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Federal Register

Wednesday
March 6, 1985

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Environmental Protection Agency

Alcohol and Alcoholic Beverages
Alcohol, Tobacco and Firearms Bureau

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

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Environmental Protection Agency

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Presidential Documents

Title 3—

The President

Proclamation 5306 of March 4, 1985

National Consumers Week, 1985

By the President of the United States of America

A Proclamation

America's economy has been revitalized by the highest level of consumer confidence in nearly twenty years. Our free enterprise system and the high productivity of American workers have made such economic growth possible, providing the American consumer with an unprecedented choice of goods and services.

As the range of consumer choice increases, competition compels our businesses to provide even greater value for consumer dollars. Increasingly, business leaders respond to consumer expectations by improving the quality, safety, and effectiveness of their products. Competition also generates reliable servicing.

This year's slogan for National Consumers Week, "Consumers Should Know," highlights the right of consumers to information about the products offered them. Knowledgeable, selective consumers make their dollars count. In that way, families not only enjoy better products but are able to put more money aside for future needs. Those savings translate into business investments, and that means growth for our Nation's economy.

Buyers and sellers alike should recognize the basic rights of consumers: the right to choice among products and services; the right to information enabling them to make sound purchases; the right to healthful and safe products; the right to be heard when products do not meet standards. Government at all levels will continue its responsible stewardship of consumer safety as well as its vigorous prosecution of illegal and deceptive practices. But in the final analysis it is the knowledgeable consumer and the responsible business person whose decisions will determine the success or failure of products and services in the competitive marketplace.

In celebration of National Consumers Week, I encourage schools, community organizations, labor unions, businesses, the media, and consumers themselves to help further public awareness of consumer issues and services. I urge American consumers to take advantage of this opportunity to seek and use the wealth of information available to all.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning April 21, 1985, as National Consumers Week.

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

Ronald Reagan

[FR Doc. 85-5551
Filed 3-5-85; 11:10 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12506 of March 4, 1985

Nuclear Cooperation with EURATOM

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 126a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to Section 126a(2) of such Act and extended by Executive Orders No. 12193, 12295, 12351, 12409 and 12463, failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of the United States non-proliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to March 10, 1986.

Ronald Reagan

THE WHITE HOUSE,
March 4, 1985.

[FR Doc. 85-5552
Filed 3-5-85; 11:11 am]
Billing code 3195-01-M

Rules and Regulations

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

FEDERAL LABOR RELATIONS AUTHORITY, GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY, AND FEDERAL SERVICE IMPASSES PANEL

5 CFR Ch. XIV

Regional Office; Address Change

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

ACTION: Amendment of rules and regulations.

SUMMARY: This document amends Appendix A, paragraph (d)(6) (45 FR 3522) of the rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 5 CFR Part 2400 *et seq.* (1984), to establish a new location and mailing address for the Authority's Dallas Regional Office. The Dallas Regional Office telephone numbers have not been changed.

EFFECTIVE DATE: March 16, 1985.

FOR FURTHER INFORMATION CONTACT: Nancy Anderson Speight, Deputy to the Assistant General Counsel, (202) 382-0811.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority, General Counsel and Panel published at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority, General Counsel and Panel under Chapter 71 of Title 5 of the United States Code (5 CFR Part 2400 *et seq.* (1984)). These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR Part 2400 *et seq.* (1984). Appendix A, Paragraph (d) of the foregoing rules and regulations sets forth office addresses and telephone numbers of the Regional Directors of the Authority. This amendment sets forth the new location and mailing address of the Dallas Regional Office of the Authority. The Dallas Regional Office telephone numbers have not been changed. Accordingly, in Appendix A to Chapter XIV, paragraph (d)(6) of the Authority, General Counsel, and Panel rules and regulations (5 CFR Part 2400 *et seq.* (1984)) is revised to read as follows:

Appendix A to 5 CFR Ch. XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(d) The Office addresses of Regional Directors of the Authority are as follows:

* * * * *

(6) *Dallas Regional Office*—Federal Office Building, 525 Griffin Street, Suite 926, Dallas, Texas 75202, Telephone: FTS—729-4996, Commercial—(214) 767-4996.

* * * * *

(5 U.S.C. 7134)

Dated: March 1, 1985.

John C. Miller,

General Counsel, Federal Labor Relations Authority.

[FR Doc. 85-5342 Filed 3-5-85; 8:45 am]

BILLING CODE 6727-01-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 293 and 294

Personnel Records; Availability of Official Information; Employment (General); Classification Under the General Schedule; Prevailing Rate Systems; Grade and Pay Retention; and Investigations

Correction

In FR Doc. 85-1740, beginning on page 3307 in the issue of Thursday, January 24, 1985, make the following corrections:

PART 293—[CORRECTED]

1. On page 3309, second column, in the last line of the Authority citation for 5 CFR Part 293, "2 CFR" shpuld have read "3 CFR".

§ 293.307 [Corrected]

2. On page 3309, in the third column, the fifth line of § 293.307(a) should have read:

"for additional 60 days (90 days where".

PART 294—[CORRECTED]

§ 294.106 [Corrected]

3. On page 3311, third column, in the ninth line of § 294.106(d), the word "physical" should have read "physician".

§ 294.108 [Corrected]

4. On page 3312, second column, eighth line of § 294.108(e) should have read: "has his or her principal place of business,".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 12, 13, 14, 20, 25, 58, 201, 207, 211, 225, 291, 310, 312, 320, 330, 361, 429, 430, and 431

Update of Organizational References

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to update organizational references resulting from a reorganization within the agency.

EFFECTIVE DATE: March 6, 1985.

FOR FURTHER INFORMATION CONTACT: Richard L. Arkin, or Robert D. Bradley, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 22, 1982 (47 FR 36913), the merger of the Bureau of Drugs and the Bureau of Biologics into the National Center for Drugs and Biologics was announced. In the **Federal Register** of March 19, 1984 (49 FR 10168), the title was changed to the Center for Drugs and Biologics. In addition, the March 19 document abolished three existing line offices and establishes five new line offices within the Center for Drugs and Biologics to combine similar drugs and biologics functions.

To implement these changes, FDA is amending its regulations by updating them to conform to terms now used in the agency's organizational structure. In addition, FDA is revising 21 CFR 310.503 by changing the name of the Atomic

Energy Commission to the Commission's new title, i.e., the Nuclear Regulatory Commission.

Because these amendments related to internal agency management and personnel and because the amendments are not substantive, the rule is exempt from the notice and comment and delayed effective date requirements of section 553(b) and (d)(3) of the Administrative Procedure Act (5 U.S.C. 553(b) and (d)(3)).

This rule has no economic impact. Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act, FDA certifies that the rule will not have a significant impact on a substantial number of small entities. The rule is related to agency organization, management, and personnel and therefore is exempt from Executive Order 12991.

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21 CFR Part 10

Administrative practice and procedure.

21 CFR Part 12

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Administrative practice and procedure.

21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

21 CFR Part 20

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21 CFR Part 25

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21 CFR Part 58

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21 CFR Part 201

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21 CFR Part 207

Drug listing, Drug registration, Reporting requirements.

21 CFR Part 211

Drugs, Manufacturing, labeling, Laboratories, Packaging and containers, Warehouses.

21 CFR Part 225

Animal drugs, Animal feeds, Labeling, Packaging and containers.

21 CFR Part 291

Health professions, Methadone, Recordkeeping and reporting requirements.

21 CFR Part 310

Administrative practice and procedure, Drugs, Medical devices, Recordkeeping and reporting requirements.

21 CFR Part 312

Drugs, Medical research.

21 CFR Part 320

Drugs.

21 CFR Part 330

Over-the-counter drugs.

21 CFR Part 361

Medical research, Prescription drugs, Radiation protection.

21 CFR Part 429

Administrative practice and procedure, Drugs, Insulin, Labeling, Packaging and containers.

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Part 431

Administrative practice and procedure, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

§§ 10.3, 10.55, 10.75 and 10.100 [Amended]

1. Part 10 is amended by changing "bureau" to "center" and "bureaus" to "centers" wherever they appear in § 10.3 *Definitions* in paragraph (d); § 10.55 *Separation of functions; ex parte communications* in paragraph (b)(2)(i), (ii), and (iii); § 10.75 *Internal agency review of decisions* in the introductory text of paragraph (c) and in paragraph (c)(1) and (2); and § 10.100 *Public calendars* in paragraphs (a)(2)(iii) and (b)(3)(vii) and (4)(iii).

PART 12—FORMAL EVIDENTIARY PUBLIC HEARING

§ 12.50 [Amended]

2. Part 12 is amended in § 12.50 *Advice on public participation in hearings* in paragraphs (d) and (e) by changing "bureau" to "center" and "bureaus" to "centers" wherever they appear.

PART 13—PUBLIC HEARING BEFORE A PUBLIC BOARD OF INQUIRY

§§ 13.10 and 13.25 [Amended]

3. Part 13 is amended by changing "bureau" to "center" wherever it appears in § 13.10 *Members of a Board* in paragraphs (b), (c), and (d) and in § 13.25 *Disclosure of data and information by the participants* in the introductory text of paragraph (a) and in paragraph (a)(3).

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

4. Part 14 is amended in § 14.100 by removing and reserving paragraph (c) and by revising paragraph (b), to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(b) *Center for Drugs and Biologics*—(1) *Allergenic Products Advisory Committee.* (i) Date established: July 9, 1984.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of allergenic biological products intended for use in the diagnosis, prevention, or treatment of human diseases.

(2) *Anesthetic and Life Support Drugs Advisory Committee.* (i) Date established: May 1, 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the field of anethesiology and surgery.

(3) *Anti-Infective Drugs Advisory Committee.* (i) Date established: October 7, 1980.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in infectious diseases.

(4) *Arthritis Advisory Committee.* (i) Date established: April 5, 1974.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in arthritic conditions.

(5) *Blood Products Advisory Committee.* (i) Date established: May 13 1980.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

(6) *Cardiovascular and Renal Drugs Advisory Committee.* (i) Date established: August 27, 1970.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

(7) *Dermatologic Drugs Advisory Committee.* (i) Date established: October 7, 1980.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of dermatologic diseases.

(8) *Drug Abuse Advisory Committee.* (i) Date established: May 31, 1978.

(ii) Function: Advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

(9) *Endocrinologic and Metabolic Drugs Advisory Committee.* (i) Date established: August 27, 1970.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in endocrine and metabolic disorders.

(10) *Fertility and Maternal Health Drugs Advisory Committee.* (i) Date established: March 23, 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of obstetrics and gynecology.

(11) *Gastrointestinal Drugs Advisory Committee.* (i) Date established: March 3, 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in gastrointestinal diseases.

(12) *Oncologic Drugs Advisory Committee.* (i) Date established: September 21, 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in treatment of cancer.

(13) [Reserved]

(14) *Peripheral and Central Nervous System Drugs Advisory Committee.* (i) Date established: June 4, 1974.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in neurological disease.

(15) *Psychopharmacologic Drugs Advisory Committee.* (i) Date established: June 4, 1974.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of psychiatry and related fields.

(16) *Pulmonary-Allergy Drugs Advisory Committee.* (i) Date established: February 17, 1972.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

(17) *Radiopharmaceutical Drugs Advisory Committee.* (i) Date established: August 30, 1967.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of nuclear medicine.

(18) *Vaccines and Related Biological Products Advisory Committee.* (i) Date established: December 31, 1979.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

(c) [Reserved]

* * * * *

PART 20—PUBLIC INFORMATION

5. Part 20 is amended:

§ 20.44 [Amended]

a. In § 20.44 *Presubmission review of request for confidentiality of voluntarily submitted data or information* in paragraph (a) by changing "Bureau" to "Center".

§ 20.106 [Amended]

b. In § 20.106 *Studies and reports prepared by or with funds provided by the Food and Drug Administration* in paragraph (a)(7) by changing "bureaus" to "centers".

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

§ 25.5 [Amended]

6. Part 25 is amended in § 25.5 *Responsible agency officials* in paragraph (a)(2) by changing "bureau" to "center" wherever it appears.

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

§ 58.217 [Amended]

7. Part 58 is amended in § 58.217 *Suspension or termination of a testing facility by a sponsor* by changing "Bureau" to "Center" wherever it appears.

PART 201—LABELING

§ 201.59 [Amended]

8. Part 201 is amended in § 201.59 *Effective date of §§ 201.56, 201.57, 201.100(d)(3), and 201.100(e)* in the table in paragraph (a)(3) by changing "HFB–720" to "HFN–825", "HFD–110" to "HFN–110", "HFD–120" to HFN–120", "HFD–130" to "HFN–810", "HFD–140" to "HFN–815", "HFD–150" to "HFN–150" "HFD–160" to "HFN–160", and "HFD–30" to "HFN–810".

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

9. Part 207 is amended:

a. In § 207.7 by removing and reserving paragraph (b), by changing "Bureau of Medical Devices" to "Center for Devices and Radiological Health" in paragraphs (c) and (d), by changing "Bureau of Drugs" to "Drug Listing Branch (HFN–315), Center for Drugs and Biologics" in paragraph (d), and by revising paragraph (a), to read as follows:

§ 207.7 Establishment registration and product listing for human blood and blood products and for medical devices.

(a) Owners and operators of human blood and blood product establishments shall register and list their products with the Drug Listing Branch, Office of Compliance (HFN–315), Center for Drugs and Biologics, on Form FDA–2830 (Blood Establishment Registration and Product Listing), in accordance with Part 607. Such owners and operators who also manufacture or process other drug products at the same establishment shall, in addition, register and list all such other drug products with the Drug Listing Branch in accordance with this part.

(b) [Reserved]

* * * * *

§ 207.22 [Amended]

b. In § 207.22 *How and where to register and list drugs* in paragraph (a) by changing "Bureau of Drugs, Drug Listing Branch (HFD–315)" to "Drug Listing Branch (HFN–315), Center for

Drugs and Biologics" and in paragraph (b) by changing "Bureau of Drugs, Drug Listing Branch" to "Drug Listing Branch (HFN-315), Center for Drugs and Biologics".

§ 207.37 [Amended]

c. In § 207.37 *Inspection of registrations and drug listings* in paragraph (a) by changing "Bureau of Drugs' Registration Section" to "Drug Listing Branch, Center for Drugs and Biologics," and in paragraphs (a) and (b) by changing "Bureau of Drugs, Registration Section (HFD-315)" to "Drug Listing Branch (HFN-315), Center for Drugs and Biologics".

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

§ 211.176 [Amended]

10. Part 211 is amended in § 211.176 *Penicillin contamination* by changing "Bureau of Drugs (HFD-430)" to "Division of Drug Biology (HFN-170), Center for Drugs and Biologics".

PART 225—CURRENT GOOD MANUFACTURING PRACTICE FOR MEDICATED FEEDS

§ 225.115 [Amended]

11. Part 225 is amended in § 225.115 *Complaint files* in paragraph (b)(2) by changing "Bureau of" to "Center for".

PART 291—DRUGS USED FOR TREATMENT OF NARCOTIC ADDICTS

§ 291.505 [Amended]

12. Part 291 is amended in § 291.505 *Conditions for use of methadone: appropriate methods of professional practice for medical treatment of the narcotic addiction of various classes of narcotic addicts with methadone under section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970* in paragraph (h)(1), (2), (3), and (5) by changing "Bureau of Drugs" to "Center for Drugs and Biologics" wherever they appear and in paragraph (k) by changing "Division of Methadone Monitoring (HFD-340)" to "Division of Scientific Investigations (HFN-340)" wherever they appear.

PART 310—NEW DRUGS

13. Part 310 is amended:

§ 310.6 [Amended]

a. In § 310.6 *Applicability of "new drug" or safety or effectiveness findings in drug efficacy study implementation notices and notices of opportunity for hearing to identical, related, and similar drug products* in paragraph (e) by changing "Bureau of Drugs, Office of Compliance, HFD-300" to "Center for Drugs and Biologics, Office of Compliance, HFN-300".

§ 310.500 [Amended]

b. In § 310.500 *Digoxin products for oral use; conditions for marketing* in paragraph (d) by changing "Bureau of Drugs (HFD-220)" to "Center for Drugs and Biologics (HFN-220)", in paragraph (f) by changing "Bureau of Drugs, Office of Scientific Evaluation, Generic Drug Staff (HFD-107)" to "Center for Drugs and Biologics, Division of Generic Drugs (HFN-230)", and in paragraph (h)(3)(iv) by changing "Bureau of Drugs, Office of Scientific Evaluation (HFD-100)" to "Center for Drugs and Biologics, Office of Drug Research and Review (HFN-100)".

§ 310.501 [Amended]

c. In § 310.501 *Preparations for contraception: labeling directed to the patient* in paragraph (b)(5) by changing "Bureau of Drugs, Division of Metabolic and Endocrine Drug Products (HFD-130)" to "Center for Drugs and Biologics, Division of Metabolism and Endocrine Drug Products (HFN-810)".

§ 310.503 [Amended]

d. In § 310.503 *Requirements regarding certain radioactive drugs* in paragraphs (a), (b), and (c) by changing "Atomic Energy Commission" to "Nuclear Regulatory Commission".

§ 310.509 [Amended]

e. In § 310.509 *Parenteral drug products in plastic containers* in paragraph (e) by changing "(HFD-160), Bureau of Drugs" to "(HFN-160), Center for Drugs and Biologics".

PART 312—NEW DRUGS FOR INVESTIGATIONAL USE

§ 312.1 [Amended]

14. Part 312 is amended in § 312.1 *Conditions for exemption of new drugs for investigational use* in paragraphs (c)(1), (d)(13), and (g) by changing "Bureau of Drugs" to "Office of Drug Research and Review" wherever it appears; in paragraph (g) by changing "Director, Bureau of Biologics" and "Bureau of Biologics" to "Office of Biologics Research and Review"; in paragraph (j) by changing "Bureau of Drugs and the Bureau of Biologics" to "Office of Drug Research and Review and the Office of Biologics Research and Review"; in paragraph (j)(1) by changing "Bureau of Drugs" to "Center for Drugs and Biologics"; and in paragraph (j)(2) and (3) by changing "Director, Bureau of Biologics" to "Office of Biologics Research and Review, Center for Drugs and Biologics".

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

§ 320.30 [Amended]

15. Part 320 is amended in § 320.30 *Inquiries regarding bioavailability requirements and review of protocols by the Food and Drug Administration* in paragraph (c) by changing "Bureau of Drugs" to "Center for Drugs and Biologics" and by changing "(HFD-520)" to "(HFN-220)".

PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

16. Part 330 is amended:

§ 330.1 [Amended]

a. In § 330.1 *General conditions for general recognition as safe, effective, and not misbranded* in paragraph (a) by changing "Parts 210, 211, 225, 226 and 229" to "Parts 210 and 211."

§ 330.13 [Amended]

b. In § 330.13 *Conditions for marketing ingredients recommended for over-the-counter (OTC) use-under the OTC drug review* in paragraphs (c)(2)(i) and (d)(2)(i) by changing "Bureau of Drugs" to "Center for Drugs and Biologics".

PART 361—PRESCRIPTION DRUGS FOR HUMAN USE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED: DRUGS USED IN RESEARCH

§ 361.1 [Amended]

17. Part 361 is amended in § 361.1 *Radioactive drugs for certain research uses* in paragraph (c)(1) by changing "Bureau of Drugs" to "Center for Drugs and Biologics"; in paragraph (c)(3) by changing "Bureau of Drugs, HFD-150" to "Center for Drugs and Biologics, HFN-150"; in paragraph (c)(4) by changing "Bureau of Drugs" to "Center for Drugs and Biologics" wherever it appears and by changing "HFD-150" to "HFN-150"; and in paragraph (d)(8) by changing "Bureau of Drugs, HFD-150" to "Center for Drugs and Biologics, HFN-150".

PART 429—DRUGS COMPOSED WHOLLY OR PARTLY OF INSULIN

§ 429.40 [Amended]

18. Part 429 is amended in § 429.40 *Requests for certification; samples; storage; approvals preliminary to certification* in paragraph (a) by changing "(HFD-410)" to "(HFN-170)".

PART 431—CERTIFICATION OF ANTIBIOTIC DRUGS

19. Part 431 is amended:

§ 431.1 [Amended]

a. In § 431.1 *Requests for certification, check tests and assays, and working standards; information and samples required* in paragraph (a) by changing "National Center for Antibiotic Analysis (HFD–430)" to "Division of Drug Biology (HFN–170)".

§ 431.50 [Amended]

b. In § 431.50 *Forms for certification or exemption of antibiotic drugs* by changing "Certification Services Branch (HFD–332)" to "Product Surveillance Branch (HFN–333)".

Effective date. This regulation is effective March 6, 1985.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C 371(a)))

Dated: February 26, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–5329 Filed 3–5–85; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 184

[Docket No. 82G–0207]

Direct Food Substances Affirmed as Generally Recognized as Safe; Low Erucic Acid Rapeseed Oil

Correction

In FR Doc. 85–2000 beginning on page 3745 in the issue of Monday, January 28, 1985, make the following corrections:

1. On page 3747, first column, paragraph designated as (1), line thirteen, "without" should appear between "weight" and "adverse".

2. On page 3751, first column, third line from the bottom, "d-HBDH" should read" α-HBDH".

BILLING CODE 1505–01–M

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21 CFR Part 184

[Docket No. 82N–0259]

Wheat Gluten, Corn Gluten, and Zein; Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that wheat gluten, corn gluten, and zein are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Falci, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 12, 1983 (48 FR 31887), FDA published a proposal to affirm that wheat gluten, corn gluten, and zein are GRAS for use as direct human food ingredients. FDA published this proposal in accordance with its announced review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review on wheat gluten, corn gluten, and zein and the report of the Select Committee on GRAS Substances (the Select Committee) on wheat gluten, corn gluten, and zein were made available for public review in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents are also available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of wheat gluten, corn gluten, and zein, FDA gave public notice that it was unaware of any prior-sanctioned food uses for these ingredients other than the proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of these ingredients recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for wheat gluten, corn gluten, and zein were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for the use of these ingredients under conditions different from those set forth in this final rule has been waived.

FDA received four comments in response to the proposal. The comments and the agency's response to them are as follows:

1. One comment, from a person suffering from celiac disease, stated that labeling foods as "gluten free" would be a helpful label for packaged food products.

FDA discussed in its proposal (48 FR 31888) that persons with celiac disease are unable to ingest gluten from wheat and from some other sources without intestinal upset. However, FDA also noted that these same individuals are able to consume without ill-effects gluten derived from corn, rice, potato, and other foods. Because glutens do not always initiate intestinal upset in persons with celiac disease, the agency finds that labeling packaged foods as "gluten free" would not be as desirable as actually identifying on the food label the source of the gluten that is used in the food. Under 21 CFR 101.4(a), wheat gluten and other gluten sources must be identified by name when they are used in food. FDA believes, therefore, that the labeling already required is adequate to alert the public and protect gluten-sensitive individuals.

2. One comment stated that corn gluten is being investigated for use as a nutrient supplement in food and requested that the ingredient be listed for this technical effect in the final rule. The comment also requested that a cross-reference indicating that zein is produced from corn gluten be added to the proposed regulation for corn gluten.

The agency notes that wheat gluten is used as a nutrient supplement in food. Because corn gluten has a nutrient profile similar to that of wheat gluten, the agency believes that it is reasonable to conclude that corn gluten may also be used for this technical effect. Additionally, FDA concludes that adequate data exist in the Select Committee's report for it to find that the use of corn gluten as a nutrient supplement in food is safe and for it to affirm that corn gluten is GRAS for this use. Therefore, the agency is including the use of corn gluten as a nutrient supplement in § 184.1321(c)(1) (21 CFR 184.1321(c)(1)).

The agency does not agree that the corn gluten regulation should state that it is used to produce zein. The regulation for zein already states that it is made from corn gluten. Inclusion of this statement in the zein regulation is consistent with FDA's practice of describing how and from what sources regulated ingredients are obtained. The agency does not consider it necessary, however, to include a list of the products that may be manufactured from an ingredient in the regulation for that

ingredient. Therefore, the agency is not including the requested cross-reference in the regulation for corn gluten.

3. One comment stated that corn gluten is produced as a byproduct in the manufacture of corn syrups from dry milled corn. The comment stated that corn gluten is produced during the in-situ conversion of the starch in whole or various fractions of dry milled corn to corn syrups.

The agency agrees that this method has been used to prepare corn gluten and has incorporated it into § 184.1321(a).

4. One comment stated that four additional technical effects for wheat gluten should be added to the regulation for that ingredient. These additional technical effects are formulation aid, processing aid, stabilizer and thickener, and surface-finishing agent. The comment contained a substantial amount of information demonstrating that wheat gluten is currently being used for each of these technical effects.

The agency has reviewed the use information submitted in the comment and has determined that wheat gluten is currently used for the additional technical effects reported in this comment. Additionally, the agency concludes that adequate safety data exist in the Select Committee's report to assure that these uses are safe, and that they may be affirmed as GRAS. Therefore, the agency is incorporating these additional technical effects in this final rule.

The agency is also making two minor editorial changes in the regulation for corn gluten to correct errors in the spelling of "glutelin" and "gluten".

In the proposal, FDA stated that it would work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for corn gluten, wheat gluten, and zein used as direct food ingredients and would incorporate those specifications into the regulations when they were developed. To date, however, work on the specifications is still incomplete. Until the specifications are developed, these ingredients for direct food uses must comply with the descriptions in the respective regulations and be of food-grade purity (21 CFR 182.1(b)(3) and 170.30(h)(1)).

The agency had previously determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in threshold assessments which may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

List of Subjects in 21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61; see 49 FR 48183; December 11, 1984), Part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. By adding new § 184.1321, to read as follows:

§ 184.1321 Corn gluten.

(a) Corn gluten (CAS Reg. No. 66071-96-3), also known as corn gluten meal, is the principal protein component of corn endosperm. It consists mainly of zein and glutelin. Corn gluten is a byproduct of the wet milling of corn for starch. The gluten fraction is washed to remove residual water soluble proteins. Corn gluten is also produced as a byproduct during the conversion of the starch in whole or various fractions of dry milled corn to corn syrups.

(b) FDA is developing food-grade specifications for corn gluten in cooperation with the National Academy of Sciences. In the interim, the ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter and a texturizer as defined in § 170.3(o)(32) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

2. By adding new § 184.1322, to read as follows:

§ 184.1322 Wheat gluten.

(a) Wheat gluten (CAS Reg. No. 8002-80-0) is the principal protein component of wheat and consists mainly of gliadin and glutenin. Wheat gluten is obtained by hydrating wheat flour and mechanically working the sticky mass to separate the wheat gluten from the starch and other flour components. Vital gluten is dried gluten that has retained its elastic properties.

(b) FDA is developing food-grade specifications for wheat gluten in cooperation with the National Academy of Sciences. In the interim, the ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a dough strengthener as defined in § 170.3(o)(6) of this chapter; a formulation aid as defined in § 170.3(o)(14) of this chapter; a nutrient supplement as defined in § 170.3(o)(20) of this chapter; a processing aid as defined in § 170.3(o)(24) of this chapter; a stabilizer and thickener as defined in

§ 170.3(o)(28) of this chapter; a surface-finishing agent as defined in § 170.3(o)(30) of this chapter; and a texturizing agent as defined in § 170.3(o)(32) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

3. By adding new § 184.1984, to read as follows:

§ 184.1984 Zein.

(a) Zein (CAS Reg. No. 9010-66-6) is one of the components of corn gluten. It is produced commercially by extraction from corn gluten with alkaline aqueous isopropyl alcohol containing sodium hydroxide. The extract is then cooled, which causes the zein to precipitate.

(b) FDA is developing food-grade specifications for zein in cooperation with the National Academy of Sciences. In the interim, the igredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a surface-finishing agent as defined in § 170.3(o)(30) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation is effective April 5, 1985.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: February 15, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-5424 Filed 3-5-85; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

Animal Drugs, Feeds, and Related Products; Tolerances for Pesticides in Feeds Administered by the Environmental Protection Agency; 3,6-Bis(2-Chlorophenyl)-1,2,4,5-Tetrazine

[FAP 3H5312/R743; FRL-2790-7]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends an established feed additive regulation to permit residues of the acaricide 3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine in or on apple pomace. This extension of the regulation will permit the continued testing and gathering of additional data on the pesticide and marketing of apple pomace in connection with an experimental use program. The extension was requested by the Nor-Am Chemical Co.

EFFECTIVE DATE: Effective on March 16, 1985..

ADDRESS: Written objections, identified by the document control number [FAP 3H5412/R743], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460..

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Environmental Protection Agency, Rm 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of September 12, 1984 (49 FR 35767), which established a regulation to permit residues of the acaricide 3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine in or on apple pomace in accordance with an experimental use program to expire March 15, 1985.

At the request of the Nor-Am Chemical Co., Wilmington, DE 19803, the regulation is extended to expire March 16, 1986, to permit the continued testing and gathering of additional data on the pesticide and marketing of apple pomace in connection with an experimental use program.

The data and other relevant material submitted in support of the regulation have been evaluated and discussed in the final rule document of September 12, 1984.

The pesticide is considered useful for the purpose for which the regulation is sought. It is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) *et seq*) and is established as set forth below.

The Office of Management and Budget has exempted this rule from the requirements of section 3 Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and pests.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

Dated: February 25, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 561—[AMENDED]

Therefore, 21 CFR 561.92 is revised to read as follows:

§ 561.92 3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine.

A tolerance of 20.0 parts per million is established for residues of the acaricide 3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine in apple pomace resulting from application of the acaricide to apples. Such residues may be present therein only as a result of the application of the acaricide in accordance with the provisions of the experimental use permit number 45639-EUP-14 that expires March 15, 1986.

[FR Doc. 85-5349 Filed 3-5-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600, 606, 610, 620, 630, 640, and 660

[Docket No. 80N-0053]

Changes in Proper Names of Certain Biological Products

Correction

In FR Doc. 85-2001 beginning on page 4128 in the issue of Tuesday, January 29, 1985, make the following corrections:

1. On page 4128, in the second column, in the table under paragraph "2", in the fourth line, under the column "Name proposed by FDA", "Cyroprecipitated" should read "Cryoprecipitated".

2. On page 4130, in the third column, in paragraph "23", in the first line, "§ 640" should read "§ 640.4".

3. On page 4131, in the third column, in paragraph "30", in the seventh line, "Anti-Rh_o.' " " should read "Anti-Rh_o' ' ' ".

4. On page 4132, in Table I, under the column "Current codified name", in the twenty-first line, "Rh_o 1(D)" should read "Rh_o (D)".

§ 600.15 [Corrected]

5. On page 4133, in the second column, in § 600.15(a), in the table, in the column "Temperature", in the ninth line, ".° to 10°C." should read "1° to 10°C.".

§ 610.53 [Corrected]

6. On page 4134, in the table in § 610.53(c), in column A, the entry reading "Iodinated (^{125}I)" should read "Iodinated (^{125}I) products"; also in the same column, the entry reading "Antihuman globulin liquid" should read "Anti-Human globulin liquid".

7. On page 4135, in the table in § 610.53(c), in column A, in the twenty-third line, "desoxyridonuclease" should read "desoxyribonuclease"; in paragraph "1" under "Hepatitis B surface antigen", "Unlyophilied" should read "Unlyophilized"; in paragraph "8" under "Immunoglobulins", "globuline" should read "globulin"; in paragraph "10", "Vari-cella-zoster" should read "Varicella-zoster".

8. On page 4136, in the table in § 610.53(c), in column D, in the thirteenth line from the bottom, "24 hours" should read "(b) 24 hours".

§ 640.25 [Corrected]

9. On page 4139, in the second column, the line reading "**§ 604.25 [Amended]**" should read "**§ 640.25 [Amended]**".

§ 660.25 [Corrected]

10. On page 4140, in the third column, in § 660.25(a)(5)(iii), in the third line "Anti-Mg" should read "Anti-M^g".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 721

Standards of Conduct; Revision

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: These regulations prescribe the standards of conduct required of military and civilian naval personnel. The regulations are being revised to refine policy regarding ethics and standards of conduct, to incorporate statutory changes, and to consolidate procedures regarding financial disclosure. These regulations govern all naval personnel.

EFFECTIVE DATE: October 24, 1984.

FOR FURTHER INFORMATION CONTACT: Commander G. Sid Smith (Office of the Judge Advocate General), (202) 325-9752 or Mr. James T. Tate, Jr. (Office of General Counsel), (202) 692-7186.

SUPPLEMENTARY INFORMATION: Pursuant to the authority conferred under 5 U.S.C. 301, 10 U.S.C. 133 and 5031, the Secretary of the Navy revises 32 CFR Part 721. This revision reflects the changes made to the underlying Secretary of the Navy instruction, SECNAVINST 5370.2 (series), which delineates the Navy's Standards of Conduct. These Standards of Conduct were reorganized and expanded to increase their value as a normative guide for personnel and to ensure their validity as a legal basis for disciplinary action in appropriate cases. The responsibilities of individuals for observing the Standards of Conduct, and the responsibilities of commands for enforcing the standards, are further delineated. Also, provisions concerning the filing, review, and disposition of Confidential Statements of Affiliations and Financial interests (DD Form 1555) are expanded.

Numerous substantive modifications and additions have been made in order to reflect current interpretation and practice, eliminate ambiguity and integrate material on fraud, waste and abuse. To reflect a broader scope, the phrase "government ethics" has been included in the title of this instruction. The terms "standards of conduct counselor" have been replaced with the terms "ethics official" and "ethics counselor," in accordance with the Ethics in Government Act of 1978.

This revision, was adopted on October 24, 1984. To the limited extent that this revision could be deemed to originate any requirements within the Department of the Navy, it has been determined that such requirements relate entirely to internal naval management and personnel practices that can be administered more effectively without public participation in the rule-making process. It has therefore been determined that invitation of public comment on this revision would be impracticable and unnecessary and is therefore not required under the provisions of Parts 296 and 701 of 32 CFR.

List of Subjects in 32 CFR Part 721

Conflict of interests, Government employees, Military personnel.

Accordingly, 32 CFR Part 721 is revised to read as follows:

Sec.

721.1 Purpose.
721.2 [Reserved]
721.3 Scope and effect.
721.4 Definitions.
721.5 General policies governing the conduct of naval personnel.
721.6 Standards of Conduct governing naval personnel.
721.7 Related statutes and directives.
721.8 Responsibilities for action.
721.9 Personal financial disclosure.
721.10 Post employment restrictions.
721.11 Administrative enforcement of 18 U.S.C. 207.
721.12 Reporting of post-retirement employment.
721.13 Delegation of authority.
721.14 Reports and forms.
721.15 Digest of laws.
721.16 Submission and processing of reports of financial circumstances (SF-278 and DD Form 1555).
721.17 Procedures for administrative enforcement of post employment restrictions of 18 U.S.C. 207.
721.18 Bedrock standards of conduct for Department of the Navy personnel.

Authority: 5 U.S.C. 301; 10 U.S.C. 133 and 5031; E.O. No. 11222, May 8, 1965; 5 CFR Part 735; 32 CFR Part 40.

§ 721.1 Purpose.

Part 721 implements and supplements Pub. L. 95-521, as amended by Pub. L. 96-19 and Pub. L. 96-28; Part 40 of this title; E.O. 11222, 3 CFR, 1964-1965 Comp., p. 301; and 5 CFR Parts 734, 735, 737, and 738, by prescribing required standards of ethical conduct governing all personnel in the Department of the Navy, to place responsibility and accountability for ensuring compliance upon commanding officers and supervisors, to publish financial disclosure reporting requirements and procedures applicable to certain naval personnel, to set forth conflict of interest statutes applicable to certain categories of both former and current naval personnel, and to promulgate bedrock

standards of conduct as a concise statement of expected ethical behavior.

§ 721.2 [Reserved]

§ 721.3 Scope and effect.

(a) *Applicability.* The provisions of this Part apply to all naval personnel as defined in § 721.4(a). The provisions of § 721.6(k)(2) apply to all retired military naval personnel and members of Reserve components not on active duty. The provisions of § 721.7(a), § 721.10, and § 721.11 apply to certain former naval personnel. The provisions of § 721.12 apply to all retired Regular officers.

(b) *Violations.* The bracketed portions of § 721.6 are regulatory general orders, apply to all naval personnel individually, and need no further implementation. A violation of these provisions is punishable in accordance with the Uniform Code of Military Justice for military personnel and is the basis for appropriate disciplinary procedures with respect to civilian employees. Noncompliance with other provisions of the instruction is expected to be corrected by timely administrative action.

§ 721.4 Definitions.

(a) *Naval personnel.* All Department of the Navy civilian officers and employees, active-duty officer and enlisted personnel (both Regular and Reserve), special Government employees, and personnel of nonappropriated fund instrumentalities.

(b) *Department of Defense (DOD) components.* The Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the joint, unified, and specified commands, the Defense agencies, and nonappropriated fund instrumentalities.

(c) *Special Government employee.* A person who is retained, designated, appointed or employed to perform, with or without compensation, not to exceed 130 days during any period of 365 consecutive days, temporary duties on either a full-time or intermittent basis. The term also includes a Reserve officer while on active duty solely for training for any length of time, one who is serving on active duty involuntarily for any length of time, and one who is serving voluntarily on extended active duty for 130 days or less. It does not include enlisted personnel.

(d) *Gratuity.* Any gift, favor, entertainment, hospitality, transportation, loan, any other tangible item, and any intangible benefit (for example, discounts, passes, and promotional vendor training) given or extended to or on behalf of naval personnel or their spouses, minor children or members of their households for which fair market value is not paid by the recipient or the U.S. Government.

(e) *Appropriate supervisor.* That superior within the chain of authority who is acquainted with the duties of the naval personnel concerned and can best determine the existence and effect of any conflict of interest of such personnel. Ordinarily, this will be the immediate superior of the person concerned. Each commanding officer and head of activity should ensure that all personnel are aware of the identity of their appropriate supervisor.

§ 721.5 General policies governing the conduct of naval personnel.

(a) *Proper conduct of official activities.* (1) Naval personnel shall become familiar with the scope of authority for and the limitations concerning the activities for which they have responsibilities.

(2) The attention of naval personnel is directed to the statutory prohibitions that apply to the conduct of naval personnel. See § 721.15.

(3) Naval personnel shall not make or recommend any expenditure of funds or take or recommend any action known or believed to be in violation of United State laws, Executive Orders, applicable directives, instructions, or regulations.

(4) In cases of doubt of the propriety of a proposed action or decision in terms of regulations or law, naval personnel shall consult legal counsel or, if appropriate, the Designated Agency Ethics Official, a deputy ethics official or ethics counselor (hereafter collectively referred to as "ethics officials"; see paragraphs (a), (b), (g), and (h) of § 721.8) to ensure the proper and lawful conduct of naval programs and activities.

(b) *Conduct prejudicial to the Government.* Naval personnel shall avoid any action whether or not specifically prohibited by this instruction that might result in or reasonably be expected to create the appearance of:

(1) Using public office for private gain,

(2) Giving preferential treatment to any person or entity,

(3) Impeding Government efficiency or economy,

(4) Losing complete independence or impartiality,

(5) Making a Government decision outside official channels, or

(6) Adversely affecting the confidence of the public in the integrity of the Government.

(c) *Standards of personal judgment.* All naval personnel will adhere strictly to the standards of conduct and related requirements prescribed. In some instances, standards are imposed that require the exercise of personal judgment. Naval personnel must consider each such instance carefully and be prepared to account for the manner in which their judgment is exercised. This is particularly true in situations that involve acceptance of hospitality or favors from persons or entities who do or seek to do business with the Department of Defense.

(d) *Dealings with business and industry representatives.* Persons who represent the Government in business dealings with representatives of industry have positions of trust and grave responsibility that require them to observe the highest ethical standards. Practices that may be accepted in the private business world are not necessarily acceptable for naval personnel. Naval personnel will not allow themselves to be placed in a position in which a conflict of interest might arise or might justifiably be suspected. Such a conflict of interest may arise or appear to arise by reason of the acceptance of gratuities or by any other action that could influence or reasonably be interpreted as influencing the strict impartiality that must prevail in all business relationships involving the Government. Strict impartiality is often particularly difficult to maintain when business relationships are allowed to become overly personal. Naval personnel should at all times ensure that persons doing business or attempting to do business with the Department of the Navy or who represent such entities are not permitted to ingratiate themselves to the extent that naval personnel hesitate to deny requests for special treatment made by such persons or otherwise to follow the rule of strict impartiality when dealing with such persons in their official capacities. Acceptance of gratuities (no matter how innocently tendered or received) from those who have or seek business dealings with the Department of the Navy may be a source of embarrassment to the Department and to the naval personnel involved, may affect the objective judgment of the recipient, and may impair public confidence in the integrity of business relations between the Department and industry. It is emphasized that prohibited conflicts and apparent conflicts of interest can sometimes arise even from relationships and transactions that the personnel concerned perceive as inconsequential. When in doubt, naval personnel will refrain from accepting gratuities, attending functions, or accepting other invitations of a hospitable nature.

(e) *Preferential treatment.* Special treatment must not be accorded to particular individuals or firms unless equivalent treatment is also accorded to other justifiably entitled individuals or firms.

(f) *Acquiring conflicting financial interests.* Notwithstanding that they may be required to submit reports of their personal financial circumstances, naval personnel must at all times avoid acquiring or retaining financial interests that would disqualify them from performing their assigned duties or responsibilities. Some of the more likely situations in which conflicts of interest might arise are where naval personnel have Government duties or responsibilities related to business entities:

(1) With which they, their spouses, minor children, or household members are associated as employees, officers, owners, directors, members, trustees, partners, advisers, or consultants;

(2) With which they, their spouses, minor children, or household members are negotiating or have arrangements for prospective employment; or

(3) In which they, their spouses, minor children, or household members have interests through ownership of stock, stock options, bonds, or other securities or other financial arrangements, such as trusts, or through participation in certain types of pension or retirement plans.

(g) *Membership in associations.* Naval personnel who are members or officers of nongovernmental associations or organizations must avoid activities on behalf of the association or organization that are incompatible with their official Government positions. Under certain circumstances, holding a position of trust or responsibility in a private association or organization or undertaking activities on its behalf could conflict with one's official duties. For example, a commanding officer may not hold a position of trust or responsibility in an insurance company or an employee welfare or benefit organization that sells insurance to its members since the official duties of a commanding office require the exercise of control over the solicitation of insurance within the command. Secretary of the Navy Instruction (SECNAVINST) 5760.4 (series) sets forth Department of the Navy policy regarding participation by naval activities and naval personnel in the activities of private associations.

