIS will be prepared for wilderness recommendations made in the Monument RMP.

The alternative plans consider four tracts for designation as areas of critical environmental concern (ACECs). The alternatives cover the range from all potential ACECs proposed for designation to none of the potential ACECs proposed for designation. Approval of the RMP will constitute designation of any proposed ACECs.

The Vineyard Creek Natural Area, containing 105 acres of public land, would be designated an ACEC under the proposed Monument RMP. BLM would coordinate with adjacent private landowners to reduce sedimentation from irrigation return flow which currently threatens the only known spawning habitat for a unique cutthroat/rainbow hybrid trout. Resource uses and proposals would be closely examined to ensure that they hybrid trout spawning habitat, possible habitat for a candidate endangered snail, and scenic quality and naturalness of the area would not be adversely affected or that adverse effects could be mitigated. Surface occupancy associated with mineral lease development would not be allowed. The area would be given priority for fire suppression.

The Box Canyon/Blueheart Springs Sensitive Area, containing 128 acres of public land, would be designated an ACEC under the proposed Monument RMP. Resource uses and proposals would be closely examined to ensure that habitat for the sensitive Shoshone sculpin, possible habitat for a candidate endangered snail species, and scenic quality and naturalness of the area would not be adversely affected or that adverse effects could be mitigated. Surface occupancy associated with mineral lease development would not be allowed. The area would be given priority for fire suppression.

The Substation Tract Relict Vegetation Area, containing 440 acres of public land, would be designated an ACEC under the proposed Monument RMP. The area would be given priority for fire suppression to protect a good condition relict vegetation community that is highly valuable for research and reference. Other opportunities to reduce the risk of loss to fire would be pursued. ORV use would be limited to designated roads and trails. Surface occupancy associated with mineral lease development would not be allowed.

The Silver Sage Playa Relict Vegetation Area, containing 10 acres of public land, would not be designated an ACEC under the proposed Monument RMP.

Charles J. Haszier,

District Manager.

[FR Doc. 85-339 Filed 1-4-85; 8:45 am]

BILLING CODE 4310-GG-M

Realty Action; Recreation and Public Purpose Sale; Public Land in Lee County, FL

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—R&PP Sale, Public Lands, Lee County, Florida.

SUMMARY: The following described lands have been examined and are classified as suitable for sale for recreation and public purposes under the Recreation and Public Purposes Act of 1926 (44 Stat. 741), as amended.

Tallahassee Meridian, Florida

T. 44 S., R. 21 E., Sec. 6, Lot 4
Sec. 7, Lot 10 and Sec. 20, Lots 2 and 3.

The described area aggregates approximately 75 acres, all in Lee County, Florida.

The State of Florida's Department of Natural Resources proposes to use these lands for inclusion into the Cayo Costa State Reserve. The purpose of this reserve is preservation, protection, and

perpetuation of the natural resources of the lands.

It has been determined that the proposed use is in the public's best interest, and is consistent with the policy of the Bureau of Land Management.

The patent will be subject to all existing rights and reservations of record. Publication of this Notice will segregate the subject lands from all appropriations under the public land laws, but not the mineral leasing laws. This segregation will terminate upon the issuance of a patent, or 18 months from the date of this Notice, or upon publication of a Notice of Termination.

Detailed information concerning the sale, including the environmental assessment and land report, is available for review at the BLM office listed below.

For a period of 45 days after the date of issuance of this notice, the public and interested parties may submit comments to the District Manager, Jackson District Office, P.O. Box 22348, Jackson, Mississippi 39213. Comments will be evaluated by the District Manager, who may vacate or modify this Realty Action.

FOR FURTHER INFORMATION CONTACT:
David Gay (601) 960-4405.

Donald L. Libbey,
District Manager.

[FR Doc. 85-346 Filed 1-4-85; 8:45 am]
BILLING CODE 4310-84-M

[5-22823-GP5-022; W-73250-0]

Wyoming; Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, § 3108.2-1(c), and Pub. L. 97-451, a petition for reinstatement of oil and gas lease W-73250-0 for lands in Weston County, Wyoming was timely filed and was accompanied by all the required rentals accruing from June 1, 1984, the date of termination.

The lessee has agreed to the new lease terms for rentals and royalties at rates of $5.00 per acre, 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-73250-0 effective June 1, 1984, 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. 85-344 Filed 1-4-85; 8:45 am]
BILLING CODE 4310-22-M

[A 19344]

Application for Issuance of Disclaimer of Interest to Lands in Arizona

December 19, 1984.

Notice is hereby given that the United States of America, pursuant to the provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), section 315, 43 U.S.C. 1745 (1976), does hereby give notice of its intention to disclaim all interest in the following described property, to-wit:

Gila and Salt River Meridian

T. 14 S., R. 15 E.,

Parcel A:

Sec. 14, the north 409.42 feet of Lot 1, except the east 712.47 feet; and further except that portion lying within Uhl Street as now established.

Parcel B:

Sec. 17, Lot 2 except the West 45 feet thereof and except the south 660 feet thereof.

Parcel C:

Sec. 17, all that portion of Lot 5 in the NW¼SE¼, lying northerly of the line beginning at a point in the West line thereof, distance North 0°02' West, 660.09 feet from the Southwest corner of said NW¼SE¼, and extending South 89°30' East to a point in the East line thereof;

Except all that portion thereof within the right-of-way of Prudence Road, according to the map thereof of record in the office of the County Recorder of Pima County, Arizona, in Book 7 of Road Maps at Page 98;

Except the South 10 feet thereof;

Excepting therefrom the following described parcel:

Beginning at the Southwest corner of the above described parcel; thence North 00°26' 21" West, 226.00 feet along the West line of said land; thence South 89°57'31" East, 180.00 feet; thence North 80°23'42" East, 107.38 feet; thence South 89°57'31" East, 40.00 feet; thence South 00°26'21" East, 244.00 feet to the South line of said land; thence North 89°57'31" West, 326.01 feet along said South line to the Point of Beginning;

Except any portion thereof conveyed to the City of Tucson by instrument recorded in Docket 4666 at page 633 now known and described as follows:

Lots 1 through 160 and Common Areas "A" and "B" of Kenyon Terrace, a subdivision of Pima County, Arizona, according to the map of record in the Pima County Recorder's Office in Book 33 of Maps and Plats at Page 65, and as amended by Declaration of Scrivener's Error recorded October 28, 1981 in Docket 6645 at Page 669; excepting therefrom Lots 105, 109, 110, 113, 114, 115, 116, 120, 121, 122 and 123.

After review of the official records, it is the position of the Bureau of Land Management that all of the land described above is found to lie between the meander line appearing on the official plat and the mid-line of Pantano Wash which is considered to be non-navigable. Therefore, the United States has issued patents to Lots 1, 2, and 5 Sec. 17, T. 14 S., R. 15 E., bounded by Pantano Wash and there are no specific reservations in said patents. There exists no valid United States claim to land which might have been formed by accretion to said lot and there is no valid United States claim to land within the bed of Pantano Wash in front of said lots.

Any person wishing to submit a protest or comments on the above disclaimer should do so in writing before the expiration of 90 days from the date of publication of this notice. If no protest(s) is received, the disclaimer will become effective on the date set out below.

Disclaimer of title and release of all interest of the United States shall issue on or about April 2, 1985.

Information concerning this land and the proposed disclaimer may be obtained from and the protest filed with the State Director, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

Don R. Mitchell,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-315 Filed 1-4-85; 8:45 am]
BILLING CODE 4310-32-M

[OR 37435]

Realty Action; Competitive Sale of Public Lands; Harney County, OR

The following described parcel of land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 STAT. 2750, 43 U.S.C. 1713) at no less than the appraised fair market value shown.

Parcel No.	Legal description	Acreage	Appraised value
OR 37435	T. 24 S., R. 32½ E., W.M. Sec. 11: W½SW¼ Harney County, OR.	80	$9,300

Except for the provisions of Section 203 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2750; 43 U.S.C. 1713), the above described lands are hereby segregated from appropriation under the public land laws, including the mining laws.

The sale will be held on Wednesday, March 20, 1985, at 10:00 a.m., at the Burns District Office, Bureau of Land Management, 74 South Alvord, Burns, Oregon, 97720. Bids must be received prior to 10:00 a.m. on that date.

The sale is consistent with publicly supported Bureau planning. The sale involves isolated land completely surrounded by private land, that is difficult and uneconomical to manage as part of the public lands, and is not suitable for management by another Federal department or agency. The public interest will be served by offering this land for sale.

The sale parcel will be offered at public auction through competitive bidding procedures provided for at 43 CFR Subpart 2711.

All minerals in the land will be reserved to the United States in accordance with Section 209(a) of the Federal Land Policy and Management Act 1976. Rights-of-way for ditches and canals will be reserved to the United States under 44 U.S.C. 945. Patent will be issued subject to all valid existing rights and reservations of record. Legal access is not guaranteed to the tract offered for sale.

The Federal Land Policy and Management Act requires that bidders must be citizens of the United States, 18 years of age or over, or, in the case of a corporation, be subject to the laws of any State of the United States. Bids may be made by a principal or his duly qualified agent. Bids must be for all land within the specified tract.

Sealed bids are the only acceptable method of bidding. Bids may be made either by mail or personally at the sale. Bids must be in a sealed envelope accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than 30% of the amount of the bid. Failure to deposit this sum will result in disqualification as the high bidder. The authorized officer shall then determine whether to accept the next highest bid, withdraw the public lands from the market, or reoffer them for sale at a later date. The sealed bid envelopes must be marked in the lower left-hand corner "Sealed Bid, Public Land Sales OR 37435."

If two (2) or more valid sealed bids in the same amount are received and they are the high bid, the tied high bidders will be immediately notified and given 20 days to submit a new sealed bid.

The successful high bidder will be required to submit full payment for the balance of the bid within 180 days from the date of the sale. Failure to submit such payment within the 180 day period shall result in the cancellation of the sale and bid deposit shall be forfeited. All unsuccessful sealed bids will be returned within 30 days from the sale date. If no bids for the land are received on the sale date, the sale will be adjourned and those parcels not sold pursuant to the Notice of Realty Action shall remain available for sale on a continuing basis until sold, or withdrawn from sale. Unsold parcels will continue to be available for sale, but only on a sealed bid basis.

Sealed bids for available unsold parcels will be opened at 10:00 a.m. on the first Wednesday of each month. Priority will not be given to first filed bids.

Detailed information concerning this land sale, including the land-use planning documents, land reports, environmental assessments and the record of public comments is available for review at the Burns District Office at the location and address previously noted. Telephone inquiries can be placed to the District Office (503) 573-5241 between 7:45 a.m. and 4:30 p.m., P.S.T.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Burns District Office, U.S. Bureau of Land Management, 74 South Alvord, Burns, Oregon, 97720. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional Committees and Delegations pursuant to Pub. L. 97-394 will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of any changes.

Dated: December 24, 1984.

Joshua L. Warburton,

District Manager.

[FR Doc. 85-317 Filed 1-4-85; 8:45 am]

BILLING CODE 4310-33-M

Caliente Resource Area; Realty Action for Noncompetitive Lease of Public Lands in Tulare County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action: noncompetitive lease of public lands [CA 13806].

SUMMARY: The following described land has been examined and found suitable for leasing under provisions of Section 302 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2762, 43 U.S.C. 1732), at no less than the appraised fair market value:

Mount Diablo Meridian, California

T. 17S., R. 29E., Tract 48 (portion of)
Containing approximately 0.73 acres.

SUPPLEMENTARY INFORMATION: The land is located near Three Rivers, California. The proposed lease parcel is a small portion of Tract 48 which is surrounded by private land owned by the Dey Memorial Foundation. The parcel has been occupied by improvements for the past 75 years without authorization. The lease will be offered to Dey Memorial Foundation to legalize its occupancy of the land, protect its equity investment in the improvements on the land and resolve an unauthorized use of the public land.

The land is withdrawn for the purpose of the Kaweah No. 2 Project flume. The lease will not interfere with the operation and maintenance of the flume. The lease is consistent with the Bureau's and Tulare County's planning, and would best serve the public interest.

DATE: For a period of 45 days from the date of publication of this notice, interested parties may submit comments.

ADDRESS: Comments and suggestions should be sent to: State Director, California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the State Director, this really action will become a final determination for the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Glenn A. Carpenter, Caliente Resource Area Manager, 520 Butte Street, Bakersfield, California 93305; telephone (805) 861-4236.

Dated: December 19, 1984.

Glenn A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 85-321 Filed 1-4-85; 8:45 am]

BILLING CODE 4310-40-M

[PHX-077993]

Arizona; Order Providing for Opening of Public Lands

December 21, 1984.

1. In an exchange of land made under the provisions of Section 3 of the Act of June 14, 1934 (48 Stat. 960), the following land has been reconveyed to the United States under the serial number listed below:

PHX-077993

T. 41 N., 1 E., GSR Mer., Arizona
Section 32, N½, SE¼.

The area described contains 480 acres in Coconino County.

2. At 9 a.m. on February 8, 1985, the land described in Paragraph 1 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 9 a.m. on February 8, 1985 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on February 8, 1985, the land prescribed in Paragraph 1 will be opened to location under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38 shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

4. At 9 a.m. on February 8, 1985, the land prescribed in Paragraph 1 will be opened to applications and offers under the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All applications and offers received prior to 9 a.m. on February 8, 1985 will be considered as simultaneously filed as of that time and date, and a drawing will be held in accordance with 43 CFR 1821.2-3, if necessary. Those applications and offers received thereafter shall be considered in the order of filing.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

Don R. Mitchell,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-316 Filed 1-4-85; 8:45 am]

BILLING CODE 4310-32-M

[R 1390 and R 2821]

California; Partial Termination of Classifications for Multiple Use Management

December 28, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates two classifications of public land for multiple use management as they affect approximately 539,586 acres in El Centro, Indio and Needles Resource Area Offices of the California Desert District, Bureau of Land Management.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841) Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, California State Office, (916) 484-4431.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated January 3, 1983, the Bureau of Land Management's classifications for multiple use management, the descriptions of which are contained in the following previously published **Federal Register** notices, are hereby terminated in their entirety *except* as otherwise indicated below:

R 1390 dated August 14, 1970
35 FR 12855 ((Aug. 13, 1970) FR Doc. 70-10551)

The lands described in the above-referenced document aggregate approximately 401,657 acres in Imperial and Riverside Counties.

The classification will remain in effect as to the following described land, affecting approximately 80,138 acres.

San Bernardino Meridian

T. 4 S., R. 9 E.
Secs. 10, 22, 24, 26, 28, and 34.
T. 5 S., R. 9 E.
Secs. 2, 4, 10, 12, 14, and 22.
T. 11 S., R. 9 E.
Secs. 2, 4, 6, and 10;
Sec. 12, S½;
Secs. 14, 22, 24, and 26.
T. 12 S., R. 9 E.
Secs. 2, 4, and 6.
T. 14 S., R. 9 E.
Sec. 5, lots 1 to 4, inclusive, S½N½, N½SE¼SW¼, and SE¼;
Sec. 6, lots 1, 4, 5, 6, 7, 8, 11, 12, 15, SE¼NE¼, and W½E½SW¼.
T. 4 S., R. 10 E.
Secs. 20, 28, 30, 32, and 34.
T. 5 S., R. 10 E.
Secs. 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, and 34.
T. 7 S., R. 10 E.
Secs. 10, 12, 14, 22, 24, and 26.
T. 11 S., R. 10 E.
Secs. 6, 8, 18, 20, 22, 26, 28, 30, 32, and 34.
T. 15 S., R. 10 E.
Secs. 19, 20, 21, 29, and 30;
Sec. 31, lots 1, 2, and 3, NE¼, E½NW¼, and NE¼SW¼;
Secs. 32 and 33.
T. 16 S., R. 10 E.
Sec. 4;
Sec. 5, NE¼, N½NW¼, SE¼NW¼, and S½;
Sec. 6, S½SW¼NE¼ and S½SE¼NW¼;
Sec. 9;
Sec. 22, lot 2 of Tract 39;
Sec. 28, lots 22 and 24, and those portions of Tracts 42, 59 and 62 located in sec. 28;
Sec. 33, lots 2, 3, 8, 9, 12, and 16, W½SE¼ and that portion of Tract 62 located in Sec 33;
Sec. 35.
T. 16½ S., R. 10 E.
Sec. 1;
Sec. 2, lots 1 to 8, inclusive, N½S½NE¼, S½NW¼, SW¼, S½SE¼, and E½NW¼ SE¼;
Sec. 3;
Sec. 4, lots 1, 2, 7, 8, S½NE¼, S½SW¼, and SE¼.
T. 17 S., R. 10 E.
Secs. 1 and 2;
Sec. 12.
T. 5 S., R. 11 E.
Secs. 20, 28, 30, and 32.
T. 6 S., R. 11 E.
Secs. 2, 4, and 6;
Sec. 8, N½;
Secs. 10, 12, and 14;
Secs. 20, 22, 24, 26, 28, and 30.
T. 17 S., R. 11 E.
Secs. 1 to 5, inclusive;
Sec. 6, lots 1 to 6, inclusive, S½NE¼, SE¼ NW¼, E½SW¼, and SE¼;
Secs. 7 to 15, inclusive;
Sec. 17;
Sec. 18, lot 4, N½NW¼NE¼, E½NE¼, SE¼SW¼, E½NE¼SE¼, and S½SE¼.
T. 12 S., R. 12 E.

Sec. 32, SW¼SW¼.
T. 13 S., R. 12 E.
Sec. 9, lot 1, S½NE¼, and SE¼;
Sec. 10, SE¼SW¼;
Sec. 15, W½;
Sec. 25, SW¼SE¼.
T. 10 S., R. 14 E.
Sec. 28, NE¼SE¼.
T. 11 S., R. 14 E.
Sec. 12, NE¼NE¼.
T. 15 S., R. 16 E.
Sec. 14, W½SE¼.
T. 16 S., R. 16 E.
Sec. 25, SE¼NE¼.

Coyote Canyon Spring

T. 8 S., R. 5 E.
Sec. 30, SE¼.

Mineral Material Site

T. 16 S., R. 9 E.
Sec. 14, NW¼;
Sec. 15, NE¼.

Mecca Hills Recreation Area

T. 6 S., R. 9 E.
Sec. 22;
Sec. 28, N½, N½SW¼, SE¼SW¼, and SE¼.
T. 6 S., R. 10 E.
Secs. 20, 26, and 28;
Sec. 30, lots 3 and 4, NE¼, E½SW¼, and SE¼;
Secs. 32 and 34.
T. 7 S., R. 10 E.
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Secs. 8, 10 and 12.

R 2821 dated November 9, 1970 35 FR 17961 [(Nov 21, 1970) FR Doc. 70-15741), as corrected by 36 FR 946 (Jan 20, 1971).

The lands described in the above-referenced document aggregate approximately 268,521 acres in Riverside, San Bernardino, and Imperial Counties.

The classification will remain in effect as to the following described land, affecting approximately 50,454 acres.

San Bernardino Meridian

T. 9 N., R. 21 E.
Sec. 10, N½, N½S½, and portion S½S½ north of US Highway 66;
Sec. 11;
Sec. 12, S½NE¼, NW¼NW¼, and portion of S½ north of US Highway 66;
Sec. 14; portion on N½N½ north of US Highway 66.
T.10 N., R. 21 E.
Secs. 27 and 34.
T.8 N., R. 23 E.
Secs. 6, 7, and 8;
Sec. 15, W½SW¼;
Secs. 18 and 19;
Sec. 20, N½ and SW¼
Sec. 22, NW¼NW¼, S½NW¼, SW¼ and W½SE¼;
Secs. 27, 28, 30, 31, 32, 34, 35.
T. 9 S., R. 21 E.
Secs. 20 and 21;
Sec. 27;
Secs. 28 to 32, inclusive;
Sec. 33, W½.
T. 10 S., R. 21 E.
Secs. 4, 5 and 6;
Sec. 7, NW¼;
Secs. 8, 18, and 20.
T. 16 S., R. 21 E.
Sec. 3, lots 1 and 2 of NE¼, lot 2 and E½ lot 1 of NW¼, and lots 3 and 6;
Sec. 4, SE¼;
Sec. 5, lots 1 and 2 of NE¼ and lots 3 to 10, inclusive;
Sec. 10, W½.

Picacho Recreation & Wildlife Area

T. 13 S., R. 22 E.
Secs. 18, 19,, and 29 to 33, inclusive;
Sec. 34, N½;
Sec. 35, N½.
T. 14½ S., R. 23 E.
Secs. 31 to 36, inclusive.
T. 15 S., R. 23 E.
Secs. 1 to 12, inclusive;
Secs. 14, 15, and 17 to 21, inclusive;
Sec. 23.

Whipple Mountain Recreation & Natural Area

T. 3 N., R. 25 E.
Sec. 3, W½ and SE¼;
Secs. 10 and 11;
Sec. 12, S½;
Secs. 13, 14 and 15.
T. 3 N., R. 26 E.
Sec. 17, SW¼;
Secs. 18, 19 and 20;
Sec. 30, W½
Sec. 31, W½.

West Well Archaeological Sites

T. 4 N., R. 24 E.
Sec. 8, SE¼SE¼ and E½SW¼SE¼;
Sec. 17, E½W½NE¼.

1. Land description of the terminated portions of the classifications is available for inspection at the California State Office in Sacramento and respective District and Resource Area Offices.

2. The above-referenced classification orders segregated the public lands from appropriation under the agricultural land laws (43 U.S.C., Chs. 7 and 9; 25 U.S.C. sec. 334) and from sale under section 2455 of the Revised Statutes (43 U.S.C. 1171), including approximately 25,501 acres from mining. The orders, otherwise, did not segregate from mining and mineral leasing.

3. Except for the lands that remain classified, as described above, at 10:00 a.m. on February 8, 1985, the segregative effect imposed by the above-referenced classification orders will terminate.

Ed Hastey,

State Director.

[FR Doc. 85-408 Filed 1-4-85; 8:45 am]

BILLING CODE 4310-40-M

[N-16095]

Groom Mountain Temporary Withdrawal; Pub. L. 98-485; Nevada

December 28, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pub. L. 98-485 dated October 17, 1984 withdrew approximately 89,600 acres for the U.S. Air Force for a period of 3 years. The lands are closed to surface entry, including the mining laws but not the mineral and geothermal leasing laws.

ADDRESS: Chief, Branch of Lands and Minerals Operations; Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, Phone number: 702-784-5703.