(h) *Equal opportunity.* Naval personnel shall scrupulously adhere to the DOD program of equal opportunity regardless of race, color, religion, sex, age, handicapping condition, or national origin in accordance with equal opportunity directives. See, for example, SECNAVINST 5350.6 (series) and SECNAVINST 5350.10 (series).

(i) *Reporting suspected violations.* Naval personnel who have information that causes them to believe that other DOD personnel have violated a statute or standard of conduct imposed by this instruction should bring the matter to the attention of the appropriate command authority.

(j) *Resolving violations.* Commanding officers or heads of activities shall promptly resolve standards of conduct violations by one or more measures such as divestiture of conflicting interests, disqualification for particular assignments, changes in assigned duties, termination, or disciplinary or other appropriate action as provided by statute or administrative procedures.

(k) *Display of the Code of Ethics for Government Service.* Pub. L. 96-303 requires the display of the *Code of Ethics for Government Service* poster in appropriate areas of federally owned or leased office space. Department of the Navy activities shall display the poster at all installations, facilities, and offices. It may also be displayed in lobbies, conference rooms, reception areas, auditoriums, cafeterias, and other high-traffic areas. To obtain copies, submit requisitions in FEDSTRIP format to the appropriate GSA regional office, requesting national stock number (NSW) 7690-01-099-8167.

§ 721.6 Standards of conduct governing naval personnel.

(a) *Affiliations and financial interests.* [Naval personnel shall not engage in any personal, business, or professional activity or receive or retain any direct or indirect financial interest that places them in a position of conflict between their private interests and the public interests of the United States related to the duties or responsibilities of their official positions. For the purpose of this prohibition, the private interests of a spouse, minor child, or household member are treated as private interests of naval personnel.]

(1) Unless otherwise expressly authorized by action taken under 18 U.S.C. 208(b), all naval personnel who have or acquire an affiliation or a financial interest that creates a conflict or appearance of a conflict with their official duties shall report the possibly disqualifying interest to their appropriate supervisor who shall resolve the matter in accordance with this instruction. If it is determined that the individual should be disqualified from participation in any official activities that are related to the conflicting interest, a formal memorandum of disqualification must be sent to the concerned individual and to any affected immediate subordinate. If the individual cannot adequately perform his or her official duties after such disqualification, he or she must divest himself or herself of such interest or be removed from that position.

(2) Naval personnel need not be disqualified under this section, however, for having one or more of the financial interests or affiliations set forth below. Such holdings are exempted from the provisions of this instruction otherwise pertaining to disqualification, but not disclosure of, such interests and from the provisions and penalties of 18 U.S.C. 208(a) as being too remote or inconsequential to affect the integrity of the services of naval personnel:

(i) Shares of a widely held and diversified mutual, money market, trust, or similar fund offered for sale by a financial institution or by a regulated investment company;

(ii) Deposits in and loans made by banks or other financial institutions, provided they are at customary and generally available terms and conditions;

(iii) Domestic bonds other than corporate bonds, i.e., federal, state, municipal, or local government bonds, regardless of the value of such interest; and

(iv) Interests resulting from holding a position of trust or responsibility in a private, nonprofit association or other organization that fosters and promotes the general interests of the naval service and depends, in part, upon the voluntary efforts of naval personnel acting in their private capacities for leadership. Provided they disclose their relationship with the organization when doing so, naval personnel so serving may, in their official capacities, render advice and make recommendations within the chain of command with respect to particular matters affecting the organization if the final decision is made by higher authority.

(3) Notwithstanding paragraph (a)(2) of this section, the commanding officer or head of the activity to which an individual is assigned who holds an interest described in paragraph (a)(2)(c) or (a)(2)(d) of this section may, in his or her discretion, require such individual to refrain from taking any official action affecting the interests of an entity in which the individual holds such an interest, if determined to be in the best interest of the Government. In this regard, see § 721.5 (b) and (g), and § 721.6(j) for ethics considerations other than 18 U.S.C. 208.

(b) *Using inside information.* [Naval personnel shall not use, directly or indirectly, inside information to further a private gain for themselves or others if that information is not generally available to the public and was obtained by reason of their DOD positions.]

(c) *Using naval position.* [Naval personnel are prohibited from using their official positions to improperly induce, coerce, or in any other manner improperly influence any person to provide any benefit, financial or otherwise, to themselves or others.]

(d) *Dealing with present and former military and civilian personnel.* [Naval personnel shall not knowingly deal on behalf of the Government with present or former Government personnel, military or civilian, whose participation in the transaction would be in violation of a statute, regulation, or policy set forth in this instruction, § 721.15 or 5 CFR Part 737.]

(e) *Commercial solicitations by naval personnel.* To eliminate the appearance of coercion, intimidation, or pressure from rank, grade, or position, [all naval personnel, are prohibited from making commercial solicitations or sales to DOD personnel who are junior in pay grade, or position, at any time or place] (see also SECNAVINST 1740.2 (series)). Commercial sales, whether or not solicited, are prohibited between officer and enlisted military personnel except as specified in paragraph (e)(2) of this section (see U.S. Navy Regulations, 1973, Article 1131).

(1) This prohibition includes, but is not limited to, the solicitation and sale of insurance, stocks, mutual funds, real estate, and other commodities or goods.

(2) This prohibition is not applicable to the one-time sale, lease, or sublease by an individual of his or her own personal property or privately owned or leased dwelling, or to the off-duty employment of naval personnel as employees in retail stores or other situations not involving solicited sales.

(3) With regard to solicitation by and of civilian personnel, the limitation applies only to solicitation of personnel under the supervision, at any level, of the solicitor.

(f) *Assignment of Reserve personnel for training.* Naval personnel who are responsible for assigning reservists for training shall not assign them to duties in which they will obtain information that could be used by them or their private sector employers to gain unfair advantage over civilian competitors.

(g) *Gratuities.* (1) [Except as provided in paragraph (g)(2) of this section, naval personnel and their spouses, minor children, and members of their households shall not solicit, accept, or agree to accept any gratuity for themselves, members of their families, or others, either directly or indirectly from or on behalf of a defense contractor or other entity that:]

(i) [Is engaged in or seeks business or financial relations of any sort with any DOD component;]

(ii) [Conducts operations or activities that are either regulated by a DOD component or significantly affected by DOD decisions; or]

(iii) [Has interests that may be substantially affected by the performance or nonperformance of the official duties of DOD personnel.] A foreign government or any agency thereof shall also constitute a defense contractor under this section where it is engaged in selling to the Department of Defense.

(2) This general prohibition does not apply to the following:

(i) The continued participation in employee welfare or benefit plans of a former employer when permitted by law and approved by the appropriate ethics official;

(ii) The acceptance of unsolicited advertising or promotional items of nominal intrinsic value such as disposable pens or pencils, note pads, or calendars;

(iii) Unsolicited trophies, entertainment, prizes, or awards given for public service or achievement, or in games or contests that are clearly open to the public or that are officially approved for participation by naval personnel;

(iv) Things available to the public (such as university scholarships covered by DOD Directive 1322.6 and free exhibitions by DOD contractors at public trade fairs);

(v) Discounts or concessions extended and realistically available to all naval personnel within a given metropolitan or regional geographic area;

(vi) Participation by naval personnel in civic and community activities when the involvement of DOD contractors is remote from the business purposes of any contractor who is sponsoring, supporting, or participating in the activity (for example, participation in a little league or Combined Federal Campaign luncheon that is subsidized by a DOD contractor);

(vii) Social activities engaged in by officers in command and other naval officials or their representatives with local civic leaders as part of community relations programs of the Department of the Navy in accordance with SECNAVINST 5720.44 (series);

(viii) The participation of naval personnel in widely attended gatherings of mutual interest to Government and industry, sponsored or hosted by institutions of higher learning, industrial, technical, or professional associations (not by individual contractors), provided that, in the case of the associations, their programs have been approved in accordance with DOD Instruction 5410.20. This exception permits acceptance of a luncheon, dinner, or refreshments which are part of the gathering, but does not extend to the acceptance of transportation or overnight accommodations unless authorized under the terms of paragraphs (g)(2) or (h) of this section;

(ix) Situations in which participation by naval personnel at public ceremonial activities of mutual interest to industry or local communities and the Department of the Navy, such as ship launchings, serves the interests of the Government, and acceptance of the invitation is approved by the commanding officer or head of the activity to which the invitee is attached. This exception permits attendance at appropriate functions incident to the activity, and mementos of nominal intrinsic value;

(x) Contractor-provided transportation, meals, or overnight accommodations in connection with official business when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable and the individual reports the circumstances in writing to his or her appropriate supervisor in advance of acceptance or as soon after as possible;

(xi) Attendance at promotional vendor training sessions (such as tuition-free training or refresher courses, seminars, and the like) offered by contractors to facilitate understanding or utilization of their products. Such attendance may be authorized when it is determined to be in the Government's interest by the appropriate supervisor of the individual concerned. Transportation, accommodations, and meals in connection with such training may be accepted only in accordance with paragraph (g)(2)(x) of this section;

(xii) Attendance of naval personnel at gatherings, including social events such as receptions, that are hosted by foreign governments or international organizations, provided that the acceptance of the invitation is approved by the commanding officer or head of the activity to which the invitee is attached or, when there is doubt as to the propriety of acceptance, by higher authority (see SECNAVINST 1650. (series) for further information

pertaining to gifts from foreign governments):

(xiii) Customary exchanges of gratuities between naval personnel and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where the circumstances make it clear that it is that relationship rather than the business of the persons concerned that is the motivating factor for the gratuity and where it is clear that the gratuity is not paid for by any entity described in paragraph (g)(1) of this section;

(xiv) Reimbursement in cash or in kind for travel, lodging, or subsistence expenses not extravagant or excessive in nature in connection with seeking other employment. In such cases the individual shall first notify his or her appropriate supervisor in writing and shall disqualify himself or herself from participating on behalf of the Government in any particular matter affecting the interests of the prospective employer. The disqualification may be rescinded only if the individual concerned notifies his or her appropriate supervisor in writing that he or she is no longer seeking or actively considering employment with that prospective employer; and

(xv) Situations in which, in the sound judgment of the individual concerned or his or her appropriate supervisor, the Government's interest will be served by naval personnel participating in activities otherwise prohibited. In any such case a written report of the circumstances shall be made by the individual concerned or his or her appropriate supervisor in advance of acceptance, or, when an advance report is not possible, within 48 hours after acceptance to the appropriate supervisor, if the appropriate supervisor is not otherwise aware of the acceptance, and to the cognizant ethics counselor, as defined in § 721.8(h).

(3) Naval personnel who receive gratuities, or have gratuities received for them in circumstances not in conformance with the standards of this section shall promptly report the circumstances to the appropriate supervisor for a determination as to proper disposition. The appropriate supervisor shall consult with the cognizant ethics counselor, as defined in §721.8(h).

(4) Procedures with respect to NROTC staff members are set forth in DOD Directive 1215.8.

(h) *Receipts in connection with official travel.* (1) The acceptance of transportation, accommodations, meals, or other services furnished in kind in connection with official travel from sources other than those indicated in paragraph (g)(1) of this section may be authorized by the commanding officer or head of activity to which an individual is assigned if determined to be in the overall interest of the Government when the individual concerned is to be a speaker, panelist, project officer, or other bona fide participant in the event attended and if the entity sponsoring the event customarily provides such services to participants. The acceptance of services of this nature may also be authorized under the foregoing conditions in connection with official travel to participate in events such as symposia, seminars, and the like sponsored by institutions of higher learning, or industrial, technical, or professional associations that are engaged in activities directly or indirectly funded by the Department of Defense, and that are, therefore, entities falling within the scope of paragraph (g)(1) of this section when such activities and the official duties of the naval personnel invited to participate in the event are unrelated.

(2) [Except as indicated in paragraph (h)(1) of this section, naval personnel may not accept personal reimbursement from any source for expenses incident to official travel unless authorized by their commanding officer or head of their activity consistent with guidance provided by the appropriate eithics official] (pursuant to 5 U.S.C. 4111 or other authority). Rather, reimbursement must be made to the Government by check payable to the "Treasurer of the United States". Personnel will be reimbursed by the Government in accordance with regulations relating to reimbursement for official travel.

(3) When transportation, accommodations, meals, or services in kind are furnished to naval personnel by non-Government sources consistent with paragraph (h) of this section, appropriate deductions shall be reported and made in the travel, per diem, or other allowances payable by the Government.

(4) In no case shall naval personnel accept reimbursement either in kind or in cash that is extravagant or excessive in nature.

(i) *Speaking, lecturing, writing, and appearances.* (1) Naval personnel are encouraged to engage in teaching, lecturing, and writing. [Naval personnel (including all Navy and Marine Corps members of both the ready and stand-by reserve), however, shall not, either with or without compensation, engage in activities that are dependent upon information obtained as a result of their Government employment except when the information has been published or is generally available to the public, or it will be made generally available and the official authorized to release such information gives written authorization for the use of nonpublic information on the basis that its use is in the public interest.]

(2) Unless there is a definite executive branch, Department of Defense, or Department of the Navy position on a matter addressed in the appearance or writing and the individual has been authorized by appropriate superior authorities to present that position officially, he or she shall expressly present his or her views on that matter as his or her own and not as those of the Department of the Navy or Department of Defense.

(3) [Naval personnel may not accept a payment or fee for any appearance or writing unless undertaken as a private citizen and not in an official capacity.] See also paragraph (j) of this section relating to outside employment generally.

(4) Naval personnel may not accept an honorarium exceeding $2,000 (excluding actual travel and subsistence expenses for the individual concerned, and for his or her spouse, or an aide, and fees or commissions paid to agents) for any appearance, lecture, speech, or article, unless disbursed to charitable organizations in accordance with procedures of 2 U.S.C. 441i(b). An honorarium is a gratuitous payment which is not intended as compensation for services.

(5) Civilian presidential appointees assigned to the Department of the Navy whose appointments must be made by and with the advice and consent of the Senate shall not receive compensation (excluding travel and subsistence expenses not otherwise prohibited by this instruction) or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to naval responsibilities, programs, or operations or that draws substantially from official material that has not become part of the body of public information. Such personnel are also prohibited in any calendar year from having outside earned income exceeding 15 percent of the rate of pay fixed by law as compensation for their services to the Government or as stipulated and agreed to with the Senate Committee on Armed Services as a condition to the confirmation of their appointment by the Senate, whichever is less. See 5 U.S.C. app. 210.

(j) *Outside employment of naval personnel.* (1) [Naval personnel shall not engage in outside employment or

any other outside activity with or without compensation that:]

(i) [Interferes with or is not compatible with the performance of their Government duties;]

(ii) [May reasonably be expected to bring discredit upon the Government or the Department of the Navy; or]

(iii) [Is otherwise inconsistent with the requirements of this instruction] including the requirement to avoid actions and situations which reasonably can be expected to create the appearance of a conflict of interest.

(2) Enlisted naval personnel on active duty may not be ordered or authorized to leave their post to engage in a civilian pursuit, business, or professional activity if it interferes with the customary or regular employment of local civilians in their art, trade, or profession. See 10 U.S.C. 974.

(3) Active duty Regular officers of the Navy and Marine Corps, including those on terminal leave, shall not be employed by any person or entity furnishing naval supplies or war materials to the United States. If such an officer is so employed, he or she is not entitled to payment from the United States for the duration of that employment, pursuant to 37 U.S.C. 801(a).

(4) Off-duty employment of military personnel by an entity involved in a strike is permissible if the person was on the payroll of the entity prior to the commencement of the strike and if the employment is otherwise in conformance with the provisions of this instruction. After a strike begins and while it continues, no military personnel may accept employment by that involved entity at the strike location.

(k) *Use of civilian and military titles or positions in connection with commercial enterprises.*

(1) [All naval personnel are prohibited from using their grade, rank, title, or position in connection with any commercial enterprise or in endorsing any commercial product.] See also Article 1403, U.S. Navy Uniform Regulations. This does not preclude author identification for materials published in accordance with DOD procedures. A commercial enterprise is any entity that engages in activities that produce income as defined in the Internal Revenue Code of 1954, section 61, and that has not been exempted from paying income taxes pursuant to the Internal Revenue Code of 1954, section 501(a).

(2) All retired military personnel and all members of Reserve components not on active duty are permitted to use their military titles in connection with commercial enterprises, provided that they indicate their inactive Reserve or retired status. If, however, such use of military titles in any way casts discredit upon the Department of the Navy or the Department of Defense or gives the appearance of sponsorship, sanction, endorsement, or approval by the Department of the Navy or the Department of Defense, it is prohibited. In addition, commanders of overseas installations may further restrict the use of titles in overseas areas including use by retired military personnel and members of Reserve components not on active duty.

(l) *Use of Government facilities, property, and manpower.* [Naval personnel shall not directly or indirectly use, take, dispose of, or allow the use, taking, or disposing of Government manpower, property or facilities of any kind, including property leased to the Government, for other than official government business or purpose.] Naval personnel have a positive duty to protect and conserve Government property. Waste or abuse of any Government asset will not be tolerated. See SECNAVINST 5430.92. These provisions do not preclude the use of Government facilities for approved activities in furtherance of naval community relations, provided they do not interfere with military missions or Government business. See SECNAVINST 5720.44 (series) for community relations guidance.

(m) *Prohibition of contributions or presents to superiors.* [Naval personnel shall not solicit contributions from other DOD personnel for a gift to a superior, make a donation or a gift to a superior, or accept a gift from other DOD personnel subordinate to themselves.] This prohibition does not include voluntary gifts or contributions of nominal value on special occasions such as marriage, illness, transfer, promotion, or retirement, provided any gifts acquired with such contributions shall not be extravagant or excessive in nature.

(n) *Gambling, betting, and lotteries.* [While on Government owned, leased, or controlled property, or otherwise while on duty for the Government, naval personnel shall not participate in any gambling activity including a lottery or pool, a game of chance for money or property, or the sale or purchase of a number slip or ticket.] The only exceptions are for activities that have been specifically approved by the Secretary of the Navy.

(o) *Indebtedness.* Naval personnel shall pay their just financial obligations in a timely manner, particularly those imposed by law (such as Federal, state, and local taxes), so that their indebtedness does not adversely affect the Government as their employer. The Department of the Navy is not required to determine the validity or amount of disputed debts.

§ 721.7 Related statutes and directives.

Attention is directed to the following related matters governed by other directives:

(a) *Reports of defense related employment.* Certain categories of present naval personnel formerly employed by defense contractors and certain categories of former or retired naval personnel presently employed by defense contractors are required by statute to report their employment, governmental or private. SECNAVINST 5314.5 (series) implements the statutory requirements, provides a form for making the required report (DD Form 1787), and assigns responsibility to commanding officers or heads of activities for ensuring compliance with the filing requirement by affected civilian employees. Failure to file such reports when required may subject individuals to criminal penalties.

(b) *Political activities.* Chapter 733 of the Federal Personnel Manual, article 6210240 of the Naval Military Personnel Manual, and paragraph 1742.3 of the Marine Corps Manual discuss restrictions on political activities of naval personnel. Related statutes are discussed in § 721.15.

(c) *General responsibilities of naval personnel.* Chapter 11 of U.S. Navy Regulations, 1973, prescribes general regulations governing the rights and responsibilities of naval personnel. If any provisions of this instruction is found to conflict with a provision of Navy Regulations, the provision of Navy Regulations shall be controlling.

§ 721.8 Responsibilities for action.

(a) *The General Counsel of the Navy.* The General Counsel of the Navy is assigned overall responsibility for the ethics and standards of conduct program of the Department of the Navy and is appointed as Designated Agency Ethics Official for the Department of the Navy, the duties of which are prescribed in 5 CFR 738.203. Unless a function is specifically reserved or otherwise assigned here, the General Counsel shall act as the designee of the Secretary and for these purposes is empowered to redelegate all such duties to the extent permitted by 5 CFR 738.204.

(b) *Principal Deputy General Counsel of the Navy.* The Principal Deputy General Counsel of the Navy is appointed as the Alternate Designated Agency Ethics Official for the Department of the Navy and shall

assume the responsibilities of the Designated Agency Ethics Official in the absence of the General Counsel of the Navy. In the absence of both the General Counsel of the Navy and the Principal Deputy General Counsel of the Navy, the Acting General Counsel of the Navy shall assume the responsibilities of the Designated Agency Ethics Official.

(c) *Navy Department officials.* The Chief of Naval Operations and the Commandant of the Marine Corps shall ensure that all naval personnel receive an oral briefing on this instruction upon initial appointment, employment or enlistment. This briefing shall be given at a depth and with an emphasis consistent with the nature of the duties to which such personnel are presently assigned and may be assigned in the foreseeable future. All personnel shall attest in writing to their attendance at the required briefing.

(d) *Commanding officers and heads of activities.* Each individual has a basic responsibility for complying with the requirements of this instruction, but commanding officers and naval personnel exercising command or similar authority have as a leadership/management matter the primary responsibility for ensuring compliance, and they will be held accountable. All commanding officers or heads of commands, bureau, offices, or activities are specifically responsible for the following:

(1) The continuing dissemination of the applicable information in this instruction to all naval personnel within their organizations at least annually in a manner that will ensure familiarity and compliance with the pertinent provisions of this instruction. (This is a continuing requirement and is in addition to the initial briefing required by paragraph (c) of this section);

(2) Providing a copy of this instruction to all naval personnel within their organizations upon request and periodically publishing § 721.18, which is a concise summary of the standards;

(3) The establishment and continuing execution of the requirements, procedures and controls prescribed in § 721.16 to ensure that all naval personnel within their organizations who are required to file reports of their financial circumstances do file them in a timely manner, and that the specified reviews are promptly and carefully made;

(4) Making determinations pursuant to this instruction and 18 U.S.C. 208(b) with respect to disqualification of personnel within their organizations from performing duties in which they have conflicts or apparent conflicts of interest;

(5) Ensuring that Reservists detailed to perform active duty for training in their organizations are assigned duties that will minimize the possibility of obtaining information that could be used by them or their employers to gain an unfair advantage over civilian competitors; and

(6) Receiving and taking prompt and appropriate action on reports concerning violations of this instruction including § 721.15 or related statutes, by personnel within their organizations.

(7) Ensuring that prospective retirees are briefed concerning post-employment requirements and restrictions, as discussed in § 721.12, § 721.15, 5 CFR Part 737, and NAVSO P-1778.

(e) *Inspector General.* The Naval Inspector General and the Inspector General of the Marine Corps shall ensure that periodic administrative inspections of organizations under their cognizance routinely include inquiry into the effectiveness of the organization's compliance with the provisions of this instruction.

(f) *Auditor General.* The Auditor General of the Navy shall ensure that the Naval Audit Service audit program routinely includes inquiry into the effectiveness of the organization's compliance with the provisions of this instruction.

(g) *Deputy ethics officials.* The Judge Advocate General, the Director, Judge Advocate Division (Headquarters Marine Corps), and the Assistant General Counsel of the Navy (Ethics) are appointed as deputy ethics officials and are delegated authority to act for the General Counsel. They shall be responsible for all ethics and standards of conduct functions within their respective areas of jurisdiction including, but not limited to, advice and proper review of all ethics and standards of conduct problems and for finally reviewing, acting upon, and maintaining the Department's file of Financial Disclosure Reports (SF-278's), except that the General Counsel shall perform all standards of conduct functions pertaining to civilian presidential appointees assigned to the Department of the Navy.

(h) *Ethics counselors.* Ethics counselors have been delegated authority for initially reviewing Financial Disclosure Reports (SF-278) and for finally reviewing Statements of Affiliations and Financial Interests (DD Form 1555) submitted by other naval personnel within their organization, activity, or geographical area. In addition, they shall be responsible for providing advice and assistance on matters relating to ethics, standards of conduct, and conflicts of interest under this instruction. Specific appointments of ethics counselors are contained in § 721.16. Other ethics counselors may be appointed by the General Counsel, the Judge Advocate General, the Director, Judge Advocate Division (Headquarters Marine Corps), or the Assistant General Counsel (Ethics).

(i) *Additional duties of senior officials.* The Commandant of the Marine Corps and the Chief of Naval Material, as appropriate, are responsible for bringing the contents of this instruction to the attention of the principal officers of each contractor doing significant business with the Department of the Navy. Chiefs and heads of commands, bureaus, and offices, commanding officers, and other senior officials shall periodically utilize the opportunity afforded by conferences with representatives of industry to direct attention to the regulations and policies set forth in this instruction.

§ 721.9 Personal financial disclosure.

The Department of the Navy maintains two separate and distinct financial disclosure reporting systems utilizing either DD Form 1555 or Standard Form 278. § 721.16 contains the detailed procedures and standards for the submission, review and custody of reports by affected naval personnel of their financial circumstances under both systems. Individuals required to file the SF-278 are not required to file DD Form 1555.

§ 721.10 Post employment restrictions.

Statutory and regulatory restrictions upon the activities of former or retired naval personnel are discussed in § 721.15 of this part and 5 CFR 737.

§ 727.11 Administrative enforcement of 18 U.S.C. 207.

A provision of the Ethics in Government Act of 1978, as amended (18 U.S.C. 207(j)), requires that each agency establish administrative procedures for the enforcement of the post employment restrictions imposed by 18 U.S.C. 207 (a)-(c). The procedures established for the Department of the Navy are contained in § 721.17. They provide that any former officer of employee, after opportunity to be heard, who is found to have violated any such restriction may be barred from engaging in business with the Department of the Navy for a period of up to five years. The implementing Office of Personnel Management Regulations are contained in 5 CFR Part 737.

§ 721.12 Reporting of post-retirement employment.

(a) Each retired Regular officer of the Navy and Marine Corps shall keep the Department of the Navy advised of his or her postretirement employment activities. All retired Regular officers whose names have been on the retired list for three years or less shall file a statement of employment [DD FORM 1357]. All retired Regular officers whose names have been on the retired list for over three years are encouraged to use DD Form 1357 to report their postretirement employment activities. In any event, officers whose names have been on the retired list for more than three years shall, at a minimum, keep the Department of the Navy advised as to whether they are employed by any agency, instrumentality, or department of the United States, and, if so, the position title and employing agency. Each Regular officer retiring hereafter shall file this statement within 30 days after retirement. Whenever the information reported changes, each such officer shall make an appropriate report within 30 days of that change. The Comptroller of the Navy (for Regular Navy officers) and the Commandant of the Marine Corps (for Regular Marine Corps officers) shall advise each officer required to file of the continuing need to report postretirement employment activities as set forth above.

(b) To determine compliance with 37 U.S.C. 801(b) and 5 U.S.C. 5532, reports of postretirement employment shall be submitted:

(1) In the case of a retired Regular Navy officer, to the Commanding Officer, Navy Finance Center (Retired Pay Division), Cleveland, OH 44199; or

(2) In the case of a retired Regular Marine Corps officer, to the Commanding Officer, Marine Corps Finance Center, Kansas City, MO 64197.

(c) If an apparent violation of law or regulation is noted upon review of a report of postretirement employment, a copy of the report shall be transmitted to the Commander, Navy Accounting and Finance Center, or Commandant of the Marine Corps (Code FD), for appropriate action.

(d) The Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, shall provide each Regular officer retiring hereafter, as part of the retirement check-out procedures, with clear instructions concerning the requirement under this instruction to report postretirement employment. These instructions should be combined, where applicable, with the instructions prescribed in SECNAVINST 5314.5A concerning the possible additional requirement to file reports of DOD and defense-related employment (DD Form 1787).

§ 721.13 Delegation of authority.

The General Counsel of the Navy is authorized to modify or supplement § 721.15, § 721.16, and § 721.17 of this instruction in a manner consistent with the policies set forth herein.

§ 721.14 Reports and forms.

(a) Symbol DD–SECNAV 5370–1 has been assigned to the Statement of Affiliations and Financial Interests Report submitted on form DD 1555. Symbol SECNAV 5370–2 has been assigned to the Financial Disclosure Report submitted on form SF 278.

(b) Forms are available as indicated: (1) DD 1357, Statement of Employment (Regular Retired Officers), from Commanding Officer, Navy Finance Center, Cleveland, Ohio 44199; (2) DD 1555, Confidential Statement of Affiliations and Financial Interests (DOD Personnel), stock number 0102–LF–001–550, from Ethics Counselor or through normal channels in accordance with NAVSUP P–2002; (3) DD 1787, Report of Report of DOD and Defense Related Employment, stock number 0102LF–025–5090, from Ethics Counselor or through normal supply channels in accordance with NAVSUP F–2002; (4) OPM 1401, Request to Inspect or Review copies of SF 278, Financial Disclosure Report, from Ethics Counselor; (5) SF 278, Executive Personnel Financial Disclosure Report, stock number 7540–01–070–8444, from Ethics Counselor or Local GSA Stores.

§ 721.15 Digest of Laws

(a) *Conflict of interest laws applicable to present officers and employees.*—(1) *18 U.S.C. 203.* This statute prohibits a Government employee from soliciting or receiving compensation for a representation by himself or another before any federal agency while he is a Government employee.

(2) *18 U.S.C. 205.* (i) This statute prohibits Government personnel from acting as agent or attorney for anyone else before a department, agency, or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

(ii) The following exemptions are allowed:

(A) 18 U.S.C. 205 does not prevent Government personnel from giving testimony under oath or making statements required to be made under penalty of perjury or contempt or from representing another person, without compensation, in a disciplinary, loyalty, or other personnel matter.

(B) 18 U.S.C. 205 also authorizes a limited waiver of its restrictions and those of 18 U.S.C. 203 for the benefit of an officer or employee, including a special Government employee, who represents his or her own parents, spouse, or child, or a person or estate he or she served as a fiduciary. The waiver is available only if approved by the official making appointments to the position. In no event does the waiver extend to representation of any such person in matters in which the employee has participated personally and substantially or that, even in the absence of such participation, are the subject of his or her official responsibility.

(C) Finally, 18 U.S.C. 205 gives the head of a department or agency the authority to allow a special Government employee to represent his or her regular employer or other outside organization in the performance of work under a Government grant or contract if the department or agency head certifies and publishes in the **Federal Register** that the national interest requires such representation.

(3) *18 U.S.C. 208.* (i) Subsection (a) of 18 U.S.C. 208 requires executive branch personnel to refrain from participating in an official capacity in any particular matter in which they, their spouses, minor children, or partners have financial interests. It also prohibits such participation in particular matters in which businesses or nonprofit organizations with which such personnel are connected or are seeking employment have financial interests. A "particular matter" may be less concrete than an actual contract, but is something more specific than rule making or abstract scientific principles. The test is whether the individual might reasonably anticipate that his or her Government action, or the decision in which he or she participates or with respect to which he or she advises, will have a direct and predictable effect upon such financial interests.

(ii) Subsection (b) of 18 U.S.C. 208 permits agencies to grant an ad hoc exemption from subsection (a) of the statute if the outside financial interest is deemed not substantial enough to affect the integrity of Government services. Categories of financial interests may also be made nondisqualifying by a general regulation published in the **Federal Register.**

(4) *18 U.S.C 209.* Subsection (a) of 18 U.S.C. 209 prevents executive branch personnel from receiving, and anyone from paying them, any salary or

supplementation of salary from a private source as compensation for their Government service. Subsection (b) of the statute permits participation in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer. Subsection (c) of this statute exempts special Government employees and anyone serving the Government without compensation. Subsection (d) of the statute exempts contributions, awards, or other expenses under the Government Employees Training Act (5 U.S.C. 4101–18).

(5) *37 U.S.C. 801(a).* A Regular Navy or Regular Marine Corps officer on active duty (including terminal leave) may not be employed by anyone furnishing naval supplies or war materials to the United States. If such an officer is so employed he or she is not entitled to any payment from the United States during that employment.

(b) *Conflict of interest laws applicable to former Government officers and employees.*—(1) *18 U.S.C. 203.* This statute makes it a criminal offense for a former Government employee to share in any fees rendered as compensation for representation before any Government agency in relation to a particular matter in which the United States is a party or has a direct and substantial interest, regardless of whether it was before the agency of which the individual is a former employee during the period of his or her Government service. It covers compensation received only in connection with actual or constructive appearances before an agency. This section does not apply to former Government employees who receive a fixed salary, as opposed to a share of profits, as compensation for their services. It is of concern primarily to professional employees who leave Government service to join an existing partnership.

(2) *18 U.S.C. 207(a) and (b)(i), applicable to all former Government officers and employees.* (i) Subsection (a) of 18 U.S.C. 207 permanently bars a former officer or employee from acting as agent or attorney for anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States is interested and in which the individual participated personnally and substantially in his or her governmental capacity. Subsection (a) similarly bars written or oral communications to the Government or its employees with regard to such matters. The legislative history of this provision makes it clear that it does not preclude post employment activities that may be characterized as rendering aid or assistance but not as acting in a representational capacity. Thus, it does not prohibit a former officer or employee from doing in-house work for an organization under a Government contract or grant that he or she negotiated on behalf of the Government, so long as the former officer or employee does not represent the organization in any dealings, formal or informal, with the Government or its employees relating to that contract or grant. In addition, the phrase "involving a specific party or parties" is interpreted as limiting the particular matters in which the former Government employee may not participate to those specific proceedings, generally adversarial in nature, that affect the legal rights of the parties involved. A former Government officer or employee, therefore, would not be barred by subsection (a) from acting as agent or attorney in connection with a particular matter governed by general rules or policies that he or she had a role in establishing, so long as the particular matter itself was not one in which he or she had participated as a Government officer or employee.

(ii) Subsection (b)(i) of 18 U.S.C. 207, as revised by the Ethics in Government Act, imposes a two-year ban against representational activities identical to those covered by subsection (a) of the statute as to all particular matters that were actually pending under the former officer's or employee's official responsibility during his or her last year of Government service, but in which the employee was not personally and substantially involved.

(iii) Past participation in, or official responsibility for, general rule making, the formulation of general policy or standards, or other similar matters does not preclude representational activities. Similarly, in the scientific field, past participation in discussions of scientific or engineering concepts, the feasibility of scientific or technical accomplishments, or proposed Government programs in their early stages, prior to the formulation of a contract or a contract proposal where specific parties become involved in a matter, does not disqualify former Government personnel from representation with respect to a contract entered into at a later time even though the same general scientific matters may be involved in such a contract.

(iv) *Exemptions under 18 U.S.C. 207.* Former officers or employees may be exempted from the restrictions of Section 207 if the Secretary, in consultation with the Director, Office of Government Ethics, executes a certification published in the **Federal Register** finding that (A) the former officer or employee possesses outstanding qualifications in a scientific, technological, or other technical discipline; (B) the former officer or employee would be acting with respect to a particular matter requiring such qualifications, and (C) to do so would serve the national interest.

(v) *Implementing regulations.* The complete text of the Office of Personnel Management Regulations implementing 18 U.S.C. 207 (as revised by the Ethics in Government Act) are contained in 5 CFR Part 737. These regulations apply to the extent specified therein to all former Government employees who left Government service after June 30, 1979.

(3) *18 U.S.C 207(b)(ii) and (c), applicable to former "senior" Government officers and employees.* (i) "Senior employees" are Federal officers or employees who are (A) in positions at Levels I through V of the Executive Schedule, (B) active duty commissioned officers assigned to pay grade O–9 or above, and (C) other flag and general officers and members of the Senior Executive Service in "senior" positions designated by the Director, Office of Government Ethics. For a position to have been so designated, it must have been determined that it involves "significant decision-making or supervisory responsibility." Further, the position must be in the Senior Executive Service or have a basic rate of pay at least equal to GS–17, step 1, or be at military pay grades O–7 or O–8.

(ii) Subsection (b)(ii) of this statute bars former senior employees, for a period of two years after terminating their employment, from assisting in the representation of another person by "personal presence" at an "appearance" before the United States in connection with any particular matter in which the former senior employee could not act as the person's actual representative because of his or her personal and substantial participation in the matter while in Government service. This provision is designed to prevent a former senior employee from appearing to lend personal influence in the resolution of a matter in which he or she was previously personally and substantially involved, simply by being there. A violation of this subsection might occur when the topic of conversation during an appearance shifts from one in which the former senior employee *was not* personally and substantially involved to one in which he or she *was* so involved and when such a shift was likely. The subsection

does not, however, bar assisting in the preparation for negotiations, hearings, and similar transactions, so long as such assistance occurs in a context not involving the personal presence of the former senior employee at an appearance before the Government.

(iii) Subsection (c) of this statute precludes a former senior Government employee, for a period of one year after terminating his or her employment, from representing anyone vis-a-vis his former agency (the Department of the Navy) or its officers or employees, whether by formal or informal appearance, or by written or oral communications intended to influence the former employing agency. This restriction pertains to all particular matters regardless of prior involvement, and without regard to whether or not a specific party is involved, if the matter is one that is pending before the agency, or if it is one in which the agency has a direct and substantial interest.

(iv) Subsection (c) further precludes attempts to influence rule making or policy formulation, since the matters covered need not involve specific parties, and also includes self-representation. It is limited to contacts with the employing agency, however; the former senior employee may appear before, or attempt to influence any other part of Government if not otherwise precluded by subsections (a), (b)(i) or (b)(ii). There are, furthermore, a number of exceptions to the restriction such as (A) purely social or informational communications, (B) transmission of filings that do not require governmental action, (C) personal matters, (D) self-representation in connection with a judicial or administrative proceeding to which the former senior employee is an involuntary party, (E) expressions of personal views where the former employee has no direct or distinctive indirect pecuniary interest, (F) responses to requests to the former employee for information by the former agency, and (G) participation as the principal researcher or investigator under Government grants.

(v) In addition to the foregoing exceptions, regarding (A) former senior employees who become elected officials of state or local governments, or (B) former senior employees whose subsequent principal occupation or employment is with a state or local government, with an institution of higher education, or with a hospital or medical research organization, the restriction contained in subsection (c) of this statute does not apply to appearances, communications, or other representation on behalf of such government, institution, hospital, or organization.

(c) *Summary of laws particularly applicable to retired Regular officers.*

(1) Prohibited activities. (i) *Claims.* A retired Regular officer of the Armed Forces may not, within two years of retirement, act as agent or attorney for prosecuting any claim against the Government, or assist in the prosecution of such a claim or receive any gratuity or any share of or interest in such a claim in consideration for having assisted in the prosecution of such a claim if such a claim involves the military department in whose service he or she holds a retired status. Nor may a Regular retired officer at any time act as an agent or attorney for prosecuting any claim against the Government, or assist in prosecution of such claim, or receive any gratuity, or any share of or interest in such claim in consideration for having assisted in the prosecution of such claim, if the claim involves any subject matter with which he or she was directly connected while on active duty (see 18 U.S.C. 283).

(ii) *Selling.* (A) A retired Regular officer is prohibited, at all times, from representing any person in the sale of anything to the Government through the military department in whose service he or she holds a retired status (see 18 U.S.C. 281).

(B) Payment may not be made from any appropriation to an officer on a retired list of the Regular Army, the Regular Navy, the Regular Air Force, the Regular Marine Corps, the Regular Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Service, for a period of three years after his or her name is placed on that list, if that officer is engaged for himself, herself, or others in selling, or contracting or negotiating to sell, supplies or war materials to an agency of the Department of Defense, the Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Service [see 37 U.S.C. 801(b)].

(C) For the purposes of 37 U.S.C. 801(b), "selling" means:

(*1*) Signing a bid, proposal, or contract;

(*2*) Negotiating a contract;

(*3*) Contacting an officer or employee of any of the foregoing departments or agencies for the purpose of:

(*a*) Obtaining or negotiating contracts,

(*b*) Negotiating or discussing changes in specifications, price, cost allowances, or other terms of a contract, or

(*c*) Settling disputes concerning performance of a contract; or

(*4*) Any other liaison activity with a view toward the ultimate consummation of a sale, although the actual contract therefor is subsequently negotiated by another person.

(iii) Neither these statutes nor this instruction preclude a retired Regular officer from accepting employment with private industry solely because his or her employer is a contractor with the Government.

(d) *Other laws applicable to present or former DOD personnel.* (1) There are legal prohibitions concerning the following activities which may subject present and former DOD personnel to criminal or other penalties:

(i) Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (see 18 U.S.C. 201).

(ii) Concealing or failing to report to proper authorities the commission of a felony under any criminal statute if such personnel knew of the actual commission of the crime (see 18 U.S.C. 4).

(iii) Conspiring with one or more persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to effect the object of the conspiracy (see 18 U.S.C. 371).

(iv) Lobbying with appropriated funds (see 18 U.S.C. 1913).

(v) Disloyalty and striking (see 5 U.S.C. 7311, 18 U.S.C. 1918).

(vi) Disclosure of classified information (see 18 U.S.C. 798, 50 U.S.C. 783); and disclosure of confidential information (see 18 U.S.C. 1905).

(vii) Habitual use of intoxicants to excess (see 5 U.S.C. 7352).

(viii) Misuse of a Government vehicle (see 31 U.S.C. 1349).

(ix) Misuse of the franking privilege (see 18 U.S.C. 1719).

(x) Deceit in an examination or personnel action in connection with Government employment (see 18 U.S.C. 1917).

(xi) Committing fraud or making false statements in a Government matter (see 18 U.S.C. 1001).

(xii) Mutilating or destroying a public record (see 18 U.S.C. 2071).

(xiii) Counterfeiting and forging transportation requests (see 18 U.S.C. 508).

(xiv) Embezzlement of Government money or property (see 18 U.S.C. 641); failing to account for public money (see 18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her Government employment (see U.S.C. 654).

(xv) Unauthorized use of documents relating to claims from or by the Government (see 18 U.S.C. 285).

(xvi) Certain political activities (see 5 U.S.C. 7321–27 and 18 U.S.C. 602, 603, 606, and 607). These statutes apply to civilian employees; regulations govern military personnel.

(xvii) Any person who is required to register under the Foreign Agents Registration Act of 1938 (see 18 U.S.C. 219) may not serve the Government as an officer or employee. The section does not apply to (A) Reservists who are not on active duty or who are on active duty for training, or (B) a special Government employee in any case in which the department head certifies to the Attorney General that his or her employment by the United States Government is in the national interest.

(xviii) Soliciting contributions for gifts or giving gifts to superiors, or accepting gifts from subordinates (see 5 U.S.C. 7351).

(xix) Acceptance of excessive honoraria [see 2 U.S.C. 441 (i)]

(xx) Acceptance, without statutory authority, of any office or title, of any kind whatever, from any king, prince, or foreign state by any person holding any office of profit or trust of the Federal Government, including all retired military personnel. (U.S. Const. Art. I, section 8).