SUPPLEMENTARY INFORMATION: Pub. L. 98-485 withdrew the lands depicted on the map entitled "Groom Mountain Addition to Nellis Air Force Range", and dated September 1984, subject to valid existing rights, for a period of three years. The lands shown on the map are described as follows:

T. 5 S., R. 55E.,
Secs. 1, 12, 13, 24, 25, 36.
T. 6 S., R. 55 E.
Secs. 1, 12, 13, 24, 25, 36.
T. 7 S., R. 55 E.,
Secs. 11, 12, 13, 24, 25;
Secs. 36, exclusive of land in PLO 1662.
T. 5 S., R. 55½ E.,
Sec. 6, exclusive of Mineral Patent 9368;
Secs. 7, 8, 16 thru 21, 28 thru 33.
T. 6 S., r. 55½ E.
T. 7 S., R. 55½ E.,
Secs. 4, 9, 16, 18 thru 21, 28 thru 30;
Secs. 5, 8, exclusive of Mineral Patents 1660, 1661, 1034979;
Sec. 17, exclusive of Mineral Patent 1055957;
Secs. 31 thru 33, exclusive of land in PLO 1662.
T. 5 S., R. 56 E.,
Secs. 19, 27 thru 35;
Sec. 20, exclusive of Mineral Patent 3379.
T. 6 S., R. 56 E.,
Secs. 2 thru 11, 14 thru 23, 26 thru 35.
T. 7 S., R. 56 E.,
Secs. 2 thru 11, 14 thru 23, 26 thru 35.

The lands are located in Lincoln county, Nevada.

This withdrawal will terminate on December 31, 1987.

The purpose of the withdrawal is to temporarily segregate the land while the Air Force prepares an Environmental Impact Study to be utilized in part to determine whether the withdrawal shall be continued or reviewed.

A copy of the map is on file and available for public inspection at the

Office of the Secretary of the Interior; Office of the Secretary of the Air Force; Bureau of Land Management offices in Washington, D.C., Reno and Las Vegas, Nevada and at Nellis Air Force Base in Las Vegas.

Harold Payne,

Acting Deputy State Director, Operations.

[FR Doc. 85-409 Filed 1-4-85; 8:45 am]

BILLING CODE 4310-HC-M

Realty Action—Recreation and Public Purpose Sale; Public Land in Lee, Charlotte and Collier County, FL

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—R & PP Sale, Public Lands, Lee, Charlotte and Collier County, Florida.

SUMMARY: The following described lands have been examined and are classified as suitable for sale for recreation and public purposes under the Recreation and Public Purposes Act of 1926 (44 Stat. 741), as amended.

Tallahassee Meridian, Florida

T. 53 S., R. 27 E., Tracts 1, 2, 3, 4, 5, 6, 7.
(39.65 acres Collier County)
T. 41 S., R. 22 E., Tracts 37, 38, 39, 40.
(1.29 acres Charlotte County)
T. 45 S., R. 22 E., Section 31: Lot 1, Tracts 38, 39, 40, 41.
(1.81 acres Lee County)
T. 46 S., R. 24 E., Section 31: Lot 1, Tracts 37, 38, 39, 40, 41.
(4.06 acres Lee County).

The described area aggregates approximately 46.81 acres.

The State of Florida's Department of Natural Resources proposes to use these lands for inclusion into the Romana-Ten Thousand Island, Pine Island Sound, Charlotte Harbor and Estero Bay Aquatic Preserves. The purpose of these preserves is preservation, protection, and perpetuation of the natural resources of the lands.

It has been determined that the proposed use is in the public's best interest, and is consistent with the policy of the Bureau of Land Management.

The patent will be subject to all existing rights and reservations of record.

Publication of this Notice will segregate the subject lands from all appropriations under the public land laws, but not the mineral leasing laws. This segregation will terminate upon the issuance of a patent, or 18 months from the date of this Notice, or upon publication of a Notice of Termination. Detailed information concerning the sale, including the environmental assessment and land report, is available for review at the BLM office listed below.

For a period of 45 days after the date of issuance of this notice, the public and interested parties may submit comments to the District Manager, Jackson District Office, P.O. Box 11348, Jackson, Mississippi 39213. Comments will be evaluated by the District Manager, who may vacate or modify this Realty Action. In the absence of any action by the District Manager this Realty Action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Douglas Jones (601) 960-4405.

Donald L. Libbey,

District Manager.

[FR Doc. 85-406 Filed 1-4-85; 8:45 am]

BILLING CODE 4310-GJ-M

Bureau of Reclamation

Nevada Realty Action; Non-Competitive Sale of Public Land

The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value.

Lot 18, Lot 20, and all that portion of Lot 21 lying outside the corporate boundaries of the city of Boulder City, Nevada, of section 2, T. 23 S., R. 63 E., Mount Diablo Meridian, Clark County, Nevada.

The land described contains 36.39 acres.

This land is being offered at direct sale to Robert J. Verchota, at the appraised fair market value, subject to any valid and existing rights.

A direct sale is being made as there is a need to recognize an authorized use (i.e. parking facility) associated with an existing business on adjacent private land, which could suffer a substantial economic loss if the tract were purchased by someone other than the authorized user (Robert J. Verchota).

The sale is consistent with the Bureau of Land Management land-use planning in the area. As a result of discussions with other Federal, State, and local government agencies, it has been determined that the lands are not required for any Federal purpose, and disposal would best serve the public interest. The land will not be offered for sale until at least 60 days after the date of this notice.

The planning documents, environmental assessment, and record of public discussions are available for review at the Bureau of Reclamation's Lower Colorado regional office, Nevada Highway and Park Street, Boulder City, Nevada 89005.

The patent issued for the land sold will be subject to a right-of-way for ditches and canals constructed by the authority of the United States in accordance with the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945), and reservations for all valid and existing rights. This land sale will be for the surface estate only; the mineral estate will be reserved to the United States.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005. Any adverse comments will be evaluated by the Regional Director who may vocate or modify this Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Realty Action will become the final determination the Department of the Interior.

Dated: December 26, 1984.

Jed D. Christensen,

Acting Assistant Secretary, Water and Science.

[FR Doc. 85-320 Filed 1-4-85; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Development Operations Coordination Document; Champlin Petroleum Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Champlin Petroleum Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5553, Block 184, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Berwick, Louisiana.

DATE: The subject DOCD was deemed submitted on December 27, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf

of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 27, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-407 Filed 1-4-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Champlin Petroleum Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Champlin Petroleum Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5548, Block 165, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Berwick, Louisiana.

DATE: The subject DOCD was deemed submitted on December 27, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Mineral Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 27, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-348 Filed 1-4-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Champlin Petroleum Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Champlin Petroleum Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 5010 and 6214, Blocks A-244 and A-231, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on December 24, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 24, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-349 Filed 1-4-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30590]

Genesee and Wyoming Railroad Co.; Acquisition and Operation Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the Genesee and Wyoming Railroad Company from the requirements of 49 U.S.C. 10901 to acquire and operate Consolidated Rail Corporation's trackage in Livingston County, NY.

DATES: This exemption will be effective on December 31, 1984. Petitions to reopen must be filed by January 28, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30590 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: James B. Gray, Jr., 700 Midtown Tower, Rochester, NY 14604

FOR FURTHER INFORMATION CONTACT: Luis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800)-424-5403.

Decided: December 28, 1984

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterret, Gradison, Simmons, Lamboley, and Strenio. Commissioner Lamboley concurred with a separate expression. Vice Chairman Andre was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 85-363 Filed 1-4-85; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 457]

Rail Carriers; Railroad Revenue Adequacy—1983 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of 1983 determination of rail revenue adequacy.

SUMMARY: In Ex Parte No. 393, *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981), published at 46 FR 20806, April 7, 1981, the Commission determined that a railroad would be considered revenue adequate under 49 U.S.C. 10704(a) if the railroad had a rate of return equal to the current cost of capital. This decision uses the rate of return standard developed in Ex Parte No. 393, *supra*, and data for the year 1983. In this manner, the Commission has now determined that none of the 32 Class I carriers are revenue adequate.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr. (202) 275-7489.

SUPPLEMENTARY INFORMATION: To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C., or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

(49 U.S.C. 10704(a))

Decided: December 17, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Sternio.

James H. Bayne,

Secretary.

[FR Doc. 85-363 Filed 1-4-85; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-No. 36]

Intrastate Rail Rate Authority, Wisconsin; Certification

AGENCY: Interstate Commerce Commission.

ACTION: Notice of certification.

SUMMARY: The Commission grants final certification to the Transportation Commission of Wisconsin under 49 U.S.C. 11501 (b) to regulate intrastate rail transportation, subject to a condition precedent that it modify its standards and procedures as noted in the full decision.

DATES: If the necessary changes are made, certification will begin February 6, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: December 21, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-362 Filed 1-4-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30597]

Hoosier Rail Development Corporation; Acquisition and Purchase Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10901 and 11301: (1) The acquisition by Hoosier Rail Development Corporation (Hoosier) of railroad property owned by Penn Central Corporation in Madison, Hancock, Henry, and Rush Counties, IN; (2) the lease and operation of the track and facilities on the property owned by Equipment Company, Inc. (Equipment); (3) the eventual purchase and operation of that track and facilities; and (4) the issuance by Hoosier of up to $750,000 in debt and equity securities.

DATES: This exemption is effective on December 31, 1984. Petitions to reopen must be filed by January 28, 1985.

ADDRESSES: Send petitions referring to Finance Docket No. 30597 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's Representative: Mark H. Sidman; 1575 Eye Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800 424-5403).

Decided: December 28, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioner Lamboley concurred with a

separate expression. Vice Chairman Andre was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 85-365 Filed 1-4-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 132X), AB-238 (Sub-No. 1X); Finance Docket No. 30593]

Seaboard System Railroad, Inc.; Abandonment and Discontinuance Exemption in Broward County, FL; and Port Everglades Railway; Abandonment Exemption in Broward County, FL and Flordia East Coast Railway Co.; Trackage Rights Exemption in Broward County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of (1) 49 U.S.C. 10903 *et seq.* the abandonment by Seaboard System Railroad, Inc. (SBD), of 900 feet of track connecting its Miami-Jacksonville line with the Port Everglades Railway (PER) at Port Everglades Junction: the discontinuance of operations by SBD over PER's line between Port Everglades Junctions and Port Everglades, a distance of about 10.67 miles; and the abandonment by PER of, and the discontinuance of trackage rights by, Florida East Coast Railway Company (FEC) over PER's line between Port Everglades Junction and Milepost SXA-1017.08, a distance of about 1.83 miles, all in Broward County, FL; and (2) 49 U.S.C. 11343 *et seq.* the acquisition of trackage rights by FEC from PER for operations over PER's line between Milepost SXA-1017.08 and the eastern end of the line at Port Everglades, in Broward County, FL.

DATES: This exemption is effective on December 31, 1984. Petitions to reopen must be filed by January 28, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 132X) *et al.* to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' Representatives:

Charles Rosenberger, 500 Water Street, Jacksonville, FL 32202

Linwood Cabot, Post Office Box 13136, Fort Lauderdale, FL 33316

and

Charles B. Evans, One Malaga Street, St. Augustine, FL 32084

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: December 28, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioner Lamboley commented with a separate expression. Vice Chairman Andre was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 85-361 Filed 1-4-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-82X)]

Southern Pacific Transportation Co.; Discontinuance of Trackage Rights Exemption in Fresno County, CA; Exemption

The Southern Pacific Transportation Company (SPT) has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments and Discontinuance of Service and Trackage Rights.* The discontinuance of trackage rights is over the portion of the Atchison, Topeka and Santa Fe Railway Company known as the Fresno Interurban Branch line between Cameo (milepost 6.133) and Belmont Ave. (milepost 16.90), a distance of approximately 10.8 miles of line in Fresno County, CA.

SPT has certified (1) that no local traffic has been moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in California has been notifed in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines, 366 I.C.C. 885 (1983).*

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective on February 6, 1985 (unless stayed pending reconsideration.) Petitions to stay the effective date of the exemption must be filed by January 17, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by January 27, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to to applicant's representative: G. A. Laakso, One Market Plaza, Southern Pacific Bldg., San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: December 27, 1984.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-366 Filed 1-4-85; 8:45]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

National Institute of Corrections

National Institute of Corrections Site Selection Projects; Formal Announcement

The National Institute of Corrections, an agency of the United States Department of Justice, is seeking a permanent site for three of its Divisions (the National Academy of Corrections; Information Center and Robert J. Kutak Memorial Library; and Jails Division), all presently located in Boulder, Colorado. The Institute will entertain the acquisition of the site by gift, lease, purchase of existing facilities, new construction, renovation of existing facilities or a combination thereof.

The National Institute of Corrections was founded in 1974 to aid in the development of a more effective, humane, safe and just correctional system. It serves the field of corrections through five legislatively mandated activities: training, technical assistance, research and evaluation, policy and standards formulation and implementation, and clearinghouse activities.

During the site selection process, because of the large number (3,000) of participants who will use air transportation to attend training seminars, great weight will be given to those jurisdictions within the 48 contiguous states which are within a

reasonable commuting distance of a large or medium airport hub, as officially classified by the Federal Aviation Administration as of September 1984. A list of large and medium hubs is included as part of this formal announcement.

The site should provide for a campus-like environment conducive to learning, with a buffer zone which provides sufficient protection against surrounding distractions. The size of the site should be approximately 30 acres.

The facilities must be dedicated to the exclusive use of the Institute. Facilities needed include at a minimum the following: a residential center of 150 single sleeping rooms with private bath; a large multi-purpose/auditorium area to accommodate at least 250 individuals; at least six principal meeting rooms each to accommodate 30 individuals; at least 18 break-out rooms each to accommodate 10 individuals; food service with the capability of providing for at least 250 people; library facilities; and office space for at least 100 staff, including support functions. Recreation facilities must be available but may be shared with other organizations. Adequate parking space must be provided adjacent to the site. Specific space criteria will be further developed and made available during the third phase of the selection process.

The site selection process will consist of three phases. Phase I is this formal announcement to the field, which tells interested parties that the Institute is officially embarking on the search for a permanent site for its Training Academy, Jail Center and Library/Information Center. This announcement also contains minimum selection criteria that interested parties must use to determine whether or not they wish to proceed further into the selection process.

Those responding to the Formal Announcement during Phase I will be placed on a mailing list and receive information regarding Phase II, the concept paper phase of the selection process. The aim of Phase II is to review and evaluate concept papers submitted to the Institute by jurisdictions against specific criteria that will be set forth in the concept paper announcement. A limited number of jurisdictions will be selected during Phase II and will be asked to submit formal proposals as part of Phase III. While Phases I and II seek to determine which jurisdictions most closely meet transportation, economic and other selection requirements, Phase III will review specific sites as well as the capability of jurisdictions to meet the Institute's site requirements.

To ensure an efficient and equitable screening and selection process, the Institute will work with state, regional and municipal Offices of Economic Development to locate the most suitable location of the National Institute of Corrections Complex. Individuals, agencies and organizations who may have a specific site available they would like to have the Institute consider, will be encouraged to work with their respective Offices of Economic Development.

To request the concept paper criteria, individuals, organizations and state or regional Offices of Economic Development should contact by letter Aaron Brown, Planning Project Director, National Institute of Corrections, 320 First Street, N.W., Room 200, Washington, D.C. 20534, (202) 724–3110. Letters of interest must be received at the above address no later than the close of the business day, January 31, 1985. The concept paper criteria packages will be mailed to those respondents after February 15, 1985.

No proposals, literature, etc. on specific sites will be considered at this time.

Enclosure

Aaron Brown,

Project Director.

FEDERAL AVIATION ADMINISTRATION—LARGE AND MEDIUM AIRPORT HUBS—SEPTEMBER 1984

Rank	City/State	Airport Name
1	Chicago, Illinois	Chicago-O'Hare Intl.
2	Atlanta, Georgia	William B. Hartsfield Intl.
3	Los Angeles, California	Los Angeles Intl.
4	New York, New York	John F. Kennedy Intl.
5	Dallas-Fort Worth, Texas	Dallas-Fort Worth Intl.
6	Denver, Colorado	Stapleton Intl.
7	San Francisco, California	San Francisco Intl.
8	New York, New York	La Guardia
9	Miami, Florida	Miami Intl.
10	Boston, Massachusetts	General Edward Logan Intl.
11	Newark, New Jersey	Newark Intl.
12	St. Louis, Missouri	Lambert-St. Louis Intl.
13	Washington, D.C.	Washington National
14	Houston, Texas	Houston Intercontinental
15	Minneapolis, Minnesota	Minneapolis-St. Paul
16	Pittsburgh, Pennsylvania	Greater Pittsburgh Intl.
17	Seattle, Washington	Henry M. Jackson Intl.
18	Detroit, Michigan	Detroit Metropolitan
19	Las Vegas, Nevada	Mc Carran Intl.
20	Phoenix, Arizona	Phoenix Sky Harbor Intl.
21	Philadelphia, Pennsylvania	Philadelphia Intl.
22	Tampa, Florida	Tampa Intl.
23	Orlando, Florida	Orlando Intl.
24	Charlotte, North Carolina	Charlotte/Douglas Intl.
25	San Diego, California	San Diego Intl.
26	Salt Lake City, Utah	Salt Lake City Intl.
27	New Orleans, Louisiana	New Orleans Intl.
28	Fort Lauderdale, Florida	Ft. Lauderdale-Hollywood
29	Cleveland, Ohio	Cleveland-Hopkins Intl.
30	Dallas, Texas	Dallas-Love Field
31	Houston, Texas	William R. Hobby
32	Baltimore, Maryland	Baltimore-Washington Intl.
33	Memphis, Tennessee	Memphis Intl.
34	Kansas City, Missouri	Kansas City Intl.
35	Portland, Oregon	Portland Intl.
36	San Antonio, Texas	San Antonio Intl.
37	Covington/Cincinnati, Kentucky	Greater Cincinnati Intl.
38	West Palm Beach, Florida	Palm Beach Intl.
39	Buffalo, New York	Greater Buffalo Intl.
40	San Jose, California	San Jose Municiplo
41	Albuquerque, New Mexico	Albuquerque Intl.
42	Columbus, Ohio	Port Columbus Intl.
43	Windsor Locks, Connecticut	Bradley Intl.
44	Oakland, California	Metropolitan Oakland
45	Milwaukee, Wisconsin	General Mitchell Field
46	Indianapolis, Indiana	Indianapolis Intl.
47	Reston, Virginia	Dulles Intl.
48	Norfolk, Virginia	Norfolk Intl.
49	Burbank, California	Burbank-Glendale-Pasadena
50	Reno, Nevada	Reno-Cannon Intl.
51	Santa Ana, California	John Wayne Airport
52	Oklahoma City, Oklahoma	Will Rogers World
53	Sacramento, California	Sacramento Metropolitan
54	Tulsa, Oklahoma	Tulsa Intl.
55	Dayton, Ohio	James M. Cox-Dayton Intl.
56	Austin, Texas	Robert Mueller Municiplo
57	Ontario, California	Ontario Intl.
58	Nashville, Tennessee	Nashville Metropolitan
59	Raleigh-Druham, North Carolina	Raleigh-Durham
60	Jacksonville, Florida	Jacksonville Intl.
61	Syracuse, New York	Syracuse Hancock Intl.
62	El Paso, Texas	El Pasco Intl.
63	Tucson, Arizona	Tuscon Intl.
64	Omaha, Nebraska	Eppley Airfield
65	Louisville, Kentucky	Standiford Field
66	Rochester, New York	Rochester-Monroe County

Aaron Brown,

Project Director.

[FR Doc. 85–70 Filed 1–4–85; 8:45 am]

BILLING CODE 4410-05-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Artists in Education Advisory Panel (Artists Residency Grants); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Artists in Education Advisory Panel (Artists Residency Grants) to the National Council on the Arts will be held on January 16, 1984 from 8:30 am–8:30 pm, January 17, 1984, from 8:30 am–6:30 pm, and January 18, 1985 from 9:00 am–5:00 pm in Room MO–9, of the Nancy Hanks Center, 1100 Pennsylvania Ave., NW., Washington, D.C. 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be application review and policy.

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.

Gary O. Larson,

Acting Director, Office of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 85-335 Filed 1-4-85; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel (Design Communication Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Design Arts Advisory Panel (Design Communication Section) to the National Council on the Arts will be held on Janaury 25-26, 1985 from 9:00 am-5:30 pm in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Ave., NW., Washington, D.C. 20506.

This meeting is 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.

Gary O. Larson,

Acting Director, Office of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 85-332 Filed 1-4-85; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel (Design Demonstration Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Design Arts Advisory Panel (Design Demonstration Section) to the National Council on the Arts will be held on January 23-24, 1985 from 9:00 am-5:30 pm in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506.

This meeting is 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.

Gary O. Larson,

Acting Director, Officer of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 85-333 Filed 1-4-85; 8:45 am]

BILLING CODE 7537-01-M

Office For Partnership Advisory Panel (State Programs Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Office for Partnership Advisory Panel (State Programs Section) to the National Council on the Arts will be held on January 23-24, 1985 from 9:00 am-5:00 pm and on January 25, 1985 from 9:00 am-4:30 pm in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506.

A portion of this meeting will be open to the public on January 23, 1985 from 9:00-11:00 am, January 24, 1985 from 9:00-10:30 am and from 2:00-5:00 pm, and January 25, 1985 from 2:00-4:30 pm to discuss orientation, application discussion, and policy discussion.

The remaining sessions of this meeting on January 23, 1985 from 11:00 am-5:00 pm, January 24, 1985 from 10:30 am-12:30 pm, and January 25, 1985 from 9:00 am-12:30 pm 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.

Gary O. Larson,

Acting Director, Officer of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 85-334 Filed 1-4-85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-2997]

Finding of No Significant Impact From Issuance of Special Nuclear Material License No. SNM-1939 to Carolina Power and Light Company, Shearon Harris Nuclear Power Plant, Raleigh, NC

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Special Nuclear Material License No. SNM-1939 to permit the receipt, possession and storage of unirradiated nuclear fuel assemblies at the Shearon Harris Nuclear Power Plant (SHNNP) near Raleigh, North Carolina. The unirradiated fuel assemblies will be for eventual use in the SHNPP Unit 1, once its operating license is issued.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the issuance of Special Nuclear Material License No. SNM-1939. On the basis of this assessment, the Commission has concluded that the environmental impact created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate. The Environmental Assessment is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of the Environmental Assessment may be obtained by calling (301) 427-4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Silver Spring, Maryland, this 28th day of December, 1984.

For the Nuclear Regulatory Commission.

W. T. Crow,

Section Leader, Uranium Process Licensing Section, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety.

[FR Doc. 85-419 Filed 1-4-85; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270 and 50-287]

Duke Power Co. (Oconee Nuclear Station, Units Nos. 1, 2 and 3); Exemption

I

The Duke Power Company (the licensee), is the holder of Facility Operating Licenses Nos. DPR-38, DPR-47, and DPR-55 which authorize the operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3 (the facilities) at reactor power levels not in excess of 2568 megawatts thermal (rated power) for each unit. The facilities are Babcock & Wilcox (B&W) designed pressurized water reactors (PWR's) located at the licensee's site in Oconee County, South Carolina.

The licenses are subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

10 CFR 50.48, "Fine Protection", and Appendix R to 10 CFR Part 50, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979", set forth certain specific fire protection features required to satisfy the General Design Criterion related to fire protection (Criterion 3, Appendix A to 10 CFR Part 50).

Section III.J of Appendix R states that, "Emergency lighting units with at least an eight-hour battery power supply shall be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto."

III

By letter dated October 24, 1983 as supplemented on August 8, 1984, the licensee requested an exemption from Section III.J for eight-hour battery powered emergency lighting for the yard access route outside the auxiliary building and the standby shutdown facility (SSF) at the Oconee Nuclear Station.