(xxi) Civilian presidential appointees occupying full-time positions, appointment to which are required to be made by the President, by and with the advice and consent of the Senate, may not have in any calendar year outside earned income attributable to such calendar year that is in excess of 15 percent of their Government salary (see 5 U.S.C. app. 210).

(xxii) Commission of prohibited personnel practices (see 5 U.S.C. 2302).

(xxiii) Acceptance of gifts and decorations (awards) from foreign governments or agents and representatives thereof (5 U.S.C. 7342).

§ 721.16 Submission and processing of reports of financial circumstances (SF–278 and DD Form 1555).

(a) *Purpose.* This section implements the requirement and contains the procedures and standards for the submission, review and custody of Financial Disclosure Reports (SF–278) and Confidential Statements of Affiliations and Financial Interests (DD Form 1555) within the Department of the Navy and identifies those who must file such reports.

(b) *Standards for review of reports of financial circumstances (SF–278 and DD Form 1555).* Each reviewing official shall review each report or statement submitted to determine that:

(1) All items are completed. For SF–278's, see Title II of the Ethics in Government Act of 1978, 5 U.S.C. app. 201 et seq., and the Office of Personnel Management regulations promulgated thereunder, 5 CFR Part 734.

(2) No interest or position is disclosed that violates or appears to violate:

(i) Any applicable provision of law contained in § 721.15; and

(ii) The provisions of this instruction.

(3) A reviewing official shall not sign and date a statement of financial circumstances until the foregoing determination has been made.

(c) *Deputy ethics officials.* Incumbents of the following positions have been appointed deputy ethics officials and have been delegated authority by the General Counsel of the Navy to act for the General Counsel in finally reviewing, acting upon, and maintaining the Department's file of Financial Disclosure Reports (SF–278) and is resolving issues referred to them by commanding officers, other heads of activities or ethics counselors with regard to Confidential Statements of Affiliations and Financial Interests (DD Form 1555): The Judge Advocate General, with respect to Navy officers; The Director, Judge Advocate Division (Headquarters Marine Corps), with respect to Marine Corps officers; and The Assistant General Counsel (Ethics), with respect to civilian employees other than presidential appointees. In exercising this authority they shall comply with applicable statutes, regulations published by the Office of Personnel Management, and additional guidance issued by the Office of Governemnt Ethics or the General Counsel.

(d) *Ethics counselors.* Incumbents of the following positions have been designated ethics counselors and have been delegated authority to initially review Financial Disclosure Reports (SF–278) and to finally review Statements of Affiliations and Financial Interests (DD Form 1555) submitted by other naval personnel within their organization, activity, or geographical area: Counsel for the Comptroller of the Navy; Counsel for the Systems and Facilities Engineering Commands; Counsel for the Military Sealift Command; Counsel for the Office of Naval Research; Counsel for the Naval Data Automation Command; Counsel in charge of Office of the General Counsel field and branch offices; Counsel for the Commandant of the Marine Corps; Deputy Judge Advocate General and Assistant Judge Advocates General; Deputy Assistant Judge Advocate General (Civil Affairs); Special Counsel to the Chief of Naval Operations (OP–OOJ); Assistant for Legal and Legislative Matters, Office of the Chief of Naval Operations (OP–09BL); Special Assistant for Law, Office of the Naval Inspector General (OP–008F); Legal Advisor to the Deputy Chief of Naval Operations (Plans, Policy and Operations) (OP–616B); Special Assistant for Medico-Legal Affairs to the Director of Naval Medicine/Surgeon General; Special Assistant for Legal Support to the Commander, Naval Medical Command; Legal Counsel, Naval Military Personnel Command; Staff and force judge advocates on the staffs of all commands having general courtmartial authority; Commanding officers of Naval Legal Service Offices; and Other ethics counselors who may hereafter be so designated by the General Counsel, the Assistant General Counsel (Ethics), the Judge Advocate General, or the Director, Judge Advocate Division (Headquarters Marine Corps).

(e) *Naval executive personnel.* The term "naval executive personnel" includes those naval personnel whose rank or position places them in one of the following categories:

(1) Civilian presidential appointees;

(2) Regular Navy and Marine Corps officers who have been appointed (with dates of rank) to grade O–7 or above;

(3) Reserve Navy and Marine Corps officers, serving on voluntary extended active duty in excess of 130 days, who have been appointed (with dates of rank) to grade O–7 or above;

(4) Reserve officers, serving as special Government employees, i.e., on active duty for training, in excess of 60 days in any calendar year and whose basic rate of pay is equal to or exceeds the uncapped rate of basic pay fixed for GS–16, step 1;

(5) Members of the Senior Executive Service;

(6) Other civilian employees, including special Government employees, whose positions are classified at GS–16 or above of the General Schedule prescribed by 5 U.S.C. 5332 (which excludes career civilian employees whose positions are classified at or below GS/GM–15) or whose rate of basic rate of pay is fixed other than under the General Schedule at a rate equal to or greater than the uncapped rate of basic pay fixed for GS–16;

(7) Civilian employees who are not members of the Senior Executive Service but who are detailed to a Senior Executive Service position for more than 60 days in any calendar year; and

(8) Employees in the excepted service in positions which are of a confidential or policy-making character unless they have been excluded by the Director, Office of Government Ethics. See Chapter 213 of the Federal Personnel Manual and 5 CFR 734.203.

(f) *Nomination reports (SF-278).* Within five days of transmittal by the President to the Senator of a nomination of an individual to a civilian position, appointment to which requires the advice and consent of the Senate, the individual so nominated shall submit an SF-278 directly to the General Counsel of the Navy. The report shall contain the information prescribed in the "Instructions" attached to the SF-278. These reports shall be certified personally by the General Counsel as Designated Agency Ethics Official, or in his or her absence by the Alternate Designated Agency Ethics Official, and thereupon processed as prescribed in 5 CFR 734.604(c) Nomination reports are not required of military officers nominated for promotion to 0-7 or 0-8 level flag or general officer grades.

(g) *Special reviewing requirement in the case of 0-9 and 0-10 level flag and general officer nominees.* As part of the process for approving nominees for appointment to 0-9 and 0-10 level flag or general officer positions, the Secretary of the Navy must ensure that the nominee has a current SF-278 on file and that the form has been reviewed in relation to the position for which he or she is being considered. Further, the Secretary of the Navy is required to cause a review of all relevant systems of records maintained by the Department of the Navy, including investigative files, to determine if there is any evidence that the nominee has violated the standards of conduct. Each such nomination forwarded to the Secretary of Defense must be accompanied by a certification of the Secretary of the Navy that the required review has been conducted and that the review has or has not disclosed a violation of the standards of conduct.

(h) *New entrant reports (SF-278).* Within 30 days of first assuming a naval-executive-personnel rank or position, a reporting individual shall submit an SF-278 in the same manner prescribed in paragraph (i)(2) of this section. The report shall contain that information prescribed for new entrant reports in the "Instructions" attached to the SF-278. No such report is necessary if the reporting individual has left another position requiring the submission of an SF-278 within 30 days prior to assumption of the new position, or has submitted an SF-278 as a nominee for the new position within 30 days of assuming it. As special Government employees, Reserve officers (as defined in paragraph (e)(4) of this section) commencing active duty for training are initially exempt from this reporting requirement. If, however, such an officer performs active duty for training in excess of 60 days in a calendar year, whether or not in a pay status, a report shall be filed within 15 days after serving the sixty-first day. New entrant reports shall be reviewed and forwarded by the appropriate supervisor and ethics counselor in the same manner as annual reports (see paragraph (i) of this section).

(i) *Annual Financial Disclosure Report (SF-278).*

(1) *Execution and signature.* At any time after 1 January, but not later than 1 May, naval executive personnel who served as such for more than 60 days during the preceding calendar year shall submit an annual Financial Disclosure Report. These reports are to be completed in accordance with the "Instructions for Completing SF-278" attached thereto. Even though no changes have occurred since the last filing of an SF-278, a complete report is required for each calendar year. Military officers newly promoted to the grade of O-7 and having dates of rank after 1 November of the preceding calendar year need not file an annual report. Their attention, however, is directed to paragraph (h) of this section.

(2) *Submission.* (i) SF-278's shall be submitted as follows:

(A) Civilian presidential appointees, to the General Counsel of the Navy;

(B) Other naval executive personnel assigned to positions within the Department of the Navy, to their appropriate supervisor for review and forwarding;

(C) Navy and Marine Corps officers serving in the various Defense agencies (e.g., DNA, DCA, DMA, DLA, DIA), or in the Central Intelligence Agency, to the Designated Agency Ethics Officials of those agencies;

(D) Navy and Marine Corps officers serving in the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, National Security Council, National Aeronautics and Space Administration, or in other assignments outside of the Department of the Navy not specifically mentioned in this paragraph, via their appropriate supervisor, to the Director for Personnel and Security, Washington Headquarters Services (OSD); and

(E) Navy and Marine Corps officers serving in joint, unified or specified commands, through their superiors for processing in accordance with procedures adopted by the unified, specified, or joint commander.

(ii) Naval executive personnel who are double or triple "hatted" shall meet the filing requirements of each position independently of the other.

(3) *Initial action by appropriate supervisor.* When a report is submitted, the appropriate supervisor shall attach to the report an unclassified copy of the official position description and thereupon forward both documents to the cognizant ethics counselor.

(4) *Ethics counselor.* —(i) *Review.* The ethics counselor shall review the report in accordance with the standards set forth in paragraph B. Ethics counselors need not audit reports to ascertain whether the facts reported therein are accurate. They may be taken at face value unless there is an apparent omission or ambiguity, or the ethics counselor has independent knowledge of matters at variance with the report.

(ii) *Disposition by ethics counselor.* (A) If the ethics counselor concludes that no actual or apparent violation of law or regulation is disclosed, he or she shall enter the following endorsement in the "Comments" section of page 1 of the report: "The information contained in this report discloses no conflict of interest under applicable laws and regulations." The ethics counselor shall thereupon date and sign the report with full name, command or activity, and the title "Ethics Counselor," and forward it to the cognizant deputy ethics official.

(B) If the ethics counselor concludes that no violation is disclosed but that the reporting individual has a direct or indirect financial interest or affiliation which, given other circumstances or different duties and responsibilities within the Department, might give rise to a conflict of interest, he or she shall issue a memorandum of caution to the reporting individual. One copy of the memorandum of caution shall be delivered to the appropriate supervisor and a second copy attached to the SF-278. Thereafter, the ethics counselor shall endorse and forward the report in the manner provided in paragraph (i)(4)(ii)(A) of this section.

(C) If the ethics counselor concludes that the information contained in the report discloses an actual or apparent violation of applicable law or regulation, he or she shall so state by making an appropriate endorsement on page 1 of the report and return the report to the appropriate supervisor.

(5) *Appropriate supervisor review.* If an ethics counselor returns to an appropriate supervisor an SF-278 containing an endorsement indicating an

actual or apparent conflict of interest, the appropriate supervisor shall review the report in accordance with the standards set forth in paragraph (b) of this section.

(i) If the appropriate supervisor concludes that no actual or apparent conflict of interest is disclosed, he or she shall endorse, date, sign, and return the report to the ethics counselor. If the ethics counselor agrees with the conclusion of the appropriate supervisor, he or she shall forward the report to the cognizant deputy ethics official, noting concurrence. Otherwise, the matter shall be referred to higher authority within the command or activity for resolution, and the report, noting that resolution is pending, shall be forwarded to the cognizant deputy ethics official.

(ii) If the appropriate supervisor concludes that an actual or apparent conflict is disclosed, he or she shall issue a memorandum of disqualification to the reporting individual. One copy of the memorandum shall be delivered to the ethics counselor and a second copy attached to the SF-278. The appropriate supervisor shall endorse and forward the report to the cognizant deputy ethics official noting the disqualification in the endorsement.

(6) *Time limits for review and disposition.* Action by the ethics counselor and, if required, the appropriate supervisor, must be completed and the report forwarded to the cognizant deputy ethics official within 15 days of submission but not later than 15 May. If necessary to provide sufficient time to accomplish the required review, commanding officers and heads of activities may require subordinate naval executive personnel to submit their SF-278's prior to 1 May. When a filing extension has been granted in accordance with the procedures of paragraph (k) of this section and a report is received after 1 May, review shall be completed and the report forwarded no later than 15 days after the report is received by the appropriate supervisor.

(j) *Termination reports (SF-278).* Within thirty days after termination of employment from a naval-executive-personnel position, a reporting individual shall submit an SF-278 in the same manner prescribed in paragraph (i)(2) of this section. Termination reports shall contain information covering the preceding calendar year, if an annual report was not filed for that year, and that portion of the present calendar year up to the date of termination of employment. A termination report is not required of an individual who, within 30 days of such termination, assumes another position requiring the submission of an SF-278. Termination reports shall be reviewed and forwarded by the appropriate supervisor and ethics counselor in the same manner as annual reports.

(k) *Extension of filing deadlines (SF-278).* (1) The General Counsel, in the case of civilian presidential appointees, and the cognizant deputy ethics official in other cases (the cognizant Designated Agency Ethics Official in the case of those flag officers serving in entities identified in paragraphs (i)(2) (i)(3) and (5) of this section, may grant, for good cause, a filing extension of up to 45 days. All requests for extensions shall be submitted in writing to the cognizant official. A copy shall be provided concurrently to the appropriate supervisor and cognizant ethics counselor. The request shall contain a clear statement of the reasons for the request and shall be submitted well in advance of the original filing deadline. The Director, Office of Government Ethics may grant a further extension of up to 45 days. Requests necessitating such a further extension of time shall be forwarded by the cognizant official, with his or her comments attached thereto, to the Director, Office of Government Ethics.

(2) Reporting individuals who anticipate termination of their employment on or before 1 September of any given calendar year may request an extension from the cognizant official of up to 90 days in order to file one consolidated annual and termination report. Combined annual and termination reports must be filed within 30 days after termination of employment but not later than 30 July. No further report is required unless a reportable event occurs between the dates of filing and termination of employment.

(l) *Special instructions (SF-278).* (1) The Under Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps shall ensure that by 10 January of each year, the directors of civilian personnel offices provide to commanding officers and heads of activities served by their offices a list of the names and addresses of civilian naval executive personnel assigned to their respective organizations who are required to file an annual Financial Disclosure Report (SF-278) pursuant to paragraph (i) of this section. They shall similarly ensure that the directors of civilian personnel offices provide to commanding officers and heads of activities served by their offices the names and addresses of civilian naval executive personnel assigned to their respective organizations who are required to file new entrant or termination Financial Disclosure Reports pursuant to paragraphs (h) and (j) of this section. This information shall be provided immediately upon the appointment of such personnel to a naval-executive-personnel position or upon receipt of an SF-52 requesting approval of the reitrement, resignation, or removal of an individual from such a position. Copies of these lists shall also be provided concurrently to the Assistant General Counsel (Ethics).

(2) Commanding officers or heads of activities shall provide timely, written notification and an SF-278, individually, to all civilian naval executive personnel under their cognizance whenever such personnel are required to file a new entrant, annual, or termination Financial Disclosure Report and shall ensure that all such reports are timely filed. They shall further provide to the Assistant General Counsel (Ethics) for appropriate action the names and addresses of all civilian naval executive personnel who continue to fail to submit any such report for more than thirty days after the required date of filing. See paragraph (m) of this section.

(3) The Judge Advocate General or the Director, Judge Advocate Division (Headquarters Marine Corps), as appropriate, shall provide timely, written notification and an SF-278, individually, to all flag and general officers whenever they are required to submit a new entrant, annual, or termination Financial Disclosure Report.

(4) The Under Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps shall ensure that agreements with other DOD components and Government agencies involving detailing of Department of the Navy executive personnel contain a requirement that the other DOD component or Government agency shall forward to the cognizant Navy deputy ethics official a copy of the detailed individual's finally reviewed Financial Disclosure Reports, including a statement as to the resolution of any conflict or apparent conflict of interests indicated.

(m) Penalty for failure to file SF-278. In addition to sanctions otherwise provided by law or regulation, the Ethics in Government Act of 1978 provides for a fine of up to $5,000 for anyone who knowingly falsifies or willfully fails to file an SF-278.

(n) *Availability of SF-278.* Supplies of SF-278 are available from ethics counselors and GSA Supply Distribution Facilities under Stock Number 7540-01-070-8444.

(o) *Confidential Statements of Affiliations and Financial Interests (DD Form 1555).*—(1) *Personnel required to file.* The following naval personnel, except those required to file SF-278, are required to submit initial and annual Confidential Statements of Affiliations and Financial Interests (DD Form 1555):

(i) Regular Navy and Marine Corps officers frocked to O-7, and Reserve Navy and Marine Corps officers frocked to O-7 serving on voluntary extended active duty in excess of 130 days;

(ii) Commanding officers or heads of, and executive officers or deputy heads of:

(A) Navy shore installations with 500 or more military and civilian personnel (including foreign national and indirect-hire personnel regularly attached but excluding personnel attached for duty under instruction); and

(B) All Marine Corps bases and air stations;

(iii) Civilian personnel classified at GS-13 or above, or whose positions are classified at a comparable rate of pay under other authority, and military personnel in grades O-5 and O-6, when it is determined by the commanding officer or head of the activity that the responsibilities of such personnel require the exercise of judgment in making a Government decision or in taking Government action in regard to activities in which the final decision or action may have a significant economic impact on the interests of any non-federal entity. Included, among others, are persons who, as part of their basic duties, sign, negotiate, recommend, or approve contracts, or other procurement actions and those who, as part of their basic duties, are engaged in auditing activities, including supervising others who are engaged in auditing activities or participating in the development of policies and procedures for performing audits;

(iv) Other civilian and military personnel of lesser rank or grade, if their commanding officer or head of activity determines that their responsibilities are comparable to those set forth in subparagraph (o)(1)(iii) of this section;

(v) Special Government employees, except those in the following categories (who may, in any case, be required to submit statements when specifically requested to do so by their appropriate supervisor):

(A) Special Government employees, other than members of advisory committees, who are not a "consultant" or "expert" as those terms are defined in Chapter 304 of the *Federal Personnel Manual;*

(B) Physicians, dentists, and allied medical specialists engaged only in providing service to patients;

(C) Veterinarians providing only veterinary services;

(D) Lecturers participating only in educational activities;

(E) Chaplains performing only religious services;

(F) Individuals in the motion picture and television fields who are utilized only as in DOD productions;

(G) Members of selection panels for NROTC candidates;

(H) Reserve officers on active duty solely for training.

(2) *Time of submission.*—(i) *Initial statement.* Affected naval personnel shall submit a DD Form 1555 to their appropriate supervisor within 30 days of assuming duties requiring the submission of such statements. The information shall be current as of the filing date. Upon transfer or reassignment from one position to another for which the filing of a statement is required, individuals shall submit a current statement to the appropriate supervisor of their new position.

(ii) *Annual statements.* Affected naval personnel shall submit a DD Form 1555 to their appropriate supervisor by 31 October of each year, with information current as of 30 September of that year. Even though no changes have occurred since the last filing, a complete statement is required.

(iii) *Extension of filing deadline.* When required by reason of duty assignment, infirmity, or other good cause, an appropriate supervisor, with the concurrence of the cognizant ethics counselor, may grant an extension of the filing deadline, not to exceed 45 days. Any annual statement filed after 31 October shall include an appropriate notation as to whether any extension of the filing deadline has been granted.

(p) *Review and disposition of DD Form 1555.*—(1) *Review.* Upon receipt of a Confidential Statement of Affiliations and Financial Interests, the appropriate supervisor shall review the statement in accordance with the standards set forth in paragraph (b) of this section, record his or her evaluation in the appropriate block on the form, and forward it to the cognizant ethics counselor for further review. If the ethics counselor agrees with the supervisor's evaluation, he or she shall note concurrence on the statement and return it to the appropriate supervisor for disposition in accordance with paragraph (p)(2) below. If the ethics counselor disagrees with the supervisor's evaluation, he or she shall forward a recommendation for appropriate resolution to the reporting individual's commanding officer or head of activity for implementation. If the commanding officer or head of activity disagrees with the recommendation of the ethics counselor and resolution of the matter is not achieved, the commanding officer or head of activity shall append his or her comments and recommendations to the record and forward the matter to the cognizant deputy ethics official who shall render a final decision. Local review and resolution of conflicts or apparent conflicts of interest disclosed in annual statements shall be accomplished by 30 November of each year and within 30 days after filing in cases where an extension has been granted and in the case of initial reports.

(2) *Disposition.* Confidential Statements of Affiliations and Financial Interests and a complete record of all action taken thereon shall be retained for a period of six years in a central location within the command or activity to which the reporting individual was assigned at the time of filing, after which time they may be destroyed.

(q) *Review of positions and notification to file (DD Form 1555).* Commanding officers and heads of activities shall ensure that position descriptions of individuals described in paragraphs (o)(1)(iii) and (o)(1)(iv) of this section contain a statement that the incumbent must file a Confidential Statement of Affiliations and Financial Interests. All new or revised position descriptions shall be reviewed to determine those requiring such statements. Any individual may request review of a decision requiring submission of a statement by him or her through established personnel of the Department. Additionally, commanding officers and heads of activities shall notify in writing naval personnel required to file Confidential Statements by 30 September of each year, and shall furnish a DD Form 1555 to them. Lists shall be maintained to ensure that all statements have been completed and returned by 31 October, or as otherwise specified when extensions have been granted.

(r) *Availability of DD Form 1555.* Supplies of DD Form 1555 are available from the Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120, under Stock Number 0102-LF-001-5550.

(s) *Privacy Act considerations.* Financial Disclosure Reports (SF-278) and Confidential Statements of Affiliations and Financial Interests (DD Form 1555) contain sensitive personal information. Completed SF-278's are

releasable to Government officers and employees and to the public, but only upon submission of a completed Request to Inspect or Receive Copies of SF-278, Financial Disclosure Report (OPM Form 1401) to the deputy ethics official having custody of the report. Naval personnel officially responsible within the chain of command for reviewing or approving a given individual's SF-278 need not submit such requests. Otherwise, care shall be exercised to ensure that completed SF-278's and DD Forms 1555 are seen only by personnel on a need-to-know basis in connection with their official duties. Adequate safeguards shall be utilized to prevent inadvertent or unauthorized disclosure of the completed forms and statements during review, transmittal, and storage. In addition, SECNAVINST 5211.5C prescribes other general restrictions and requirements applicable to the collection, use, and dissemination of these records, and contains Rules of Conduct under the Privacy Act which are applicable to all naval personnel.

(t) *Effect of disclosure.* The reporting of information or the filing of any report or statement of financial circumstances shall not be deemed to authorize the receipt of income, gifts, honoraria or reimbursements, the holding of assets, liabilities, or positions, or involvement in transactions otherwise prohibited by law, Executive Order, or regulation.

§ 721.17 Procedures for administrative enforcement of post employment restrictions of 18 U.S.C. 207.

(a) *Basic procedures.* The administrative enforcement of restrictions on post employment activities imposed by 18 U.S.C. 207 will be accomplished in accordance with 5 CFR 737.27 and these procedures.

(b) *Delegation of authority.* Authority to administer proceedings under these provisions is delegated to the General Counsel of the Navy with power to redelegate.

(c) *Initiation of administrative disciplinary hearing.* (1) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information is not frivolous, the General Counsel expeditiously shall provide such information, along with any comments, to the Director, Office of Government Ethics, and to the Criminal Division, Department of Justice, and shall coordinate any investigation or possible administrative disciplinary action with the Department of Justice. If that Department advises that it does not intend to institute criminal proceedings, such coordination shall no longer be required.

(2) Upon receipt of advice from the Department of Justice that it does not intend to institute criminal proceedings, in circumstances where it has been determined, after appropriate review, that there is reasonable cause to believe that a former Department of the Navy officer or employee (hereafter referred to as a "former employee") has violated 18 U.S.C. 207 (a), (b), or (c) or implementing regulations, the General Counsel will refer the case to the head of the activity where the alleged violation occurred. The activity head may initiate an administrative disciplinary proceeding by providing the former employee with notice of the alleged violation. The privacy of former employees shall be protected as to allegations made prior to a determination of sufficient cause to initiate an administrative disciplinary proceeding.

(d) *Content of notice.* (1) Notice must include:

(i) A statement of allegations, and the basis thereof, sufficiently detailed to enable the former officer or employee to prepare a defense;

(ii) Notification of the right to a hearing;

(iii) The procedure for requesting a hearing;

(iv) A statement to the effect that if the former employee fails to request such a hearing, the Department of the Navy may, nevertheless, take disciplinary action if the former employee is determined to have violated 18 U.S.C. 207.

(2) A copy of these Procedures for Administrative Enforcement shall be provided with this notice.

(3) *Request for a hearing.* (1) Any former employee who is notified of an alleged violation of 18 U.S.C. 207 pursuant to paragraph (c)(2) of this section may, within 20 days from the date of such notice, request a hearing by writing to the activity head who issued the notice.

(2) If the former employee fails to request a hearing in accordance with paragraph (c)(1) of this section, the activity head will notify the General Counsel who may, nevertheless, render a final administrative decision in the matter and, if appropriate, impose the sanctions specified in paragraph (k) of this section.

(f) *Hearing examiner.* (1) The presiding official shall be an individual to whom the General Counsel has delegated authority to make an initial decision (hereafter referred to as a "hearing examiner").

(2) A hearing examiner shall be an attorney with not less than five years experience in the practice of law subsequent to admission to the bar.

(3) A hearing examiner shall be impartial. An individual who has participated in any manner in the decision to initiate proceedings may not serve as a hearing examiner in those proceedings.

(g) *Time, date, and place of hearing.* (1) The hearing shall be held at a reasonable time, date, and place.

(2) The date of the hearing shall be established with due regard to the former employee's need for adequate time to prepare a defense properly and the need to resolve expeditiously allegations that may be damaging to his or her reputation.

(h) *Hearing Rights.* This subject of the hearing shall have, at a minimum, the following rights:

(1) To represent himself or herself, or to be represented by counsel;

(2) To introduce and examine witnesses, and to submit physical evidence;

(3) To confront and cross-examine witnesses;

(4) To stipulate as to facts not in issue;

(5) To present oral argument; and

(6) To receive a transcript or recording of the proceedings.

(i) *Burden of proof.* The Department of the Navy has the burden of proof. A violation is established only by a preponderance of the evidence.

(j) *Decision.* (1) Upon conclusion of the hearing, the hearing examiner shall make a determination exclusively upon matters of record in the proceeding, which determination shall be in the form of a written decision. This decision [hereafter referred to as the "initial decision"] shall include all findings of fact and conclusions of law relevant to the matters at issue, including possibly mitigating circumstances. In cases where a violation is found to have occurred, the initial decision shall also include a recommendation as to what measures would constitute appropriate action. The initial decision shall be transmitted to the General Counsel, via the activity head, and a copy shall be mailed or otherwise furnished to the affected former employee.

(2) Within 20 days following receipt of a copy of the initial decision, the former employee may file an appeal with the General Counsel. An appeal shall be in writing, and shall set forth all errors of fact, or law, or both, together with the reasons therefor, alleged to exist in the initial decision.

(3) Upon review of the initial decision, and any appeal timely filed, the General Counsel shall issue a written decision which shall be based solely upon the

record of the proceedings, or those portions thereof cited by the parties to limit the issues. If the General Counsel modifies or reverses the initial decision, findings of fact or conclusions of law that differ from those of the hearing examiner shall be specified. The decision of the General Counsel shall be deemed a final administrative determination.

(k) *Administrative sanctions.* The General Counsel may take appropriate disciplinary action in the case of any former employee found in violation of 18 U.S.C. 207 (a)–(c) or implementing regulations by:

(1) Prohibiting the former employee from making, on behalf of any other person, except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Department of the Navy, its officers or employees, on any matter of business, for a period not to exceed five years. This may be enforced by directing present officers and employees of the Department to refuse to participate in any such appearance, or to accept any such communication; and

(2) Taking other appropriate disciplinary action.

(l) *Judicial review.* Any person found in violation, as described, may seek judicial review of the final administrative determination.

§ 721.18 Bedrock standards of conduct for Department of the Navy Personnel.

(a) To maintain public confidence in the integrity of the Department of the Navy which is essential to the performance of its mission, all naval personnel shall comply with the standards of conduct listed in this section.

(b) Avoid any action, whether or not specifically prohibited, which might result in or reasonably be expected to create the appearance of:

(1) Using public office for private gain,

(2) Giving preferential treatment to any person or entity,

(3) Impeding Government efficiency or economy,

(4) Losing complete independence or impartiality,

(5) Making a Government decision outside official channels, or

(6) Adversely affecting the confidence of the public in the integrity of the Government.

(c) Do not engage in any activity or acquire or retain any financial interest which results in a conflict between your private interest and the public interest of the United States related to your duties.

(d) Do not engage in any activity that might result in or reasonably be expected to create the appearance of a conflict of interest.

(e) Do not accept gratuities from defense contractors.

(f) Do not use your official position to influence any person to provide any private benefit.

(g) Do not use inside information to further a private gain.

(h) Do not use your rank, title, or position for commercial purposes.

(i) Avoid outside employment or activity that is incompatible with your duties or may bring discredit to the Navy.

(j) Never take or use Government property or services for other than officially approved purposes.

(k) Do not give gifts to your superiors or accept them from your subordinates. [Consult § 721.6 for situations considered to fall outside this rule.]

(l) Conduct no official business with persons whose participation in the transaction would be in violation of law.

(m) Seek ways to promote efficiency and economy in Government operation and public confidence in its integrity.

Dated: February 14, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve; Federal Register Liaison Officer.

[FR Doc. 85-4881 Filed 3-5-85; 8:45 am]

BILLING CODE 3810-AE-M

POSTAL SERVICE

39 CFR Part 601

Procurement of Property and Services; Amendments to Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Amendments to Postal Contracting Manual.

SUMMARY: The Postal Service announces that it is amending the Postal Contracting Manual to increase the rates for procurement of international mail transportation by water to reflect current marine operating costs.

EFFECTIVE DATE: February 15, 1985.

FOR FURTHER INFORMATION CONTACT: Eugene A. Keller, (202) 245-4818.

SUPPLEMENTARY INFORMATION: The Postal Contracting Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), has been amended by the issue of PCM Circular 85-1, dated February 15, 1985.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the **Federal Register** and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104.)

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service, Incorporation by reference.

Explanation of Changes

Section 19-504 is revised to increase the rates for procurement of international mail transportation by water to reflect current marine operating costs. This revision supersedes the rates in PCM Circular 83-4, May 5, 1983, and in Section 19-504 of forthcoming Transmittal Letter 35.

(5 U.S.C. 552(a); 39 U.S.C. 401, 404, 410, 411)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-5358 Filed 3-5-85; 8:45 am]

BILLING CODE 7710-12-M

39 CFR Part 601

Procurement of Property and Services; Cumulation of PCM Circulars Into Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Cumulation of PCM Circulars 82-1 through 84-3 into Postal Contracting Manual.

SUMMARY: Several years ago the Postal Service began a new and more expeditious method of amending the Postal Contracting Manual (PCM) by issuing PCM Circulars. Periodically all circulars previously issued are cumulated in a Transmittal Letter, noticed in the **Federal Register**, and transmitted to subscribers by GPO in the usual way. This document gives notice of the cumulation in Transmittal Letter 35 of PCM Circulars 82-1 through 84-3.

EFFECTIVE DATE: Transmittal Letter 35—August 15, 1984; Substantive changes to the PCM-date of each PCM Circular.

FOR FURTHER INFORMATION CONTACT: Eugene A. Keller, (202) 245-4818.

SUPPLEMENTARY INFORMATION: For the above reasons, the Postal Contracting Manual, which has been incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), has been amended by the issuance of Transmittal Letter 35, dated August 15, 1984.

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service.

PART 601—[AMENDED]

Accordingly, title 39 CFR Part 601 is amended by adding the following to § 601.105:

§ 601.105 Amendments to the Postal Contracting Manual.

Transmittal letter	Dated	Federal Register publication
35	Aug. 15, 1984	50 FR

(5 U.S.C. 552(a), 39 U.S.C. 401, 404, 410, 411, 2008)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-5359 Filed 3-5-85; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 81-893; File No. ENF 83-18; FCC 85-35]

Implementation of Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry); and American Telephone and Telegraph Co., Request for Approval To Supplement Capitalization of AT&T Information Systems in Connection With Transfers of Embedded Customer Premises Equipment

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order on reconsideration (MO&O).

SUMMARY: The MO&O reviews petitions for reconsideration of the Commission decision which established rules and requirements regarding the detariffing of customer premises equipment owned by AT&T. In the first report and order in CC Docket 81-893, released December 15, 1983, the Commission permitted AT&T to transfer to AT&T Information Systems (AT&T-IS) virtually all embedded CPE which AT&T received from the Bell Operating Companies (BOCs) as a result of the divestiture proceeding. Petitioners requested review of some of the conditions and requirements of that transfer. After review, the Commission affirmed its earlier decision with only minor changes in: (1) The procedure to ensure that customer service is not terminated due to failure to pay AT&T-IS's customer premises equipment charge; and (2) in the calculation of reimbursement expenses for refurbishment of equipment to be paid by AT&T-IS to the BOCs.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Geoffrey Jarvis, Rose Crellin, John Cimko (202) 632-9342.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order on Reconsideration

In the matter of procedures for implementing the detariffing of customer premises equipment and enhanced services (second computer inquiry) CC Docket No. 81-893; American Telephone and Telegraph Company, request for approval to supplement the capitalization of AT&T information systems in connection with the transfers of embedded customer premises equipment File No. ENF 83-18.

Adopted: January 18, 1985.

Released: January 29, 1985.

By the Commission.

I. Introduction

1. We have before us petitions for reconsideration of our decision [1] establishing rules and requirements regarding the detariffing of embedded customer premises equipment [2] (CPE) owned by American Telephone and Telegraph Company (AT&T). In the Order, we permitted AT&T to transfer to AT&T Information Systems (AT&T-IS) virtually all embedded CPE [3] which AT&T received from the Bell Operating Companies (BOCs) as a result of the divestiture proceeding. [4] The transfer was made subject to a number of conditions and requirements we established as a means of balancing the interests of ratepayers, investors, the telecommunications industry, and the public generally. [5] We have concluded, based upon our extensive review of these petitions and of oppositions, comments, replies, and other filings made in this proceeding, [6] that neither the basic principles nor the broad outline of the detariffing plan established in the *Order* is in need of any revision. We have found no reason to depart from our conclusion that the procedures and requirements established in the *Order* are the best means of implementing the objectives of *Second Computer Inquiry* [7] with regard to embedded CPE owned by AT&T.

A. Background

2. Our efforts in this proceeding to establish a program for the detariffing of embedded equipment owned by AT&T are part of our continuing implementation of deregulatory principles articulated in *Second Computer Inquiry*. In that proceeding, we made the finding that tariff regulation of CPE was no longer warranted because such regulation tended to thwart the competitive provision of CPE. *Final Decision*, 77 FCC 2d at 388. Our analysis of the CPE marketplace led us to conclude that there no longer was any justification for tariff regulation of carrier-provided CPE. *Id.* at 441; *see Reconsideration Order*, 84 FCC 2d at 65; *Further Reconsideration Order*, 88 FCC 2d at 513. [8] Our

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[1] CC Docket No. 81-893 & File No. ENF 83-18, Report and Order, 95 FCC 2d 1276 (1983) (hereinafter *Order*).

[2] For a definition of CPE which is subject to this proceeding, see *Order*, 95 FCC 2d at 1278 n.2. For a definition of embedded CPE, for purposes of this proceeding, see *id.* at 1279 n.5.

[3] The *Order* did not apply to embedded CPE used in mobile telephone service. The detariffing of this equipment has been ordered by the Commission in a separate Order. *See* CC Docket No. 81-893, Second Report and Order, FCC 84-269, 49 FR 27754 (released June 29, 1984). The *Order* also did not apply to specialized CPE designed for use by disabled persons. *See Order*, 95 FCC2d at 1329-30.

[4] See the Modified Final Judgment (MFJ) of the United States District Court for the District of Columbia (District Court) in *United States* v. *American Tel. & Tel. Co.*, 552 F.Supp. 131 (D.D.C. 1982, *aff'd sub nom. Maryland* v. *United States*, 460 S.CT. 1001 (1983) (hereinafter *United States* v. *AT&T*).

[5] See Part I.B, *infra*, for a summary of the provisions of the *Order*.

[6] A list of parties filing pleadings in this proceeding, together with a list of the acronyms and abbreviations used to refer to these parties in this Order, is attached as an Appendix to this Order. A summary of those pleadings has been placed in the docket of this proceeding.

[7] *Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 FCC 2d 384 (*Final Decision*), *reconsideration*, 84 FCC 2d 50 (1980) (*Reconsideration Order*), *further reconsideration*, 88 FCC 2d 512 (1981) (*Further Reconsideration Order*), *aff'd sub nom. Computer & Communications Industry Ass'n* v. *FCC*, 693 F.2d 198 (D.C.Cir 1982), *cert. denied sub nom. Louisiana Pub. Serv. Comm'n* v. *FCC*, *103 S.Ct 2100* (1983) (hereinafter *Second Computer Inquiry*).

[8] We have emphasized in this proceeding that the fostering of competition in the telephone equipment marketplace is an important Commission objective. *See* CC Docket No. 81-893, Notice of Proposed Rulemaking, 94 FCC 2d 76, 89 & n.23 (1983) (hereinafter *Notice*). Nearly 10 years ago we noted that: "[Our] decisions have permitted the terminal equipment market to evolve naturally into a multiple supplier market where competitors utilize state of the art technology and features to capture a portion of the market. In this environment there is no incentive for competitors to build and market terminal devices which are overpriced or so overbuilt that they are not affordable." FCC, *Report by the Federal Communications Commission on Domestic Telecommunications Policies*, Attachment B, at 67 (Sept. 27, 1976). It also is instructive to note that the District Court in the divestiture proceeding has recognized that the development of a competitive marketplace has directly benefitted CPE customers. The Court has indicated that "should [AT&T] * * * raise its rates, or fail to

Continued

assessment of the impact of competition upon the telephone equipment marketplace, however, did not prevent us from recognizing that special treatment would be necessary for embedded CPE in order to avoid significant dislocations which could result from immediate detariffing. *See Reconsideration Order*, 84 FCC 2d at 66. We arrived at the view that a phased approach to detariffing over a transition period was the surest means of continuing "progress towards a more competitive equipment environment * * *." *Id.* at 67.[9] These decisions and policies set the stage for our addressing directly, in the *Order*, the problems and issues surrounding the detariffing of AT&T embedded equipment.[10]

B. Summary of Order

3. After an extensive review of pleadings filed by more than fifty parties in this proceeding, we adopted the *Order* on November 23, 1983. The *Order* specified that a sale plan for embedded CPE, coupled with the transfer of the unsold portion of the embedded base to unregulated service, would serve as the foundation of the detariffing plan established in the *Order*, and also provided that net book value of AT&T's embedded base would be used as a surrogate for economic value for establishing sale prices during the transition period and for valuing the CPE transferred to AT&T–IS. We required that AT&T must disaggregate the embedded base on the basis of single-line and multi-line equipment for valuation and purchase price purposes. We also concluded that the detariffing plan established in the *Order* was fully consistent with the equitable principles established in *Democratic Central Committee*,[11] noting that the plan represented a workable means for detariffing embedded equipment under the unprecedented circumstances presented by the Bell System divestiture. We indicated that we would accept the AT&T plan for the detariffing of residence and business single-line CPE [12] and that we would permit all equipment in the multi-line base to be detariffed and transferred to AT&T–IS at divestiture. The *Order* specified, however, that the two-year transition period for product lines in the multi-line embedded base would be triggered only upon the offering for sale by AT&T–IS of the product line involved (if this sale offer did not occur at the time of divestiture.)

4. The *Order* provided that the national lease rates established by AT&T for embedded multi-line CPE would not apply until the product line involved was initially offered for sale by AT&T–IS, and the *Order* established a ceiling for lease rates which AT&T–IS could set for embedded multi-line CPE of a type which was not also leased as new equipment by AT&T–IS. The BOCs were permitted to provide billing and other support services to AT&T–IS on a compensatory basis, and AT&T–IS was permitted to obtain access to CPE customer-specific information. Access to non-CPE service information was restricted, and AT&T–IS was required to inform customers that they had the opportunity to obtain from AT&T–IS information regarding their leased embedded CPE. The *Order* required AT&T–IS to provide one year's notice before phasing out maintenance and support of particular product lines during the transition period, and to make available technical specifications and rights necessary for the support of phased-out products.

5. We required deferred tax reserves and unamortized investment tax credits associated with the Bell System embedded base to be transferred to AT&T–IS, and we concluded that intrasystem wiring owned by AT&T would not be detariffed and would not be transferred from the BOCs to AT&T–IS. The *Order* provided that CPE station handling costs in account 232, "Inside wiring," would not be added to net book value upon the removal of the CPE from regulated service, and the *Order* approved AT&T's proposed treatment of debt in its embedded CPE capitalization plan for AT&T–IS. We also required AT&T–IS to reimburse the BOCs for 50 percent of CPE refurbishment costs incurred by the BOCs during 1983, and we required AT&T–IS to provide reimbursement to the BOCs for 50 percent of the original cost of expensed assets acquired in 1983 and for 50 percent of the unallocated balance of 1983 exempt materials expenses.

C. Issues Before the Commission

6. Petitions for reconsideration of the *Order* and other pleadings have been filed by numerous parties.[13] A few petitioners challenge the sufficiency of the sale and transfer plan established in the *Order*. One party, for example, objects to the use of net book value as a valuation standard for AT&T's embedded base, and argues that the aggregated valuation approach taken by the *Order* is deficient. Other petitioners suggest that the detariffing plan fails to meet the requirements set forth in *Democratic Central Committee*. Most commenters, however, accept the general detariffing framework established by the *Order*, choosing instead to focus their comments on discrete aspects of the detariffing plan.

7. A few petitioners argue that residential customers should not be required to pay charges for on-premises repair visits for hard-wired telephones, and another party contends that AT&T–IS has disseminated inaccurate pricing information regarding embedded Design-Line telephones. It also is argued that the Commission should determine that the two-year transition period for multi-line CPE was not triggered on January 1, 1984, because AT&T–IS failed to provide in-place customers with sufficient sale price information at that time. Other petitioners argue that the Commission should require AT&T–IS to release publicly its sale price information on a product line basis, and that the monthly sales reports filed by AT&T–IS with the Commission under the terms of the *Order* also should be released to the public.

8. With regard to long-term contracts for the leasing of embedded multi-line CPE, several petitioners argue that AT&T–IS should be prohibited from imposing penalties under the terms of these contracts if customers choose to terminate the contracts before the expiration date. Other commenters

render quality service, its customers could easily take their business to one of its * * * equipment competitors." *United States* v. *Western Elec. Co.*, No. 82–0192, slip op. at 63 (D.D.C. July 26, 1984) (footnote omitted). We also have made the finding that the growth of competitive market forces in the equipment industry has made continued price regulation of CPE impractical. *Notice*, 94 FCC 2d at 113.

[9] We also concluded that a phased approach which provided for the detariffing of embedded CPE over a transition period would afford needed time for the development of solutions to jurisdictional separations problems associated with the provision of CPE. *Further Reconsideration Order*, 88 FCC 2d at 518–19. These separations problems have been resolved. *See Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80–286, Decision and Order, 89 FCC 2d 1, *modified*, 90 FCC 2d 52 (1982), *appeal docketed sub nom. MCI Telecom. Corp.* v. *FCC*, No. 82–1237 (D.C. Cir. Mar. 4, 1982).

[10] For a further discussion of the background leading up to our adoption of the *Order*, see *Order*, 95 FCC 2d at 1283–91.

[11] *Democratic Cent. Comm.* v. *Washington Metro. Area Transit Comm'n*, 485 F.2d 786 (D.C.Cir. 1973), *Cert. denied sub nom. D.C. Transit Sys.* v. *Democratic Cent. Comm.*, 415 U.S. 935 (1974) (hereinafter, together with companion cases, referred to as *Democratic Central Committee*). For a description of the companion cases, see *Order*, 95 FCC 2d at 1312 n.48.

[12] For a description of the types of equipment encompassed by the terms "residence CPE" and "business single-line CPE," see *Order*, 95 FCC 2d at 1319 n.59.

[13] See para. 1 n.6, *supra*, & Appendix.

contend that the Commission should take some action to prevent AT&T–IS from imposing these penalties in a discriminatory manner. Several petitioners suggest that the Commission should require that customer proprietary information relating to embedded CPE transferred to AT&T–IS should be disclosed to the public, and that the Commission should establish additional restrictions upon access to this information by AT&T–IS marketing personnel. Several petitioners request the Commission to reverse its decision to prohibit local telephone service terminations for failure to make payments to AT&T–IS for embedded CPE bills, to require that partial payments must first be applied to local service bills, and to require that customers must be notified that service will not be terminated for failure to pay CPE bills.

9. It is suggested by some petitioners that the Commission should strengthen the provisions of the *Order* which prohibit AT&T–IS from banning the use of independently-supplied equipment in conjunction with CPE leased from AT&T–IS. A few commenters argue that the Commission should reverse its treatment of deferred tax reserves and unamortized investment tax credits, and a few other petitioners also suggest that the Commission should reconsider its decision regarding intrasystem wiring in order to require that the wiring be detariffed and transferred from the BOCs to AT&T–IS. Another commenter contends that the Commission should, at a minimum, clarify the current responsibilities of the BOCs regarding maintenance and augmentation of embedded intrasystem wiring. It also is suggested that the Commission should reverse its decision in the *Order* and require the transfer of CPE station handling costs to AT&T–IS. There also is a request that the Commission modify the requirement of the *Order* that AT&T–IS share with the BOCs refurbishment costs and exempt materials expenses incurred in 1983.

II. General Rules Governing AT&T Embedded Base

A. Adequacy of Detariffing Plan

1. Comments

10. Rolm argues that the *Order* creates an anticompetitive situation because the sale program established by the *Order* leaves AT&T–IS with too much pricing flexibility and gives AT&T–IS the opportunity to overprice embedded CPE in less competitive markets in order to cross-subsidize equipment in more competitive markets. Rolm Petition at 11–12 & n.10. NATA contends that the sale program approved by the Commission is defective because the Commission, in its effort to balance the interests of ratepayers and investors under the guidelines of *Democratic Central Committee*, "ignored the interests of CPE competitors * * *." NATA Comments at 13–14.

2. Discussion

11. We conclude that none of the contentions raised by Rolm and NATA has merit. We stressed in the *Order* that "we must carefully gauge the effects on the continued strength of competition which may be caused by the removal from regulated service of AT&T [CPE] assets * * *"[14] and numerous provisions contained in the *Order* amply demonstrate that we have been successful in ensuring that competition in the CPE marketplace will not be adversely affected by the detariffing of AT&T's embedded base. First, the *Order* provides that the two-year transition period for multi-line equipment will not begin until AT&T–IS actually offers for sale the product line involved. This requirement eliminates the opportunity for AT&T–IS to manipulate the timing of sales and the level of lease rates in a manner which reduces customer choice and pressures customers into purchasing AT&T–IS's embedded CPE (at the point AT&T–IS decides to offer the equipment for sale) in order to avoid inflated lease rates. Second, AT&T–IS is required to offer all equipment comprising the embedded CPE base for sale to in-place customers. *See, e.g., Order*, 95 FCC 2d at 1300. AT&T initially proposed, with respect to embedded multi-line CPE, that no opportunity for purchase would be provided until *after* a price predictability period ended, and that this purchase opportunity would apply only to CPE also sold as new equipment by AT&T–IS. *See id.* at 1285. We rejected this approach, requiring instead that AT&T–IS must offer *all* embedded CPE for sale. Not only does the *Order* extend protection to in-place customers by giving them the option to purchase their equipment, but it also fosters competition through this requirement by creating the potential for a secondary market in used equipment.

12. Third, the *Order* establishes restrictions regarding the manner in which AT&T–IS may establish lease rates for both residential and business CPE during the transition. *See, e.g., id.* at 1286 n.15, 1324–25, 1341–46. These restrictions[15] preserve and enhance competition in the CPE marketplace by stabilizing lease rates applicable to in-place customers during the transition, thus giving them an opportunity to assess a range of options with respect to their equipment needs. Part of this assessment, of course, will include weighing the value of products and services offered by competing vendors. Fourth, we have required that AT&T–IS must give at least one year's notice before phasing out any embedded multi-line product and that, "[n]o later than the date of the announcement of product phase-out, AT&T should make available all technical information and rights necessary for the support of the phased-out products." *Id.* at 1358. These requirements will produce pro-competitive results because they will stimulate a secondary market in spare parts for embedded CPE and they also will enhance the opportunity of in-place customers to assess their equipment needs and turn to competing vendors if they conclude that such a decision will best serve their needs.

13. With regard to Rolm's assertion that the *Order* extends excessive pricing flexibility to AT&T–IS,[16] we made clear in the *Order*[17] that the valuation and pricing flexibility we were extending to AT&T–IS was consistent with the principles of *Democratic Central Committee* and was a necessary means of equitably accommodating the interests of AT&T's investors. Rolm has not advanced any credible evidence or arguments that this flexibility is "excessive" and, on that basis, we find no reason for modifying the provisions of the *Order*.

B. Valuation of Embedded CPE Assets

1. Comments

14. Rolm argues that adjusted net book value should not be used as the valuation standard particularly in light of the fact that the Commission has not sought to establish any relationship between the net book value and the economic value of the embedded CPE base. Rolm Petition at 15, 20–21. Rolm also contends that the Commission should require AT&T–IS to make a good faith effort to apply the net book value standard on a product line basis, as a means of ensuring fair treatment of in-place customers and mitigating the

[14] *Order*, 95 FCC 2d at 1302.

[15] The *Order* established specific lease rate limits for residential CPE. With regard to business CPE, the *Order* imposed a ceiling on national lease rates which could be established by AT&T–IS and provided that these national lease rates would be phased in through three lease rate adjustments occurring eight months apart during the transition period. *See* CC Docket No. 81–893, Second Report and Order, FCC 84–269, 49 FR 27754 (released June 29, 1984) at paras. 19–25.

[16] *See* para. 10, *supra*.

[17] *Order*, 95 FCC 2d at 1319.

problems caused by the Commission's failure to ascertain the economic value of the embedded base *Id.* at 14 & n.10.

2. Discussion

15. We can find no reason for abandoning the net book valuation standard established in the *Order*. Rolm fails to mount a persuasive challenge to our conclusion that our use of net book value as a surrogate for economic value is well within our regulatory discretion under the terms of *Democratic Central Committee*. As we indicated in our *Order*, any attempt to appraise the embedded base as it existed prior to its transfer to AT&T at the time of divestiture would be fraught with difficulties, and there can be little assurance that any such appraisal would produce reliable results.[18] Further, Rolm presents no compelling arguments that AT&T–IS should be required to apply the net book value standard on a product line basis. Such an approach was specifically rejected in the *Order* because we concluded that pricing flexibility with regard to the embedded base would help ensure "that stockholders have an opportunity to obtain capital recovery * * *." *Order*, 95 FCC 2d at 1312. We also noted that more extensive disaggregation was not necessary because AT&T's agreement to offer the entire multi-line base for sale greatly reduced AT&T's ability to use manipulative pricing practices to gain a competitive advantage. *Id.* at 1311. We must stress that the pricing flexibility extended to AT&T–IS in the *Order* is part of an overall structure we designed to comply with *Democratic Central Committee* and to serve the public interest. Any alteration of the disaggregation provisions in the manner contemplated by Rolm could endanger the soundness of this overall detariffing structure.

C. Democratic Central Committee

1. Comment

16. California asserts that the Commission has failed to meet the standard established in *Democratic Central Committee* because we did not conduct an adequate factual examination or cost study to determine whether there was any appreciation in the value of the embedded base. California Petition at 2. California asserts that the Commission in effect delegated to AT&T–IS the Commission's authority to establish a sale program for embedded equipment because the Commission failed to conduct cost studies or otherwise establish a basis for the sale program. *Id.* at 5–6. Rolm contends that we have not met the *Democratic Central Committee* requirements because, under our approach, any gains in the value of assets transferred to AT&T–IS are potentially captured by in-place customers but not by the general body of ratepayers. Rolm Petition at 16–17. Rolm also argues that our failure to determine the economic value of the transferred equipment amounts to non-compliance with the *Democratic Central Committee* requirements. *Id.* at 18.

2. Discussion

17. None of these arguments has any merit. California's suggestion that cost studies were necessary to fix any appreciation in the value of the embedded base misperceives the mechanism we established in the *Order*. Our purpose was to prevent any gains from flowing to AT&T's investors, in the event that there were any such gains. *See, e.g. Order*, 95 FCC 2d at 1311–12, 1319. California and Rolm are erroneous in their assertions that this mechanism falls short of the *Democratic Central Committee* requirements. By requiring that sale prices established by AT&T–IS for single-line and multi-line equipment cannot exceed that net book value of this equipment in the aggregate, [19] we have ensured that, if there are any gains in the value of these assets upon their removal from regulated service, ratepayers have a sufficient opportunity to capture these gains. The operation of this mechanism is not dependent upon any actual determination of the economic value of the embedded base [20] and, in our view, fully comports with the *Democratic Central Committee* requirements.

18. With regard to California's assertion that we have somehow "delegated" to AT&T-IS authority for establishing and operating the sale program, such an argument files in the face of the express provisions of the *Order*. Regarding single-line CPE, specific sale prices are established. *Id.* at 1286 n.15. Regarding multi-line equipment, we have protected the interests of ratepayers and in-place customers by requiring that sale prices cannot exceed net book value. *See id.* at 1311–12. We have concluded that our balancing of ratepayer and investor interests fully meets the *Democratic Central Committee* test. Further, we agree with AT&T–IS's assertion that we are under no lobligation to conduct adjudicatory proceedings to ascertain appropriate sale prices, and that any attempt to conduct such proceedings prior to the divestiture of the Bell System would have held little prospect of success. *See* AT&T–IS Opposition at 4. Rolm, in claiming that our failure to devise a mechanism under which any gains would flow to the general body of ratepayers (as opposed to in-place customers having an opportunity to purchase their CPE) violates the *Democratic Central Committee* requirements, misapprehends the reach of those requirements. In the context of the extraordinary asset transfer with which we were confronted, we reached the conclusion that *Democratic Central Committee* requires no more than that the interests of ratepayers and investors be balanced in a manner which furthers the public interest. *See Orders*, 95 FCC 2d at 1315–19. Nothing in Rolm's petition convinces us that we have failed to meet this test.

III. Residence and Business Single-Line CPE

A. Design-Line Telephones

1. Comments

19. One residential customer, Paul J. Sinderbrand, has indicated that he was given price quotations for the electronic components of his Touch-Tone Design-Line telephone by AT&T–IS representatives which were considerably higher than the national sale prices subsequently announced by AT&T–IS. *See, e.g.*, Sinderbrand Petition, Affidavit at 2–3; Letter from Paul J. Sinderbrand to Secretary, FCC (Apr. 20, 1984) at 1–2. AT&T–IS contends that it never established sale prices at the level which Mr. Sinderbrand claims was quoted to him by AT&T–IS representatives. AT&T–IS Comments on Reply Filed by Paul J. Sinderbrand at 1–2. Mr. Sinderbrand further argues that, since the competitive marketplace is not at work with regard to Design-Line telephones, [21] the Commission should act to establish a ceiling on sale prices for these telephones. Sinderbrand Petition at 5. He also contends that, if such a cap is established, customers purchasing Design-Line telephones since

[18] *See id.* at 1306–07 & n.43 for a further discussion of the problems associated with any attempt to appraise the Bell System's embedded CPE base.

[19] *See id.* at 1339.

[20] The *Order* makes clear that intractable practical problems would have confronted any effort to determine the economic value of the embedded base, *see id.* at 1307–08.

[21] Mr. Sinderbrand argues that telephone equipment retailers do not sell, as separate items, electronic telephone components which can be used with Design-Line telephone housings already purchased by BOC customers. Because of this, Design-Line users must either lease or purchase the electronic components from AT&T–IS. *See* Sinderbrand Petition at 6–7.

January 1, 1984, at prices above the cap should be entitled to receive refunds. *Id.* at 9.

20. AT&T–IS indicates that national sale prices have been established for Design-Line CPE. These prices are $15.95 for rotary components and $25.95 for Touch-Tone components. AT&T–IS Opposition at 6 n.**. AT&T–IS also states that these national purchase prices were first established in October 1983 and were forwarded to field representatives for implementation on January 27, 1984. AT&T–IS Comments on Reply Filed by Paul J. Sinderbrand at 2–3. In the period immediately following divestiture, state-tariffed sale prices for Design-Line components remained in effect until the changeover to AT&T–IS's national prices. Letter from Terry L. Trantina to Acting Chief, Enforcement Division, Common Carrier Bureau (Feb. 1, 1984) at 3.

2. Discussion

21. The national sale prices established by AT&T–IS for Design-Line electronic components appear to us to be reasonable on their face. The reporting requirements we have established will enable us to determine whether these prices, together with all other single-line CPE sale prices, comply with our requirement that sale prices may not exceed net book value. *See Order*, 95 FCC 2d at 1321–22. Further, we conclude that it is neither necessary nor prudent to attempt to resolve the factual dispute between Mr. Sinderbrand and AT&T–IS in the context of this reconsideration proceeding. We do note that if Mr. Sinderbrand or any other Design-Line customers paid a purchase price after January 1 in excess of the national sale price established by AT&T–IS (or the applicable state tariff sale price), then these customers should be entitled to a refund of the difference. The normal complaint processes of the Commission are available to any customers who are entitled to a refund but fail to obtain it from AT&T–IS.[22]

B. Charges for Residential Repair Visits

1. Comments

22. Both New York and Virginia contend that residential customers should not be required to pay repair charges to AT&T–IS for the on-premises repair of hard-wired telephones.[23] New York Petition at 1; Virginia Petition at 7; *see* Letter from Counsel for New York Dept. of Pub. Serv. to Secretary, FCC (Jan. 26, 1984) at 2. Virginia argues that the flat charges established by AT&T–IS are too high, and New York suggests that this Commission should place a cap on these charges. Virginia Petition at 5–6; New York Petition at 2. New York further suggests that AT&T–IS should be required to provide free repair service to elderly and handicapped customers. Letter from Counsel for New York Dept. of Pub. Serv. to Secretary, FCC (Jan. 26, 1984) at 2. NATA contends that, in cases in which AT&T–IS personnel make on-premises repairs of hard-wired telephones, they should install modules so that the telephones can be more easily removed if future repairs are necessary. NATA Opposition at 17.

23. AT&T–IS argues that it has taken sufficient steps to meet concerns regarding charges for home repair visits. For customers with modular telephones, AT&T–IS has established a flat charge of $25 for on-premises repair visits. For customers with hard-wired telephones which are capable of being modularized by the customer, the flat repair charge is $15. If the equipment is not capable of being modularized by the customer, AT&T–IS does not charge for home repair visits. AT&T–IS also provides free modularization kits, and free pick-up and delivery service for residential customers. AT&T–IS Opposition at 14–16. AT&T–IS also points out that "most * * * leased single-line equipment may be brought into Phone Center Stores and exchanged for identical new or refurbished equipment at no charge." *Id.* at 15. AT&T–IS notes that, during 1983, between 75 and 80 percent of repairs to residential telephone equipment were made without on-premises visits. *Id.* at 15 n.*.

2. Discussion

24. After reviewing the plan proposed by AT&T–IS for the repair of residential CPE during the transition period, we took note of an approved AT&T–IS's proposal to charge for on-premises repair visits. Order, 95 FCC 2d at 1324–25. We now conclude that the flat charges established by for such repair visits, taken in the context of the overall repair program established AT&T–IS, are reasonable and do not require any adjustment. We see no reason to deter AT&T–IS from continuing the efforts originally begun by the BOCs to make more efficient the manner in which repairs of residential CPE are carried out. By providing free repair service at central locations, and through free pick-up and delivery services, AT&T–IS has acted in a prudent fashion to cut transaction costs associated with its repair services. At the same time, we cannot agree with claims that these procedures are unduly burdensome to residential customers. This is particularly true in light of the fact that AT&T–IS has established a flat charge (rather than hourly rates which could lead to substantial repair costs for some customers, depending upon the nature of the required repair work), and the fact that AT&T–IS provides free on-premises repairs in the case of hard-wired sets which are not capable of being modularized by the customers. To require AT&T–IS to do more would run the risk of escalating transaction costs to the detriment of all AT&T–IS customers. Further, it is important to keep in mind that the high level of competition in the residence CPE marketplace[24] gives consumers the option to deal with other vendors if they conclude that AT&T–IS's repair policies are not sufficient to meet their needs and cost considerations.

IV. Multi-Line CPE

A. Duration of Sale and Lease Transition Periods

1. Comments

25. ICA argues that we should conclude that the transition period for multi-line CPE did not begin on January 1, 1984, because AT&T–IS failed to take sufficient steps by such date to make its embedded multi-line equipment available for purchase by in-place customers.[25] Letter from Counsel for ICA

[22] One other residential customer, James J. Butler, argues that telephone customers receiving secretarial telephone service (primarily in apartment buildings) should be given an opportunity to purchase their telephones as part of the AT&T–IS sale program. Butler Petition at 1. We indicated in the Order that the AT&T–IS sale program covered all significant classes of embedded CPE. *Order*, 95 FCC 2d at 1338, citing AT&T Response to Bureau Letter (filed Oct. 7, 1983) at 4. AT&T–IS has indicated that Mr. Butler has been informed that he may purchase his in-place equipment. AT&T–IS Opposition at 6 n.**.

[23] "Hard-wired" telephones are connected to the transmission line through the physical, separate interconnection of (usually four wires are involved) inside an on-premises junction box. Modular telephones eliminate the need for this separate interconnection of wires by using plug-in devices.

[24] In 1982, 5.7 million telephones were sold to retailers, with factory sales of $400 million. In 1984, it is estimated that 31.1 million units will be sold, with factory sales reaching $1.24 billion. Wall St. J., Aug. 2, 1984, at 10.

[25] ICA also has argued that AT&T–IS is incorrect in its assertion that multi-line CPE lease rates may be adjusted at 6-month, rather than 8-month, intervals during the transition period. *See, e.g.*, ICA Jan. 13 Letter at 4–5. This issue has been resolved by the Commission in separate actions in this docket. See CC Docket No. 81–893, Second Report and Order, FCC 84–289, 49 FR 27754 (released June 29, 1984), *reconsideration petition pending*. Public Notice No. 1476, 49 FR 34957 (released Aug. 24, 1984) at paras. 19–25; CC Docket No. 81–893, Order, FCC 84–304, 49 FR 30710 (released June 29, 1984).

to Chief, Common Carrier Bureau (Jan. 13, 1984) (hereinafter ICA Jan. 13 Letter) at 4; *see also* Letter from Counsel for ICA to Secretary, FCC (Jul. 9, 1984) at 3.[26] ICA contends that a letter from AT&T–IS to its multi-line customers informing them of their opportunity to purchase their in-place equipment should not constitute a sufficient sale offer for purposes of triggering the transition period because this notice failed to list price quotes or detail the terms and conditions of sale. ICA Jan. 13 Letter at 4.

26. ICA maintains that AT&T–IS's failure to supply firm price quotes has persisted well after the transfer of embedded CPE to AT&T–IS after divestiture. Letter from Counsel for ICA to Secretary, FCC (Feb. 17, 1984) (hereinafter ICA Feb. 17 Letter) at 2–3. ICA argues that AT&T–IS should be required to supply price quotes to customers not later than two weeks after an initial request from the customer. *Id.* at 3. ICA further contends that, "for *all* CPE product lines, ATTIS should be held to its representation * * * that it will credit against the purchase price any lease charges paid between the time a quote is requested and the time it is actually provided." *Id.* at 3 (emphasis in original). ICA also maintains that AT&T–IS has adopted a practice under which customers reviewing price quotes from AT&T–IS must make purchase decisions within 30 days, and that such a policy places undue burdens upon in-place users. *See* Letter from Counsel for ICA to Secretary, FCC (Apr. 27, 1984) at 4.

27. In responding to these assertions, AT&T–IS has maintained that it began mailings to its 4.5 million multi-line CPE customers on December 20, 1983, notifying them that their embedded CPE was available for purchase,[27] and that this notice was all that was required under the *Order* to trigger the transition period as of January 1, 1984. Letter from Terry L. Trantina to Secretary, FCC (Mar. 1, 1984) at 2. AT&T–IS contends that the *Order* did not require AT&T–IS to mail firm price quotes to *every* multi-line customer in order to trigger the transition period, and that any such requirement would have been administratively infeasible and prohibitively expensive. *Id.* at 2–3.

2. Discussion

28. There is no basis for concluding that the transition period for all multi-line CPE did not begin on January 1. The *Order* explicitly states that "the transition period for multi-line CPE should commence for a particular category of multi-line CPE at the time ATTIS notifies the customer of equipment." *Order*, 95 FCC 2d at 1334 (footnote omitted). In our view, AT&T–IS has initiated its sale program in a manner which is consistent with the *Order*, thus triggering the transition period as of the date of divestiture. ICA would have us now impose more stringent requirements upon AT&T–IS, based upon the alleged manner in which AT&T–IS has conducted its sale program since multi-line CPE was transferred to AT&T–IS. We can find no reason for doing so.

29. There are two principal reasons for our conclusion. First, we considered ICA's proposal in our *Order*, 95 FCC 2d at 1334 n.85, and decided upon a different approach. Changing our decision in the *Order* to require now that the transition period will not be construed to begin for a particular product line until AT&T–IS has provided specific price quotes to all users of the product line, would be unduly burdensome and expensive. ICA has failed to demonstrate that there are public interest benefits outweighing that burden and expense. Further, if particular customers have no interest in purchasing their in-place CPE, it is not reasonable to require AT&T–IS to supply these customers with unsolicited price quotes in order to trigger the transition period for the product line involved. Placing such a requirement upon AT&T–IS necessarily would result in severe upward pressures on transaction costs associated with the multi-line CPE sales program.[28] These transaction costs, which would be generated in large measure by multi-line customers who have no intention of purchasing their in-place equipment, would be borne by those customers who actually make purchases. Confronting prospective buyers with sale prices reflecting these inflated transaction costs also could seriously dampen sales, thus undermining our efforts to provide AT&T investors with a reasonable opportunity to recover their investment in the detariffed embedded base. *See id.* at 1319.

30. Second, we conclude that AT&T–IS has made reasonable efforts to provide multi-line customers with requested pricing information. These efforts began in November 1983 with the initiation of a customer information program for business CPE customers. Under this program, basic information[29] regarding the CPE sale program was distributed to business customers in December 1983. In addition, certain business customers received additional information regarding the sale program through bill inserts. *See* Letter from Terry L. Trantina to Secretary, FCC (Jan. 31, 1984) at 5. AT&T–IS also advised the Commission of its intention to make a second direct mailing to its 4.5 million business customers in late January. *Id.* at 6. This mailing contained information regarding the termination of lease service in order to obtain CPE from other vendors, described AT&T–IS's warranties and policies relating to special assembly equipment, and "advise[d] customers that they may obtain specific information concerning their equipment so they may evaluate their equipment needs and alternatives." *Id.*

31. AT&T–IS also prepared customer contact kits, for distribution to 30,000 large customers, which provided details regarding the multi-line CPE sale program. AT&T–IS advised the Commission of its intention to distribute similar kits to 3.5 million small and medium size customers. *Id.* at 7. Newspaper and magazine advertisements were purchased by AT&T–IS as a means of further informing its business customers that they could purchase their CPE as of January 1.

32. In April 1984, the Common Carrier Bureau requested AT&T–IS to supply specific information regarding AT&T–

[26] We have received a number of letters and other comments in addition to the petitions, oppositions, and reply comments filed regarding the *Order*. *See, e.g.*, para. 46 n.82, *infra*. In light of the serious issues raised in these filings, and the fact that in most instances interested parties have taken the opportunity to file opposing comments with regard to these letters and other comments, we are accepting these letters and other comments as further comments in this reconsideration proceeding. We note, however, that this proliferation of filings outside the normal reconsideration pleading cycle has contributed to prolonging the process of arriving at the decisions contained in this Order; it is our intention in the furture to treat less favorably such efforts by parties to burden us with filings in disregard of the pleading schedules established in our Rules.

[27] AT&T–IS earlier had notified the Common Carrier Bureau of its intention to "make *all* in-place embedded customer premises equipment available for purchase at the time of divestiture." Letter from D.J. Culkin to Chief, Common Carrier Bureau (Dec. 16, 1983) at 1 (emphasis added).

[28] We noted in the *Order* our interest in ensuring that AT&T–IS established reasonable transaction costs for embedded equipment sales. *Order*, 95 FCC 2d at 1340.

[29] This information included (1) a letter from the Chairman of AT&T–IS; (2) a notice regarding lease terms applicable to embedded multi-line CPE; (3) a question and answer booklet; and (4) stickers to be affixed to equipment with the 800 number for the AT&T–IS business sales and service center. Also included was a statement that all embedded business CPE would be available for purchase as of January 1. *See* Letter from Terry L. Trantina to Secretary, FCC (Jan. 31, 1984) at 4 & Attachment C.

IS's policies and procedures for supplying price quotes to its business customers. *See* Letter from Chief, Common Carrier Bureau, to Terry L. Trantina (Apr. 26, 1984). In response to this letter, AT&T–IS provided a detailed account of mechanisms it had established to facilitate the development of price quotes. *See* Letter from Terry L. Trantina to Secretary, FCC (May 15, 1984) (hereinafter Trantina May 15 Letter).[30] AT&T–IS outlined the steps taken to provide price quotes,[31] and drew attention to some of the problems encountered in the effort to expedite the preparation of this information. For example, a necessary step in the preparation of price quotes is the assembly of copies of the customer's detailed CPE records. *Id.*, Attachment A, at 1. In areas in which shared billing with the BOCs is still in effect, these records must be assembled by using copies of BOC customer service records (CSRs). This procedure leads to two difficulties. First, since the CSRs usually also contain transmission service data which must not be disclosed to AT&T–IS marketing personnel,[32] this information must be manually blocked out. *Id.*, Attachment A, at 2. This process often is time-consuming because of the amount of equipment involved.[33] Second, the BOC records do not identify CPE items using descriptive names, but rather identify each piece of equipment by reference to a BOC Uniform Service Order Code (USOC). AT&T–IS does not use these USOCs for equipment-identification purposes, and thus must translate these codes into its own formats.[34] This process adds further time to the price quote preparation procedures.

33. AT&T–IS also described in detail two automated systems, the Price Quote System (PQS) and the Portable Data Entry (PDE) system, developed to decrease the amount of time necessary to prepare price quotes. *See id.*, Attachment A, at 6–9. PQS, an on-line software program used for the development of price quotes for all intermediate size and large customers, automatically generates a variety of customer-specific information, including a "[s]ummary display, by equipment location, of total or partial system sale in-place price, maintenance contract costs, price predictability lease rates and current or projected monthly discounts." *Id.*, Attachment A, at 7. AT&T–IS maintains that use of PQS has dramatically cut price quote preparation time.[35] The PDE system, which is used to mechanize the process of summarizing USOC data in the case of large accounts, also has reduced price quote request processing time.[36]

34. Use of these automated processing techniques has enabled AT&T–IS to reduce the overall response times for providing price quotes. In the case of small customers, which comprise over 91 percent of AT&T–IS's embedded multi-line CPE customer base,[37] the typical response time is two to three business days. For intermediate customers, the typical response time ranges from four days to six weeks. Once AT&T–IS marketing personnel obtain screened CPE records for intermediate customers, "it typically takes two to five business days to process a price quote manually and approximately half that time to process a quote using PQS." *Id.*, Attachment A, at 18. For large customers, the preparation time ranges from one to several months, depending on the size and complexity of the customer system involved.[38]

35. It is evident from the information supplied by AT&T–IS in its May 15, 1984, filing that there are substantial obstacles impeding the rapid preparation of price quotes, and that AT&T–IS has made significant and effective efforts in overcoming these obstacles. As we have indicated, to require AT&T–IS to go through this price quote generation exercise for each and every customer using a particular product line as a prerequisite for beginning the transition period for that product line, would run the risk of greatly extending the length of the transition period as well as imposing substantial and unnecessary costs. In view of the fact that the great bulk of AT&T–IS's multi-line customers receives price quotes within two to three business days following the request, we see no reason to modify the *Order* to impose the additional burdens upon AT&T–IS which are being proposed by ICA. Although we have noted that "a primary objective of the transition period is assisting customer decision-making in a detariffed environment",[39] we conclude that the *Order* sufficiently protects this decision-making process, making unnecessary the additional requirements suggested by ICA. We have made clear, for example, that price predictability extends to December 31, 1985,[40] with lease rate adjustments occurring at sufficiently wide intervals,[41] to protect in-place users against severe lease rate increases.

In addition, we have: (1) Placed a cap on lease rates during the transition;[42] (2) established an overall ceiling on sale prices for multi-line CPE;[43] (3) imposed maintenance requirements for this equipment;[44] and (4) required AT&T–IS to comply with equipment interconnection requirements.[45] The approach taken in the *Order* regarding the triggering of the transition period was fashioned in the context of this overall set of transitional requirements

[30] This account addressed an AT&T–IS embedded base customer profile which included 4.1 million small multi-line customers (10 stations or less, one location), 300,000 intermediate size multi-line customers (11 to 80 stations, one or more locations), and 100,000 large multi-line customers (80 stations and above, one or more locations). Trantina May 15 Letter, Attachment A, at 1 n.2 & 18.

[31] *See id.*, Attachment A, at 1–5.

[32] *See Order*, 95 FCC 2d at 1349–52.

[33] "On large accounts, a CSR printout for a single location may run several hundred to a thousand pages in length, with 50 lines per page." Trantina May 15 Letter, Attachment A, at 2.

[34] AT&T–IS in order to facilitate the establishment of national prices for embedded multi-line CPE, standardized CPE designations by instituting Embedded Base Price Element (EBPE) codes. *Id.*, Attachment A, at 3 nn. 7–8.

[35] "By way of example, in the case of one intermediate size customer quote, four hours of personnel time were performed in approximately 20 minutes using PQS." *Id.*, Attachment A, at 4.

[36] "By way of example, in the case of a large customer, an estimated 530 hours of personnel time for summarizing CPE records were performed in approximately 210 hours using PDEs." *Id.*, Attachment A, at 8.

[37] *See* para. 32 n.30, *supra*.

[38] ICA has criticized the price quote mechanisms established by AT&T–IS because "only 10 percent of embedded CPE users have received sales quotes thus far * * *" and "90 percent of users who do not have sales quotes have lost close to five months of the prescribed two-year transition period (assuming it began on January 1, 1984, as ATTIS claims) without having had any opportunity to evaluate the possible purchase of their embedded CPE." Letter from Counsel for ICA to Secretary, FCC (May 30, 1984) at 2. ICA apparently is referring to the Trantina May 15 Letter, in which it is indicated that "to date, AT&T–IS has provided quotations to over 10% (40,000) of its intermediate and large multi-line embedded CPE customers." Trantina May 15 Letter at 1. The 10 percent figure cited by ICA, however, is a percentage of *all* of AT&T–IS's intermediate and large multi-line CPE customers, not just those requesting price quotes. AT&T–IS has indicated that it has been processing 14,000 small business price quotes per month and that, as of March 31, 1984, it had received 18,000 price quote requests from intermediate and large customers and had processed 32,000 price quotes. The number of processed quotes exceeded the number of requests because AT&T–IS account executives may initiate price quote preparation without specific requests from customers, and because a separate quotation is processed for each location of a multi-location customer. *Id.* at 19 & nn.15–16.

[39] *Order*, 95 FCC 2d at 1336.

[40] *Id.* at 1342–43 & n.98; CC Docket No. 81–893, Second Report and Order, FCC 84–269, 49 FR 27754 (released June 29, 1984) at paras. 22–25.

[41] We have provided that lease rate adjustments during the transition period may be made by AT&T–IS on July 1, 1984, July 1, 1985, and January 1, 1986. CC Docket No. 81–893, Order, FCC 84–304, 49 FR 30710 (released June 29, 1984) at para. 11.).

[42] *Order*, 95 FCC 2d at 1344.

[43] *See id.* at 1339.

[44] *Id.* at 1356–59.

[45] *Id.* at 1358–59.

established in the *Order*. This matrix of requirements was constructed to balance the need to protect user interests with our overall goal of removing embedded CPE from regulation all allowing AT&T–IS to compete in the CPE marketplace free from unwarranted regulatory restrictions. In view of the extensive efforts made by AT&T–IS to establish and operate an efficient system for responding to price quote requests, we must conclude that nothing in the pleadings prompts us to undo the balance achieved in the *Order* for the purpose of subjecting AT&T–IS to additional regulatory burdens.[46]

36. Two additional points raised by ICA need to be addressed. First, ICA argues that AT&T–IS should be required to permit all its embedded multi-line CPE customers to receive a credit against the purchase price for all lease charges paid from the time a price quote is requested until the time the quote is provided. *See* para. 26, *supra*. We do not consider such a requirement to be warranted. AT&T–IS has indicated that such a credit for lease payments will apply in the case of customers who lease special assembly equipment and who made purchase inquiries in early January 1984.[47] With regard to all other multi-line customers, "AT&T–IS reduces the in-place sale price for all embedded equipment items one percent per month, up to a maximum of 15 percent during the price predictability period." Trantina May 15 Letter, Attachment A, at 4. AT&T–IS also offers other purchase discounts on a uniform basis to its multi-line customers, including "discounts based on the type of equipment purchased, the quantity purchased, [and] the total amount of the sale * * *." *Id.*, Attachment A, at 12.

37. We made it clear in the *Order* that, in order to comply with *Democratic Central Committee*, our detariffing plan must ensure "that stockholders have an opportunity to obtain capital recovery * * *." *Order*, 95 FCC 2d at 1312. We also noted that it would be in AT&T–IS's interest to establish sale prices which promote purchases by in-place customers in order to achieve capital recovery. *Id.* In our view the discount of one percent per month and other purchase discounts established by AT&T–IS reflect a prudent attempt by AT&T–IS to stimulate sales while also maximizing capital recovery. For us to require AT&T–IS to do more, as suggested by ICA, would constitute an unwarranted intrusion upon AT&T–IS's exercise of its business judgment and would risk undermining those elements of our detariffing plan which forward the goals of *Democratic Central Committee* by facilitating capital recovery.

38. Second, ICA argues that AT&T–IS guarantees its price quotes to embedded multi-line customers for only 30 days and that this is unduly burdensome on customers. *See* para. 26, *supra*. In explaining its price quotation policies, AT&T–IS has indicated that:

> Each firm price quotation is valid for 30 days. While customers can purchase their in-place equipment anytime thereafter, a new price quotation must be developed after 30 days to reflect the additional one percent per month discount, any embedded CPE sale-in-place price changes, and changes in the quantity of equipment to be purchased.

Trantina May 15 Letter, Attachment A, at 4. We conclude that this price quotation policy established by AT&T–IS is reasonable and that there is no need for us to impose any adjustments. Customers are not disadvantaged by the 30-day period because their failure to purchase by the end of that time does not foreclose their opportunity to purchase at a later time during the price predictability period. Since AT&T–IS has noted valid reasons for the need to recalculate price quotes, we can find no reason to impose any additional restrictions or requirements.

B. Public Release of AT&T–IS Sale Prices

1. Comments.

39. Both Rolm and NATA argue that AT&T–IS should be required to make publicly available all sale prices for its embedded multi-line CPE on a product line basis. They also contend that AT&T–IS's monthly sale reports to the Commission should be made public. *See* NATA Opposition at 16; Rolm Petition at 11; Rolm Reply Comments at 9–10; *See also* ICA Opposition at 8. Rolm argues that, without the disclosure of these prices, AT&T–IS is capable of setting sale prices in the manner which cross-subsidizes competitive product lines, and competitors must be permitted to monitor AT&T–IS's pricing policies and marketing conduct in order to prevent any such cross-subsidization. Rolm Petition at 11–13; *see* NATA Reply Comments at 8; Rolm Reply Comments at 7. ICA suggests that AT&T–IS at a minimum should be required to release "benchmark" sale prices for certain product lines to give some guidance to in-place customers. ICA Opposition at 8; *see* NATA Reply Comments at 7; Rolm Reply Comments at 9. AT&T–IS argues that general public release of this sale price information is not warranted because it is entitled to confidential treatment and particular customers may obtain price information from AT&T–IS upon request. *See* AT&T–IS Opposition at 6, 7 & n.*; AT&T–IS Reply Comments at 10.

2. Discussion

40. We find no merit in the claims that AT&T–IS should be required to disclose publicly its prices for embedded multi-line CPE. We have already determined in a separate proceeding[48] that AT&T–IS's pricing information qualifies for confidential treatment under §§ 0.457 and 0.459 of the Commission's Rules, 47 CFR 0.457, 0.459, and that the public interest does not otherwise require disclosure of this information.[49] Further, we rejected in the *Order* the assertion of various commenters[50] that the detariffing plan we ultimately established would run the risk of enabling AT&T–IS to engage in price manipulation in an anticompetitive manner. We stressed in the *Order*, in rejecting extensive disaggregation of AT&T–IS's sale prices and valuation amounts, that "the most effective means to guard against the possibility of anticompetitive conduct by ATTIS is to prevent any abrupt transition to a totally deregulated CPE environment." *Order*, 95 FCC 2d at 1311. We remain confident that the scope of requirements we have put in place during the transition[51] is sufficient to protect the interests of in-place customers, and we conclude that we are under no obligation to seek to enhance the standing of AT&T–IS's competitors in the CPE marketplace by giving them access to confidential pricing information. Further, since AT&T–IS indicates that in-place customers are being given pricing information upon request,[52] this availability of pricing information sufficiently protects the interests of these customers.[53]

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[46] To the extent that a particular multiline customer has requested a price quote and not received the type of response that AT&T–IS has assured us it is providing to all customers, our complaint procedures remain available. In virtually every case, however, we anticipate that customers will be able to resolve problems with AT&T–IS directly.

[47] Letter from Terry L. Trantina to Secretary, FCC (Jan. 31, 1984) at 6.

[48] *North Am. Tel. Ass'n*, FOIA Control No. 83–156, Memorandum Opinion and Order, FCC 84–343 (released July 20, 1984).

[49] *See id.* at paras. 8–12.

[50] *See Order*, 95 FCC 2d at 1310 & n.46.

[51] *See* para. 35, *supra*.

[52] See paras. 30–34, *supra*, for a review of the steps AT&T–IS has taken to supply price quotations to customers upon request.

[53] NATA has argued that AT&T–IS should disclose the methods it has used to calculate transaction costs with regard to its sale prices.

Continued

C. Calculation of Lease Rates

1. Comments

41. ICA suggests that AT&T–IS may not be following the requirements of the *Order* regarding the manner in which it is calculating lease rates for multi-line CPE during the transition period. ICA argues that AT&T–IS may be applying the Commission's 70 percent lease rate ceiling [54] to each subcomponent of a given CPE system, rather than to the system as whole, and that such an approach would lead to a lease rate for the system in excess of the 70 percent cap.[55] Letter from Counsel for ICA to Secretary, FCC (Apr. 27, 1984) at 6. AT&T–IS explains that, in calculating lease rates for embedded multi-line CPE, it identified the highest state tariff on an individual Embedded Price Element Code (EPEC) basis.[56] Trantina May 15 Letter, Attachment A, at 15. AT&T–IS claims that it would not have been possible to take any other calculation approach, primarily because the BOC's tariffed CPE rates were based on USOCs and were not stated in aggregated terms based on the various USOCs making up a particular CPE system. *Id.*

2. Discussion

42. In establishing the 70 percent ceiling, we did not contemplate imposing upon AT&T–IS a method of lease rate calculation other than the one AT&T–IS had intended to use in connection with its proposal regarding lease rates. AT&T–IS had proposed that the *highest* state tariff rate should be the ceiling for national lease rates. *See Order*, 95 FCC 2d at 1341–42 & n.97. Our main purpose in reducing the ceiling to 70 percent of the highest state tariff rate was to prevent increases "so large as to threaten rate shock in any area." *Id.* at 1344. It was not our purpose to confront AT&T–IS with the virtually impossible task of comparing the tariff structures in all the states for each of the hundreds of thousands [57] of CPE system configurations in order to derive some hybrid "highest state traiff" for each configuration. There is too much variation in state tariff structures and in CPE configurations to make such an approach feasible. In order to devise an efficient and expeditious [58] method of calculating lease rates, it was necessary for AT&T–IS to seek out a "building block" which would provide a common link among the otherwise divergent tariff structures. The EPECs were the only tool available for this purpose. We cannot fault AT&T–IS for taking the only practical route available for establishing a lease rate calculation methodology.