The SSF is a structure separated from those other areas of the plant which contain equipment normally used for safe shutdown. The emergency shutdown equipment and controls located in the SSF will be used to maintain the plant in a safe shutdown condition if a fire damages normal plant controls or shutdown equipment. In the event of a fire necessitating use of the SSF, the plant operators would leave the main control room, pass through the auxiliary building and across the yard to the SSF.

In a letter dated August 8, 1984, the licensee states that he met his commitment to install by May 1, 1984, eight-hour battery backed emergency lighting in the control room for each unit. Additionally, the licensee has committed to install eight-hour battery backed emergency lighting in the stairwells and corridors from each unit's control room to an outside door of the auxiliary building.

Illumination for the yard area between the auxiliary building and the SSF is provided by security lighting. The security lighting can be powered from onsite sources in the event of a loss of offsite power. To ensure safe operator access to the SSF, the licensee has committed to provide battery-powered hand lanterns for operator usage.

Lighting for the SSF itself is provided by an AC lighting system and a backup DC system which is powered from batteries located in the SSF. The DC lighting system has a 90 minute capacity without recharge. The DC lighting system actuates on loss of AC power. Additionally, the SSF houses an auxiliary diesel generator which provides the emergency power for plant shutdown from the SSF. This auxiliary diesel generator is capable of providing continuous charging to the DC batteries of the SSF.

Since the SSF is provided with an independent lighting system with the capability of continuous lighting in excess of the eight-hour battery requirement, we conclude that the exemption from the battery-powered emergency lighting requirement of Section III.J of Appendix R to 10 CFR Part 50 for the SSF is justified. Since the lighting provided outside the auxiliary building which is backed by the hand lanterns is adequate to ensure safe operator access to the SSF, we conclude that the exemption from the eight-hour battery powered emergency lighting requirement of Section III.J of Appendix R to 10 CFR Part 50 for the yard access route outside the auxiliary building is also justified. Therefore, we conclude that the Appendix R, Section III.J, exemption for Oconee Units 1, 2 and 3 should be granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption requested by the licensee's letter of October 24, 1983 as supplemented on August 8, 1984, is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. The Commission hereby grants to the licensee an exemption from the requirements of Appendix R (Section III.J) on emergency lighting.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (49 FR 48625).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 27th day of December 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 85-422 Filed 1-4-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 72-1]

General Electric Co.; Issuance of Amendment to Materials License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 3 to Materials License No. SNM-2500 held by the General Electric Company for the receipt and storage of spent fuel at the General Electric Morris Operation, located in Grundy County, Illinois. The amendment is effective as of the date of issuance.

The amendment is in response to the licensee's application of May 10, 1984 submitting revisions to the Consolidated Safety Analysis Report (CSAR) for the Morris Operation (NEDO-21326D) and a revision of the Quality Assurance Plan (NEDO-20776, Revision 8). These revisions of the CSAR and the Quality Assurance Plan are administrative, organizational and procedural in nature and do not involve any changes in the scope or type of operation presently authorized by the license.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated May 10, 1984, as

supplemented by the licensee's letter of July 24, 1984, and (2) Amendment No. 3 to License No. SNM–2500, transmitted by the Commission's letter to the licensee dated December 31, 1984. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Silver Spring, Maryland, this 31st day of December 1984.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Advanced Fuel and Spent Fuel Licensing Branch, Division of Fuel Cycle and Material Safety.

[FR Doc. 85–420 Filed 1–4–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. STN 50–528]

Palo Verde Nuclear Generating Station, Unit 1, Arizona Public Service Company, et al.; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission), has issued Facility Operating License No. NPF–34, (License) to Arizona Public Service Company, Salt River Project Agricultural Improvement and Power, District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority. This License authorizes operation of the Palo Verde Nuclear Generating Station, Unit 1 (facility) at reactor core power levels not in excess of 3,800 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan. However, the License contains a condition currently limiting operation to five percent of full power (190 megawatts thermal). Authorization to operate at greater than five percent power will require specific Commission approval.

Palo Verde Nuclear Generating Station, Unit 1 is a pressurized water reactor which utilizes a CESSAR standard plant design and is located at the licensees' site in Maricopa County, Arizona approximately 36 miles west of the city of Phoenix. The License is effective as of the date of issuance and shall expire at midnight on December 31, 2024.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on July 11, 1980 (45 FR 46941) as clarified in a notice published July 25, 1980 (45 FR 49732). The issuance of the operating license was approved by the Atomic Safety and Licensing Board in its Initial Decision, dated December 30, 1982.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF–34, with Technical Specifications (NUREG–1111) and Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards dated December 15, 1981; (3) the Commission's Safety Evaluation Report on Palo Verde dated November 1981; Supplement Nos. 1 through 7, dated February 1982, May 1982, September 1982, March 1983, November 1983, October 1984, and December 1984, respectively; (4) the Commission's related Safety Evaluation Report on CESSAR dated November 1981; Supplement No. 1 dated March 1983; Supplement No. 2 dated September 1983; (5) the Final Safety Analysis Reports and amendments thereto; (6) the Environmental Report and supplements thereto; (7) the Draft Environmental Statement dated October 1981; and (8) the Final Enviornmental Statement dated March 1982.

These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004. A copy of Facility Operating License No. NPF–34 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements 1 thorough 7 (NUREG–0857) and the Final Environmental Statement (NUREG–0841) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders can call 301–492–9530.

Dated at Bethesda, Maryland, the 31st day of December 1984.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 85–421 Filed 1–4–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–387 and 50–388]

Pennsylvania Power and Light Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–14 and NPF–22, issued to Pennsylvania Power and Light Company for the operation of the Susquehanna Steam Electric Station, Units 1 and 2 located in Luzerne County, Pennsylvania.

In accordance with the licensee's application for amendment dated December 6, 1984, the proposed change would revise SSES Unit 1 and 2 technical specifications to avoid forced shutdown of Unit 2 during the Unit 1 refueling outage. SSES Unit 2 currently depends on certain SSES Unit 1 125-volt batteries to support loads common to both units. As a result, Unit 1 batteries are listed in Unit 2 Limiting Conditions for Operating (LCOs) on the DC system. As the Unit 1 and Unit 2 Technical Specifications are now written whenever the Unit 1 125-volt batteries are unavailable Unit 1 and Unit 2 must shutdown after a short time period if the 125-volt power sources are not restored.

During the Unit 1 refueling outage (presently scheduled for February 1985) the Unit 1 batteries must undergo battery load profile testing. The battery tests are scheduled to be performed within the first week of the refueling outage. This battery load profile testing results in the unavailability of Unit 1 125-volt batteries forcing Unit 2 to shutdown during the aforementioned testing. The licensee is proposing to modify the 125-volt DC system in order to provide an alternative means of supplying common loads. This proposal includes providing a common load

transfer scheme which will allow common loads to be powered from a 125-volt DC source on either unit through the use of manual transfer switches. It should be noted that during normal operations of Unit 1 and 2 this proposed amendment only allows Unit 2 to remain operating upon loss of the Unit 1 125-volt DC power source. Provisions have been made in the proposed technical specification changes to provide for implementation of the common load transfer. Plant modifications will provide the hardware capability to feed the common loads from the Unit 1 and Unit 2 DC sources.

The Unit 1 Technical Specification changes reflect the addition of several action statements to instruct the operator to transfer common loads to the Unit 2 DC source upon loss of Unit 1 DC source. Additionally Unit 1 technical specifications make provisions for the loss of the Unit 2 DC source sebsequent to the loss of Unit 1 DC source. The Unit 2 Technical Specification changes reflect the addition of action statements to instruct the operator to transfer loads back to the Unit 1 DC source when the Unit 1 DC source is again operable. Provisions have also been made in the Unit 2 technical specifications for the loss of Unit 2 DC source when supporting common loads. The changes proposed allow increased operational flexability in addition to adding a redundent feature, being the alternative means of providing 125-volt DC power source.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Basis for proposed no significant hazards consideration determination: The licensee in his letter of December 6, 1984 stated that: (1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated, for the following reasons: (a) Each unit has four independent 125-volt DC power sources. The FSAR analysis shows that a unit can be safely shut down with any one 125-volt DC power source disabled (Section 8.3). (b) Based on the revised design, one 125-volt DC source would fail due to a fault in a Unit 1 tag along load if *both* upstream protective devices (fuse and distribution panel breaker) failed. The more likely result of a fault on a Unit 1 tag along load would be loss of an individual circuit. Therefore, the most probable failure is less severe than the loss of an entire power source, which has been previously evaluated. (c) Finally, the Unit 2 batteries have been analyzed and do have sufficient stored energy to operate all necessary loads for the design basis interval of four hours, after loss of AC power and assuming the loss of the battery charger. (2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the probable failure as a result of the revised design is within the bounds of the previous FSAR analysis, and battery capacity is sufficient to meet design commitments. Therefore, no new or different kinds of accidents would be created. (3) The proposed changes do not involve a significant reduction in a margin of safety. Based on the existance of sufficient battery capacity, the increased reliability of Unit 1 due to continuity of power, and the fact that the worst case failure due to the new design is consistent with previous analysis, the existing margin of safety has not been reduced.

The staff agrees with the licensee's evaluation in this regard, and accordingly, the NRC staff proposes to find the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commision, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By February 6, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with resonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to A. Schwencer: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** Notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. The determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Bethesda, Maryland, this 2nd day of January 1985.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch #2, Division of Licensing.

[FR Doc. 85–423 Filed 1–4–85; 8:45 am]

BILLING CODE 7590-01-M

PEACE CORPS

Notification of Extension Request of Peace Corps Candidate Selection Inventory

SUMMARY: The information collection inventory described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Peace Corps solicited public comment on the subject inventory by publishing a notice of proposed action in the **Federal Register**, Volume 48, Number 75, April 18, 1983. No comments were received and the form was approved through December 31, 1983. The Peace Corps is now requesting that the study be incorporated into the applicant selection process on an experimental basis.

ADDRESS: Interested persons are invited to submit comments regarding this proposal by name to Francine Picoult, OMB Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3235, Washington, D.C. 20503. Comments should be received on or before (60 days from publication date).

FOR FURTHER INFORMATION CONTACT: Richard Haag, Manager, Peace Corps, 806 Connecticut Avenue, NW., Room P-303, Washington, D.C. 20526, telephone (202) 254–5650. This is not a toll-free number. For a copy of the scale contact Mr. Haag.

SUPPLEMENTARY INFORMATION: Peace Corps proposes to incorporate a self-administered paper-and-pencil inventory for helping staff improve the selection of Peace Corps Volunteers. Current research with the inventory, the Overseas Assessment Inventory (OAI), originally developed and validated to screen naval and private sector personnel for overseas assignments, and recently tested on a sample number of Peace Corps trainees suggests the tool is a cost effective and systematic means for measuring and predicting Peace Corps Volunteer candidates' cross-cultural adjustment overseas. Use of this inventory by the U.S. Navy has not produced any evidence that it discriminates among groups on the basis of gender, race or ethnic background. Information derived from the inventory predict suitability of a Peace Corps Volunteer candidate as he or she goes through Peace Corps' Volunteer Delivery System and overseas service.

All persons who submit an application to serve as a Peace Corps Volunteer will fill out the inventory. It is estimated that 15,000+ people would be involved per annum. Respondents will be mailed and requested to complete a copy of the OAI along with their application to serve.

Participants will need to provide personal identifying information in order that later status changes can be tracked and linked to OAI scores. The proposed information collection requirement is described below.

List of Subjects

Volunteers, Information, Privacy.

Proposal: Overseas Assessment Inventory, PC Form 1556.

Office: Office of Marketing, Recruitment, Placement and Staging.