D. CPE Contract Termination Penalties

1. Comments

43. Several different approaches to this issue are suggested in the comments. First, a number of commenters argue that the Commission should prohibit AT&T–IS from invoking early termination contract provisions to impose termination charges if customers who originally entered into a long-term contract [59] with a BOC (for CPE now owned by AT&T–IS) seek to terminate the contract before its scheduled termination date. *See* Rolm Reply Comments at 8; Tandy Opposition at 6; TCA Opposition at 4; *see also* IDCMA Petition at 4. Second, it is contended that the Commission should determine that, if the contracts were legally assignable from the BOCs to AT&T–IS and continue to be enforceable, then AT&T–IS does not have any discretion to waive the early termination penalties in certain circumstances and instead must apply these penalty provisions uniformly in all circumstances. That is, AT&T–IS should not be permitted to waive the early termination penalty *only* if the customer agrees to buy the embedded equipment, or new equipment, from AT&T–IS. Rolm Petition at 15 n.11; *see* ICA Opposition at 11; NATA Reply Comments at 10–11; IDCMA Comments of July 26, 1984, at 4–6. Third, it is argued that the long-term contracts should not be viewed as assignable and enforceable against the in-place customers (or, at least, the Commission should concede that it does not have authority to decide this issue), but that the contracts should be treated as enforceable against AT&T–IS because AT&T–IS in this proceeding has pledged to the Commission that it will abide by the contracts. NATA Reply Comments at 10–13. Under this approach, customers could terminate before the expiration dates in the contracts without facing any penalty. Fourth, it is suggested that the Commission should monitor AT&T–IS's activities and take appropriate action in instances in which complaints regarding AT&T–IS's practices are brought before the Commission. ICA Opposition at 11.

44. In arguing that none of these approaches is warranted or necessary, AT&T–IS maintains that the Commission has approved those aspects of the AT&T–IS plan relating to these fixed-term contracts. AT&T–IS Opposition at 11. AT&T–IS further contends that these contracts have been assigned to AT&T–IS from the BOCs by operation of law, and that we should reaffirm our intent that the terms of these contracts must be honored by all parties. AT&T–IS Reply Comments at 9; AT&T–IS Opposition at 12–13. AT&T–IS maintains that barring imposition of the early termination penalties would relieve customers of an obligation under the contracts while still giving them the benefits of their bargains. AT&T–IS Opposition at 11. In addition, AT&T–IS asserts that the BOC lease rates set by tariff regarding these contracts took into account the imposition of penalties for early termination, and that the resulting lower tariff rates would have been considered unlawfully discriminatory (*vis-a-vis* non-contract customers) were it not for the early termination penalty requirements of the contracts. *Id.* at 12 & n.* *.

45. AT&T–IS argues that imposition of the early termination charge is necessary "because when a customer terminates service prior to the expiration of the term of the agreement, [AT&T–IS] will not achieve the investment and expense recovery contemplated and upon which the lower

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NATA Opposition at 16. We required AT&T–IS to supply us with information regarding the derivation of its transaction costs. *Order*, 95 FCC 2d at 1340. In compliance with this requirement AT&T–IS has disclosed and explained the methodology it has established for deriving transaction costs. *See* Letter from B.H. Walling, Jr., to Secretary, FCC (Apr. 16, 1984).

[54] We required that: "ATTIS may establish during the transition period for any product of multi-line equipment which is not also leased as new equipment by ATTIS [lease rates which] shall not exceed the higher of (1) an amount equal to 70 percent of the highest state tariff in effect for the category of equipment involved on March 29, 1983; and (2) the statistical median of all state tariffs in effect on that date for that category of equipment." *Order*, Appendix B, 95 FCC 2d at 1417.

[55] For an illustration of ICA's assertion that such component-specific lease rates would lead to overall lease rates for a CPE system in excess of the Commission's ceiling, see Letter from Counsel for ICA to Secretary, FCC (May 30, 1984), Table A.

[56] An EPEC is a code used by AT&T–IS to designate embedded CPE items. Trantina May 15 Letter, Attachment A, at 3. AT&T–IS found it necessary to convert USOCs to EPECs for purposes of establishing national sale and lease prices because USOCs "used by each BOC vary significantly among BOCs and by jurisdiction." *Id.*, Attachment A, at 3 n.8.

[57] Trantina May 15 Letter, Attachment A, at 15.

[58] It was AT&T–IS's goal to have the national lease rates in place at the time of divestiture. *See id.* AT&T–IS was not able to implement national lease rates until March 1, 1984. See Letter from Terry L. Trantina to Secretary, FCC (Jan. 31, 1984) at 4–5.

[59] AT&T–IS has explained that: "[F]ixed-term agreements [were made] for periods ranging from 12 to 144 months. Selection of a fixed-term agreement assured customers of a lower monthly rate than that available to month-to-month customers and that the company would not increase that rate during the contract term selected. In return, AT&T was assured of a know revenue stream to offset its investment and the expenses associated with the CPE without the risk of premature retirement or additional expense." Letter from Terry L. Trantina to Chief, Common Carrier Bureau (June 19, 1984) at 2.

[lease rates] were predicated." Letter from Terry L. Trantina to Chief, Common Carrier Bureau (June 19, 1984) at 2. AT&T–IS further contends that its current practices regarding the application of penalties for early contract termination [60] should not be overturned by the Commission because they are "normal competitive marketing practices" [61] which are "consistent with the marketing and pricing practices of other vendors who lease equipment." [62]

2. Discussion

46. The comments regarding two-tier contracts and early termination penalties have indicated several potential problems in the termination charge area. These problems include: AT&T–IS's ability to recover investments in equipment in the absence of termination charges; the impact of AT&T–IS's actions on competition in the CPE marketplace; and the effect of AT&T–IS's actions on its customers' capacity to make informed telecommunications decisions. The comments have also presented varied approaches for the resolution of these problems which range from maintaining the status quo to eliminating the charges entirely. The difficulty in resolving these issues has been further complicated by the relatively late submission of significant comments on the issue. [63]

47. Consequently, we have decided that the issues presented by AT&T–IS's termination charge practices should not be addressed in this Order. The desirability of an immediate resolution of many of the other issues raised in this proceeding, and the importance of the concerns raised by the termination charge issue, mandates this conclusion. Our conclusion is also prompted by the fact that the uniqueness of the questions raised by this issue and the number of comments filed and inquires made well after completion of the normal reconsideration pleading cycle make it necessary to take additional time to engage in further analysis before arriving at a decision. We will, therefore, address the full range of termination charge questions noted in the comments in a subsequent Order in this docket.

48. As a final matter, AT&T–IS has asserted that the Commission has sanctioned AT&T–IS's view that the CPE lease contracts have been assigned to AT&T–IS by operation of law. For example, in responding to a letter from the Chief, Common Carrier Bureau, [64] regarding early termination penalties, AT&T–IS contends that "[i]mplicit in your questions concerning AT&T–IS's termination charge policies and practices is Commission recognition of the continuing validity of the fixed-term agreement * * *." *Id.* at 1. In reaching such a conclusion, AT&T–IS is engaging in a strained interpretation of the Bureau Chief's letter and of our actions in this docket. We have had two objectives in this docket regarding the issue of early termination penalties—to determine the policies AT&T–IS intended to follow regarding imposition of these penalties if we permitted the transfer of the embedded base to AT&T–IS, [65] and to ascertain the nature of the actual practices followed by AT&T–IS regarding application of these penalties in the wake of divestiture. [66] Nothing in the *Order* addressed the issue of the assignability of the BOCs' long-term contracts, nor have we taken any other action in the docket which could be construed as a judgment that these contracts have been assigned to AT&T–IS "by operation of law."

V. Support of Embedded CPE During Transition Period

A. Customer Proprietary Information

1. Comments

49. Rolm argues that all customer proprietary information relating to the embedded CPE base should be disclosed to the public. Rolm Petition at 4; *see* Tandy Opposition at 8–9. Rolm contends that such disclosure would be consistent with Commission rules governing the provision of enhanced services customer proprietary information by carriers to their separate subsidiaries, [67] that the Commission has failed to take into account the fact that competition is severely threatened by the Commission's failure to require the disclosure of this information, [68] and that customer privacy could be adequately protected by permitting customers to bar the disclosure of this information to any CPE vendor, including AT&T–IS. [69]

50. AT&T–IS maintains that Rolm is incorrect in asserting that the procedures approved by the Commission in the *Order* are not consistent with the Commission's rules, and that, even if these rules were applicable, they would relate only to non-CPE service information and not to CPE-specific information. AT&T–IS Opposition at 9 & n.*. ICA objects to the approach suggested by Rolm because any automatic release of customer proprietary information would confront customers with the prospect of repeated and burdensome inquiries and blandishments from CPE vendors. ICA Opposition at 7. The BOCs maintain that the Commission has already specifically rejected the disclosure requirements recommended by Rolm, and that the BOCs are transferring CPE-specific information to AT&T–IS in a manner fully consistent with the requirements established by the District Court in *United States* v. *AT&T*. BOC Opposition at 7–8; BOC Reply Comments at 2–3.

2. Discussion

51. We can find no reason to alter the treatment of customer proprietary information which we established in the *Order*. In adopting the *Order*, we

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[60] AT&T–IS's current practices may be summarized as follows: (1) If a customer seeks to terminate a lease contract before its expiration date in order to purchase or otherwise obtain CPE from another vendor, then AT&T–IS imposes a termination penalty.

(2) If a customer seeks to purchase its in-place CPE from AT&T–IS, then no termination charge applies.

(3) If a customer seeks to upgrade its existing system, lease new CPE, or purchase new CPE from AT&T–IS, then the termination charge is not waived. The customer may, however, be eligible for a credit to reduce the amount of the termination liability. *See id.* at 3.

[61] *Id.* at 4.

[62] *Id.* at 3.

[63] Since August 31, 1984, the Commission has received comments for three parties solely on the termination charge issue. Supplemental Comments of North American Telecommunications Association, filed Aug. 30, 1984; Comments of Rolm Corporation, filed Sept. 19, 1984; Reply of AT&T—Information Systems, filed Sept. 21, 1984; Response of North American Telecommunications Association to Reply of AT&T—Information Systems, filed Oct. 26, 1984. The Common Carrier Bureau has also received between 60 and 70 informal inquiries regarding this issue.

[64] Letter from Chief, Common Carrier Bureau, to Terry L. Trantina (May 24, 1984).

[65] In September 1983 the Common Carrier Bureau requested AT&T to indicate "what corporate policy * * * ATTIS [would] apply concerning customer obligations under [long-term leases]" and whether "ATTIS [would] seek to enforce existing termination charges * * *." Letter from Chief, Common Carrier Bureau, to William A. Davis II (Sept. 16, 1983), Attachment, at 4. AT&T–IS responded that "[t]ermination charges, applicable to early termination of service agreements (*i.e.*, Tier A and Variable Term, non-month-to-month) will * * * be applied." Letter from William A. Davis II to Secretary, FCC (Oct. 7, 1983) at 22.

[66] In May 1984 the Common Carrier Bureau request information from AT&T–IS "in order that we may have a better understanding of the facts concerning your termination charge policies for purposes of the Commission's addressing and resolving this issue in the reconsideration proceeding." Letter from Chief, Common Carrier Bureau, to Terry L. Trantina (May 24, 1984) at 1–2.

[67] Section 64.702(d)(3) of the Commission's Rules, 47 CFR 64.702(d)(3), provides that carriers "[m]ay not provide to any * * * separate [subsidiary] any customer proprietary information unless such information is available to any member of the public on the same terms and conditions * * *."

[68] Rolm Petition at 5–6; *see* Rolm Reply Comments at 2–3.

[69] Rolm Petition at 8; *see* NATA Opposition at 9 n.8; Tandy Opposition at 9 n.4; NATA Reply Comments at 5; Rolm Reply Comments at 3–4.

considered and rejected the argument that CPE-related proprietary information [70] should be made publicly available, and nothing convinces us now that this decision should be modified. First, we reject the view that the mechanisms we established in the *Order* fail to take adequate account of competitive considerations. We reached the conclusion in the *Order* that the most serious potential threat to competition was created by the possibility that AT&T–IS could gain access to the BOCs' non-CPE service information [71] as well as CPE-related information. *See Order*, 95 FCC 2d at 1349. Access to such service information could give AT&T–IS an unfair competitive advantage over other CPE vendors because the information could be used to identify potential customer needs and to develop marketing strategies. We further concluded in the *Order* that the safeguards established by AT&T–IS to isolate non-CPE service information from AT&T–IS marketing personnel, if properly implemented, would be sufficient to ameliorate any potential risk that AT&T–IS would engage in anti-competitive conduct. *See id.* at 1351–52.[72] We find no reason to alter this view.

52. Second, we cannot agree with Rolm's assertion that the mechanisms we established in the *Order* regarding CPE-related information are not consistent with our rules. This CPE-related information is an essential attribute of the embedded base. To require public disclosure of this information would substantially discount the value of the embedded base transferred to AT&T–IS because such availability of the information to AT&T–IS's competitors would erode AT&T–IS's opportunity to compete in the CPE marketplace on an equal footing with these other vendors. *See id.* at 1350. Our desire to nurture competition in this market does not extend so far that we would be willing to award to AT&T–IS's competitors the windfall of free access to CPE-related information. Nor do we believe that any such windfall is necessary to protect competition in the CPE marketplace. We have concluded that competition is better served by recognizing that AT&T–IS is entitled to access to this information, as an integral part of the embedded base, without being required to make the information public. This information, which is inextricably bound up with the CPE assets being transferred to AT&T–IS, is not the type of proprietary information which is subject to § 64.702(d)(3) of the Commission's Rules, 47 CFR 64.702(d)(3).

53. It also is important to note that the *Order* established mechanisms regarding CPE-related information which will promote competition, while also protecting the interests of users. Under the *Order*, each embedded CPE user has the authority "to decide whether and to whom information specific to that customer's service and equipment should be disseminated." *Id.* at 1352. This requirement promotes competition by establishing a mechanism under which customers can give CPE-related information to other vendors, thus enabling these vendors to develop price quotes based on detailed information regarding the customers' current CPE systems. The mechanism also protects the privacy of embedded CPE customers by giving them control over dissemination of this information. No commenter has presented any persuasive evidence or argument that this mechanism—and the overall approach we have taken regarding CPE proprietary information—will not foster competition, protect the value of the embedded CPE base transferred to AT&T–IS, and provide in-place customers with a sufficient degree of confidentiality.

B. Termination of Service for Nonpayment of CPE Bills

1. Comments

54. AT&T–IS argues that the Commission's requirements [73] regarding the prohibition of local telephone service terminations for failure to pay embedded CPE bills, the application of partial payments first to local service bills, and the notification of customers that service will not be terminated for such nonpayment, should be relaxed because the BOCs' Customer Records Information System (CRIS) billing systems would have to be substantially altered to comply with these requirements and any such alteration could not be carried out in any timely fashion without inordinate expense. AT&T–IS Emergency Petition at 7–8.[74] Other commenters agree that it is not practical to require the BOCs to alter their CRIS systems to achieve compliance with these requirements. ICA Comments at 2; BOC Petition at 5–6. AT&T–IS also contends that the requirements established by the *Order* are not necessary because the billing system developed by the BOCs and AT&T–IS is in full compliance with requirements established by the District Court in *United States* v. *AT&T*. AT&T–IS Emergency Petition at 8–9. Further, AT&T–IS maintains that embedded CPE customers already are adequately protected because the BOCs do not terminate local service in any case in which a CPE bill has been contested by a customer. *Id.* at 9–10; *see* AT&T–IS Reply Comments at 4.

55. AT&T–IS suggests that the shared billing arrangements developed by the BOCs and AT&T–IS are beneficial to embedded CPE customers because the arrangements minimize costs, which otherwise would be passed on to these customers. AT&T–IS Emergency Petition at 8–9. AT&T–IS Argues that modifications of the CRIS system should not be required because these modifications may not serve any useful purpose after the BOCs cease providing shared billing to AT&T–IS. *Id.* at 10–11; *see* BOC Petition at 6; BOC Opposition at 5–6. ICA suggests that current billing and service termination procedures should be explained to embedded CPE customers through a written notice. ICA Comments at 2–3; *see* ICA Opposition at 10; Letter from Counsel for ICA to Secretary, FCC (Apr. 27, 1984) at 8–9.[75] The BOCs, however, object to such a notice requirement because joint billing is a transitory arrangement which does not warrant such costly notice requirements and because, under current BOC practices, customers are notified directly before local service is actually terminated. BOC Opposition at 5–7; *see* AT&T–IS Reply Comments at 4. The BOCs also point out that any Commission requirements which necessitate alteration of the CRIS systems would force the BOCs and AT&T–IS to renegotiate their shared billing contracts—an exercise which would be costly and time-consuming. BOC Petition at 7. Both AT&T–IS and the BOCs assert that the BOCs' current collection practices are recognized to be

[70] CPE-related information includes general customer information and CPE-specific information. General customer information includes customer name, billing address, billed telephone number, business or residence, and class of service. CPE-specific information includes equipment types, quantities, and locations. *Order*, 95 FCC 2d at 1349–50.

[71] Non-CPE service information includes information relating to access lines, toll usage, and directory advertising. *Id.* at 1349.

[72] We are satisfied that AT&T–IS has taken adequate measures to ensure that non-CPE service information is not made available to, or otherwise obtained by, AT&T–IS marketing personnel. For a detailed description of these measues, see Trantina May 15 Letter, Attachment A, at 10–11.

[73] *See Order*, 95 FCC 2d at 1354–55.

[74] See para. 56 n.75, *infra*, for a discussion of AT&T–IS's emergency petition.

[75] ICA generally favors the relief sought by AT&T–IS, arguing that the shared billing arrangements approved by the District Court in *United States* v. *AT&T–IS* are sufficient. ICA Opposition at 9–10.

fair and flexible, and that customers are given ample opportunity to make payment arrangements with regard to delinquent accounts before any service termination is actually carried out. AT&T–IS Reply Comments at 4; BOC Reply Comments at 5.

56. IDCMA asserts that the billing requirements established by the Commission in the *Order* should be maintained, and that the imposition of local service cut-offs should not depend upon whether the customer involved has disputed his telephone bill. IDCMA Petition at 7–8. NATA supports IDCMA's position, arguing that there is no need to reconfigure the CRIS system in order to achieve compliance with the *Order*. NATA argues that it would be sufficient for embedded CPE customers to be notified that the BOCs do not have any authority to terminate local telephone service if a customer fails to pay embedded CPE bills. NATA Opposition at 3, 5. Both NATA and Tandy argue that a manual review of customers' bills would be a sufficient mechanism to prevent service terminations for nonpayment of CPE bills. *Id.* at 6; *see* Tandy Opposition at 5. NATA and Tandy also assert that any relaxation of the requirements established in the *Order* would give AT&T–IS an unfair competitive advantage because the BOCs have a decided advantage in collecting unpaid bills as a result of their ability to terminate local service. NATA Opposition at 6; Tandy Opposition at 5.[76]

2. Discussion

57. We indicated in the *Order* that our objective in barring the BOCs from terminating local service for failure to pay CPE charges was to limit "any competitive advantage that may follow from the BOCs' provision of billing and related support services to ATTIS." *Order*, 95 FCC 2d at 1355. Our concerns regarding this possible competitive advantage lead us to hold to our view that the BOCs should not be authorized to terminate or suspend local telephone service for failure to pay AT&T–IS CPE charges. We also have concluded, however, that the practical problems and considerations raised by AT&T–IS make it advisable for us to adopt certain refinements and adjustments in the requirements we established in the *Order*. Specifically, those requirements are revised as follows:

(1) The BOCs shall not terminate or suspend local service in any case in which the customer has disputed a CPE charge or has failed to pay a CPE charge.

(2) A BOC employee shall manually review a customer's bill records before submitting any order for the termination or suspension of the customer's service. This manual review shall be for the purpose of confirming that the customer has failed to make payments or has made only partial payments, and for determining whether the failure to make payments is related to a CPE billing dispute.

(3) If the manual review indicates that the customer has made partial payments, the reviewing BOC employee shall determine whether sufficient payments have been made by the customer to defray outstanding transmission service bills. If sufficient payments have been made, the BOC employee shall not submit any order for local service termination or suspension.

(4) A BOC representative also shall contact a customer directly by telephone before authorizing any termination or suspension of local service. This contact may be made only if the customer is delinquent in paying transmission service bills, and shall be for the purpose of attempting to establish a mutually acceptable payment schedule with the customer. The customer must be advised that he must pay the balance owed for transmission service in order to avoid termination or suspension of service. The customer also must be advised that local service will not be terminated or suspended for failure to pay AT&T–IS CPE bills.

(5) Neither the BOCs nor AT&T–IS will be required to notify all in-place CPE customers that the BOCs are not authorized to terminate or suspend local service for failure to pay CPE charges. Sufficient notice in specific cases will be provided through the manual review process we are requiring.

(6) The BOCs will not be required to make any alterations in the computer software comprising their CRIS billing systems. The automated billing methods and procedures currently in effect may continue to be operated by the BOCs without modification for purposes of the shared billing services provided to AT&T–IS.

These requirements, it should be noted, will apply only in cases in which the customer involved is leasing embedded equipment from AT&T–IS.

58. We have concluded that, with these clarifications and refinements, the requirements established in the *Order* are sufficient to prevent AT&T–IS from gaining an unfair competitive advantage over other vendors while also avoiding the imposition of burdensome costs on the BOCs or AT&T–IS. Further, the requirements we are establishing are similar to billing review procedures already being followed by many of the BOCs. *See, e.g.*, BOC Reply Comments at 5. From the perspective of the BOCs' customers who also continue to lease embedded CPE from AT&T–IS, the fact that our requirements bar any service cut-off for failure to pay CPE bills ensures that these customers' dealings with a third party vendor (*i.e.*, AT&T–IS) will not affect the provision of transmission service to them by the BOCs. Although we recognize that operation of the automated "treatment" mechanisms of CRIS [77] creates the potential for confusion among some customers, we have concluded that this potential is offset by our requiring manual review of a customer's bills and direct contact from a BOC representative before any termination or suspension of service may be carried out. Further, as we will discuss, modification of the CRIS billing mechanisms does not appear to be a practical alternative in the context of

[76] The BOCs also seek a waiver of the requirements of paragraphs 131 and 132 of the *Order* on behalf of 17 telephone companies. *See* BOC Petition at 7–8 & Attachment A. Mountain States Telephone and Telegraph Company also has filed a petition for waiver of these provisions of the *Order*. On December 28, 1983, AT&T–IS submitted an Emergency Petition seeking reconsideration of the Commission's joint billing requirements and also seeking temporary authority for AT&T–IS and the divested BOCs to implement shared billing without effectuating measures to comply with the billing requirements established in the *Order*. *See* AT&T–IS Emergency Petition at 2. On December 29, 1983, the Common Carrier Bureau granted a temporary partial stay of the billing requirements, pending further action by the Commission. CC Docket No. 81–893, Order Granting Temporary Partial Stay Pending Reconsideration, Mimeo No. 34183 (released Dec. 29, 1983).

[77] "Treatment" refers to methods employed by the BOCs to collect overdue bills. AT&T has explained that: "CRIS * * * provides for mechanized treatment (notices to the customer and/or business office) of overdue accounts. Residence, business and final accounts (residence or business) are separately categorized. Whether a particular customer is subject to credit treatment depends upon a combination of that customer's payment history, the amount due and the category in which the customer falls. A reminder notification is mechanically generated to the customer and/or business office when payment has not been received by a specific number of days after the due date."

AT&T Plan of Reorganization filed in *United States* v. *AT&T* (Dec. 16, 1982) at 96. AT&T has also indicated that: "Treatment notices will continue [after divestiture] to be generated by the BOC CRIS system based on the total amount due. The BOC account inquiry center will conduct normal collection activities on all overdue accounts unless or until a customer indicates that the failure to pay is due to a dispute over AT&T equipment charges. If this occurs, the BOC will credit the customer's account for the amount of AT&T equipment charges in dispute and refer the charges to AT&T for collection or adjustment. AT&T will compensate the BOC for these services." *Id.* at 104.

the shared billing services provided to AT&T–IS by the BOCs.[78]

59. From the perspective of vendors competing with AT&T–IS, we have concluded that our decision to bar service cut-offs for failure to pay CPE bills is an adequate means of protecting the competitive position of these vendors, and that further requirements, such as reconfiguration of CRIS, are not necessary. In our view, the result of these safeguards is that AT&T–IS is not afforded any special advantage as a result of joint billing carried out by the BOCs. The ultimate threat for non-payment of CPE bills—the cut-off of local service—has been removed, and we have taken steps to ensure that this fact is brought to the attention of the customer. Thus, the BOCs are not authorized to take action which would place AT&T–IS in a better position than its competitors to collect unpaid bills.

60. From the perspective of the BOCs and AT&T–IS, we agree with the contention that the imposition of further requirements is unnecessary and may be burdensome. We have arrived at this conclusion for a number of reasons. First, because of the design of CRIS [79] any revision of the system would be a difficult undertaking. AT&T–IS has indicated that any such modification "would require significant program and design changes * * *" and would require up to 12 months to complete.[80] Second, the modifications would be costly. The BOCs have estimated that these reconfiguration costs could easily exceed $100 million.[81] Third, the shared billing provided to AT&T–IS by the BOCs is temporary, and thus does not warrant the imposition of further billing reconfiguration requirements. The *Order* requires shared billing to terminate no later than June 30, 1985. *Order*, 95 FCC 2d at 1348. Further, AT&T–IS is currently phasing in its assumption of billing functions for embedded CPE and, after September 1, 1984, only seven BOCs are scheduled to be providing billing for AT&T–IS. BOC Reply Comments at 4.[82] This phasing out of joint billing makes unnecessary any reconfiguration of CRIS.

61. We conclude this discussion by noting that we imposed similar billing requirements upon the BOCs in a separate proceeding.[83] In that proceeding, we required that partial payments be applied first to transmission service charges, that local service could not be cut off for failure to pay CPE charges, and that BOC representatives must contact customers before terminating service in order to determine whether amounts owed relate to transmission charges or to charges imposed by a BOC separate subsidiary for CPE. *BOC Separation Order*, 95 FCC 2d at 1141–42. On reconsideration, we required the BOCs to develop procedures to satisfy our policy against termination of local service for failure to pay a BOC affiliate's CPE charges. *BOC Separation Reconsideration Order* at paras. 48–49.

62. Although the billing mechanisms applicable initially to the BOCs are more stringent than those we adopt here,[84] there are distinctions between the BOCs' billing for their affiliates and the BOCs' billing for AT&T–IS which support our view that the more stringent requirements need not be applied in the latter case. First, the joint billing provided to AT&T–IS must end not later than June 30, 1985, but the BOCs may provide joint billing to their affiliates through 1987. *See BOC Separation Order*, 95 FCC 2d at 1141. The shorter period of joint billing justifies less stringent requirements. Second, the BOCs are likely to have greater incentive to use their billing collection mechanisms to benefit their own affiliates than they would to benefit AT&T–IS, which in many instances is in competition with these affiliates. Third, since the BOCs' affiliates are just beginning to enter the CPE market as retailers of new equipment, the number of monthly billings involved is far less than the number of billings provided for AT&T–IS.[85] The large number of AT&T–IS billings makes CRIS reconfiguration more complicated than the billing mechanism changes necessary with regard to billings for the BOC affiliates.

C. Interconnection of Independently-Supplied CPE

1. Comments

63. IDCMA argues that AT&T–IS should be prohibited from establishing or enforcing any policy or rule under which AT&T–IS customers are barred from using or interconnecting any independently-supplied CPE as a condition of the continued leasing of AT&T–IS's equipment. IDCMA maintains that the *Order* should be clarified to ensure that this prohibition applies regardless of whether the independently-supplied CPE is registered under Part 68 of the Commission's Rules, 47 CFR 68.1 *et seq.* IDCMA Petition at 5; *see* ICA Opposition at 11; NATA Opposition at 6; Tandy Opposition at 6–7; TCA Opposition at 4. AT&T–IS contends that IDCMA's assertions are ill-conceived because AT&T–IS does not follow any "no-mix" policy regarding independently-supplied CPE, because AT&T–IS permits interconnection of such CPE so long as it meets "reasonable, minimal standards" and does not adversely affect compliance with Part 68 by the CPE supplied by AT&T–IS, and because AT&T–IS's policy is consistent with the approach adopted by the Commission regarding equipment interconnection. AT&T–IS Opposition at 13; *see* AT&T–IS Reply Comments at 8; Letter from Terry L. Trantina to Legal Assistant to the Chief, Common Carrier Bureau (May 11, 1984) (hereinafter Trantina May 11 Letter) at 2.[86]

2. Discussion

64. The *Order* barred AT&T–IS from preventing equipment-to-equipment interconnection between its embedded CPE and components or adjunct devices made by other manufacturers and registered under Part 68. The *Order* also required AT&T–IS to "work

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[78] See para. 61, *infra*. It also is reasonable to conclude that BOC customers are further protected by the fact that the BOCs may have little financial incentive to cut off transmission service for failure to pay AT&T–IS CPE bills, because this failure to pay CPE bills does not necessarily mean that the customer is not a good credit risk. *Cf.* Woletz, *Money Rolling Out*, Forbes, Sept. 10, 1984, at 142.

[79] AT&T–IS has indicated that: "The design of the BOC billing systems does not permit association of amounts paid by customers with specific charges comprising the total balance due. Payments can be applied only against the total balance due. When partial payments are tendered, the BOCs will therefore be unable to determine what portion of the payment is due to each entity whose charges are included in the total balance due." AT&T–IS Emergency Petition at 4 (quoting AT&T Plan of Reorganization filed in *United States v. AT&T* (Dec. 16, 1982) at 108); *see* BOC Petition at 4–5; AT&T–IS Reply Comments at 2.

[80] AT&T Emergency Petition, Attachment A (Affidavit of D.L. Oertle) at 4.

[81] BOC Petition at 5.

[82] As of December 1984, AT&T–IS had assumed embedded CPE billing functions in 24 states. In January 1985 AT&T–IS was scheduled to begin its own billing for more than 3 million customers in New York. New York Times, Dec. 4, 1984, at D1.

[83] *Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies*, CC Docket No. 83–115, Report and Order, 95 FCC 2d 1117 (1983) (*BOC Separation Order*), *reconsideration*, FCC 84–252, 49 FR 26056 (released June 1, 1984) (*BOC Separation Reconsideration Order*).

[84] *See* Letter from Chief, Common Carrier Bureau, to J.R. Teel, BellSouth Services (June 29, 1984). Our discussion of the BellSouth proposal here should not be construed as the rendering of any determination of whether the proposal is in compliance with the *BOC Separation Order*. We shall make that determination in a separate action.

[85] The CRIS systems include embedded CPE records for approximately 60 million customers. AT&T–IS Emergency Petition, Attachment A (Affidavit of D. L. Oertle) at 3.

[86] The Secretary of the Commission has been requested to include a copy of this letter in the official record of this docket.

cooperatively with such manufacturers to facilitate this interconnection." *Order*, 95 FCC 2d at 1359. The concerns expressed by IDCMA raise two separate issues. First, whether the "reasonable, minimal standards" applied by AT&T–IS in deciding whether to permit equipment-to-equipment interconnections are consistent with commission policies and do not constitute an unauthorized ban on such interconnections. Second, whether the scope of our policy as described in the *Order* should be expanded to include equipment-to-equipment interconnections not currently governed by Part 68.

65. As to the first issue, we note that the "reasonable, minimal standards" referenced by AT&T–IS may be summarized as follows:

(1) The equipment-to-equipment interconnection must conform to Part 68 and to applicable municipal regulations.

(2) Appropriate interfaces for interconnections, which may be provided by AT&T–IS or by the customer, must permit reasonable trouble isolation.

(3) Customers may not modify or rearrange AT&T–IS CPE to carry out hard-wire connections.

(4) Costs incurred by AT&T–IS to provide and remove arrangements to interconnect customer CPE will be recovered from the customer.

(5) Customers will be informed that they are responsible for ensuring that the AT&T–IS host CPE and the add-on CPE continue to comply with applicable regulations.

(6) The interconnection must be otherwise acceptable to AT&T–IS for the specific proposed connection.

(7) The interconnection must not require distribution or use of specifications which are proprietary in nature.

See Trantina May 11 Letter at 3 & Attachment (Letter from W. E. Russell to M. D. Woody (Apr. 13, 1984)) at 2. There is nothing on the face of these standards which conflicts with the policy of the *Order* that AT&T–IS should not prevent equipment interconnections with its embedded CPE.[87] Of course, the Commission would be concerned in any situation in which it is alleged that AT&T–IS is abusing these standards in order to restrict interconnections as a means of gaining a competitive advantage over other vendors.[88] If any such case arises, sufficient mechanisms already are in place to enable us to effect a remedy.

66. As to the second issue, we do not agree with IDCMA that the *Order* is unduly limiting. Our intent in the *Order* was to make clear that we would not countenance any deviation by AT&T–IS from our *existing* policies regarding equipment-to-equipment interconnections. Any suggestion that these policies should be expanded to encompass CPE not required to be registered under Part 68 would take us far afield from the issues we address in this proceeding. Hence, we reject IDCMA's suggested approach.

VI. Other Issues

A. Refurbishment Costs and Exempt Materials Expense

1. Comments

67. In the *Order* we required AT&T to reimburse each of the BOCs for 50 percent of the amount of refurbishing expenses incurred in 1983 by the respective BOCs. We also required AT&T–IS to reimburse the BOCs for 50 percent of the unallocated balance of 1983 exempt materials expenses except that AT&T was granted permission to subtract amounts previously allocated to AT&T–IS from 1983 exempt materials expenses.

68. AT&T–IS requests the Commission to reconsider its requirement that AT&T must reimburse ratepayers for 50 percent of refurbishment expenses incurred by the BOCs in 1983 in connection with embedded CPE inventory transferred to AT&T–IS. AT&T–IS disagrees with the Commission's conclusion that refurbishment increases the net book value of CPE transferred to arguing that the net book value of this CPE already has been adjusted to reflect a longer useful life resulting from refurbishment. Thus, AT&T–IS contends, the net book value paid by AT&T–IS at transfer was higher than would have been the case if refurbishment had not been taken into account.

69. AT&T–IS points out that this higher net book value is assumed regardless of whether the CPE is in place or in unrefurbished inventory, or whether the refurbishment expense was actually incurred before or after the CPE is transferred to AT&T–IS. AT&T–IS also notes that about 40 percent of embedded CPE inventory transferred to AT&T–IS was unrefurbished, and that the additional cost to AT&T–IS of refurbishing this CPE would be at least $63.6 million.

70. AT&T–IS contends that the assumptions made by the Commission in deriving the amount of reimbursement to the BOCs are not supported by the facts. First, AT&T–IS notes that the Commission assumed that all BOC refurbishing expenses in 1983 are attributable to inventory CPE, but notes that 87 percent of single-line CPE and 77 percent of multi-line CPE refurbished in 1983 were returned to service and are subject to AT&T–IS's sale plan. Second, AT&T–IS notes that the Commission assumed that all BOC embedded CPE inventories were transferred to AT&T–IS, but points out that at least 15.5 percent of embedded CPE was retained by the BOCs (for use primarily as official service equipment). Thus, AT&T–IS argues that at least this percentage of refurbishment expense is not attributable to CPE transferred to AT&T–IS. Third, AT&T–IS notes that the Commission assumed that all embedded CPE inventory was transferred to AT&T–IS in refurbished condition, but points out that this is true for only 60 percent of the transferred inventory. AT&T–IS is responsible for refurbishing the remaining 40 percent. AT&T–IS estimates that only $128.3 million of the $787.6 million 1983 BOC refurbishment expenses incurred through November 30, 1983, is actually attributable to embedded CPE inventory transferred to AT&T–IS, under the Commission's "increased value" rationale. AT&T–IS contends that reimbursement of even this amount would constitute double ratepayer recovery for the effects of refurbishment.

71. AT&T–IS contends that it should not be required to reimburse ratepayers for BOC "exempt materials" expense, as required by the Commission, because such expenses were incurred only in connection with the installation and maintenance of inside and drop wire, and not the installation and maintenance of CPE. Since inside and drop wire remains the property of the BOCs, AT&T–IS argues that any expense attributed to that wire, including exempt materials expense, is the responsibility of the BOCs.

72. AT&T–IS notes that the Commission may have intended to refer to "other expensed materials" (*e.g.*, small CPE repair parts such as bulbs, buttons, and cords) used in the repair

[87] We note that add-on CPE may require Part 68 registration prior to connection with AT&T–IS embedded CPE, depending upon the level of network protection offered by the embedded CPE. We further note that the Commission is currently considering deregulating the means of connecting equipment to equipment. *See Revisions to Part 68 of the Commission's Rules*, CC Docket No. 84–885, Notice of Proposed Rulemaking, FCC 84–424, 49 FR 39349 (released Sept. 26, 1984).

[88] *See, e.g.*, Letter from Legal Assistant to the Chief, Common Carrier Bureau, to T. A. Rossano, AT&T (Apr. 13, 1984).

and maintenance of embedded CPE. AT&T–IS maintains that, if this was the Commission's intent, AT&T–IS should not be required to reimburse any of the 1983 BOC expense associated with these materials because all of these materials were either used by the BOCs during 1983 or will have been used by AT&T–IS during the first few weeks of 1984 to repair in-place CPE available for purchase. Thus, it suggests that ratepayers can capture the value of such expense through purchase.

73. On the other hand, the BOCs argue that the Commission should reject AT&T–IS's suggestion that the *Order* be modified regarding refurbishment costs and exempt materials expenses, contending that modification would be inconsistent with the Commission's policy of protecting the BOC ratepayers. The BOCs maintain that, to the extent AT&T–IS collects lease rates for refurbished inventory and in-place embedded CPE, AT&T–IS will receive gains for which it has not compensated the BOCs. The BOCs note that, even though revenues associated with the lease or sale of refurbished inventory CPE will be received by AT&T–IS and cannot be captured by ratepayers through the sales program, the BOCs do not object to the Commission's adjusting the reimbursement to take into account CPE inventory transferred in unrepaired condition. Regarding exempt materials, the BOCs note that AT&T–IS has argued that reimbursement should not be required because the exempt materials relate to assets retained by the BOCs, and argue that it is likely that the Commission intended to refer only to the inventory of materials and supplies used for refurbishing CPE inventory which was transferred at the time the CPE inventory was itself transferred. The BOCs argue that they should be reimbursed for (1) 50 percent of refurbishment costs on embedded in-place CPE transferred to AT&T–IS; (2) 100 percent of such costs for inventory CPE actually refurbished before transfer; and (3) the value of inventory materials and supplies normally used to refurbish CPE transferred to AT&T–IS.

2. Discussion

74. AT&T–IS has persuaded us to revise our approach. In developing instructions in the *Order*, we were faced with the difficulty of quantifying the reimbursement amount. We noted that the BOCs might well be able to identify the CPE being transferred to AT&T–IS and not subject to the sales program, and that we could require the BOCs to bill AT&T–IS for such expenses. However, in order to minimize the administrative burden on both the BOCs and AT&T–IS, we assumed that all CPE inventory was refurbished during 1983 and that all 1983 refurbishment expenses were related to the CPE being transferred to AT&T–IS. Thus, we required the reimbursement of 50 percent of the refurbishment costs. We also assumed that all CPE was transferred in refurbished condition. AT&T–IS, however, has shown through its comments that our assumptions do not accurately reflect the relevant circumstances surrounding refurbishment costs and exempt materials. For one thing, AT&T–IS notes that the larger portions of both single-line and multi-line CPE refurbished in 1983 were returned to service subject to AT&T–IS's sales plan. This fact contradicts our assumption that all BOC refurbishing expenses in 1983 are attributable to inventory CPE. AT&T–IS also notes that at least a portion of embedded CPE was retained by the BOCs. This contradicts our assumption that all BOC embedded CPE inventories were transferred to AT&T–IS. And AT&T–IS further points out that only 60 percent of the transferred CPE inventory was in refurbished condition. This fact, again, contradicts our assumption that all embedded CPE inventory was transferred in refurbished condition.

75. Based on the facts that AT&T–IS presents, we agree that refurbishing expenses, in this instance, are properly attributable to inventory CPE. Further, a portion (15.5 percent) of embedded CPE was retained by the BOCs and not transferred at all. These facts substantially affect our instruction in the *Order*. Further, these facts, when taken in conjunction with the cost information provided by AT&T–IS, provide a basis upon which a more accurate measure of reimbursement can be determined.

76. Regarding exempt materials, we first must clarify the intended definition and the underlying assumptions from the *Order*. It was our intent to refer only to the inventory of materials and supplies used for refurbishing CPE inventory which was transferred at the time the CPE inventory was itself transferred. Further, we assumed "the value of these expensed assets endures beyond the moment the associated expenditure is incurred." *Order*, 95 FCC 2d at 1383. Other assumptions related to this issue were that the precise duration of the expensed assets' value is no greater than one year (*i.e.*, its value is consumed within a year after the moment it is expensed) and expensed assets were acquired at a constant rate throughout 1983. Accordingly, we required AT&T–IS to reimburse the BOCs for 50 percent of the expenses associated with exempt materials. There is, however, a clear distinction both between exempt materials and CPE inventory, and between the accounting for each. AT&T–IS has not given adequate justification to warrant reconsideration of AT&T–IS's reimbursement to the BOCs in this area. While AT&T–IS's comments provide a more quantifiable basis to determine how the BOCs should be reimbursed for CPE inventory, they have not demonstrated that ratepayers can capture the value of exempt materials expense through purchase. Accordingly, we agree with the BOCs that there should be a 50–50 sharing of expenses for exempt materials. As already discussed, exempt materials are assumed to have a life of one year or less and are purchased and consumed at relatively constant rates throughout the year. Further, the accountng effort necessary to identify specifically and reconstruct actual balances as of December 31, 1983, if possible, would be most difficult. The benefits to be derived from such reconstructed data appear to be negligible and certainly do not justify the effort involved, given the relatively low value of these assets.

77. In conclusion, therefore, we require AT&T–IS to reimburse the regulated BOC entities as follows. First, the exempt materials expense (expensed assets) associated with the CPE being transferred should be separated from the total refurbishment expense associated with that same CPE. Then, based on the premises stated in the *Order*, we require AT&T–IS to reimburse the regulated entities for 50 percent of the exempt materials expense not previously allocated to AT&T–IS. *See id.* Next we deal with refurbishment expense net of exempt materials expense. This net refurbishment expense should be divided by the total number of refurbished units to arrive at an average refurbishment cost per unit. With this computed average, we require AT&T–IS to reimburse the regulated BOC entities for the refurbishment expense associated with the actual number of refurbished CPE inventory units transferred (computed by multiplying the average cost per unit times the number of units transferred).

B. Tax Issues

1. Comments

78. California and NATA argue that the Commission should reverse its decision to reduce the net book value of the assets transferred to AT&T–IS by the amount of the deferred tax reserve and unamortized investment tax credit

(ITC) accounts associated with those assets.[89] California maintains that the Commission has failed to reach an equitable result and has ignored the implied, if not express, intent of Congress that ratepayers should continue to share in these tax benefits, even after the associated assets have been removed from regulation. NATA basically supports California's arguments.

79. AT&T–IS argues that the Commission's treatment of those tax-related accounts is required by the Internal Revenue Code and points out that the Internal Revenue Service, in ruling upon a request for a revenue ruling filed by AT&T,[90] has reached conclusions identical to the Commission's position on these tax issues on every point.

2. Discussion

80. Our decision in the *Order* was that deferred tax reserves and unamortized investment tax credits associated with embedded CPE should be transferred from the BOCs to AT&T–IS together with the CPE. *See id.* at 1359–60. We based this conclusion on the applicable provisions of the Internal Revenue Code (the "Code"), associated Treasury regulations, generally accepted accounting principles, and our own rules. As specified in these various provisions, under the "normalization" approach to accounting for the benefits of accelerated depreciation and ITCs, there is a continuing relationship between the assets that give rise to those benefits and the resulting deferred tax reserve and unamortized ITC accounts, which would be severed if those accounts did not move with the underlying assets. Furthermore, we concluded that both the express terms of the Code and their legislative history evidence a clear congressional intent that ratepayers should share in these tax benefits so long, but only so long, as the assets remain in regulated service and their costs are being borne by ratepayers through depreciation charges.

81. California now argues that tax reserves should be viewed as funds collected from ratepayers to be held until tax payments become due and that they are essentially customer contributions to capital. Thus, California concludes that the benefits of normalization should extend beyond the date of transferring the CPE because, argues California, AT&T still owns these assets, which have merely been tranferred to unregulated service.

82. Regarding investment tax credits, California argues that the *Order* subverts the statutory scheme and allows AT&T–IS to reap the full benefits of the unamortized ITCs. California suggests that the Commission should adopt some mechanism to permit the unamortized ITCs to be flowed through to ratepayers after the associated CPE has been transferred.

83. California's arguments are not new. The same lines of reasoning were considered in the initial responses to the *Notice*. Arguments found to be inadequate in the initial response period do not constitute sufficient reason to reconsider.[91]

84. Finally, subsequent to the release of our *Order*, the Department of the Treasury, Internal Revenue Service, issued its response to a revenue ruling request filed by AT&T. The IRS stated:

> The deferred tax reserve attributable to the transferred assets must be removed from each transferor's books of account and no part of such deferred tax reserve may be used to reduce the transferor's rate base or service (or treated as no-cost capital) * * *. The balance of the unamortized investment tax credits (after adjustment for recapture, if any) with respect to the transferred property should be removed from the transferor's books to reflect the assignment of the property and no portion of such unamortized investment tax credit may be used to reduce the transferor's cost of service or rate base under section 46(f)(2).[92]

Thus, our decision on this issue is fully consistent with IRS's decision.

C. Intrasystem Wiring

1. Comments

85. In the *Order*, we questioned whether embedded intrasystem wiring should be removed from regulated service in connection with the removal from regulated service of associated CPE. We concluded that intrasystem wiring currently owned by AT&T or the Independent telephone companies should not be detariffed and removed from regulated service for two reasons. First, the transfer could have an adverse effect upon competition. And second, it was more equitable to require that unamortized labor costs, which form the predominant portion of embedded intrasystem wiring investment, be recovered under regulation. *See Order*, 95 FCC 2d at 1370–73.

86. The parties make two general arguments regarding our decision dealing with embedded intrasystem wiring. First, it is contended that we should reverse our decision and now require that intrasystem wiring owned by the BOCs prior to divestiture must be detariffed and transferred to AT&T–IS. California Petition at 7; FEA Petition at 2. California maintains that such a transfer would not harm competition and would prevent AT&T–IS from deriving a windfall which it otherwise would receive if it were not required to assume responsibility for unrecovered investment in the embedded wiring. California Petition at 9. AT&T–IS opposes California's detariffing request, arguing that California is merely raising arguments already rejected by the Commission and by the District Court in the divestiture proceeding. AT&T–IS Opposition at 19; *see* Bell Atlantic Opposition at 4–5. AT&T–IS objects to the notion that it would receive any windfall as a result of our decision to require the BOCs to retain the embedded wire under tariff, arguing that "[n]o such windfall profits will accrue because all embedded CPE rates were disaggregated by the time of divestiture, and the lease rates do not include recovery of the intrasystem wire investment of the BOCs." AT&T–IS Opposition at 20 n.**. Our decision also is supported by a number of other parties. *See* ICA Opposition at 4; IDCMA Opposition at 5–6; NATA Opposition at 10–11.

87. The second argument made by a number of parties is that the Commission should impose requirements upon the BOCs regarding their maintenance of the embedded intrasystem wiring because the BOCs are failing to provide adequate maintenance or to respond to users' reconfiguration requests. FEA Petition at 3–5. It also is suggested that we should require the BOCs to provide access to the wire on a non-discriminatory basis as a means of curing any maintenance problems. ICA Opposition at 5–6; *see* NATA Opposition at 12. Several parties object to these suggestions, asserting

[89] California Petition at 17–20; NATA Reply at 13–18.

[90] IRS Letter Ruling to AT&T, Dec. 29, 1983.

[91] As it did in its comments, California simply asserts that its positions are consistent with congressional intent and public policy without anchoring its arguments to any substantive analysis of the applicable provisions of the Code or their legislative history. The Code supports our decision in the *Order*. NATA further argues that the Commission should not have looked to the tax law as a basis for deciding the tax-related issues involved in the transfer of the embedded CPE. NATA reply at 16–17. (It is not clear what source of law NATA would have us turn to in resolving these issues.) NATA is apparently concerned that an analysis of tax law is beyond the competence of this Commission. However, Congress has placed in the Code provisions governing the regulatory accounting treatment of accelerated depreciation and ITCs taken by public utilities. By virtue of this fact, every regulatory commission that has utilities within its jurisdiction that take accelerated depreciation and ITCs must interpret and apply those provisions of the Code.

[92] IRS Letter Ruling to AT&T, Dec. 29, 1983, at 4–5.

that the BOCs are fulfilling their maintenance obligations pursuant to state tariffs. *See* Bell Atlantic Opposition at 3–4; Mountain States Opposition at 4–5.

2. Discussion

88. As to the first argument raised in the comments, we refuse to make any modification of our treatment of embedded inside wiring in the *Order* because nothing in the comments persuades us that any adjustment is necessary. No new arguments are presented in the reconsideration petitions, and the contentions which are reiterated in these petitions do not cause us to waiver from our conclusion that the embedded wiring should not be transferred to AT&T–IS.

89. As to the commenters' second argument, we do not choose to address in this *Order* the merits of the assertions made in the petitions because we have concluded that these assertions raise issues which are beyond the scope of this proceeding. We will, in a separate proceeding, address requests that we issue a declaratory ruling clarifying the rights of users regarding embedded intrasystem wiring. *See* Public Notice, Common Carrier Bureau Seeks Comments on Petition for Declaratory Ruling Clarifying the Rights of Users with Respect to Access to Complex Embedded Intrasystem Wiring (released Aug. 29, 1984).

VII. Ordering Clauses

90. Accordingly, it is hereby ordered, That the petitions for reconsideration or, in the alternative, for waiver, filed by AT&T Information Systems, James J. Butler, the People of the State of California and the Public Utilities Commission of the State of California, the Federal Executive Agencies, the Independent Data Communications Manufacturers Association, Inc., the Mountain States Telephone and Telegraph Company, the State of New York Department of Public Service, the Operating Telephone Companies, Rolm Corporation, Paul J. Sinderbrand, and the Virginia State Corporation Commission, ARE DENIED except as provided herein.

91. It is further ordered, That the petition to waive page limitations filed by North American Telecommunications Association is granted.

92. It is further ordered, That the late-filed comments in opposition filed by the People of the State of California and the Public Utilities Commission of the State of California, and by the Public Service Commission of Wisconsin, are accepted.

93. It is further ordered, That the motion to strike filed by the American Telephone and Telegraph Company and AT&T-Information Systems regarding late-filed further comments filed by the People of the the State of California and the Public Utilities Commission of the State of California, is granted. [93]

94. It is further ordered, That the comments on the reply by Paul J. Sinderbrand filed by AT&T-Information Systems, and the letter filed by Paul J. Sinderbrand in response to these comments, are accepted.

95. It is further ordered, That the emergency petition filed on December 28, 1983, by AT&T-Information Systems seeking reconsideration of the joint billing requirements established in the *Order* is dismissed as moot.

96. And, it is further ordered, That the Secretary shall cause a copy of this Order to be published in the **Federal Register.**

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

I. Parties Filing Petitions for Reconsideration or Petitions for Waiver

AT&T Information Systems (AT&T–IS)
James J. Butler
People of the State of California and the Public Utilities Commission of the State of California (California)
Federal Executive Agencies (FEA)
Independent Data Communications Manufacturers Association, Inc. (IDCMA)
International Communications Association (ICA)
Mountain States Telephone and Telegraph Company
State of New York Department of Public Service (New York)
Operating Telephone Companies (BOCs)
Rolm Corporation (Rolm)
Paul J. Sinderbrand
Virginia State Corporation Commission (Virginia)

II. Parties Filing Oppositions

American Telephone and Telegraph Company (AT&T)
AT&T–IS (jointly with AT&T)
Bell Atlantic Companies (Bell Atlantic)

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[93] The California pleading, which was styled "Petition for Reconsideration Further Comments" was received by the Commission on February 23, 1984. The supplementary filing was submitted "in support" of California's intial petition for reconsideration, which was received on January 27, 1984. California Further Comments at 1. The supplementary filing was not accompanied by any separate pleading seeking acceptance of the late filing.

The Communications Act of 1934 specifically provides that petitions for reconsideration of Commission actions must be filed not later than 30 days after the date of public notice of the action. Section 405 of the Communications Act of 1934, 47 U.S.C. 405. Our rules, as a means of enforcing this statutory filing requirement, provide that "[n]o supplement to a petition for reconsideration filed after expiration of the 30 day period will be considered, except upon leave granted pursuant to a separate pleading stating the grounds for acceptance of the supplement." Section 1.429(d) of the Commission's Rules, 47 CFR 1.429(d). In this case, the deadline for filing reconsideration petitions regarding the *Order* was January 27, 1984.

In applying these provisions of the statute and our rules, we have decided to grant AT&T motion to strike California's supplementary filing for the following reasons. First, unlike other filing deadlines which we establish pursuant to our own Orders, we are here confronted with a statutory mandate that reconsideration petitions must be filed within a specified period. Our responsibility to enforce this statutory requirement makes it necessary for us to apply stringent scrutiny to any attempts to circumvent the filing deadline through supplementary filings. *See Gardner* v. *FCC*, 530 F.2d 1086 (D.C. Cir. 1976); *American Telephone & Telegraph Co.*, File No. ENF–83–7, Order, Mimeo No. 1603 (released Jan. 4, 1984); *Louisiana & Mississippi Broadcast Stations Renewals*, 50 FCC 2d 1020 (1975). Second, the California supplementary filing was received a full 27 days after the applicable filing deadline. (It will be noted that the lateness of California's filing was nearly as long as the original 30-day period available under the statute for filing reconsideration petitions.) Under these circumstances California bore an especially heavy burden to demonstrate grounds for accepting the pleading.

Third, California has made no attempt to meet this burden. No separate motion stating grounds for acceptance was submitted. In the absence of any attempt by California to comply with the provisions of § 1.429(d) of our Rules, we are not inclined to invent on our own initiative any grounds for the acceptance of the supplement. Fourth, since California's filing came so far outside the normal cycle for reconsideration petitions, oppositions, and replies, if we were to accept the late filing we would impinge upon the interests of other parties who did not have an adequate opportunity to reply.

California
IDCMA
ICA
Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (filing jointly)
North American Telecommunications Association (NATA)
BOCs
Tandy Corporation (Tandy)
Tele-Communications Association (TCA)
Public Service Commission of Wisconsin (Wisconsin)

III. Parties Filing Reply Comments

AT&T–IS
FEA
IDCMA
NATA
BOCs
Rolm
Paul J. Sinderbrand

[FR Doc. 85–5326 Filed 3–5–85; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 64

[CC Docket No. 85–26; FCC 85–56]

Policy and Rules Concerning the Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone and Telegraph Company, and Related Waiver Requests

AGENCY: Federal Communications Commission.

ACTION: Waiver of rule.

SUMMARY: This document cross-references a document published in the Proposed Rule section in this issue. In that document, AT&T is granted a conditional waiver of Part 64 of the Commission's rules to allow its subsidiary to engage in joint use of software subject to approval of an accounting and network information and disclosure plan. AT&T was also permitted to realign personnel services in its Technologies Sector. Such activities should lower AT&T's cost while causing minimal harm to competition. Another waiver request, relating to AT&T's provision of CPE to the federal government, is denied because the need for it was unsupported.

EFFECTIVE DATE: The effective date of the conditional waiver is March 6, 1985.

ADDRESSES: All documents filed in this proceeding may be inspected and copied in the Commission's Public Reference Room, Room 239, 1919 M Street, N.W., Washington, D.C. 20554, between 8:00 a.m. and 5:30 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Kurt DeSoto (202) 632–7553.

List of Subjects in 47 CFR Part 64

Communications common carriers, Communications equipment, Telephone, Separate Corporation.

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

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–5312 Filed 3–5–85; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–710; RM–4753]

Assignment of TV Broadcast Station in Destin, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 64 to Destin, Florida, as that community's first television assignment in response to a petition filed by Multi-Systems, Inc.

EFFECTIVE DATE: April 8, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, TV Broadcast Stations (Destin, Florida), MM Docket No. 84–710, RM–4753.

Adopted: February 15, 1985.
Released: February 28, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 30545, published July 31, 1984, which proposed the assignment of UHF television Channel 64 to Destin, Florida, as that community's first television assignment. The *Notice* was adopted in response to a petition filed by Multi-Systems of Destin, Inc. ("petitioner"). Petitioner has filed supporting comments reaffirming its intention to apply for the channel, if assigned. No other comments or oppositions to the proposal were received.

2. Destin (population 3,672)[1], in Okaloosa County (population 109,920) is located on the Gulf Coast approximately halfway between Pensacola and Panama City, Florida. Petitioner states that Destin is a growing community with both a permanent and year-round tourist population deserving of its first local television service.

3. We believe that petitioner has adequately demonstrated the need for a first commercial television assignment at Destin and that the public interest would be served by assigning UHF television Channel 64 to that community. The channel can be assigned in compliance with the minimum distance separation requirements of § 73.610 of the Commission Rules.

PART 73—[AMENDED]

§ 73.606 [Amended]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934 as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 8, 1985, the Television Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the following community:

City	Channel No.
Destin, Florida	64 +

5. It is further ordered, That this proceeding is terminated.

6. For further information contact, D. David Weston, Mass Media Bureau (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–5311 Filed 3–5–85; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–375; RM–4589]

Assignment of TV Broadcast Stations in Perry, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

[1] Population figures were extracted from the 1980 U.S. Census.

SUMMARY: Action taken herein assigns UHF Television Channel 58 to Perry, Georgia, as its first TV assignment, in response to a petition filed by Lowell Register.

EFFECTIVE DATE: April 8, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Perry, Georgia), MM Docket No. 84–375, RM–4589.

Adopted: February 15, 1985.
Released: February 28, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 18143, published April 27, 1984, proposing the assignment of UHF Television Channel 58 to Perry, Georgia, as that community's first television service. The *Notice* was adopted in response to a petition filed by Lowell Register ("petitioner"). Supporting comments were late filed by the petitioner reaffirming his intention to file for the channel, if assigned.[1] No comments in opposition to the proposal were received.

2. We believe that channel 58 should be assigned to Perry in order to provide a first television service to that community. The channel can be assigned in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

PART 73—[AMENDED]

§ 73.606 [Amended]

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 8, 1985, the Television Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the following community:

City	Channel
Perry, Georgia	58+

4. It is further ordered, That this proceeding is terminated.

5. For further information contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–5324 Filed 3–5–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 82–276; RM–4060]

Assignment of TV Broadcast Stations, Billings, Miles City and Lewistown, MT and Lander, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein switches the noncommercial educational reservation from Channel 6 to Channel 10 at Miles City, Montana, and reassigns Channel 6 to Billings, Montana, as that community's fifth commercial allocation. The assignment was made at the request of Comanche Enterprises.

EFFECTIVE DATE: April 4, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b) table of assignments, television broadcast stations (Billings, Miles City, and Lewistown, Montana and Lander, Wyoming), BC Docket No. 82–276, RM–4060.

Adopted: February 15, 1985.
Released: February 26, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Second Further Notice of Proposed Rule Making and Order to Show Cause*, 49 FR 4527, published February 7, 1984, proposing alternative assignment plans looking toward the allocation of VHF Channels 5 or 6 to Billings, Montana. Comments were filed by Comanche Enterprises ("petitioner") and the Chrysostom Corporation ("Chrysostom"). Reply comments were filed by the petitioner, Arapahoe Silent Majority, Inc. ("Arapahoe"), and jointly by KOUS–TV, Inc. and Three C's Broadcasting Company ("KOUS" and "3 C's").

2. This proceeding was initiated by the *Notice of Proposed Rule Making*, published May 16, 1982, 47 FR 22985, which proposed the reassignment of Channel *6 from Miles City, Montana, where it is reserved for noncommercial educational use, to Billings, Montana, as a commercial channel. The *Notice* also proposed to switch the educational reservation to Channel 10 at Miles City. In response to the *Notice*, 3 C's notified the Commission that it had tendered an application for use of Channel 10 as a full service television facility at Miles City. As argued by 3 C's, should the Commission reassign Channel 6 as a commercial facility to Billings and grant its application for use of Channel 10 at Miles City, the Commission would be deleting a noncommercial educational channel, without replacement, in contravention of Commission policy.

3. The Commission then issued a *Further Notice of Proposed Rule Making* 48 FR 14681, published April 5, 1983, noting that Channel 13, assigned to Lewistown, Montana, had not been activated as a full-service station since its assignment in 1952, and was therefore available for reassignment to Billings. Therefore, we proposed in the alternative that Channel 13 be reassigned, without replacement, from Lewistown to Billings or that Channel 6 be reassigned from Miles City to Billings, with the reservation of Channel 10 at Miles City as previously proposed. In response to the *Further Notice*, the Commission was informed by Arapahoe that it had tendered an application for use of Channel 13 at Lewistown and based on Commission precedent argued against the removal of a channel from a community, without replacement, where an interest in its use had been expressed. In light of the proposed activation of Channel 13 at Lewistown, the Commission then issued the *Second Further Notice of Proposed Rule Making and Order to Show Cause* ("*Second Further Notice*"), *supra*, seeking comments on the alternative assignment of Channel 5 to Billings with a concomitant change in offset for Channel 5 at Lander, Wyoming, as well as the original Channel 6 reassignment from Miles City to Billings. It was also noted that the use of Channel 5 at Billings would require a site restriction of 10.7 miles southeast to avoid short-

[1] We have accepted these comments for consideration herein for the purpose of allowing the petitioner to reaffirm his intention to apply for the channel.

spacing to Channel 5, Great Falls, Montana.

4. The petitioner filed comments in response to the *Second Further Notice* supporting the original proposal which would reassign Channel 6 to Billings as a commercial channel with the reservation of Channel 10 at Miles City for noncommercial educational use. It based this support on the fact that (1) if the Commission approved a pending assignment of license application of Station KYUS-TV, Miles City, to KOUS, then 3 C's, as part of that application, has agreed to a dismissal of its application for Channel 10 at Miles City, thereby removing the impediment to switching the educational reservation from Channel 6 to Channel 10, and (2), the use of Channel 6 at Billings does not require a site restriction or modification of the Lander, Wyoming, Channel 5 license to specify operation on a different offset.

5. The Chrysostom Corporation, in its comments, indicates that it is willing to change offset provided it receives reasonable reimbursement for the costs involved in such a change, should Channel 5 be assigned to Billings. The assignment of Channel 5 is supported by Arapahoe as it will enable Commission grant of the application for use of Channel 13 at Lewistown, Montana.

6. In reply comments, KOUS and 3 C's have informed the Commission that the assignment application of KOUS has been granted and the application of 3 C's for Channel 10 at Miles City has been dismissed. Accordingly, we find that adoption of the original proposal, that of the dereservation and reassignment of Channel 6 from Miles City to Billings, with the reservation for noncommercial educational use of Channel 10 at Miles City, to be in the public interest. The application of 3 C's for use of Channel 10 at Miles City has been dismissed and the channel has not been applied for by any other party. Channel 6 at Billings can be assigned without the imposition of a site restriction and no existing licensee needs to modify its operation. Further, this action will enable Billings to receive an additional commercial television service while retaining an educational assignment for use at Miles City. Canadian concurrence in the channel assignment has been received.

PART 73—[AMENDED]

§ 73.606 [Amended]

7. In view of the above and pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 4, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to the communities listed below, to read as follows:

City	Channel No.
Billings, Montana	2, 6, 8, *11, 14, 20+
Miles City, Montana	3-, *10

8. It is further ordered, That this proceeding is terminated.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-5323 Filed 3-5-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-168]

Authorization of the Offering of Data Transmission Services on the Vertical Blanking Interval of Television Stations; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; Correction.

SUMMARY: This document corrects an error made in the Report and Order in this proceeding concerning the Vertical Blanking Interval of Television Stations. The error specifically appears in § 73.646(d). The Report and Order was published in the **Federal Register** on February 1, 1985, 50 FR 4658.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, (202) 632-6302.

Erratum

In the matter of amendment of Parts 2, 73, and 76 of the Commission's Rules to authorize the offering of data transmission services on the vertical blanking interval of television stations; MM Docket No. 84-168.

Released: February 19, 1985.

PART 73—[CORRECTED]

§ 73.646 [Corrected]

1. On January 24, 1985, the Commission released a *Report and Order* in the above captioned matter, 50 FR 4658. In this document, there is an error in the text of the new rules on page one of Appendix B. The error is in the second sentence of paragraph (d) page 4664, under "§ 73.646 Telecommunications Service on the Vertical Blanking Interval." The released text reads ". . . . with the right to reject any material that it deems is appropriate or undesirable." The correct text is ". . . . with the right to reject any material that it deems inappropriate or undesirable."

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-5319 Filed 3-5-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 74

[MM Docket No. 84-280]

Frequency Assignment Procedures in the Broadcast Remote Pickup Service to Facilitate More Efficient Use of the Available Spectrum

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Order* establishes the effective date for two previously adopted rule changes affecting the Broadcast Remote Pickup Service.

This action is taken by the Commission in its efforts to relax restrictive regulations and policies.

The Rule changes are intended to provide broadcasters more flexibility in the way they use the Broadcast Remote Pickup frequencies.

EFFECTIVE DATE: February 13, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 74

Communications equipment.

Order

In the matter of amendment of frequency assignment procedures in the Broadcast Remote Pickup Service to facilitate more efficient use of the available spectrum MM Docket No. 84-280.

Adopted: February 13, 1985.

Released: February 15, 1985.

By the Chief, Mass Media Bureau.

1. The Commission adopted a *Report and Order* pertaining to the Broadcast Remote Pickup Service on October 26,

1984 [1] with the effective date to be specified in a future *Order* when appropriate computer programs are available for implementing the rules. Some of the rule changes are not dependent upon those computer programs, and can therefore become effective immediately. These include the elimination of the "guard receiver" requirement for repeaters and the elimination of the "program only" usage restriction on the present R and S group channels.

Actions

2. Accordingly, it is ordered, pursuant to § 0.5(c) of the Commission's Statement of Delegations of Authority, that Part 74 of the Commission's Rules and Regulations is amended as set forth in the attached Appendix A, effective upon adoption.

3. Further information on this proceeding may be obtained by contacting Hank VanDeursen, Mass Media Bureau, (202) 632-9660.

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

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

Appendix A

PART 74—[AMENDED]

Part 74 of the Federal Communications Commission's Rules and Regulations is amended as follows:

§ 74.402 [Amended]

1. Section 74.402 is amended by removing and reserving footnote 7 to paragraph (a).

2. Section 74.436 is amended by removing paragraphs (a) (1), (2), and (3) in their entirety, revising the introductory paragraph, and revising paragraph (a) to read as follows:

§ 74.436 Special requirements for automatic relay stations.

An automatic relay station shall, in addition to the relay transmitter, include a control unit and one or more relay receivers.

(a) The licensee shall institute appropriate operating procedures to prevent interference to other stations operating on the automatic relay output channel.

* * * * *

[FR Doc. 85-5314 Filed 3-5-85; 8:45 am]

BILLING CODE 6712-01-M

[1] MM Docket No. 84-280, 49 FR 45155 (November 15, 1984).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-202]

Organization and Delegation of Powers and Duties; Commercial Space Launch Act

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This amendment delegates to the Director of the Office of Commercial Space Transportation the authority vested in the Secretary by the Commercial Space Launch Act.

EFFECTIVE DATE: The effective date of this amendment is October 30, 1984.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, Department of Transportation, Washington, DC (202) 472-5580.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register.**

Executive Order 12465 of February 24, 1984, "Commercial Expendable Launch Vehicles" (49 FR 7211; February 28, 1984) assigns to DOT responsibility for being the lead agency within the Federal Government for encouraging and facilitating commercial expendable launch vehicle (ELV) activities by the United States private sector. The Order assigns to the Secretary of Transportation numerous responsibilities and authorities in this regard. To carry out these functions, the Secretary established within the Office of the Secretary an Office of Commercial Space Transportation, headed, by a Director reporting directly to the Secretary.

To support the efforts of the ELV industry and DOT, the Congress recently passed the Commercial Space Launch Act, Pub. L. 98-575, which the President signed on October 30, 1984. That act establishes a formal regulatory, licensing, and enforcement scheme at DOT for ELVs, the places from which they are launched, and the payloads that they carry. All authority vested in the Secretary in that act is being delegated to the Director.

When a formal hearing is held, the Director will generally use the Office of Hearings (consisting of Administrative Law Judges and established by DOT because of the need for formal hearings in carrying out some functions transferred from the Civil Acronautics Board under the Airline Deregulation Act of 1978), and the staff in the Office of Aviation Enforcement and Proceedings in the Office of the General Counsel will serve as agency counsel.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies).

PART 1—[AMENDED]

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

1. In § 1.45, paragraph (b) is revised to read as follows:

§ 1.45 Delegations to all Administrators.

* * * * *

(b) Except as otherwise specifically provided, each official to whom authority is granted by §§ 1.45 through 1.53, 1.66, and 1.68 may redelegate and authorize successive redelegations of that authority within the organization under that official's jurisdiction.

2. Section 1.68 is revised to read as follows:

§ 1.68 Delegations to Director of Commercial Space Transportation.

The Director of Commercial Space Transportation is delegated authority to—

(a) Carry out the functions assigned to the Secretary by Executive Order 12465 (February 24, 1984) relating to commercial expendable launch vehicle activities.

(b) Carry out the functions vested in the Secretary by the Commercial Space Launch Act (Pub. L. 98-575; October 30, 1984).

Authority: 49 U.S.C. 322.

Issued in Washington, DC, on February 28, 1985.

Elizabeth H. Dole,

Secretary of Transportation.

[FR Doc. 85-5413 Filed 3-5-85; 8:45 am]

BILLING CODE 4910-62-M

Proposed Rules

Federal Register
Vol. 50, No. 44
Wednesday, March 6, 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 989

Raisins Produced From Grapes Grown in California; Proposed Suspension of Certain Provisions for Zante Currant Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking invites comments on suspending a sentence in § 989.67(j) of the marketing order for raisins produced from grapes grown in California. That sentence deals with the pricing of reserve raisins offered to handlers for free use. Suspension of that sentence would apply only to 1984 crop reserve Zante Currants so that the value of handlers' free tonnage inventory of those raisins can be adjusted downward closer to current world price levels, thereby aiding in the marketing of those supplies. The proposal was recommended by the Raisin Administrative Committee, which works with USDA in administering that marketing order.

DATE: Comments must be received by April 5, 1985.

ADDRESSES: Send two copies of comments to the Office of the Docket Clerk, Room 2069, South Building, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, where they will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5053.

SUPPLEMENTARY INFORMATION: This proposal has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will have an impact on a substantial number of small entities. The net proceeds to equity holders resulting from the sale of reserve Zante Currant raisins under the Raisin Administrative Committee's proposal will be reduced to a point well below the cost of producing raisins. To the extent that such entities are equity holders in the reserve pool, this impact will be proportional to the size of their equities therein. However, it is recognized that the effects of this action on individual entities will vary depending on their financial conditions, but the impact is not expected to be significant. In the long-term, the benefits of becoming more competitive under current marketing conditions should outweigh any adverse short-term impact and result in benefits to both small and large entities. The domestic inventory adjustment to be accomplished through this action will permit an overall price reduction for Zante Currant raisins, enabling the industry to compete more effectively with lower-priced, foreign-produced Zante Currants, and to more aggressively market raisins generally so as to maintain and expand existing domestic markets and develop new markets. With respect to small businesses that are not raisin producers or handlers, the impact of this action is difficult to quantify but is not expected to be significant. To the extent there is an effect on such individuals, it is likely to be positive as a result of increased marketing of raisins at reduced prices.

This proposal would suspend for Zante Currant raisins, through July 31, 1985, the penultimate sentence in § 989.67(j) of the marketing agreement and Order No. 989, both as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). That sentence provides that: "However, such raisins shall not be sold at a price below that which the Committee concludes reflects the average price received by producers for free tonnage of the same varietal type purchased by handlers during the current crop year up to the time of any offer for sale of reserve tonnage by the Committee, to which shall be added the costs to the equity holders incurred by the committee on account of receiving, inspecting, storing, fumigating, insuring, and holding of said raisins, and including costs of taxes and interests: *Provided*, That where the outlook for the next crop year or other factors have caused a downward trend in the prices received by producers for free tonnage raisins or in the prices received by handlers for free tonnage packed raisins, reserve tonnage may be sold to handlers at the currently prevailing or the approximate computed field price for free tonnage raisins, as determined by the Committee."

On June 27, 1984, the Department issued a document suspending the penultimate sentence of § 989.67(j) through July 31, 1986, to help reduce the value of handlers' 1983 crop free tonnage inventory of all raisin varietal types having reserve pools to permit more aggressive marketing and product movement and to help the industry become price competitive with foreign-produced raisins. That suspension was published in the **Federal Register** on June 29, 1984 (49 FR 26708).

Subsequent to that action, a group of raisin producers filed suit in the Federal district court for the Eastern District of California (Raisin Producers for Fair Marketing, et al. vs John R. Block, et al.), to enjoin the implementation of that suspension and necessary price adjustments. On July 31, 1984, Judge Price denied the request for injunction relief insofar as it applied to 1983 crop reserve raisins but issued an order enjoining the suspension for the 1984 and subsequent crop year reserves until the Secretary had complied with the applicable provisions of the Agricultural Marketing Agreement Act of 1937, the Administrative Procedure Act, the Regulatory Flexibility Act, or until further order of the district court. The decision of the court prevented the industry from making price adjustments in the value of 1983 crop Zante Currant free tonnage inventory because no reserve was established for that varietal type during the 1983 crop year and because the suspension of the penultimate sentence of § 989.67(j) was blocked with respect to 1984 and later crop year reserves.

A reserve is in effect for 1984 crop Zante Currant raisins and is available to offset the price of the higher valued 1983 crop inventory carried into the 1984 season (held in inventory on July 31, 1984) by the California raisin industry. That inventory totalling 2,551 natural condition tons was valued (producers price) at $1,150 per ton while the 1984 producer price for the free tonnage portion of the 1984 crop is just over half that amount at $625 per ton. The proposal would allow the RAC to sell to handlers one ton of 1984 crop reserve Zante Current raisins at $100 per ton for each ton of 1983 crop Zante Currant raisins, valued at $1,150, effectively revaluing those raisins at $625, and making them competitive with free tonnage from the 1984 crop.

Deliveries of current crop Zante Currant raisins to date this season are in excess of 2,800 tons. The carryin from the 1983 crop coupled with the 1984 production represent more than a two-year supply of Zante Currant raisins. Free tonnage shipments last year of Zante Currant raisins totalled about 2,262 packed tons and the most recent three-year average shipments was 2,311 tons.

In the absence of this proposal, open price contracting between producers and packers on 1984 crop Zante Currant deliveries was a possibility because of the excess supplies and the inflated value of the 1983 crop inventory. After the Committee's recommendation, packers did not use open price contracting but agreed instead to the aforementioned $625 per ton price, and have been conducting their marketing operations on the premise that the value of the 1983 crop Zante Currant raisins carried into the 1984 season would be averaged down to the 1984 negotiated free tonnage price.

In recommending this proposal, the Committee recognized that producers would be selling reserve Zante Currant raisins at a price well below production costs. However, the devaluation of the inventory would bring the prices of Zante Currant raisins in line with current marketing conditions, and parallel the price adjustments already made on other California raisins using 1983 crop reserves.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, California.

PART 989—[AMENDED]

Therefore, the proposal is as follows:

§ 989.67 [Amended]

The next to the last sentence in § 989.67(j) is hereby suspended for Zante Currant raisins through July 31, 1985.

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

Dated: February 28, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85-5399 Filed 3-5-85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102 and 1108

Milk in the Georgia and Certain Other Marketing Areas; Proposed Suspension of Certain Provisions of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

7 CFR Part and Marketing Area

1007—Georgia
1011—Tennessee Valley
1046—Louisville-Lexington-Evansville
1093—Alabama-West Florida
1097—Memphis, Tennessee
1098—Nashville, Tennessee
1102—Forth Smith, Arkansas
1108—Central Arkansas

SUMMARY: This notice invites written comments on a proposal to suspend the seasonal base-excess plans for paying producers under the above listed orders. The suspension was requested by Southern Milk Sales, a cooperative association that represents producers who are located in areas covered by these marketing orders. The cooperative contends that a suspension of the base-excess plans during the period of March through August 1985 is necessary since a substantial portion of the cooperative's member milk was shipped to other deficit southeastern markets that do not provide for base-excess payment plans. As a result of supplying these markets, producer members of the cooperative have not established bases that reflect their entire production and thus they will have their returns reduced during the base-paying months. The cooperative contends that a reduction of returns, in the absence of a suspension action, will jeopardize the maintenance of an adequate supply of milk during the coming months for these and other southeastern markets.

DATE: Comments are due not later than March 13, 1985.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, 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 dairy farmers and would not affect milk handlers.

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 orders regulating the handling of milk in the aforesaid marketing areas is being considered for the months of March through August 1985.

A. In Part 1007

1. In § 1007.61(a), the words "of September through January".
2. In § 1007.61(a)(5), the words "for the months of September through January".
3. Section 1007.61(b).
4. In § 1007.73(a)(2), the words "or base milk and excess milk".
5. In § 1007.75(a), the words "and the uniform price for base milk".

B. In Part 1011

1. In § 1011.61(a), the words "of July through February".
2. In § 1011.61(a)(5), the words "for the months of July through February".
3. Section 1011.61(b).
4. In § 1011.73(a)(2), the words "or base milk and excess milk".
5. Section 1011.73(d)(3).
6. In § 1011.75(a), the words "and the uniform price for base milk".

C. In Part 1046

1. In § 1046.61(a), the words "of July through February".
2. In § 1046.61(a)(5), the words "for the months of July through February".
3. Section 1046.61(b).
4. In § 1046.73(b), the words "or base milk and excess milk".
5. Section 1046.73(d)(3).
6. Section 1046.73(e)(3).
7. In § 1046.75, the words "and the uniform price" and "base".

D. In Part 1093

1. In § 1093.61(a), the words "of August through February".

2. In § 1093.61(a)(5), the words "for the months of August through February".

3. Section 1093.61(b).

4. In § 1093.73(a)(1), the words "or if the producer had no established base upon which to receive payments during the base paying months of March through July".

5. In § 1093.73(a)(2), the words "or base milk and excess milk".

6. Section "1093.73(e)(3).

7. In § 1093.75(a), the words "and the uniform price for base milk".

E. In Part 1097

1. In § 1097.61(a), the words "for each of the months of August through February".

2. In § 1097.61(a)(5), the words "of August through February,".

3. Section 1097.61(b).

F. In Part 1098

1. In § 1098.61(a), the words "for each of the months of August through February".

2. In § 1098.61(a)(5), the words "in the months of August through February".

3. Section 1098.61(b).

4. In § 1098.71(a), the words "except that for milk received in March, April, May, June, and July from a producer for whom no daily average base can be computed pursuant to § 1098.92, the applicable rate for making payment pursuant to this paragraph shall be the Class III price for the preceding month".

5. In § 1098.73(a), the words "except that for milk received in March, April, May, June, and July from a producer for whom no daily average base can be computed pursuant to § 1098.92, the applicable rate for making payment pursuant to this paragraph shall be the Class III price for the preceding month".

6. In § 1098.73(b), the words "and such payments to be for base and excess milk at not less than the uniform prices for base and excess milk, respectively, computed pursuant to § 1098.61(b) for the months for which such uniform prices for base and excess milk are computed".

7. In § 1098.73(d)(2), the words "including for the months in which base and excess prices apply, the pounds of base and excess milk".

8. In § 1098.73(e)(2), the words "including for the months in which base and excess prices apply, the pounds of base and excess milk".

9. In § 1098.75(a), the words "and the uniform price for base milk".

G. In Part 1102

1. In § 1102.61(a), the words "for each of the months of August through February".

2. In § 1102.61(a)(4), the words "of August through February,".

3. Section 1102.61(b).

H. In Part 1108

1. In § 1108.61(a), the words, "for each of the months of August through February".

2. In § 1108.61(a)(6), the words "of August through February,".

3. Section 1108.61(b).

4. In § 1108.73(a)(2), the words "or base milk and excess milk".

5. Section 1108.73(c)(2)(ii).

6. In § 1108.75(a), the words "and uniform price for base milk".

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the Diary Division, AMS, Room 2968, South Building, 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 March 1985 in the suspension period.

The comments that are received will be made available for public inspection in the Diary Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would make inoperative the seasonal base-excess plans under eight orders during the base paying spring and summer months in 1985. The suspension was requested by Southern Milk Sales, a cooperative association that represents producers who are located in the areas covered by the marketing orders.

Under base-excess plans a base for each producer is computed on the basis of deliveries during the fall and winter months. During the following spring and summer months, producers receive a uniform price for base milk for production that does not exceed the established daily average base. Milk in excess of base production commands a lower "excess" price. The plans are intended to encourage a seasonal leveling of production.

The base-excess plans of these orders were recently amended so that if a producer delivered milk to more than one of these eight markets during the fall and winter months, the deliveries to all of the eight markets could be used to compute the producer's base for the purpose of payments during the spring and summer months. However, Southern Milk Sales contends that substantial quantities of the milk of its producer members was shipped to other deficit southeastern markets that do not have base-excess plans. As a result of supplying these markets, producer members of the cooperative have not established bases that reflect their entire production and thus their returns during the spring and summer will be reduced because an abnormally large proportion of their marketing would be paid for at the lower "excess" price. The cooperative contends that a reduction of returns will jeopardize the maintenance of an adequate supply of milk during the coming months for these and other southeastern markets. Thus, the cooperative concludes that the base-excess plans of the eight orders should be suspended during March through August 1985.

List of Subjects in 7 CFR Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102 and 1108

Milk marketing orders, Milk, Dairy products.

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

Signed at Washington, D.C. on: February 28, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–5339 Filed 3–5–85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84–AWA–13]

Proposed Alteration of VOR Federal Airways

Correction

In FR Doc. 85–3732 beginning on page 6193 in the issue of Thursday, February 14, 1985, make the following correction on page 6194:

PART 71—[CORRECTED]

§ 71.123 [Corrected]

V–13 [Corrected]

In the third column, in V–13, in the fourth line, "003° T" should read read "033° T".

BILLING CODE 1505-01-M

14 CFR Part 71

[Airspace Docket No. 84-AWA-14]

Proposed Alteration of VOR Federal Airways

Correction

In FR Doc. 85-3723 beginning on page 6195 in the issue of Thursday, February 14, 1985, make the following corrections:

PART 71—[CORRECTED]

§ 71.123 [Corrected]

V-105 [Corrected]

1. On page 6196, in the third column, in V-105, in the sixth line, "Vagas" should read "Vegas".

V-163 [Corrected]

2. In the same column, in V-163, in the eighth line, "Armdore" should read "Ardmore".

BILLING CODE 1505-01-M

14 CFR Part 71

[Airspace Docket No. 84-AWA-34]

Proposed Alteration of VOR Federal Airways

Correction

In FR Doc. 85-3731 beginning on page 6192 in the issue of Thursday, February 14, 1985, make the following corrections:

PART 71—[CORRECTED]

§ 71.123 [Corrected]

V-571 [Corrected]

1. On page 6193, in the middle column, in V-571, in the second line, "Leon" should read "Leona".

V-198 [Corrected]

2. On the same page, in the third column, in V-198, in the eleventh line, "226° " should read "266° ".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 76N-052H]

Cold Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for OTC Antihistamine Drug Products; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Food and Drug Administration (FDA) is deleting the reference to doxylamine succinate inadvertently included in certain parts of the preamble of a notice of proposed rulemaking, which was published in the **Federal Register** of January 15, 1985 (50 FR 2200). The agency clearly indicated earlier in the preamble that all discussion of the safety and effectiveness of doxylamine succinate was removed from the tentative final monograph pending a complete review and evaluation of the new data and information concerning the relationship between doxylamine succinate and birth defects.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-680 appearing at page 2200 in the **Federal Register** of Tuesday, January 15, 1985, the following correction are made:

1. On page 2204, third column, the last two sentences of the second paragraph are corrected to read: "The agency, therefore, is proposing in this tentative final monograph that diphenhydramine hydrochloride at an adult dosage of 25 to 50 mg be Category I as an OTC antihistamine drug product. (See comment 8 below.)"