Frequency of Submission: On occasion.

Affected Public: Individuals who are applicants for Peace Corps Service.

Estimated Burden Hours: 7,500 per annum.

This is not a request to which 44 U.S.C. 3504(h) applies.

This notice is issued in Washington, D.C. on January 2, 1985.

Karl Pulley,

Acting Associate Director for Management.

[FR Doc. 85-418 Filed 1-4-85 8:45 am]

BILLING CODE 6051-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Approval Under the Paperwork Reduction Act of a Revision of the Information Collection Requirement Contained in 29 CFR Part 2610 and PBGC Form 1 To Accelerate the Premium Due Date for Larger Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested approval by the Office of Management and Budget for revision of the information collection requirement contained in 29 CFR Part 2610 and the PBGC Form 1. The revision would change the currently approved information collection requirement (1212-0009) to enable the collection of information necessary to implement an acceleration of the premium due date for larger plans. The affected plans would be required to pay premiums based on an estimated participant count by the last day of the second month following the close of the prior plan year and to file a reconciliation, if necessary, by the last day of the seventh month following the close of the prior plan year, which would continue to be the premium due date for all other plans.

Under the requested information collection requirement, plans would be required to identify their filings as an original filing based on estimated participant count, an original filing based on final participant count, or a final or reconciliation filing. Plans needing to make a reconciliation filing would be required to report the amount of premium previously paid to PBGC for the applicable period and the net premium due PBGC for the reconciliation filing. Reconciliations were required in PBGC's early years for all plans but were no longer needed when PBGC changed the premium due date from 30 days after the close of the prior plan year to a later date to coincide with the filing of the Form 5500 Annual Report. There would be no other substantive changes to the form.

If approved, the new information collection would be effective for plans with 10,000 or more participants beginning with the plan year that starts in 1985, and for plans with 500 or more participants beginning with the plan year that starts in 1986. The effect of this notice is to advise the public of PBGC's request for OMB approval of the revision of the information collection requirement to enable the payment of estimated and reconciliation premiums by larger plans.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, D.C. 20503. the request for revision of the information collection requirement will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street, NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, 202-254-6476 (202-254-8010 for TTY and TDD). These are not toll-free numbers.

David M. Walker,

Acting Executive Director.

[FR Doc. 85-441 Filed 1-4-85; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549

Extension of Approval

Rule 17Ac2-1 (a) and (c); Form TA-1 No. 270-95

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17Ac2-1 (a) and (c) (CFR 240.17Ac2-1 (a) and (c)) and Form TA-1 (17 CFR 249b.100) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*). Rule 17Ac2-1(a) requires transfer agents to apply for registration on Form TA-1. Rule 17Ac2-1(c) requires transfer agents to correct information submitted on Form TA-1 which becomes inaccurate, misleading or incomplete within twenty-one days following the date on which the information became inaccurate, misleading or incomplete. Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: December 28, 1984.

John Wheeler,

Secretary.

[FR Doc. 85-372 Filed 1-4-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21603; File No. SR-BSE-84-8]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78 s(b)(1), Notice is hereby given that on November 23, 1984 the Boston Stock Exchange, Incorporated ("BSE") filed with the Securities and Exchange Commission the proposed changes 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.

Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The text of the proposed Rule change amending Chapter II, Section 33 of the Rules of the Board of Governors is as follows:

(Note.—Brackets indicate deletions; italics indicate additions.)

CHAPTER II

Dealings on the Exchange

Execution Guarantee

Sec. 33. The Boston Stock Exchange *Execution* Guarantee[d] [Execution System] shall be available to each member firm in all issues traded through the Intermarket Trading System (ITS) [in the specialist system] *registered to a member specialist of the Exchange.*

Specialists must accept and guarantee execution on all agency orders from 100 up to and including 1,299 shares regardless of the size of the order.

Subject to the requirements of the short sale rule, all agency market orders must be filled on the basis of the best Consolidated Quotation System bid or better on a sell order, or the best Consolidated Quotation System offer or better on a buy order.

The provisions of this Section 33 shall also apply to agency orders in eligible stocks designated by the Exchange received from members of a foreign exchange approved by the Board of Governors.

* * * Interpretations and Policies

.07 Agency orders received from members of The Montreal Exchange shall be subject to the provisions of the Execution Guarantee Rule.

[.07] *.08* In unusual trading situations or in the event of an equipment failure a specialist or floor broker may seek relief from the requirements of paragrqaphs .01 through

[.06] *.07* above from two floor members of the Market Performance Committee or two floor officials or a combination thereof [who would have authority to set execution prices].

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 governing 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. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose and Statutory Basis for the Proposed Rule Change

(1) The proposed Rule change is designed to ensure that agency orders transmitted directly to the Floor of the BSE by members of The Montreal Exchange are subject to the existing provisions of the BSE's Execution Guarantee Rule. Such orders are subject to all other Rules of the Exchange.

The initial linkage with The Montreal Exchange was approved by the Commission on November 1, 1984. The second phase of the linkage will expand the list of eligible issues to include U.S.-listed securities now traded through the Intermarket Trading System (ITS). Orders in most eligible stocks will be transmitted from The Montreal Exchange to the BSE through The Montreal Exchange Registered Representative Order Routing and Execution System (the "MORRE System"). The BSE, in consultation with The Montreal Exchange, will designate certain stocks as eligible for transmission via the MORRE system ("BSE eligible securities"). BSE eligible securities will be included in the MORRE library of eligible securities. It is expected that up to 200 or more issues will be selected for inclusion in the MORRE system.

The MORRE System will accept orders entered by members of The Montreal Exchange and route these orders in BSE-eligible securities to the BSE for execution. Orders routed through the MORRE System will be automatically priced at the best U.S. market derived from the CQS composite feed.

The MORRE System is capable of accepting market, limit, days, open, stop, odd-lot and mixed-lot orders and is further capable of recognizing the Execution Guarantee parameters of the BSE.

In the initial period of the implementation of Phase II, the BSE expects to install two MORRE data terminals on its floor. Orders will be received on the terminal printer, shall designate the Montreal member, the stock, quantity and execution price in U.S. dollars. Upon receipt the order will be called out to the floor and executed by the registered specialist at the MORRE price or better. All trades executed will be cleared in the same manner as trades executed under Phase I.

(2) The bases for the proposed Rule change are Section 6(b)(5) and 11(b) of the Securities Exchange Act of 1934, as amended. The rule change will enhance the national market system by increasing the ability of Boston specialists to attract orderflow and thereby make more competitive and more liquid markets in securities in which they are registered.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The BSE perceives no burden on competition by the adoption of the proposed Rule change. The BSE believes the proposed amendment will benefit investors and the public by enhancing the depth and liquidity of the markets maintained by BSE specialists.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the specific rule change have neither been solicited nor received. However, the proposed linkage with The Montreal Exchange was reviewed and approved by floor members and specialist members of the BSE and by the Board of Governors of the BSE.

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 change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC. 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 January 28, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

December 26, 1984.

[FR Doc. 85-373 Filed 1-4-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21547; File No. SR-MSE-84-8]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Inc.

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 on October 26, 1984, the Midwest Stock 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. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Article VI, Rule 4 of the Rules of the Midwest Stock Exchange, Incorporated is hereby amended as follows:

Additions italicized—[Deletions Bracketed]

Employment of Registered Persons

Rule 4. [(a) No member organization shall employ any registered representative or other person in a nominal position because of the business obtained by such person.]

[(b)] *(a)* No change in text.

[(c)] *(b)* No change in text.

[(d)] *(c)* No change in text.

[* * * Interpretations and Policies:]

[.01 The prohibition against employment of persons in a "nominal position" is intended to prevent "buying business" by providing nominal titles to persons who attract business merely because of their contacts and to foster professional competence and reliability of registered persons by requiring them to service and be responsible for the conduct of the accounts for which they are compensated.]

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. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule 4(a) and Interpretations and Policies .01 of Article VI were adopted as anti-rebate provisions when fixed commission rates were in effect. This prohibition is no longer appropriate because fixed commission rates have been abolished. The New York Stock Exchange and the American Stock Exchange recently deleted comparable provisions in their rules.

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934, in that it eliminates regulation not related to the purposes of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

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 submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., 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 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 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 January 28, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

December 31, 1984.

[FR Doc 85-374 Filed 1-4 85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21600; File No. SR-MSE-84-12]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Inc.

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 on December 12, 1984, the Midwest Stock 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached to the filing as Exhibit A are the New Guidelines for Specialist Assignment of Issues.

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. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the new guidelines for the posting and reallocation of stocks used by the Committee on Specialist Assignment and Evaluation is to update the membership on the steps the Committee is taking to improve overall specialist performance and, more

specifically, to set out factors the Committee takes into consideration for stock allocation when there is a split up, merger or other fundamental change with a specialist unit. It is expected that more proposals for mergers and "take overs" of specialist units will be presented to the Committee in the future.

As the preamble to the Guidelines states, these are not rules, but guidelines which further define the assignment procedure set forth in Article XXX, Rule 1, and the provisions for actions as a result of unsatisfactory performance in Article XVII, Rules 2 and 3, of the Rules of the Exchange. It is hoped that publication of the Guidelines will encourage specialist units to take more initiative to strengthen their operations, and make the general membership more aware of what can be expected from the Committee's review of various proposals.

Items 1 through 3 are not new and have not been changed. Item 4 defines and interprets the rules relating to assignment and evaluation procedures, separating the specialist as a unit from the co-specialist as an individual. It also details general guidelines to be considered in the event of a split between the unit and the individual. Item 5 lists changes in the organization of a unit that will not ordinarily result in the posting of the issues. Item 6 covers steps to be taken in cases of unsatisfactory performance by the co-specialist. Item 7 relates to disciplinary actions taken by the Exchange as a result of violations of the rules and regulations.

Because these are not rigid rules, but guidelines only, the Committee will retain its right to review any changes in a specialist unit on a case by case basis.

The proposed rule change is consistent with Section 6 of the Securities Exchange Act of 1934 in that it is designed to promote just and equitable principles of trade by establishing guidelines for the evaluation of specialists and allocation of issues.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and Subparagraph (e) of the Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, 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 Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th St., N.W., 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 in the Commission's Public Reference Section, 450 5th St., N.W., Washington, D.C. 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 January 28, 1985.

For the Commission, by the Division of Market Regulation.

Dated: December 24, 1984.

John Wheeler,

Secretary.

[FR Doc. 85–375 Filed 1–4–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23550; 70–6983]

Northeast Utilities Western Massachusetts Electric Co., et al.; Proposed Open Account Advances and Capital Contributions by Holding Company to Subsidiary

December 28, 1984.

In the matter of Northeast Utilities Western Massachusetts Electric Co. and the Quinnehtuk Co., 174 Brush Hill Avenue, West Springfield, Massachusetts 01089; The Connecticut Light and Power Co., Northeast Nuclear Energy Co., The Shelton Canal Co., Selden Street, Berlin, Connecticut 06037; Holyoke Water Power Co., One Canal Street, Holyoke, Massachusetts 01040.

Northeast Utilities ("NU"), a registered holding cmpany, and its above-named subsidiary companies, have filed with this Commission a post-effective amendment to the proposal in this proceeding pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 thereunder. The Shelton Canal Company ("SCC"), a wholly owned subsidiary of The Connecticut Light and Power Company ("CL&P"), has been added as an applicant.