2. On page 2209, third column, and on page 2210, first column, item (6)(iii) is corrected to read: *"For products containing diphenhydramine hydrochloride identified in § 341.12(e).* 'May cause marked drowsiness.' "

Dated: February 27, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-5328 Filed 3-5-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 357

[Docket No. 81N-0050]

Poison Treatment Drug Products for Over-the-Counter Human Use; Tenative Final Monograph

Correction

In FR Doc. 85-682 beginning on page 2244 in the issue of Tuesday, January 15, 1985, make the following corrections:

1. On page 2248, in the second column, in the ninth line, "permot" should read "permit".

2. On page 2249, in the second column, in paragraph 17., in the third line, "prvious" should read "previous".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1800

[Docket No. R-85-1221; FR-2051]

Solar Energy and Energy Conservation Bank

AGENCY: Solar Energy and Energy Conservation Bank, HUD.

ACTION: Proposed rule.

SUMMARY: Section 104(d)(2) of the Housing and Community Development Technical Amendments Act of 1984 amended section 520(b)(5) of the Solar Energy and Energy Conservation Bank Act to require revision of the current regulation of the Solar Energy and Energy Conservation Bank. The revised regulations must establish explicit criteria, and their relative weights, for allocation of financial assistance and must provide that all amounts available for financial assistance shall be allocated at the same time. The Bank is proposing to change 24 CFR 1800.95 to conform to this statutory requirement and to make other necessary revisions to 24 CFR Part 1800.

DATE: Comment due date: April 5, 1985.

ADDRESS: Interested parties are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Comments should refer to the docket number and date of publication of the rule. A copy of each comment submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Francis, Manager, Solar Energy and Energy Conservation Bank, Room 7110, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone: 202-755-7166. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

The current 24 CFR 1800.95 was adopted in response to the old section 520(b)(5) of the Solar Energy and Energy Conservation Bank Act, which had been added by section 463(e)(2) of the Housing and Urban-Rural Recovery Act

of 1983. (The background and reasoning for the current provision is explained in detail at 49 FR 9875–9876, March 16, 1984.) Under that section the Bank was required to include in its rule "criteria" for allocation of financial assistance. In response, the Bank established two sets of criteria. One set (which applied to the allocation of at least half of the available funds in each Fiscal Year) consisted of objective characteristics of a State (*e.g.*, number of households at various income levels, average household energy consumption) which were weighted through a formula to determine the percentage of funds allocated for each State. The remaining available funds (designated a "reserve fund") were to be allocated among States later in the year considering the following criteria as applied to the State and its approved program: Program scope, population characteristics, funds drawdown history, whether Bank funds are leveraged with any funds derived from sources not involving some form of Federal subsidy, and history of compliance with applicable rule provisions. The relative weight for these criteria, while not stated in the Bank regulations, was announced to State participants in the Bank program prior to allocation of funds. (Funds allocated to State participants under each set of criteria were to be later allocated within a State in accordance with the approved State program.)

The new legislation requires two basic changes to the current 24 CFR 1800.95. The relative weights among all of the allocation criteria must be stated in the regulation, whereas currently there is no fixed relationship in the regulation between the weights given to the two sets of criteria and no weights are stated in the regulation for the "reserve fund" criteria. Also, a single allocation round applying all of the criteria is required each year instead of the distinct "formula" and "reserve fund" allocation rounds which occur at separate times of the year under the current regulation.

Proposed § 1800.95

The proposed § 1800.95(a) preserves much of the current § 1800.95 (a) and (c) while making the changes required by legislation and certain other improvements. The score for each State is the product of two basic factors. The criteria for Factor "A" are the same as the criteria stated for the "formula" allocation in § 1800.95(a) of the current rule and used to calculate the tentative allocations announced on March 16, 1984 (49 FR 9962) except that the criterion in the current § 1800.95(a)(2) is excluded and the remaining criteria are multiplied rather than added together. The highest value given to a State under this factor would be set equal to 100 with other values proportionately less.

Factor "B" is comprised of four criteria which (except for one change) were aspects of the "funds drawdown history" item of the current § 1800.95(c)(2); these and other criteria were used in calculating the "reserve fund" allocation announced by HUD press release on September 26, 1984. These criteria were explained to all participating States before the allocations were calculated but they have not previously been published in the **Federal Register.**

The first criterion measures the extent of a State's energy savings per Bank subsidy dollar expended, the second criterion measures total dollar investment in subsidized measures in a State per Bank subsidy dollar expended, the third criterion measures the proportion of funds awarded to a State which are actually expended and the fourth criterion measures a State's use of subsidy dollars in relation to the subsidy dollars used by all States. The third criterion uses "expended" funds rather than "committed" funds as under the "reserve fund" allocation since the program is no longer at the start-up phase in which committed but not expended funds represented a significant amount of total committed funds (36 percent as of August 31, 1984).

For each of the four criteria the highest State value will be set equal to 5 with other values proportionately less. The Factor "B" elements are normalized to be in the range of 0–5 which represents a performance multiplier value, meaning a State could receive a funding allocation of up to 5 times the amount it would receive with no program activity. Increasing the range of the multiplier, *e.g.*, 0–10, increases the amount of funds distributed to participants with superior performance while decreasing the amount to low performers. The Bank feels the 0–5 range will provide adequate incentive for good performance without distorting award results with relatively small differences in performance as would happen with a high multiplier range. Weights given to the four criteria will be 0.1, 0.1, 0.5 and 0.3, respectively.

As was done with the 1984 "reserve fund" allocation, a State's allocation may be reduced if the State program uses Bank funds to subsidize measures which benefit from another Federal subsidy as well. This reduction is a minimum 5 percent of Factor "B" and potentially 50 percent in case of a complete overlap of subsidies. The subsidy levels permitted in the Bank rule themselves provide sufficient Federal subsidy for efficient measures. The Bank views the potential for substantial downward adjustment of a State's funds as a flexible and effective way of discouraging Federal oversubsidization and leveraging more State and local government and private funds into the energy area. Congress previously barred the Bank from prohibiting the combination of Bank funds with tax-exempt financing; the Bank now proposes to also drop provisions barring the combination of Bank funds with certain specified Federal assistance programs, as discussed below, and to rely instead exclusively on the funds allocation criteria to achieve these objectives. The Bank does not consider Petroleum Violation Escrow funds or proceeds of Federally-guaranteed or insured loans to be a Federal subsidy.

Certain of the criteria used for the "reserve fund" allocation under the current § 1800.95(c)(2) are not continued in the proposed § 1800.95. The "program scope" criterion as applied by the Bank resulted in extra funds being allocated to the States with operating programs for several building categories and for both solar and conservation. The proposed rule drops "program scope" and does not use funds allocation as a means of encouraging broad-based State programs. "History of compliance with applicable rule provisions" (another criterion for the "reserve fund") was implemented in a very limited way (failures to submit required reports) since compliance reviews had been conducted for only a small number of participants and the first audits were not yet due under § 1800.125. The Bank now proposes to allocate funds on the expectation of rule compliance and to use its powers to recapture funds or suspend drawdowns to address noncompliance problems. Failure to submit timely reports will have the effect of reducing an allocation, however, since a State will receive no score for the factors which depend on current information available only through the reports. "Population characteristics" was also a distinct criterion for the "reserve fund" allocation; this is no longer needed since the old "formula" and "reserve" allocations are in effect combined under the proposed rule and Factor "A" is based on population characteristics.

A revision to § 1800.95(b) also is proposed. That paragraph concerns the manner of legally obligating funds to States which elect to receive their tentative allocations. The proposed revision clarifies that the Bank is not

required to obligate any new funds if a violation of program requirements has been brought to a State's notice and remains unresolved. The notice of violation gives the Bank the right to recapture already-obligated funds and it may be pointless to obligate new funds in that case.

Other Changes

Other proposed changes to Part 1800 are described below.

1. *Section 1800.3 Definitions.* The proposed rule would reinsert the definition for "one-to four-family residential building" which was inadvertently dropped when Part 1800 was published as a final rule and add to the definition a previously-announced Bank policy that at least half of a building's floor area must be for residential use. Another new definition would be "solar pool heating system" which is a system to heat swimming pool water in a non-profit commercial building for therapeutic purposes.

The proposed rule modifies certain other definitions. Deletion of "domestic" before "hot water" in the definition of "active solar energy system" is proposed in connection with new eligibility for swimming pools. The proposed revision to the "annual income" definition would reference the new 24 CFR Part 813 which contains the rule for calculating income for purposes of HUD's Section 8 housing assistance payment programs, but differs from Part 813 in not imputing income to any "net family assets" which are not actually income-producing. The Bank program permits assistance for nonrental buildings, unlike Section 8, and thus Bank applicants may have substantial nonincome-producing assets in the form of equity in their residences, which would not be counted. This approach is consistent with income calculation guidelines which the Bank has distributed to all State participants.

Proposed additions to the "commercial building" definition will clarify what is an ineligible building "used for the general conduct of government". The definition is not an exclusive list of such buildings. The Bank does not regard publicly-owned libraries, neighborhood centers, recreational facilities, or hospitals as buildings for "general conduct of government".

The revised definition of "commercial building" would also specifically exclude buildings used for religious purposes to reflect Constitutional restrictions on use of Federal financial assistance. While the religious nature of an applicant may also preclude Bank assistance without regard to the use of the building, the Bank has not attempted to incorporate that Constitutional restriction into the text of the rule because of the extreme difficulty in reducing the restriction to a simple rule. States and/or financial institutions should rely on relevant judicial opinions when evaluating the eligibility of an applicant for subsidy under the Bank program; they may consult the Bank in doubtful cases.

The proposed revision to the "cost-effective" definition is intended to clarify that an applicant who is not *required* to submit an energy audit or energy design analysis may nevertheless choose to obtain an audit or analysis and use it to demonstrate cost-effectiveness. The revised definition would also provide that an audit or analysis can demonstrate cost-effectiveness only on the basis of either simple payback or life-cycle cost analysis (both of which are explained). This precludes use of hybrid methods which use some factors excluded from simple payback, such as fuel cost escalation, but do not include all of the factors relevant to a comprehensive life-cycle cost analysis.

"Energy audit" is redefined in the proposed rule to eliminate the prior special provisions for multifamily, commercial and agricultural buildings which appear unnecessary and which did not clearly require information on costs and savings for appropriate energy conservation measures or solar energy systems. In the proposed definition, a State could determine which measures or systems were "inappropriate" for costs and savings information. For example, a State whose approved program is limited to one kind of measure could accept audits with costs and savings information only for that measure.

The proposed revision to the "financial institution" definition would update a reference to regulations of the Neighborhood Reinvestment Corporation. The proposed revision to the definition of "improvement costs" would delete the final three sentences of the definition, which would be restated in new §§ 1800.33(c), 1800.97(a)(7) and 1800.67(a)(4). "Median area income" would be redefined in the proposed rule to emphasize the need to consider applicant family size when determining applicant income in terms of percentage of median area income.

As proposed, the "multifamily residential building" definition would add a statement that at least half of a building's floor area must be for residential use. The proposed revision to the definition of "State" would drop reference to selection by the Bank since the term is sometimes used to refer both to participating and nonparticipating (*i.e.*, unselected) States, and adds a reference to the Indian Assistance Coordinator which is treated as a State for most purposes.

Section 1800.3 also defines the term "RCS" which is the Residential Conservation Service program of the Department of Energy. While no revision is proposed at this time, the Bank is aware of consideration by both the Senate and House of Representatives during 1984 of amendments to Title II of the National Energy Conservation and Policy Act (42 U.S.C. 8211 *et seq.*) which authorizes the RCS, as well as amendments or repeal of Title VII of the same Act which authorizes the Commercial and Apartment Conservation Service (CACS) program No legislative changes were made in 1984. Reconsideration in 1985 is likely and the Bank may be required to make revisions in its final rule (*e.g.*, in the provisions concerning energy audits as well as § 1800.77) if legislation amending Title II and/or Title VII has been enacted before the final rule is published.

2. *Section 1800.13 Forms of assistance.* The Bank has interpreted the current rule as prohibiting both interest and principal reduction for a single loan. The Bank has learned that combination of both subsidy types may be desired in certain cases and proposes to permit it at the discretion of the financial institution. The combined subsidies would be subject to the maximum levels stated in § 1800.67. The Bank continues to oppose combination of grants with loan subsidies and proposes to prohibit this more explicitly.

3. *Section 1800.15 Reduction of principal.* The Bank proposes a complete revision to respond negatively to questions which have arisen: Whether the entire loan amount must be disbursed before the subsidy payment is available from the Bank and whether an initial loan repayment schedule based on the unsubsidized loan is required.

3. *Section 1800.17 Prepayment of interest.* Changes are proposed which would explain how to combine prepayment of interest with principal reduction pursuant to the proposed change to § 1800.13.

5. *Section 1800.29 Debarment.* The proposed rule would update a reference to the debarment regulation of the General Services Administration.

6. *Section 1800.33 Installation certificate.* The proposed rule revises § 1800.33 to permit a financial institution representative, rather than a grant recipient, to certify as to use of Bank

funds for eligible purposes when a grant payment is not actually made to the grant recipient but instead is paid to a contractor or supplier or paid to reimburse a party which has advanced funds. While section 514(b)(8) of the Act literally requires the grant recipient to make the certification, the grant recipient cannot make a knowledgeable certification when he or she is not actually involved in the handling of funds. Since the Conference Report for the Act evidences a clear Congressional preference for payment of grant funds to persons other than the grant recipient, we believe the proposed rule fully carries out the Congressional intent that a reliable certification as to use of grant funds be available to the Bank in all cases. In actual practice, the Bank has accepted evidence other than installation certificates for those grant recipients who do not handle grant funds.

7. *Section 1800.43 Eligible recipients (solar).* Minor changes are proposed which are needed to apply income limitations after December 31, 1985, as required by statute. The Bank also proposes to remove paragraph (d) which bars Bank assistance for solar energy systems which are to be assisted under certain other Federal programs, in lieu of the more comprehensive approach of the allocation criteria discussed above. The current list of programs in paragraph (d) originated in mid-1980 and is outdated. Keeping the list up to date would be a continual problem if paragraph (d) were retained.

8. *Section 1800.45 Eligible solar energy systems.* The Bank proposes to modify this section to permit funding of heating for therapeutic swimming pools in non-profit commercial buildings. A proposed new paragraph explains eligibility in cases of mixed use buildings. Previous Bank guidance in this area preceded the eligibility of some commercial buildings and is outdated.

9. *Section 1800.47 Levels of assistance (solar).* The proposed change would add an appropriate maximum assistance level for eligible solar pool heating systems and add material moved from the definition of "improvement cost" in § 1800.3.

10. *Section 1800.55 Standards.* The Bank has relied on HUD's Minimum Property Standards (MPS) for building insulation as its minimum standards for newly constructed or substantially rehabilitated one- to four-family residential buildings with solar energy systems. HUD recently amended 24 CFR 200.929(b)(2) to adopt a new 1984 edition to the MPS for Multifamily Housing, 4910.1, 49 FR 18690–18699. This edition revises the building insulation provisions and it is the Bank's intention that § 1800.55 refer to the current edition of the handbook, whether the 1984 edition or a subsequent one. HUD has also proposed amendments of 24 CFR 200.929(b)(1) which currently references the MPS for One and Two Family Dwellings, 4900.1, 49 FR 39854–39865. The proposed amendment would delete reference to that handbook, which would no longer be used, and the building insulation requirements currently in the handbook would be replaced by a new 24 CFR 200.920d(e). Since this MPS change is only a proposed rule the Bank is not now formally proposing replacement language for § 1800.55. However, this is notice of the Bank's current intention to reflect in § 1800.55 of its final rule any final MPS changes which have been made by that time.

The Bank does not expect the HUD Secretary to consult with all of the officials and agencies named for consultation in section 515(a)(3) of the Solar Energy and Energy Conservation Bank Act before the Bank revises § 1800.55. The House Conference Report for the Act states:

> The Conferees intend that with respect to the establishment of requirements for cost-effective energy conservation standards pursuant to [the Act], the HUD Minimum Property Standards (and any amendments to the minimum property standards dealing with energy conservation and solar energy requirements which are in effect as of the date of the loan application) are appropriate cost-effective standard[s] to be used by the Bank.

While additional language in the Conference Report and the Act could be read as requiring even MPS changes to be adopted by the HUD Secretary for use by the Bank only after consultation with all of the named officials and agencies, the Bank has concluded that such consultation is needed only if standards other than the MPS are used. The statutory authority and requirements for the MPS are contained in other legislation and it is unlikely that Congress chose the Bank legislation to impose additional procedural requirements for revision of the MPS by the HUD Secretary.

11. *Section 1800.63 Eligible recipients (conservation).* Some reorganization and revision is proposed, largely to correct the failure of the current rule to completely recognize the elimination of earlier income limitations for most owners. As with § 1800.43, the paragraph listing programs which cannot be combined with Bank funds is proposed to be removed.

12. *Section 1800.65 Eligible energy conservation measures.* The proposed rule would correct a reference to the definitions section. A proposed new paragraph would explain eligibility in cases of mixed use buildings.

The Bank has also considered revisions to three other provisions. Currently § 1800.65(a)(9) allows financial assistance for heat pumps in one- to four-family residential buildings only if the heat pumps replace existing pumps or replace a combination of electrical resistance heating and air conditioning. This restriction, which is explained in the preamble to the current rule, 49 FR 9872, is related to ensuring that the replacement heat pump is cost-effective regardless of the future relationship between rates for different kinds of fuels. Similar concerns are addressed in the restrictions on assistance for heat pump water heaters in § 1800.65(a)(10). While the Bank is proposing to continue the current provisions without revision, it seeks public comment on whether revision would be appropriate before making a final decision. Similarly, the Bank is seeking public comment on its proposed decision not to revise § 1800.65(b)(9) to allow financial assistance for cogeneration systems in multifamily residential buildings. As far as the Bank is aware, existing studies do not demonstrate the feasibility of cogeneration systems in multifamily residential buildings rather than commercial/agricultural buildings. The Bank would consider adding multifamily residential buildings to § 1800.65(b)(9) if convincing evidence is received which demonstrates such feasibility.

13. *Section 1800.67 Levels of assistance.* Material would be moved from the definition of "improvement cost" in § 1800.3.

14. *Section 1800.77 Contractors and suppliers.* The proposed rule would insert the word "for" which was inadvertently omitted when Part 1800 was published as a final rule.

15. *Section 1800.93 Program participants.* The proposed revision of this section would make minor changes which clarify that all States with effective cooperative agreements on the date of an allocation round are treated the same; there is no special status for the original 1983 State participants. A reference to the reserve fund under § 1800.95 would be deleted. The discussion of the Indian Assistance Coordinator (IAC) would be revised to recognize that an initial IAC has been designated and to clarify that application of future IAC allocations of funds will be at the discretion of the Bank.

16. *Section 1800.97 Recapture of funds.* Since § 1800.97 no longer concerns reallocation of funds, the words "and reallocation" are proposed to be dropped from the section heading.

17. *Section 1800.98 Reallocation of funds.* This new section is proposed because the current reallocation provision is in the "reserve fund" sections and will be deleted. As a general rule any funds which are available for reallocation will be allocated under the proposed § 1800.95(a) the following year. A special allocation is possible for funds which would expire before the next regular allocation.

18. *Section 1800.99 Authorized expenditures.* The proposed rule would revise paragraph (d) to permit use of OMB Circular A–122, "Cost Principles for Non-profit Organizations", as applicable. For example, the Indian Assistance Coordinator, local participants or State agents could be non-profit organizations.

19. *Section 1800.103 State discretion.* An additional sentence to § 1800.103 is proposed to recognize current practice under which States (or their agents or designated local participants) perform many administrative tasks for financial institutions to "streamline" procedures. These tasks may include determination of eligibility for an applicant, building and/or proposed improvement, calculation of subsidy amount, and receipt of required certifications. Many States have determined that it is more cost-efficient for their personnel to undertake such tasks rather than the personnel of a financial institution which may make only a few subsidized loans or grants and lack familiarity with program requirements. As long as a financial institution actually makes the subsidized loan or grant, the Bank has been willing to permit such arrangements and considers them compatible with statutory and regulatory requirements. A different approach could greatly restrict the willingness of financial institutions to participate, particularly with respect to grants.

20. *Section 1800.107 Reporting and recordkeeping requirements.* The need to report use of other Federal subsidies in a State program would be highlighted.

21. *Section 1800.109 Manner of payment.* In connection with the revision of § 1800.15, the Bank proposes to permit a State to draw funds on the basis of *bona fide* loan commitments. The current rule restricts draws to loan closings or completed grant projects. The proposed change will eliminate any need for a financial institution to advance its own funds in the amount of the Bank subsidy while waiting for subsidy funds to be drawn and disbursed by a State. Under the proposal the financial institutions' funds will be needed only for the unsubsidized portion of the loan commitment.

22. *Section 1800.120 Conflict of interest.* A new provision is proposed to prevent any financial institution and any person involved in the assistance process from benefiting from the assistance, with exceptions for publicly-owned buildings and a person's principal residence.

23. *Section 1800.127 Prohibition against tax credits.* The proposed revision would correct several incorrect references to the Secretary of the Treasury and conform the reference to the residential energy tax credit to the section renumbering of the Internal Revenue Code made by section 471 of the Deficit Reduction Act of 1984. It also eliminates a certification requirement for an applicant for asisstance for a building outside the 50 States and the District of Columbia. The residential energy tax credit is limited to dwelling units in the 50 States and District of Columbia and the certification would serve no purpose elsewhere. The business energy credit may be available in certain cases for buildings located outside such areas (if the owner is located in such areas), but the Bank will not require the territories participating in the Bank program to establish a certification requirement for that narrow class. In practice the Bank has not required certifications from these applicants.

The certification in this section requires an applicant to certify that certain tax credits will not be claimed "except as permitted by regulations or other legal interpretations of the Internal Revenue Service." The Bank has requested a clarifying interpretation from the IRS and any such interpretation may require changes to this section which would be reflected in a final rule.

24. *Section 1800.137 Other Federal requirements.* Proposed changes would recognize the Bank's Memorandum of Agreement with the Advisory Council on Historic Preservation, the new HUD rental rehabilitation and housing development grant programs and the possibility of HUD regulations to implement Executive Orders 11988 (wetlands) and 11990 (floodplains). The revised rule would no longer restrict improvements to existing buildings in wetlands which are not also floodplains. The Bank is also reviewing the legality of relying in part on States for compliance with those Executive Orders and the final rule may reflect its conclusions.

With respect to OMB Circular A–102, it should be noted that OMB, in cooperation with all of the grantmaking agencies, including HUD, is reviewing the circular for possible revision and restructuring. Five agency-chaired teams have been organized for a logical review of the circular according to the grants process (and two special issue areas). The teams are addressing pre-award, post-award, after-the-grant, property and procurement, and entitlements (public assistance) programs. The result of the Government-wide effort will be a uniform set of grant terms and conditions which agencies will adopt verbatim in "common" regulations, and an accompanying set of OMB government-wide guidance instructing Federal agencies on significant grant management practices such as cash management and closeout. Such regulations and guidance will also be relevant for the Bank cooperative agreements.

The interagency teams developing the common regulations anticipate publishing final rules in mid-1985. Consequently, when the agencies adopt common regulations in place of Circular A–102, some changes to § 1800.137 will probably be necessary. One possibility will be to adopt the general HUD regulations on Circular A–102 as regulations of the Bank, through amendment of § 1800.135(b) or by action of the Bank President under § 1800.136(c), and to amend § 1800.137(g) to include only those requirements unique to the financial assistance program of the Bank.

25. *Appendices II and III.* Additional material proposed for Appendices II and III would explain calculation of combined interest and principal loan subsidies pursuant to the proposed changes to §§ 1800.13 and 1800.17.

Comment Period

HUD normally provides sixty days for public comment on proposed rules. In this instance, the public comment period has been reduced to thirty days. This abbreviated comment period will make it possible for HUD to take into account the views expressed in response to this rule, while publishing a final rule early enough in Fiscal Year 1985 to enable all available 1985 funds to be: (1) Allocated to current and potential new State participants in a single 1985 allocation round as required by the new legislative amendment, and (2) both allocated and obligated after receipt of State semi-annual reports for the period ending June 30, 1985 (which must conform to any revised reporting requirements) but prior to the end of Fiscal Year 1985 in

order to comply with the approved OMB apportionmnet of the 1985 funds.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The Bank finds that there are no anticompetitive discriminatory aspects of the proposed rule with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Environmental Impacts

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact for this final rule is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, SW, Washington, D.C. 20410.

OMB Control Number

The reporting provisions of this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, (Pub. L. 96-111) and have been assigned OMB control number 2504-0001. This control number has an expiration date of January 31, 1988.

Regulatory Impact Analysis

The proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs for prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) 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.

Semiannual Agenda of Regulations

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 22, 1984 (49 FR 41684) under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog Of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.550.

List of Subjects In 24 CFR Part 1800

Grant program, Energy conservation, Loan program, Solar energy, Reporting and recordkeeping requirements.

Accordingly, 24 CFR Chapter XI is proposed to be amended by revising Part 1800 as follows:

PART 1800—FINANCIAL ASSISTANCE PROGRAM OF THE SOLAR ENERGY AND ENERGY CONSERVATION BANK

1. The citation of authority for Part 1800 would be revised to read as follows:

Authority: Solar Energy and Energy Conservation Bank Act (12 U.S.C. 3602-3619).

2. Section 1800.3 would be amended by adding definitions for "one- to four-family residential building" and "solar pool heating system" in alphabetical order and by revising the definitions of "active solar energy system", "annual income", "commercial building", "cost-effective", "Energy audit", paragraph (g) of "financial institution", paragraph (d) of "improvement cost", "Median area income", "Multifamily residential building", and "State", to read as follows:

§ 1800.3 Definitions.

* * * * *

"Active solar energy system" means equipment which is designed to absorb solar energy and provide auxiliary water heating and/or space heating by use of mechanically forced thermal energy transfer devices such as fans or pumps.

* * * * *

"Annual income" means the total annual income of a family from all sources for the 12-month period following the date of determination of income, computed in accordance with Part 813 of this title which prescribes the method of computation for the section 8 housing assistance payment programs of HUD, except that for purposes of this part only actual income from "Net Family Assets" rather than imputed income shall be included.

* * * * *

"Commercial building" means any building other than a one- to four-family residential or multifamily residential building which is used primarily to carry on a business (including any nonprofit business) and is not used primarily for the manufacture or production of raw material, products, or agricultural commodities. A building is used primarily to carry on a business if at least 50 percent of its floor space is devoted to the business. A building owned by a public body may be a commercial building unless it is a building used for general conduct of government such as a public school, city hall, county administrative building, State capital or office building or other facility in which the legislative, judicial or other general administrative affairs of government are conducted. Building used for religious purposes are not commercial buildings.

* * * * *

"Cost-effective" means, generally, that the solar energy system or energy conservation measure is expected to result in a dollar savings over the life of such system or measure that exceeds its costs over its useful life, as determined by an energy audit or energy design analysis without consideration of the financial assistance of the Bank. Such determination shall be made either on the basis of simple payback or life-cycle cost analysis. "Simple payback" means the determination of the time in years for recovery of the cost of an energy system based on estimated annual energy savings in dollars at current energy prices. The cost of a measure or system is divided by the annual savings to yield the simple payback period. "Life-cycle cost analysis" means an evaluation of investment alternatives to an energy conservation measure or a solar energy system which considers all costs and economic benefit parameters over the useful life of the measure or system as the common time element for the evaluation. All present value costs are aggregated and compared to the present value of all benefits and a measure or system is deemed to be cost-effective when the benefits exceed the costs. As a minimum, the evaluation shall compare the costs and benefits of a measure or system to a non-energy improvement investment alternative. The general methodology to be followed in the evaluation shall be as defined by a State and approved by the Bank. A solar energy system or energy conservation measure will also be considered cost-effective, in the case of applicants for financial assistance who are excepted from the requirement to submit an energy audit or energy design analysis stated in § 1800.35 of this part, if such system or measure is a "program measure" for the area under the regulations governing the RCS program (10 CFR Part 456) or (in States for which there is no listing of "program measures" in the RCS regulations) if

such system or measure is listed in §§ 1800.45(a), 1800.65(a), or 1800.65(b) of this part.

* * * * *

"Energy audit" means:

(a) An energy audit of a building or dwelling unit performed for purposes of Title II or Title VII of the National Energy Conservation Policy Act, 42 U.S.C. 8211 *et seq.* and 8281 *et seq.*, respectively, or

(b) An on-site inspection of the building or dwelling unit using procedures approved by a State or Federal government entity (or performed by an energy auditor who is determined to be qualified by a State or local government entity) which includes a determination of and provides information on:

(1) The type, quantity, and rate of energy consumption of such building or dwelling unit;

(2) Energy conserving maintenance and operating procedures which can be employed to significantly reduce the energy consumption of such building or dwelling unit; and

(3) The cost of purchasing and installing appropriate energy conservation measures, a solar energy system, or both (excluding measures or systems considered inappropriate for this purpose by a State), and the savings in energy costs which are likely to result from the installation of such measures or system.

* * * * *

"Financial institution" means:

* * * * *

(g) Any Neighborhood Housing Services corporation which is administering a local program as described in § 4100.1 of this title and which meets all requirements of the Neighbrohood Reinvestment Corporation.

* * * * *

"Improvement cost" means:

* * * * *

(d) The actual cost to the recipient of the labor involved in the installation by a contractor.

* * * * *

"Median area income" means the median annual income for an area as determined by HUD for the section 8 housing assistance payment programs of HUD which adjust median area income for family size and region. When the annual income of an applicant must be determined in terms of percentage of median area income, the median area income for the appropriate family size must be used.

* * * * *

"Multifamily residential building" means any building which has 50 percent or more of its floor space used for residential purposes, contains five or more dwelling units and has at least one system for heating or cooling or both.

* * * * *

"One- to four-family residential building" means any builing which has 50 percent or more of its floor space used for residential purposes, contains at least one and not more than four dwelling units and has at least one system for heating or cooling or both.

* * * * *

"Solar pool heating system" means an active or passive solar energy system for heating water in a swimming pool which is part of a commercial building and which is used at least in part for therapeutic or similar non-recreational purposes.

* * * * *

"State" means any State (which includes the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa and the Trust Territory of the Pacific Islands). As described in § 1800.93(d)(2) of this part, an Indian Assistance Coordinator designated by the Bank shall also be treated as a State for most purposes.

3. In § 1800.13, paragraphs (b)(1) and (b)(3) would be revised to read as follows:

§ 1800.13 Types of assistance.

* * * * *

(b) *Forms of financial assistance for loans.* (1) Except as specified in paragraph (b)(2) of this section, financial assistance used in connection with loans may be in the form of a reduction in principal, prepayment of interest, or a combination of reduction in principal and prepayment of interest, at the discretion of the financial institution.

* * * * *

(3) Financial assistance in the form of grants shall not be combined with assistance in the form of a loan subsidy.

4. Section § 1800.15 would be revised to read as follows:

§ 1800.15 Reduction of principal.

When financial assistance is in the form of reduction of principal, a financial institution must have made a *bona fide* loan commitment in the full unreduced principal amount to an eligible recipient for use for eligible purposes under this part. Prior to receiving payment from a State a financial institution may choose to disburse loan proceeds only in an amount equal to the difference between the loan commitment and the subsidy amount as long as an amount equal to the rest of the loan commitment is disbursed to the recipient whenever the financial institution receives payment from the State. The loan repayment schedule may be set based on the principal amount which will remain owing after reduction of principal by the financial institution to avoid recalculation of the repayment schedule. The loan must have an interest rate not exceeding the rate comparable to unassisted loans.

5. Section 1800.17 paragraphs (a), (b) (3) and (4) would be revised to read as follows:

§ 1800.17 Prepayment of interest.

(a) *Form.* Prepayment of interest on a loan shall take the form of reduction of the interest rate which would otherwise have been charged. The available subsidy may be used entirely toward prepayment of interest or a portion of it may be used as a reduction of principal with the balance if the subsidy used toward prepayment of interest. Where the two forms of loan subsidy are applied to a single loan, the reduction of principal shall be applied first following § 1800.15 of this part and the prepayment of interest portion shall be calculated following paragraph (b) of this section using the reduced principal amount of the loan.

* * * * *

(b) * * *

(3) Appendix II to this part explains the calculation procedure for assistance in the form of prepayment of interest or combined reduction of principal and prepayment of interest. Appendix III to this part presents examples of calculations for assistance in the form of prepayment of interest or combined reduction of principal and prepayment of interest. States may adopt alternative procedures provided the subsidy amount determined from any alternative procedure does not exceed the subsidy determined by Appendix II.

(4) In the case of a loan for which only a portion qualifies for financial assistance, *e.g.*, a home improvement loan of $2,000 which includes $1,000 for eligible conservation measures, the subsidy may be applied to the entire loan when calculated in accordance with procedures contained in Appendix II.

6. In § 1800.29, paragraph (a)(1) would be revised to read as follows:

§ 1800.29 Debarred contractors, suppliers and financial institutions.

(a) * * *

(1) The Consolidated List of debarred, suspended and ineligible contractors prepared by the General Services Administration pursuant to 48 CFR Chapter 1, Subchapter B, Supbart 9.4;

* * * * *

7. Section § 1800.33 would be revised to read as follows:

§ 1800.33 Installation certificate.

(a) *Requirement for receiving Bank funds.* No financial institution may request any Bank funds in connection with a particular applicant's solar energy system or energy conservation measure unless:

(1) The financial institution has received an installation certificate from the applicant, or

(2) The applicant has agreed to provide an installation certificate to the financial institution immediately upon competition of installation of such solar energy system or energy conservation measure (not applicable to grants), or

(3) A representative of the financial institution has executed an installation certificate (applicable only when a grant will not be paid directly to the recipient).

(b) *Content of certificate.* (1) An installation certificate from an applicant must include the following:

(i) The applicant's signature, and

(ii) A statement that the grant or loan proceeds will be used immediately toward payment for eligible purposes under this part, or toward reimbursement for payments for eligible purposes under this part.

(2) An installation certificate from a financial institution representative must include the following:

(i) The signature of the representative, and

(ii) A statement that the grant will not be paid directly to the recipient but will be used immediately by the financial institution toward payment toward eligible purposes under this part, or toward reimbusement for payment for eligible purposes under this part.

(3) In all cases except solar space heating or cooling systems, installation certificates must also include:

(i) The improvement cost, or

(ii) A statement that the improvement cost equals or exceeds the cost estimate (which shall be stated) which was used to determine the amount of financial assistance, or

(iii) A statement that the improvement cost equals or exceeds the loan amount (which shall be stated) used to determine the amount of financial assistance.

(c) *Reasonable costs.* Costs in excess of reasonable costs are not eligible for financial assistance and must be disregarded in an installation certificate.

8. Section 1800.43 would be amended by removing current paragraph (d), redesignating current paragraphs (e), (f) and (g) as paragraphs (d) (e), and (f), respectively, and revising paragraphs (c) and (f) to read as follows:

§ 1800.43 Eligible recipients.

* * * * *

(c) *Joint applications.* A joint owner of a dwelling unit or of a building may apply for assistance individually, simultaneously with other joint owners in a single application, or simultaneously with other joint owners by a separate application. If simultaneous separate applications are made by two or more joint owners with respect to the same building or dwelling unit, such applicants collectively may not receive assistance exceeding the maximum level of assistance established for such building or dwelling unit under § 1800.47 of this part. Spouses are not considered joint owners. Each applicant in a joint application must be eligible under this section. The average annual income of joint applicants shall be used to determine compliance with paragraph (f) of this section after December 31, 1985.

* * * * *

(f) Financial assistance may not be provided in connection with a loan made to an owner of an existing one- to four-family residential building after December 31, 1985 if such owner is not an individual or is an individual whose family has an annual income in excess of 250 percent of the median area income.

9. Section 1800.45 would be amended by revising paragraph (a) and adding new paragraphs (c) and (d), to read as follows:

§ 1800.45 Eligible solar energy systems.

(a) *Eligible systems.* The following are eligible solar energy systems, subject to paragraphs (b), (c) and (d) of this section:

(1) Passive solar energy systems, and

(2) Active solar energy systems.

* * * * *

(c) *Water heating.* The only eligible solar energy systems for water heating are solar domestic hot water systems and solar pool heating systems.

(d) *Mixed use buildings.* In a building in which floor space is used for both residential and other purposes, no special rules apply if the building is a commercial or agricultural building or is a one- to four-family or multifamily residential building in which at least 80 percent of the floor space is used for residential purposes. Otherwise, solar energy systems are eligible if they benefit the residential portion of the building or if the applicant is a non-profit owner and the non-residential portion of the building is used for purposes which, if extended throughout the building, would qualify the building as a commercial or agricultural building.

10. Section 1800.47 would be amended by redesignating current paragraphs (a)(3), (a)(4) and (a)(5) as paragraphs (a)(4), (a)(5) and (a)(6), respectively, and by adding new paragraphs (a)(3) and (a)(7) to read as follows:

§ 1800.47 Levels of assistance.

(a) * * *

(3) The maximum amount of assistance for solar pool heating systems shall be $12,500 or 40 percent of the improvement costs, whichever is less, for commercial buildings.

* * * * *

(7) If more than one person is responsible for the cost of a solar energy system, then the amount of financial assistance for a person shall be based on the person's share of the total improvement cost.

* * * * *

11. Section 1800.63 would be amended by revising paragraphs (c)(3) and (f), adding paragraph (c)(4), removing current paragraph (i), and redesignating current paragraphs (j) and (k) as paragraphs (i) and (j), respectively, to read as follows:

§ 1800.63 Eligible recipients.

* * * * *

(c) * * *

(3) Except as provided in paragraphs (c)(1) and (c)(2) of this section, an owner of a building shall not be subject to any income requirement.

(4) An owner which is not an individual shall be treated as having a family with an annual income in excess of 150 percent of the median area income.

* * * * *

(f) *Joint applications.* (1) A joint owner of a dwelling unit or of a building may apply for assistance individually, simultaneously with other joint owners in a single application, or simultaneously with joint owners simultaneously by separate application. A tenant jointly renting a dwelling unit or a building with other tenants may apply for assistance individually, simultaneously with other tenants in a joint application, or simultaneously with other tenants by separate application.

(2) Spouses are not considered joint owners or tenants.

(3) If simultaneous separate applications are made by two or more joint owners or by two or more joint tenants with respect to the same building or dwelling unit, such applicants collectively may not receive assistance which would exceed the maximum amount of assistance for which the applicant with the lowest annual income would be eligible if such applicant applied individually and did not share costs with anyone else.

(4) Each applicant in a joint application must be eligible under this section. If a joint application is made, the average annual income of all joint applicants shall be used for purposes of § 1800.67(a) of this part. When different family sizes are involved, the average size rounded up to the nearest whole number should be used. The average annual income of joint applicants when one or more is not an individual shall be considered in excess of 150% of median area income.

* * * * *

12. Section 1800.65 would be amended by revising paragraph (b)(13) and adding a new paragraph (d) to read as follows:

§ 1800.65 Eligible energy conservation measures.

* * * * *

(b) * * *

(13) Energy audits (as included in the definition of "improvement cost" in § 1800.3 of this part).

* * * * *

(d) *Mixed use buildings.* In a building in which floor space is used for both residential and other purposes, no special rules apply if the building is a commercial or agricultural building or is a one- to four-family or multifamily residential building in which at least 80 percent of the floor space is used for residential purposes. Otherwise, energy conservation measures are eligible if they benefit the residential portion of the building or if the applicant is a non-profit owner or tenant and the non-residential portion of the building is used for purposes which, if extended throughout the building, would qualify the building as a commercial or agricultural building.

13. Section 1800.67 would be amended by adding a new paragraph (a)(4) to read as follows:

§ 1800.67 Levels of assistance.

(a) * * *

(4) If more than one person is responsible for the cost of a solar energy system, then the amount of financial assistance for a person shall be based on the person's share of the total improvement cost.

* * * * *

14. Section 1800.77 would be revised to read as follows:

§ 1800.77 Contractors and suppliers.

All contractors and suppliers who install or supply energy conservation measures for which assistance is provided in the form of a grant must appear on a list of approved contractors and suppliers which meets the requirements of section 213(a) of the National Energy Conservation Policy Act, 42 U.S.C. 8214. This requirement shall not apply in areas of a State which are not served by a public utility described in section 211(a) of the National Energy Conservation Policy Act, 42 U.S.C. 8212, or areas where such list has not been made public by a public utility under section 215(a)(3) of the National Energy Conservation Policy Act, 42 U.S.C. 8216, or by the Secretary of Energy.

§ 1800.93 [Amended]

15. In § 1800.93, paragraphs (a), (b) and (d)(2) would be revised, to read as follows:

(a) *Current State participants.* Any State with a current cooperative agreement (one which is legally effective on the date of any tentative allocations under § 1800.95 of this part) may elect to receive any additional funds allocated under § 1800.95 of this part on the basis of programs approved in its cooperative agreement. To receive any new allocation of funds, a State must complete and return to the Bank a Bank-prepared cooperative agreement amendment obligating such additional funds to the State within a 30-day period from the time such amendment is provided by the Bank.

(b) *States without cooperative agreements.* A State without a current cooperative agreement with the Bank may become a new participant in the Bank program for any allocation of funds under § 1800.95 of this part by submitting a written program proposal which is accepted by the Bank. The Bank publishes, from time to time in the **Federal Register**, a Notice of Funding Availability which should be referred to for guidance as to the contents of the program proposal.

* * * * *

(d) * * *

(2) An IAC was initially designated on the basis of a written program proposal and statement of qualifications submitted to the Bank in response to a competitive solicitation announced in the **Federal Register**. Whenever an IAC designation expires, the IAC may be redesignated without competitive solicitation or a new competitive solicitation may be announced in the **Federal Register**. Tentative allocations of funds for an IAC shall be determined in the same manner as for States under § 1800.95(a) of this part except that Factor "A" shall be determined by the Indian population of the United States divided by United States household size and then multiplied by energy consumption per United States household. Values shall be given to Factor "B" on the basis on a particular IAC's program performance only if the resulting tentative allocation is expected to be obligated to the same IAC without an intervening competitive solicitation. At the discretion of the Bank, such allocation may be obligated to the then-designated IAC by amendment of its cooperative agreement, obligated by a cooperative agreement with a new IAC designated after competitive solicitation, or reallocated pursuant to § 1800.98 of this part. Except for designation and allocation of funds, the IAC shall be treated as a State for purposes of this part.

* * * * *

16. Section 1800.95 would be revised to read as follows:

§ 1800.95 Allocation of funds.

(a) *Tentative Allocation.* (1) Each Fiscal Year in which funds are available to the Bank for obligation, a tentative allocation shall be made to each State with a cooperative agreement and all other States which have submitted acceptable program proposals pursuant to § 1800.93 of this part. The tentative allocation shall be made during February or August at the Bank's option, but not both, depending on availability of funds and the need for additional funds by States to sustain program activities.