By order in this proceeding dated June 28, 1984 (HCAR No. 23350), NU was authorized, among other things, to make open account advances and capital contributions to certain of its subsidiaries. It is now proposed that CL&P will advance funds on behalf of SCC to effect certain repairs and improvements and that, as of January 31, 1984, all such advances will be converted to capital contributions. The amount of such advances and capital contributions will not exceed $300,000. All capital contributions to SCC will be credited to its capital surplus account. It is stated that SCC's principal asset is a dam on the Housatonic River between Derby and Shelton, Connecticut, and that the site is being evaluated for installation of a new hydroelectric generating unit. In anticipation of that development, it has been necessary to effect substantial repairs and improvements to the dam.

The amended proposal 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 January 21, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 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 matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-371 Filed 1-4-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 5-32710]

Texas Federal Savings and Loan Association; Application To Withdraw From Listing and Registration

December 28, 1984.

In the Matter of Texas Federal Savings and Loan Association; Certificates of Deposit Maturing on July 22, 1988 and March 21, 1994; File No. 5-32710.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

(1) Pursuant to a merger on September 8, 1983, Texas Federal Savings and Loan Association ("Company") became a wholly-owned subsidiary of Texas Federal Financial Corporation ("Parent"). As a result, the Company's common stock is no longer registered under section 12 of the Act.

(2) The Company has been advised that during calendar year 1983 and during the first six months of 1984, only $397,000 and $104,000 principal amount, respectively, of the 1988 Series Certificates were traded on the Amex, and that only $188,000 and $25,000 principal amount, respectively, of the 1994 Series Certificates were traded on the Amex, out of a total of $75,000,000 principal amount of certificates issued.

(3) In view of the limited trading of the certificates, Parent and the Company believe that the expense of preparation and filing of forms 10-K, 10-Q and 8-K under the Act is disproportionate to any benefit to the holders of the certificates.

(4) The Amex has agreed not to interpose any objections to the filing of this application.

Any interested person may, on or before January 21, 1985, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-369 Filed 1-4-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21609; File No. SR-CBOE-84-32]

Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated

December 28, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that by letter dated December 14, 1984, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Pursuant to Exchange Rule 2.22, the CBOE has determined not to charge a fee for services rendered by CBOE Order Book Officials ("OBO") on orders executed in the National Semiconductor ("NSM") class of option contracts. The elimination of the OBO charge in NSM options is a competitive response to a similar action taken by the specialist in these options on the American Stock Exchange, Inc. ("Amex"). The CBOE maintains that the fee waiver is designed to enhance market quality competition between the CBOE and the Amex, and thus has a statutory basis in sections 6(b)(5) and 6(b)(8) of the Act.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and paragraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of the proposed rule change, 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.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-84-32.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communciations relating to the proposed rule change between the Commission and any person, other than those which 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 Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the CBOE.

For the Commission, by the Division of Markef Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-370 Filed 1-4-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21598; File No. SR-NASD-84-33]

Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s (b)(1), notice is hereby given that on December 14, 1984, the National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW., Washington, D.C. 20006 filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would amend Article III, Section 19 of the NASD Rules of Fair Practice to provide, as part of the NASD's rules, that NASD members must comply with SEC Rule 15c3-3 (17 CFR 240.15c3-3) under the Act and its requirements regarding possession and control of securities and the maintenance of cash reserves by a broker-dealer. The NASD has eliminated from section 19 the requirement that customers sign a separate written authorization to allow

a member to lend that customer's securities because Rule 15c3–3 under the Act has its own written authorization requirements. The NASD also is proposing to change the standard determining when it is acceptable for a member to lend securities carried for the account of a customer. The proposed standard for lending a security is the eligibility of a security to be pledged or loaned under Rule 15c3–3. Previously, section 19 had a fair and reasonable standard. In addition, the NASD has eliminated the explanation of the Board of Governors for paragraphs (b) and (c) of section 19. The NASD also has made technical changes to section 19. The NASD states that the statutory basis for the proposed rule change is section 15A(b)(2) of the Act. By eliminating duplicative and out of date provisions from section 19 of the Rules of Fair Practice and adding an affirmative duty to comply with Rule 15c3–3 under the Act the NASD's ability to enforce compliance by members with its rules and with the Act will be enhanced.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–NASD–84–33.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which 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 Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the NASD.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

John Wheeler,

Secretary.

[FR Doc. 85–368 Filed 1–4–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange

January 2, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

National Education Corporation
Capital Stock, $.01 Par Value, File No. 7–8201

Trans World Airlines, Inc.
Common Stock, $.01 Par Value, File No. 7–8200

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 24, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–460 Filed 1–4–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange

January 2, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Clayton Homes
Common Stock, $.10 Par Value, File No. 7–8202

Muse Air Corporation
Common stock, $.10 Par Value, File No. 7–8203

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 24, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–459 Filed 1–4–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Continental Illinois Holding Corporation
Common Stock, $1.00 Par Value, File No. 7–8204
Continental Illinois Corporation [New)
Common stock, $1.00 Par Value, File No. 7–8205
Continental Illinois Corporation
Rights to Subscribe, File No. 7–8206

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 24, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–458 Filed 1–4–85; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09–0239]

Brentwood Capital Corp.; Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Brentwood Capital Corporation (BCC) 11661 San Vicente Boulevard, Los Angeles, California 90049, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.903 of the Regulations governing small business investment companies (13 CFR 107.903 (1984)) for approval of two conflict of interest transactions.

1. Molecular Computer Corporation, 251 River Oak Parkway, San Jose, California 95134.

BCC purchased $340,000 of convertible preferred stock.

2. Digital Sound Corporation, 2030 Alameda Padre Sierra, Santa Barbara, California 93102.

BCC intends to invest up to $300,000 in shares of convertible preferred stock.

BCC and other Brentwood entities (Associates) have prior investments in these small concerns. The proposed financings by BCC and its Associates are follow-on investments. They will be made in the ratio of the current equity ownership and on the same terms for all parties. SBA prior written approval is required pursuant to Section 107.903 of SBA Regulations because Associates own 10 or more percent of the small concerns' equity securities and these are not initial joint financings with Associates.

Notice is hereby given that any person may, not later than thirty (30) days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice will be published in newspapers of general ciruclation in the Los Angeles, California and the other localities most directly affected by the transactions.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 28, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–424 Filed 1–4–85; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2178]

Texas; Declaration of Disaster Loan Area

Dallas County and the adjacent County of Ellis in the State of Texas constitute a disaster area because of severe thunderstorms, rains, and tornadoes which occurred on December 13, 1984. Applications for loans for physical damage may be filed until the close of business on February 28, 1985, and for economic injury until the close of business on October 1, 1985, at the address listed below:

Disaster Area 3 Office, Small Business Adminstration, 2306 Oak Lane Suite 110, Grand Prairie, Texas 75051, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 2178 for physical damage and for economic injury the number is 6241.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 28, 1984.

Harry S. Carver,

Acting Administrator.

[FR Doc. 85–425 Filed 1–4–85 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Evaluating Turbine Engine Operating Characteristics

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed Advisory Circular 25–939–XX and request for comments.

SUMMARY: This notice announces the availability of and request comments on a proposed advisory circular (AC) which provides guidance for the evaluation of turbine engine (turbojet, turboprop, and turboshaft) operating characteristics.

DATE: Comments must be received on or before March 25, 1985.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Regulations & Policy Office, ANM–110, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Pat Siegrist, Regulations & Policy Office, at the above address, telephone (206) 431–2126.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the proposed AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify AC 25.939–XX and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Regulations & Policy Office before issuing the final AC.

Discussion

Section 25.939(a) of the Federal Aviation Regulations (FAR) requires that turbine engines exhibit no hazardous adverse operating characteristics during normal and emergency operation while within the

range of operating limits of the airplane and engine. The proposed AC provides guidelines for the evaluation of turbine engine operating characteristics of subsonic transport category airplanes. The guidelines describe flight test procedures and pass-fail criteria that have been found to be acceptable for demonstration of compliance.

Issued in Seattle, Washington, on December 18, 1984.

Leroy A. Keith,

Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 85-322 Filed 1-4-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

National Motor Carrier Advisory Committee; Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee will hold a meeting on January 23 and 24, 1985, beginning at 9:00 a.m., both days, in Washington, D.C., at the Department of Transportation's Headquarters Building, 400 Seventh Street, SW., Washington, D.C., Room 4234.

The first day of the meeting, January 23, the full committee will convene briefly at 9:00 a.m. The balance of the day will be devoted to meetings of subcommittees to develop comments and recommendations concerning the following four study provisions of the Deficit Reduction Act of 1984: (1) Heavy Vehicle Cost Responsibility Study, (2) Trans-Border Trucking Study, (3) Study of Weight-Distance Taxes, and (4) Study of Piggyback Trailers. These meetings will be open to the public and room assignments will be available at 9:00 a.m., in Room 4234.

The meeting of the full committee will be convened at 9:00 a.m. on January 24 in Room 4234 and is also open to the public. The agenda for this session of the meeting will conclude reports from each of the subcommittees. Briefings will be provided for the Committee on the Centralization Plan of the State/Industry Task Force of the National Association of Regulatory Utility Commissioners, the impact of the Motor Carrier Safety Act of 1984, and the status of the FY 1985 Motor Carrier Safety Assistance Program.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Stapleton, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HCC-20, Room 4224, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-0834. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on: December 28, 1984.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 85-343 Filed 1-4-85; 8:45 am]

BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 4
Monday, January 7, 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).

CONTENTS

	Item
Commission on Civil Rights	1

1

COMMISSION ON CIVIL RIGHTS

PLACE: Sheraton Harbor Island Hotel, San Diego, California.

DATE AND TIME: Thursday, January 10, 1985, 10 a.m.–4 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report (November and December)
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports
IV. Revision of Proposed Regulations Respecting Commission meetings
V. Presentation Concerning *Grove City College* v. *Bell*
VI. State Advisory Committee Recharters
VII. Civil Rights Developments in the Southwestern States Region

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 736–8311.

Lawrence B. Glick,

Solicitor.

January 3, 1985.

[FR Doc. 85–538 Filed 1–3–85; 3:25 pm]

BILLING CODE 6335–01–M

Reader Aids

Federal Register

Vol. 50, No. 4

Monday, January 7, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-210 2
211-426 3
427-720 4
721-916 7

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12456 (Superseded by EO 12496) 211
12462 (Amended by EO 12497) 229
12496 211
12497 229
Proclamations:
5201 (See Proc. 5291) 223
5290 1
5291 223

5 CFR

531 427
536 427
Proposed Rules:
831 473

7 CFR

46 428
58 3
354 721
905 231
907 ..... 5, 231
908 231
910 428
912 231
913 231
917 231
928 231
932 231
959 5
966 5
971 5
979 5
987 5
Proposed Rules:
920 835
1030 280
1136 815
1804 815
1924 815

9 CFR

72 ..... 429, 430
73 430
97 722
113 ..... 431, 439
307 723
318 6
350 723
351 723
354 723
355 723
362 723
381 ..... 6, 723
Proposed Rules:
381 280

10 CFR

440 708
Proposed Rules:
903 206

11 CFR

Proposed Rules:
Ch. I 477

12 CFR

201 444
304 7
505d 7

13 CFR

120 725
123 704
305 725

14 CFR

Ch. II 451
21 7
39 ..... 10, 445-448
71 726-728
97 449
121 450
135 450
241 ..... 10, 232
245 453
246 453
291 453
298 14
310b 454
312 454
370 455
385 22
399 455
Proposed Rules:
39 ..... 280, 478, 479
71 90-93
211 95
223 480
241 101
272 95
302 95
323 481
383 482

15 CFR

377 729
Proposed Rules:
377 835

16 CFR

Proposed Rules:
456 598

17 CFR

1 22
31 22

240 730

Proposed Rules:

31 102
190 102

18 CFR

Proposed Rules:

157 114
284 114

19 CFR

113 739

20 CFR

701 384
702 384
703 384

21 CFR

173 61
178 62-64
520 64
524 739

Proposed Rules

133 ..... 119, 120
193 120
442 253
510 254
522 254
558 254
866 414

24 CFR

965 456

26 CFR

1 ..... 740, 747
31 747
54 747

Proposed Rules:

1 ..... 836, 837
31 836
54 836

27 CFR

4 ..... 758, 759
9 255

28 CFR

540 410
550 410

29 CFR

1910 64

30 CFR

701 257
762 257
816 257
817 257
926 258
931 456
934 260

Proposed Rules:

250 838
884 483
886 483
913 485
914 281
917 283
935 284
938 486

31 CFR

129 262
209 263
210 263
240 263

32 CFR

166 77

33 CFR

Proposed Rules

110 859
117 ..... 122, 860, 861

36 CFR

223 458

Proposed Rules:

223 488

37 CFR

211 263

39 CFR

10 763

40 CFR

52 ..... 459, 764-769
65 772-775
136 ..... 690, 695
180 61
260 ..... 273, 614
261 614
264 614
265 614
266 614
271 775

Proposed Rules:

52 ..... 123, 285, 493, 862-865
80 718
81 286
136 697
180 125
721 127

41 CFR

101-11 81
101-49 82

43 CFR

Proposed Rules:

2 286

44 CFR

64 84

45 CFR

77 776

Proposed Rules:

1601 495
1612 501
1614 509
1620 512
1622 514

47 CFR

0 65
31 762
73 273
81 65
83 85
90 783

Proposed Rules:

18 287
81 132
83 132
90 865

48 CFR

Ch. 2 274
Ch. 8 789
1803 784
1804 784
1805 784
1812 784
1813 784
1814 784
1815 784
1816 784
1817 784
1825 784
1827 784
1831 784
1832 784
1835 784
1842 784
1844 784
1845 784
1852 784

49 CFR

1 277
171 798
172 798
173 798
174 798
175 798
176 798
177 798
1135 87
1312 459

Proposed Rules:

106 288
107 288
171 288
172 288
173 288
174 288
175 288
176 288
177 288
178 288
571 294
1057 517

50 CFR

23 811
227 278
611 460-468
661 811
663 471
672 467

Proposed Rules:

21 518
227 294
642 518
661 134

LIST OF PUBLIC LAWS

Note: The President completed his consideration of acts and joint resolutions passed during the second session of the 98th Congress on November 8, 1984.

Last list November 16, 1984.

The list will be resumed when bills are enacted into public law during the first session of the 99th Congress which convenes on January 3, 1985.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $550 domestic, $137.50 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1983 Compilation and Parts 100 and 101)	7.00	Jan. 1, 1984
4	12.00	Jan. 1, 1984
5 Parts:		
1-1199	13.00	Jan. 1, 1984
1-1199 (Special Supplement)	None	Jan. 1, 1984
1200-End, 6 (6 Reserved)	6.00	Jan. 1, 1984
7 Parts:		
0-45	13.00	Jan. 1, 1984
46-51	12.00	Jan. 1, 1984
52	14.00	Jan. 1, 1984
53-209	13.00	Jan. 1, 1984
210-299	13.00	Jan. 1, 1984
300-399	7.50	Jan. 1, 1984
400-699	13.00	Jan. 1, 1984
700-899	13.00	Jan. 1, 1984
900-999	14.00	Jan. 1, 1984
1000-1059	12.00	Jan. 1, 1984
1060-1119	9.50	Jan. 1, 1984
1120-1199	7.50	Jan. 1, 1984
1200-1499	13.00	Jan. 1, 1984
1500-1899	6.00	Jan. 1, 1984
1900-1944	14.00	Jan. 1, 1984
1945-End	13.00	Jan. 1, 1984
8	7.00	Jan. 1, 1984
9 Parts:		
1-199	13.00	Jan. 1, 1984
200-End	9.50	Jan. 1, 1984
10 Parts:		
0-199	14.00	Jan. 1, 1984
200-399	12.00	Jan. 1, 1984
400-499	12.00	Jan. 1, 1984
500-End	13.00	Jan. 1, 1984
11	7.50	Apr. 1, 1984
12 Parts:		
1-199	9.00	Jan. 1, 1984
200-299	14.00	Jan. 1, 1984
300-499	9.50	Jan. 1, 1984
500-End	14.00	Jan. 1, 1984
13	13.00	Jan. 1, 1984
14 Parts:		
1-59	13.00	Jan. 1, 1984
60-139	13.00	Jan. 1, 1984
140-199	7.00	Jan. 1, 1984
200-1199	13.00	Jan. 1, 1984
1200-End	7.50	Jan. 1, 1984
15 Parts:		
0-299	7.00	Jan. 1, 1984
300-399	13.00	Jan. 1, 1984
400-End	12.00	Jan. 1, 1984
16 Parts:		
0-149	9.00	Jan. 1, 1984
150-999	9.50	Jan. 1, 1984
1000-End	13.00	Jan. 1, 1984
17 Parts:		
1-239	14.00	Apr. 1, 1984
240-End	13.00	Apr. 1, 1984
18 Parts:		
1-149	12.00	Apr. 1, 1984
150-399	15.00	Apr. 1, 1984
400-End	6.50	Apr. 1, 1984
19	17.00	Apr. 1, 1984
20 Parts:		
1-399	7.50	Apr. 1, 1984
400-499	13.00	Apr. 1, 1984
500-End	14.00	Apr. 1, 1984
21 Parts:		
1-99	9.00	Apr. 1, 1984
100-169	12.00	Apr. 1, 1984
170-199	12.00	Apr. 1, 1984
200-299	4.25	Apr. 1, 1984
300-499	14.00	Apr. 1, 1984
500-599	13.00	Apr. 1, 1984
600-799	6.00	Apr. 1, 1984
800-1299	9.50	Apr. 1, 1984
1300-End	6.00	Apr. 1, 1984
22	17.00	Apr. 1, 1984
23	13.00	Apr. 1, 1984
24 Parts:		
0-199	8.00	Apr. 1, 1984
200-499	14.00	Apr. 1, 1984
500-699	6.00	Apr. 1, 1984
700-1699	12.00	Apr. 1, 1984
1700-End	9.50	Apr. 1, 1984
25	14.00	Apr. 1, 1984
26 Parts:		
§§ 1.0-1.169	14.50	Apr. 1, 1984
§§ 1.170-1.300	10.00	Apr. 1, 1984
§§ 1.301-1.400	7.50	Apr. 1, 1984
§§ 1.401-1.500	13.00	Apr. 1, 1984
§§ 1.501-1.640	12.00	Apr. 1, 1984
§§ 1.641-1.850	12.00	Apr. 1, 1984
§§ 1.851-1.1200	14.00	Apr. 1, 1984
§§ 1.1201-End	17.00	Apr. 1, 1984
2-29	13.00	Apr. 1, 1984
30-39	9.00	Apr. 1, 1984
40-299	14.00	Apr. 1, 1984
300-499	9.50	Apr. 1, 1984
500-599	8.00	[3] Apr. 1, 1980
600-End	5.50	Apr. 1, 1984
27 Parts:		
1-199	13.00	Apr. 1, 1984
200-End	12.00	Apr. 1, 1984
28	13.00	July 1, 1984
29 Parts:		
0-99	14.00	July 1, 1984
100-499	6.50	July 1, 1984
500-899	14.00	July 1, 1984
900-1899	7.50	July 1, 1984
1900-1910	15.00	July 1, 1984
1911-1919	5.50	July 1, 1984
1920-End	14.00	July 1, 1984
30 Parts:		
0-199	13.00	July 1, 1984
200-699	5.50	July 1, 1984
700-End	13.00	July 1, 1984
31 Parts:		
0-199	8.00	July 1, 1984
200-End	9.50	July 1, 1984

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	July 1, 1984
1–39, Vol. II	19.00	July 1, 1984
1–39, Vol. III	18.00	July 1, 1984
40–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–629	13.00	July 1, 1984
630–699	12.00	July 1, 1984
700–799	13.00	July 1, 1984
800–999	9.50	July 1, 1984
1000–End	6.00	July 1, 1984
33 Parts:		
1–199	14.00	July 1, 1984
200–End	13.00	July 1, 1984
34 Parts:		
1–299	14.00	July 1, 1984
300–399	8.50	July 1, 1984
400–End	14.00	July 1, 1984
35	7.50	July 1, 1984
36 Parts:		
1–199	9.00	July 1, 1984
200–End	12.00	July 1, 1984
37	8.00	July 1, 1984
38 Parts:		
0–17	14.00	July 1, 1984
18–End	9.50	July 1, 1984
39	8.00	July 1, 1984
40 Parts:		
1–51	13.00	July 1, 1984
52	14.00	July 1, 1984
53–80	18.00	July 1, 1984
81–99	14.00	July 1, 1984
100–149	9.50	July 1, 1984
150–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–424	13.00	July 1, 1984
425–End	14.00	July 1, 1984
41 Chapters:		
1, 1–1 to 1–10	13.00	July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	July 1, 1984
3–6	14.00	July 1, 1984
7	6.00	July 1, 1984
8	4.50	July 1, 1984
9	13.00	July 1, 1984
10–17	9.50	July 1, 1984
18, Vol. I, Parts 1–5	13.00	July 1, 1984
18, Vol. II, Parts 6–19	13.00	July 1, 1984
18, Vol. III, Parts 20–52	13.00	July 1, 1984
19–100	13.00	July 1, 1984
101	15.00	July 1, 1984
102–End	9.50	July 1, 1984
42 Parts:		
1–60	12.00	Oct. 1, 1984
61–399	8.00	Oct. 1, 1984
400–End	17.00	Oct. 1, 1983
43 Parts:		
1–999	9.50	Oct. 1, 1984
1000–3999	14.00	Oct. 1, 1983
4000–End	8.00	Oct. 1, 1984
44	12.00	Oct. 1, 1983
45 Parts:		
1–199	9.50	Oct. 1, 1984
200–499	6.50	Oct. 1, 1984
500–1199	13.00	Oct. 1, 1984
1200–End	9.50	Oct. 1, 1984
46 Parts:		
1–40	9.50	Oct. 1, 1984
41–69	9.50	Oct. 1, 1984
70–89	6.00	Oct. 1, 1984
90–139	9.00	Oct. 1, 1984
140–155	9.50	Oct. 1, 1984
156–165	10.00	Oct. 1, 1984
166–199	9.00	Oct. 1, 1984
200–499	13.00	Oct. 1, 1984
400–End	7.00	Oct. 1, 1983
47 Parts:		
0–19	13.00	Oct. 1, 1984
20–69	14.00	Oct. 1, 1983
70–79	13.00	Oct. 1, 1983
80–End	13.00	Oct. 1, 1983
48 Chapters:		
*1 (Parts 1–51)	13.00	Oct. 1, 1984
*1 (Parts 52–99)	13.00	Oct. 1, 1984
*2	13.00	Oct. 1, 1984
49 Parts:		
1–99	7.50	Oct. 1, 1984
100–177	14.00	Nov. 1, 1983
178–199	13.00	Nov. 1, 1983
200–399	13.00	Oct. 1, 1984
*400–999	13.00	Oct. 1, 1984
1000–1199	12.00	Oct. 1, 1983
1200–1299	13.00	Oct. 1, 1984
*1300–End	3.75	Oct. 1, 1984
50 Parts:		
1–199	9.00	Oct. 1, 1983
200–End	13.00	Oct. 1, 1983
CFR Index and Findings Aids	17.00	Jan. 1, 1984
Complete 1984 CFR set	550.00	1984
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Subscription (mailed as issued)	200.00	1984
Individual copies	2.25	1984

[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1984. The CFR volume issued as of Apr. 1, 1980, should be retained.