(2) The amount of funds allocated to each State is based on a score which is the product of two factors, provided that the tentative allocation of funds for each new State participant shall be not less than $120,000 and for each current State participant shall be not less than $20,000. The score for each State is divided by the sum of the scores of all States and the resulting ratio is multiplied by the available funds to provide a tentative allocation.

(i) Factor "A" is determined by the product of:

(A) The sum of 50 percent of the number of households in the State with income at 80 percent or less of the median household income for the State, 30 percent of the number of households with income greater than 80 percent of

the median up to 150% of the median and 20 percent of the number of households with incomes greater than 150% of the median, normalized so that the largest value is equal to 100 with all other ratios proportionately less with a weight of 0.5; and

(B) The average amount of energy consumed per household for the State, normalized so that the largest resultant value is equal to 100 with a weight of 0.5.

(ii) Factor "B" is equal to one for a new participant pursuant to § 1800.93(b) and otherwise is determined by the sum of one plus:

(A) The annual Btu savings for subsidized energy conservation measures and solar energy systems per dollar of Bank subsidy expended normalized so that the highest value equals 5 with a weight of 0.1;

(B) The calculation of the total dollar investment made in subsidized measures and systems per dollar of Bank subsidy expended normalized so that the highest value equals 5 with a weight of 0.1;

(C) The calculation of the ratio of dollars of Bank subsidy expended to the total funds obligated to a State by the cooperative agreement normalized so that the highest value equals 5 with a weight of 0.5; and

(D) The calculation of the ratio of dollars of Bank subsidy expended to the total funds expended by all program participants normalized so that the highest value equals 5 with a weight of 0.3.

(iii) "Investment" as used in paragraph (a)(2)(ii)(B) of this section means the improvement cost for a measure or system when used as the basis for calculation a subsidy; otherwise it means the estimated system cost in the case of solar space heating or cooling systems.

(iv) The value for Factor "B" shall be reduced if Bank subsidies and other Federal subsidies are provided for the purchase and installation of the same energy conservation measures or solar energy systems, with a minimum reduction of 5 percent and reductions at the rate of 5 percent for each 10 percent of total dollars of Bank subsidy which are expended for measures or systems which also are subsidized by other Federal subsidies to a maximum reduction of 50 percent.

(v) Factor "B" shall represent cumulative performance based on the entire period of State participation in the Bank program or the preceding 24 months, whichever period is less. The information needed to calculate the value for Factor "B" shall be taken from the State semi-annual reports due pursuant to § 1800.017 of this part. If any such report has not been received by the Bank from a State, no value will be given for paragraphs (a)(2)(ii) (A) and (B) of this section; in such case paragraphs (a)(2)(ii) (C) and (D) of this section shall be based on information available to the Bank through its fund transfer system with a 50 percent reduction applied to paragraph (a)(2)(ii)(C) of this section for any State not reporting.

(b) *Obligation.* The Bank shall inform each State of its tentative allocation. Unless a State elects not to receive its tentative allocation the full amount of the State's tentative allocation shall be obligated to a State by the cooperative agreement or an amendment to it, provided that if the Bank has a State notice of intent to recapture funds under § 1800.97(b) of this part the Bank shall have no duty to obligate any additional funds to the State unless the violation is resolved to the satisfaction of the bank.

17. The heading of § 1800.97 would be revised to read as follows:

§ 1800.97 Recapture of funds.

18. A new § 1800.98 would be added to read as follows:

§ 1800.98 Reallocation of funds.

Any funds which become available for reallocation after tentative allocation and while they remain legally available for obligation shall be included in the next tentative allocation. A special reallocation may be made for any such funds which would cease to be legally available for obligation prior to the next anticipated tentative allocation and any special reallocation shall be in a manner determined by the Bank to be appropriate considering the amounts involved and timing. Funds available for reallocation include funds tentatively allocated under § 1800.95 of this part to a State that does not elect to receive such funds or for an IAC when the Bank determines not to obligate such funds and funds recaptured under § 1800.97 of this part.

19. Section 1800.99 would be revised to read as follows:

§ 1800.99 Authorized expenditures.

* * * * *

(d) *Principles for determining allowable expenses.* Administrative and promotional expenses must be allowable under the principles and standards established in OMB Circular No. A–87, "Cost Principles for State and Local Governments", or A–122, "Cost Principles for Non-profit Organizations", as applicable.

20. Section 1800.103 would be revised to read as follows:

§ 1800.103 Selection of financial institutions.

A State will select the financial institutions which will provide financial assistance within the State. A State may serve as a financial institution itself as long as it qualifies under the definition set forth in § 1800.3 of this part. A State not serving as a financial institution itself may nevertheless perform any functions prescribed for a financial institution by this part or a cooperative agreement to the extent agreed by the financial institution, except for the actual making of a grant or subsidized loan.

21. Section 1800.107 would be amended by revising paragraph (a)(7) to read as follows:

§ 1800.107 Reporting and Recordkeeping Requirements.

(a) * * *

(7) The cost-effectiveness of the program in terms of the percent of Bank funds expended in connection with some other form of Federal subsidy, administrative costs, promotional costs, leveraging of funds, energy savings in terms of dollars per barrel of oil equivalent and other measures as may be appropriate; and

* * * * *

22. Section 1800.109 would be revised to read as follows:

§ 1800.109 Manner of payment.

Payments to States will be made by electronic funds transfer whenever possible, letter or credit, or other means, pursuant to the cooperative agreements and in compliance with the Intergovernmental Cooperation Act (42 U.S.C. 4201 *et seq.*) and Treasury Circular No. 1075 (31 CFR Part 205). States may receive payments for administrative and promotional expenses only after they have been incurred. States may receive other payments only in amounts necessary to pay financial institutions for financial assistance in connection either with energy conservation measures or solar energy systems which have been purchased, or with loans which have been closed or for which a *bona fide* loan commitment has been made if energy conservation measures or solar energy systems will be installed within 60 days of loan closing. States shall utilize appropriate procedures to minimize the time elapsing between the transfer of funds by the Treasury to the State and the disbursement of funds by the State.

23. A new § 1800.120 would be added to read as follows:

§ 1800.120 Conflict of interest.

No financial institution and no person who is an employee, agent, consultant, officer, or elected or appointed official of a State, local participant, financial institution, or public or private entity acting as agent of any of the foregoing, and who is in a position to participate in a decisionmaking process or gain inside information with respect to expenditures for administrative or promotional expenses or assistance for eligible activities under this part, may obtain a personal or financial interest in or benefit from such expenditures or assistance, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure. This paragraph does not restrict financial assistance to a publicly-owned building or to a person with respect to a single dwelling unit which is the person's principal residence.

24. Section 1800.127 would be revised to read as follows:

§ 1800.127 Prohibition against tax credits and financial assistance for same expenditure.

(a) *Information provided to the Secretary of the Treasury.* As required by section 506(f) of the Act, the Bank shall provide to the Secretary of the Treasury such information as the Secretary of the Treasury determines is necessary to insure that no person is allowed for the same expenditure both financial assistance under the Act and a credit against Federal income taxes under 26 U.S.C. 38 (investment credit) or 26 U.S.C. 23 (residential energy credit). Except as otherwise directed by the Secretary of the Treasury, the Bank intends to discharge this responsibility as well as the information return requirements of 26 U.S.C. 6050D by requiring either a State or financial institutions within a State to submit Internal Revenue Service Form 6497 ("Information Return of Nontaxable Energy Grants or Subsidized Energy Financing") or any replacement form duly approved by the Office of Management and Budget to the appropriate office of the Internal Revenue Service.

(b) *Information required from applicant.* As a condition of financial assistance, an applicant shall be required to provide to the financial institution:

(1) All information which the Secretary of the Treasury determines is necessary under paragraph (a) of this section and which is possessed by the recipient, including the applicant's Social Security number or taxpayer identification number and other information required for Internal Revenue Service Form 6497 or any replacement form duly approved by the Office of Management and Budget, and

(2) A certification that the applicant will not claim a Federal tax credit under 26 U.S.C. 38 or 23 for amounts expended for the assisted energy conservation measures or assisted solar energy system up to the amount used as the basis for determining the financial assistance, except as permitted by regulations or other legal interpretations of the Internal Revenue Service. No certification shall be required from an applicant for financial assistance for a building in Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa or the Trust Territory of the Pacific Islands.

[Approved by the Office of Management and Budget under OMB control number, 2504–0001]

25. Section 1800.137 would be amended by revising paragraphs (c) and (d) to read as follows:

§ 1800.137 Other Federal requirements.

* * * * *

(c) *Historic preservation.* No financial assistance shall be provided in connection with any energy conservation measure or solar energy system with respect to any district, site, building, structure or object included in or eligible for inclusion in the National Register maintained by the Secretary of the Interior under 16 U.S.C. 470a as determined by the State or a financial institution, unless (1) such financial assistance is provided in compliance with the Bank's initial Memorandum of Agreement with the Advisory Council on Historic Preservation, or any subsequent such Memorandum of Agreement, or (2) such financial assistance is in connection with an assistance program of a Federal agency other than the Bank for which the other Federal agency or a recipient of assistance under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) or section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o) has complied with the procedures of the Advisory Council on Historic Preservation set forth in 36 CFR Part 800 or (in the case of Urban Development Action Grants) 36 CFR Part 801.

(d) *Special flood hazard areas and wetlands.* In order to carry out the Federal policies stated in Executive Orders 11988 ("Floodplain Management") and 11990 ("Protection of Wetlands"), no financial assistance shall be provided in connection with a newly constructed building located at wetlands in connection with any building located in or an area that has been identified by the Federal Emergency Management Agency as having special flood hazards, unless such financial assistance is in connection with an assistance program of a Federal agency other than the Bank for which the Federal agency or a recipient of assistance under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) or section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o)) has complied with the procedures set forth in Executive Order 11988 or 11990. The preceding sentence shall not restrict the providing of financial assistance in compliance with any HUD regulations implementing Executive Orders 11988 and 11990 if such regulations have been adopted by the Bank pursuant to § 1800.135(c) of this part.

26. Appendix II would be amended by adding a new section IV after the end of current section III to read as follows:

Appendix II—Procedure for Calculating Subsidy and Reduced Interest Rate on Prepayment of Interest Loan Assistance

* * * * *

IV. Combined Reduction of Principal and Prepayment of Interest.

Category 5 loan.

1. Determine subsidy amount available as per §§ 1800.47 and 1800.67 as applicable.

2. Determine amount of subsidy to be used for reduction of principal. This would normally be estimated based on the amount of interest bringdown desired as for a Category 1 loan.

3. Subtract the portion of the subsidy to be used as a reduction of principal from the loan amount to obtain the amount to obtain the amount to be repaid.

4. Using the amount to be repaid and the portion of the available subsidy to be used toward prepayment of interest, calculate the loan repayment terms and subsidy amount as per steps C.1 through C.5 for a Category 2 loan.

5. The amount of Bank assistance to be provided is the sum of the subsidy amounts determined by steps 2 and 4 above. An iterative process may be needed to maiximize use of an available subsidy if desired.

Appendix III—[Amended]

27. Appendix III would be amended by adding a new Example 5 after the end of current Example 4 and before the Note to Appendix III to read as follows:

Example 5. Category 5

It is desired to offer reduced interest rate loans at a level competitive with rates of return available to individuals to discourage early repayment of loans but yet make the total amount of assistance attractive to individuals to encourage installation of energy conserving measures. Accordingly, a situation as per Example 1 is desired with a $500 reduction in principal in addition to the 10% reduced interest rate loan.

1. Using Category 5 procedures, a $500 reduction in principal is applied to the loan making the amount to be repaid $1,500.

2. The difference in finance charges from 15% to 10% for $1,500 is $229.05 ($641.25 – $412.20).

3. The discounted rate growth factor is 1.3489 as per example 1.

4. The amount of prepayment of interest subsidy required to reduce the interest rate to 10% is $169.80 ($229.05 divided by 1.3489).

5. The total amount of assistance to be provided is then $699.80 ($500 + $169.80). Since this is within the allowable subsidy of $700, the $669.80 is the subsidy amount.

EXAMPLE 5. SUMMARY

	Conventional	Bank subsidized
Principal	$2,000	$1,500.
Interest rate	15 pct	10 pct.
Term	5 years	5 years.
Monthly payment	$47.60	$31.87.
Total payments	$2,856	$1,912.20.

Authority: Solar Energy and Energy Conservation Bank Act (12 U.S.C. 3602–3619).

Date February 26, 1985.

Richard H. Francis,

Manager, Solar Energy and Energy Conservation Bank.

[FR Doc. 85–5300 Filed 3–5–85; 8:45 am]

BILLING CODE 4210-32-M

POSTAL SERVICE

39 CFR Part 111

Applicable Rates for "Plus" Issues of Second-Class Periodicals

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal is intended to clarify postal regulations related to second-class mail, particularly as they concern so-called "Plus" issues or editions. The proposed regulations constitute a clarifying interpretation of Schedule 200 of the Domestic Mail Classification Schedule (DMCS) which is consistent with past interpretations of that schedule; no change in substance is proposed.

DATES: Comments must be received on or before April 5, 1985.

ADDRESS: Written comments should be directed to Robert Lowry, Law Department, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260–1142. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the Law Department, Room 5103, Comsat Building North, 955 L'Enfant Plaza West SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Robert Lowry, (202) 245–3891.

SUPPLEMENTARY INFORMATION: The mail classification schedule established by the Governors of the Postal Service pursuant to 39 U.S.C. 3621 and set forth in the DMCS seeks to preserve the essential nature of second-class mail as it was first established by Congress. It was Congress' intent that second-class be the class of mail set aside for mail matter devoted primarily to the dissemination of information. In recognition of the public benefit that resulted from such dissemination, certain rate advantages were enacted for second-class mail. *See* former 39 U.S.C. 4358. Congress also established third-class mail as the class of mail in which advertising matter was intended to travel through the postal system.

In order to preserve the nature of second-class mail, the DMCS identifies second-class mail as mail which is "originated and published for the purpose of disseminating information of a public character, or devoted to literature, the sciences, art, or some special industry." DMCS 200.0104. The DMCS preserves the dichotomy between second- and third-class mail by providing that "[p]ublications designed primarily for advertising purposes, free circulation, or circulation at nominal rates . . . do not qualify for second-class privileges." DMCS 200.012. *See* former 39 U.S.C. 4354(c).

Recent events have resulted in blurring the distinctions first enacted by Congress and preserved in the DMCS between the two classes of mail. Some second-class periodicals have begun distributing so-called "Plus" issues as part of a total market coverage program. These "Plus" issues are distributed to readers on the same day as that on which a regular issue of the periodical appears, contain a great preponderance of advertising matter, and are mailed to a different set of readers from those who hold subscriptions and who receive the regular issues of the periodical on a daily basis. Such "Plus" issues are inconsistent with the essential nature of second-class mail as a vehicle for information and not for advertising.

The Postal Service is proposing two revisions of the Domestic Mail Manual (DMM) as clarifying interpretations of existing provisions of the DMCS. If they are adopted, the first revision would amend DMM 422.23, which sets forth advertising restrictions on general second-class publications. A new 422.232 would be added stating that any issue which consists of more than 75 percent advertising or is distributed primarily to nonsubscribers, and which is also delivered by the Postal Service on the same day as another issue of the publication appears, may not be mailed at second-class rates. Current 422.232 would be renumbered 422.233.

The second revision would amend DMM 425.1 to state that, for purposes of eligibility for second-class rates, a periodical shall be considered to have only one regular issue on any given day. Additional issues delivered by the Postal Service on the same day as a regular issue appears, except for special issues designed for the purpose of communicating additional news and information received too late for insertion in the regular issue and not intended for advertising purposes, would be charged third- or fourth-class rates. The day on which an issue is designed to be delivered would be determined by the date on the issue. The determination as to which of multiple issues of the same publication designed to be delivered by the Postal Service on the same day is the regular issue would be made by local postmasters.

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Incorporation by reference, Postal Service.

PART 111—[AMENDED]

1. In 422, revise 422.232 to read as follows:

PART 422—TYPES OF AUTHORIZATIONS

* * * * *

422.2 General Publications.

* * * * *

.23 Advertising Restrictions

* * * * *

.232 Issues Not an Integral Part of the Periodical and Designed for Advertising Purposes

An issue of a general publication which contains more than 75 percent

advertising or is distributed primarily to nonsubscribers, and which is also delivered by the Postal Service on the same day as another issue of the same publication appears, may not be mailed at second-class rates.

2. Renumber current 422.232 as 422.233.

3. In 425, revise 425.1 to read as follows:

PART 425—WHAT MAY BE MAILED AT THE SECOND-CLASS RATES

425.1 Complete Copies of Regular Issues.

Complete copies of the regular issues of a second-class publication may be mailed at the applicable second-class rates in 410. For purposes of eligibility for second-class rates, a periodical shall be considered to have only one regular issue on any single day. Copies which are not complete because pages or portions of pages are missing and issues designed to be delivered by the Postal Service on the same day as a regular issue appears, except as set forth in 425.2a and 425.2c, will be charged with postage at the applicable third-or fourth-class rates.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

(39 U.S.C. 401, 3621, 3623)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-5357 Filed 3-5-85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2790-6]

Approval and Promulgation of Implementation Plans; Ohio

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

ACTION: Proposed rulemaking.

SUMMARY: On March 28, 1983, the State of Ohio, Environmental Protection Agency, submitted amendments to Ohio Administrative Code, Chapter 3745-21, to USEPA as proposed revisions to the State Implementation Plan (SIP) for ozone. Ohio Administrative Code Chapter 3745-21 consists of emission limitations and control requirements for sources of volatile organic compounds (VOC). The amendments to Chapter 3745-21 involve certain compliance deadlines, source specific exemptions from otherwise applicable emission limitations, and alternative test procedures.

Based on a review of the State's submittal, USEPA is proposing approval and disapproval of specific portions of the Ohio submittal as a revision to the Ohio SIP. The intent of this notice is to discuss the results of USEPA's review of the State's amendments to the VOC control portion of its SIP and to solicit public comments on the revisions and USEPA's proposed action.

DATE: Comments on this revision and on the proposed USEPA action must be received by April 5, 1985.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review.

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Comments on this proposed rule should be addressed to: (Please submit an original and five copies if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

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

SUPPLEMENTARY INFORMATION: On March 28, 1983, the State of Ohio Environmental Protection Agency (OEPA) submitted amendments to Ohio Administrative Code (OAC) Chapter 3745-21 and supporting data to USEPA as a proposed revision to the ozone portion of its SIP. OEPA adopted these rules in final form in two separate actions on June 21, 1982, and January 24, 1983. OAC Chapter 3745-21, entitled "Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Material Standards", consists of Ohio's VOC reasonably available control technology (RACT I and II) regulations. The regulations are embodied in the OAC as follows: Definitions, rule 3745-21-01; Attainment dates and compliance time schedules, Rule 3745-21-04; Control of emissions of organic compounds from stationary sources, Rule 3745-21-09; and Compliance test methods and procedures, Rule 3745-21-10. USEPA initially approved these regulations as part of Ohio's SIP for ozone in separate rulemaking actions on October 31, 1980, and June 29, 1982 (45 FR 72122 and 47 FR 28097).

For the reader's convenience, the following discussion presents a summary of the changes to the existing rules. Where appropriate, the discussion presents the results of USEPA's analysis and USEPA's conclusion as to whether or not the change is approvable. USEPA's complete analysis is contained in a document entitled Technical Support Document for Ohio RACT I and II Rule Revisions, dated July 18, 1983. This document is available for review at the Region V office listed above. The reader is referred to this document and the State submittal of March 28, 1983, which includes the adopted version of Rules 3742-21-01, -04, -09, -10, and supporting documentation, for further details.

1. Definitions, Rule 3745-21-01

In today's rulemaking action, USEPA is proposing to approve, as SIP revisions, all new terms and definitions which Ohio has added and revised pertaining to the source categories of paper and vinyl coating and to the use of cutback and emulsified asphalts in road construction and maintenance. The following portions of Rule 3745-21-01 have been revised.

a. Section (D) (16), (36), and (50)

The definition of paper coating has been revised to include coatings applied by an extrusion coater and a definition of an extrusion coater has been added. The definition of vinyl coating has been revised to include application of coating by means of a knife or roll coater.

b. Section (F)(1-8)

Ohio has clarified the existing definitions and added new terms related to amendments to Rule 3745-21-09(N) on the use of asphalts in road construction and maintenance.

c. Sections (E)(8) and (J)(5)

Typographical errors in Sections (E)(8) and (J)(5) have been corrected.

2. Attainment Dates and Compliance Time Schedules, Rule 3745-21-04

a. Sections (C)(2) and (C)(35) Extended Compliance Schedule

USEPA is taking no action on the compliance date extension contained in Rule 3745-21-04 Sections (C)(2) and (C)(35) granted by Ohio to the Honda of America Manufacturing, Inc. auto assembly plant in Marysville. The extension was granted under Ohio's new source review program and any further federal action here is unnecessary.

USEPA is proposing to approve the State's revisions to the compliance time schedules contained in Rule 3745-21-04 for the following sources.

b. Section (C)(3) Can Coating Lines

Section (C)(3) has been revised to include an alternative compliance schedule for can coating lines subject to applicable control requirements. The alternative schedule may extend to December 31, 1985, if the owner or operator of the line demonstrates the necessity of the compliance date extension to the satisfaction of the Director of OEPA by supplying the documentation required in subparts (i) through (iv).

USEPA requests copies of any extension granted by Ohio EPA. It is not required, however, that Ohio EPA submit such an extension to USEPA as a SIP revision unless the extension will interfere with Reasonable Further Progress (RFP) or maintenance of the standard. In those instances where the Director has discretion under this rule or any similar rule contained in OAC Chapter 3745-21 and the extension will interfere with RFP or maintenance of the standard, USEPA requires Ohio to submit a SIP revision request which includes an updated RFP demonstration along with a modeling attainment demonstration and data base consistent with that required for extension areas.

c. Section (C)(15) Cutback and Emulsified Asphalts

A compliance date of April 15, 1982, has been added to Rule 3745-21-04 OAC on the use of emulsified asphalt in road construction and maintenance.

d. Section (C)(29) Gasoline Tank Trucks

Ohio has revised the compliance date by which gasoline tank trucks are required to comply with leak testing, record-keeping and reporting requirements. This revision requires compliance by March 31, 1983.

e. Section (C)(33) External Floating Roof Tanks

The compliance time schedules for awarding contracts and initiating and completing construction to retrofit tanks to comply with the SIP, have been revised to March 1, October 1, and November 1, 1982, respectively. The deadlines for submitting a control plan to OEPA and for final compliance with Rule 3745-21-09(Z) are unchanged.

3. Control of Emissions of Organic Compounds From Stationary Sources, Rule 3745-21-09

In general, USEPA finds this rule to be acceptable and proposes to approve the following amendments. A discussion of USEPA's specific comments and exceptions to the proposed approval action are contained in part 3.b of this notice.

a. Proposed Approval

Sections:
(B) Emission limitations
.(C)(1) and (3) Surface coating of automobiles and light duty trucks
.(I)(1) and (2) Surface coating of metal furniture
.(K)(1) and (3) and (K)(4)(a), (b) and (c) Surface coating of large appliances
.(N) (1), (2), and (3)(b) and (c) Use of cutback and emulsified asphalts. Note: USEPA is not proposing to approve (N)(3)(a) and (e).
.(O)(2) Solvent metal cleaning
.(P)(1), (4), and (5) Bulk gasoline plants
.(Q)(3) Bulk gasoline terminals
.(R)(3) Gasoline dispensing facilities
.(U)(1) and the exemptions contained in (2)(h) Surface coating miscellaneous metal parts and products
.(X)(1)(a)(i), (b)(i), and the exemption contained in (2)(d) Rubber tire manufacturing.
.(Z)(1)(b) through (h), (2), and (3) Storage of petroleum liquids in external floating roof tanks. Note: USEPA is not proposing to approve (Z)(1)(a).
.(AA)(1) and (2)(b) and (c) Dry cleaning facility. Note: USEPA is not proposing to approve (AA)(2)(a).

b. Comments and Proposed Disapproval

.Section (A) Applicability

USEPA Comment: The applicability of this section was revised to include new as well as existing sources of VOC. USEPA is taking no action on this section as it applies to new sources of VOC. New Sources are regulated by Ohio's new source review program and by USEPA's Prevention of Significant Deterioration (PSD) program and may require more stringent emission limitations than those contained in this rule.

.Section (K)(4) Surface Coating of Large Appliances

USEPA Comment: Section (4) exempts 3 Whirlpool Corporation plants from the control requirements contained in paragraph (K)(1). The plants are located in Sandusky, Hancock, and Marion Counties. Marion, Sandusky, and Hancock were designated attainment areas on June 12, 1984 (49 FR 24124).

Because USEPA is proposing to approve the exemption from RACT for the Whirlpool Corporation sources located in Sandusky, Hancock, and Marion Counties, the State no longer has an accomodative ozone SIP for these counties. As a result, the waiver from the requirement of one year preconstruction ozone monitoring as required by the Prevention of Significant Deterioration regulations is terminated for the counties in which the sources are located.

Thus, in today's rulemaking action, USEPA is proposing to approve the State's exemption contained in (K)(4)(a) (b), and (c) for the Whirlpool Corporation plants located in Marion, Sandusky, and Hancock Counties.

.Section (N)(3)(a) and (e) Use of Cutback and Emulsified Asphalts

USEPA is proposing to disapprove 2 amendments to the requirements of Section (N) on the use of cutback and emulsified asphalt in road construction and maintenance. The first amendment extends the exemption period in the existing rule for use of cutback asphalts by 2 months to September 15 through May 15 of each year, due to problems encountered in using emulsified asphalt during colder weather. USEPA acknowledges that emulsified asphalt does not set up properly at temperatures below 50°F. However, OEPA has not provided documentation that USEPA requested in a letter to OEPA dated November 17, 1982, on the temperature ranges in the additional 2 months that the state permits the use of cutback asphalts.

The second amendment exempts a maximum daily use of 1000 gallons of cutback or emulsified asphalt when applied by hand for patching or sealing cracks. OEPA states that this exemption is necessary due to a lack of personnel trained to use low-volume emulsified asphalt for road patching. USEPA's review of this rule shows that the basis on which the 1000 gallons exemption is determined is not stated, i.e. per person, crew, district, or County. Further, a lack of training is not sufficient reason for an exemption.

.Section (R)(4) Gasoline Dispensing Facilities

USEPA Comment: USEPA previously conditionally approved this rule on October 31, 1980 (45 FR 72122-72143). On June 1, 1984 (49 FR 22814), USEPA proposed to remove the conditions on USEPA's approval of this rule for most of Ohio (except for Akron, Cincinnati and Cleveland demonstration areas).

.Section (U)(2)(f)

OEPA has amended the exemption for this rule by adding (f)(i) and (ii) which applies to new sources. Since USEPA is taking no action on Section (a) as it applies to new sources of VOC, USEPA

is also taking no action on these exemptions.

.Section (U)(2)(i) Surface of Miscellaneous Metal Parts and Products

USEPA Comment: USEPA is taking no action on the exemption contained in Section (U)(2)(i) granted by Ohio for the Honda of America Manufacturing, Inc. motorcycle assembly plant in Marysville. The exemption was granted under Ohio's new source review program and any further federal action here is unnecessary.

.Section (V) Gasoline Tank Trucks

OEPA has amended the emission control requirements of Section (V) to include reference to the State's standard leak testing procedure, Method G [Rule 3745-21-10(G)] and a new alternative leak testing procedure, Method H [Rule 3745-21-10(H)]. USEPA is proposing to disapprove Method H. Thus, USEPA is proposing to disapprove this Section and Rules 3745-21-10(G) and (H) as adopted by the State on January 24, 1983. A discussion of Method H and USEPA's rationale for disapproving Rules 3745-21-09(V), -10G, and -10(H) as an alternative leak testing procedure is set forth in Part 4.b of this notice. The effect of a finalized disapproval of these rules is that all owners and operators of such trucks will be subject to the control requirements in Rule 3745-21-09(V) of the existing SIP and for leak tests using only the standard procedure in Rule 3745-21-10(G) as adopted by the State on March 27, 1981, and approved by USEPA as a SIP revision on June 29, 1982 (47 FR 28097).

.Section (X)(2)(d) Rubber Tire Manufacturing Facility

USEPA Comment: OEPA has added Section (2)(d) which contains an exemption for the Cooper Tire and Rubber Company facility located in Findlay, Ohio which is located in Hancock County. As stated previously, Hancock County was redesignated to attainment on June 12, 1984 (49 FR 24124).

Because USEPA is proposing to approve the exemption from RACT for the Cooper Tire and Rubber Company located in Hancock Counties, the State no longer has an accomodative ozone SIP for this county. As a result, the waiver from the requirement of one year of preconstruction ozone monitoring as required by the Prevention of Significant Deterioration regulations is terminated for Hancock County.

.Section (Z)(1)(a) Storage of Petroleum in External Floating Roof Tanks

This rule, as approved by USEPA for floating roof storage tanks (47 FR 28097, June 29, 1982), required the use of secondary seals for all tanks storing petroleum liquids. Ohio has amended this Section to require only one seal, either a liquid mounted primary seal, a mechanical shoe primary seal, or the equivalent, on an external floating roof tank if the petroleum liquid being stored is crude oil.

OEPA justified this amendment with data showing that the cost-effectiveness of retrofitting secondary seals on storage tanks with these types of primary seals is substantially more expensive per ton of VOC controlled than retrofitting secondary seals on other tank types or on tanks storing more volatile organic liquids. EPA agrees that cost-effectiveness may be considered in modifications to RACT. However, Ohio has not demontrated that this relaxation would not interfere with the timely attainment and maintenance of the the NAAQS for ozone. Without such a demonstration, EPA cannot approve the amendment. Therefore, EPA is proposing to disapprove this amendment. EPA will reconsider this amendment if the state submits the necessary demonstration.

c. Other Action

.Section (AA)(2)(c) Dry Cleaning Facility

This rule as approved by USEPA for perchloroethylene dry cleaning operations (47 FR 28097; June 29, 1982) exempted only those operations which were coin-operated or due to insufficient steam or space, could not install a control device. OEPA has added Section (2)(c) which exempts any facility in which less than 60,000 pounds of fabrics are cleaned per year.

On October 24, 1983 (48 FR 49097), USEPA proposed to add perchloroethylene to the list of organic compounds which have negligible photochemical reactivity and thus should be exempt from regulation under the SIP. Therefore, USEPA is proposing to take no action on Ohio's amendment regarding perchloroethylene. However, if after USEPA issues its final policy on perchloroethylene, USEPA determines further action is required on Ohio's amendment, USEPA will take action either approving or disapproving this rule revision.

.Section (D)(3) Alternative Daily Emission Limitation for Can Coating

USEPA Comment: USEPA approved OAC Rule 3745-21-09(D)(3); an alternative daily emission limitation for can coating facility on June 29, 1982 (47 FR 28097). However, during USEPA's review of the State's revision to the ozone SIP, USEPA identified the following deficiencies within this rule.

This rule presents equations for determining an alternative daily emission limitation. USEPA finds that the equations are incorrect in that the volume (Vi) of each coating delivered to the coating applicator is the same for the allowable daily emission limitation (Ad) and the actual daily emissions (Ed). Vi will be different because the coatings can only be compared on the basis of solids applied to the can being coated.

Unless Ohio corrects this provision before USEPA publishes a final rule on these revisions, USEPA will take the following steps.

(1) USEPA will issue a notice of SIP deficiency and will call for a SIP revision under Section 110(a)(2)(H).

(2) In the same notice, USEPA will set up a deadline for correcting this rule.

(3) USEPA may propose construction and funding restrictions under section 173(4) and 176(b).

(4) USEPA may defer final action on these restrictions if the State commits to submitting an approvable SIP revision during the specified time period.

(5) If USEPA approves the plan, it will withdraw the proposed funding restrictions. However, USEPA will impose the restrictions if it disapproves the plan.

USEPA is using today's notice as an opportunity to identify this deficiency in the Ohio ozone SIP and give Ohio the opportunity to respond to this deficiency during the public comment period.

4. Compliance Test Methods and Procedures, Rule 3745-21-10

OEPA has amended this Rule to include a number of minor revisions, corrections or classifications; a rule reorganization; and, an alternative method for determining the leak tightness of gasoline tank trucks. USEPA is proposing to approve all changes made to Rule 3745-21-10 (B) through (F) and (I) through (K). USEPA is proposing to disapprove Sections (G) and (H). The following sections of Rule 3745-21-10 have been significantly revised.

a. Proposed Approval

Sections .(A)(3) and (4) General Provisions

.(B)(3), (4), and (5) Methods for determining VOC content of surface coating and inks

.(E)(4) and (7) Method for determining VOC emissions from bulk gasoline terminals

.(K) Method for detecting leaks of gasoline vapors

b. Proposed Disapproval

.Section (G) Standard method for the determination of the leak tightness of gasoline tank trucks. (Method G). As noted in part 3.b. of this notice, USEPA is proposing to disapprove amended Section (G) consistent with USEPA's action on Rule 3745–21–09(V), which USEPA finds to be unapprovable. USEPA believes that the existing approved SIP currently contains the control requirements and leak test procedures consistent with Agency guidance and other States in the Nation that have tank certification regulations. The effect of a final disapproval of this rule is that all owners and operators of gasoline tank trucks would be subject to Rules 3745–21–09(V) and -10(G) as adopted by the State in March 1981, and approved by USEPA as a SIP revision on June 29, 1982 (47 FR 28097).

.Section (H) Alternate Method for Determining Leak Tightness of Gasoline Tank Trucks (Method H)

In today's rulemaking action, USEPA is proposing to disapprove the State's alternative test, Method H, contained in amended Rule 3745–21–10(H) because this method involves a pressure test of only the vapor recovery lines and associated equipment. To summarize the rule, gasoline tank trucks which were manufactured prior to 1/1/75, must be pressurized to 15 inches of water and may not sustain a pressure decrease greater than 3.0 inches of water over 3 consecutive minutes. Gasoline tank trucks which were manufactured on or after 1/1/75, must be pressurized to 18 inches of water and may not sustain a pressure decrease greater than 3.0 inches of water over 3 consecutive minutes. The pressure test does not involve pressurization of any compartment of the gasoline tank truck. In addition to the pressure test, the following items are to be inspected and repaired or replaced if found to be defective.

(1) Dome cover lids (gaskets, latch tension and pressure/vacuum vents),

(2) Fusible plugs,

(3) Vapor vent hoods and sealing bands,

(4) Vapor return hoses and any associated fittings and adaptors, and

(5) Any pressure and vacuum relief vents on the vapor recovery lines.

Also, the pressure/vacuum vents in the dome assembly covers must comply with certain minimum specifications.

This method is not consistent with USEPA's control technique guidance and regulations of 19 other States that have tank truck certification regulations. In addition, OEPA has presented no acceptable evidence demonstrating why this rule constitutes RACT.

5. Summary of USEPA's Proposed Action

USEPA is proposing to approve all of the June 21, 1982, and January 24, 1983, amendments to chapter 3745–21–01, –04, –09, and –10 as submitted by the Director of OEPA to USEPA on March 28, 1983, with the following exceptions:

a. USEPA is proposing to disapprove new exemptions for the use of cutback asphalt [Rule 3745–21–09(N)(3)(a)+(e)], for external floating roof (crude oil) storage tanks from the secondary seal requirement [Rule 3745–21–09(Z)(1)(a)], USEPA is also proposing to disapprove Method G+H as an alternative leak testing procedure for gasoline tank trucks.

b. USEPA is taking no action on the applicability of Rule 3745–21–09 to new sources of VOC, the gasoline throughput exemption level for gasoline dispensing facilities, and the compliance date extension for Honda of America Manufacturing, Inc. auto and motorcycle assembly plant in Marysville.

c. USEPA is identifying deficiencies in the existing Rule 3745–21–09(D)(3) which contains an Alternative Daily Emission Limitation for Can Coating facilities.

d. USEPA is taking no action on OAC Rule 3745–21–09(AA)(2)(a) which exempts any dry cleaning facility in which less than 60,000 pounds of fabrics are cleaned per year.

e. USEPA is taking no action on OAC Rule 3745–21–09(U)(2)(f)(i) and (ii) which apply to new sources (surface coating lines).

All interested persons are invited to submit written comments on the proposed revisions to the Ohio SIP and on USEPA's proposed action. Written comments received by the date specified above will be considered in USEPA's final rulemaking on the regulations discussed herein.

No matter what rules the State now enforces, the existing federally approved SIP regulations for any source will apply, and be fully enforceable, until the source complies with the new regulations which USEPA approves as a result of its final rulemaking on the Chapter 3745–21 revisions. Further, the appropriate existing SIP regulations will continue in force if USEPA finalizes its proposed action disapproving certain new regulations.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to USEPA, and any USEPA response, are available for public inspection at the USEPA Region V office listed above. 023

Pursuant to the provisions of 5 U.S.C. section 605(b), the Administrator has certified on January 27, 1981 (46 FR 8709), that this rule, if finalized, will not have a significant economic impact on a substantial number of small entities.

This rule proposes approval and disapproval of State actions. For approval and/or disapproval, it imposes no new requirements beyond those which the State has already imposed. For disapprovals, the sources will remain subject to the existing applicable provisions of the Ohio SIP.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

The notice of proposed rulemaking is issued under the authority of sections 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a)).

Dated: December 5, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85–5348 Filed 3–5–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 60

[AD–FRL–2790–3]

Review of Standards of Performance for New Stationary Sources; Ammonium Sulfate Manufacture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Review of standards.

SUMMARY: The EPA proposes to leave unchanged the regulations established in 1980 for the control of ammonium sulfate emissions from new, modified, or reconstructed ammonium sulfate plants. EPA is required to review standards of performance for new, modified, reconstructed sources every 4 years by the Clean Air Act. A review of the existing new source performance standards (NSPS) for ammonium sulfate manufacture (40 CFR Part 60, Subpart PP) has been completed to determine if changes are needed. The review indicates that no revision to the standard is necessary.

DATE: Comments must be received on or before May 6, 1985.

ADDRESS: Send comments (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–

84–47, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Review Document. The review document summarizing information gathered during the review may be obtained from the EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Review of New Source Performance Standards for Ammonium Sulfate Manfacture," EPA–450/3–85–004, February 1985.

Docket. Docket No. A–84–47, containing supporting information gathered during the review is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, D.C., 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James Crowder, Industrial Studies Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5601.

SUPPLEMENTARY INFORMATION:

Background

Ammonium sulfate (AS) is produced primarily for use as an agricultural fertilizer. Ammonium sulfate manufacture was selected for NSPS development in 1978 on the basis of the potential for AS dryers to emit significant quantities of particulate matter into the atmosphere. A particulate emission standard was proposed in February 1980 for new ammonium sulfate plants, and the standard was promulgated on November 12, 1980. The promulgated standard was expressed on a mass basis, and limited particulate matter from AS dryers to 0.15 kg per Mg of AS produced (0.30 lb/ton). An opacity standard of 15 percent was also promulgated.

The standards apply to AS dryers that manufacture AS as a caprolactam by-product, as a coke oven by-product, or by synthetic manufacture (direct combination of ammonia and sufuric acid). Over 95 percent of all AS is produced by one of these processes. The dryer is the only significant source of particulate emissions in the process, and is the only emission source covered by the NSPS. Requirements were included in the promulgated standards for continuous monitoring of pressure drops across particulate control equipment by the owner or operator, and for continuous monitoring of AS feed streams to the crystallizer/reactor unless a facility uses weigh scales to measure feed rates. Records of these operating parameters are required to be maintained by the owner/operator for 2 years from the date that the measurements are recorded.

Section 111(b)(1)(B) of the Clean Air Act requires the Administrator of EPA to review and, if necessary, to revise established standards of performance for new stationary sources at least every 4 years. This notice reports the findings of the first 4-year review of the NSPS for AS manufacture. Information was gathered through contacts with Regional Offices of the EPA, State agencies, AS facilities of the types that would be affected by the NSPS, and fertilizer trade organizations. The findings and recommendations of the review are presented in the following paragraphs.

Findings

Affected Facilities and Projected New Facilities

No new, modified, or reconstructed AS producing facilties have come under the NSPS since it promulgation in 1980. There have been several plant closing in the synthetic AS and coke oven by-product AS Segments of the industry. Most plants are currently operating at less than capacity due to a decreasing demand for AS fertilizer. There is no anticipated new construction of AS plants or expansion of existing AS plants in the next 4 years.

Emission Control Technology

Wet scrubbers are currently used at all operating AS plants to control particulate emissions. Particulates that are collected by wet scrubbing are recycled back into process streams, recrystallized, and sold as product. This practice eliminates waste streams and disposal costs, and increases production efficiencies. There are various types of wet scrubber systems in operation at existing facilities, including venturi scrubbers, centrifugal scrubbers, packed tower scrubbers, and spray chambers. One synthetic AS plant has previously used a baghouse to control particulates from an AS dryer, but this plant has been shut down since promulgation of the NSPS. No newly demonstrated technologies that control emissions more effectively than those currently in use were identified in the review.

Achievability

Although there have been no new, modified, or reconstructed dryers in the AS industry since proposal of the NSPS, emissions have been tested at several facilities; and testing results were obtained by EPA. One caprolactam by-product AS plant controls a combined stream from one fluidized bed dryer and one rotary dryer with centrifugal scrubbers. Emissions from the scrubber tested at this plant were reported at 0.04 kg of particulates per Mg of AS production. Another caprolactam by-product producer provided results from emission testing of four rotary dryers at the plant, with controlled emissions ranging from 0.021 kg/Mg to 0.090 kg/Mg of AS produced. All four of these dryers are controlled by centrifugal scrubbers.

Although not subject to the NSPS several operating facilities have achieved the NSPS limit of 0.15 kg/Mg. Because emissions are typically recycled back to process streams, there is an incentive for AS producers to meet the NSPS for production as well as environmental reasons. Credits for recycling captured particulates substantially offset operating costs of control equipment, and in some cases generate net savings in annualized costs.

Cost Effectiveness of the NSPS

A review of control costs for venturi scrubbers was performed to update the capital and annualized costs incurred in achieving the NSPS and to determine the cost effectiveness of the existing standard. A medium energy venturi scrubber with a pressure drop of 12 inches W.G. and 99.9 percent collection efficiency was selected for the study. Representative production rates, dryer exhaust rates, and uncontrolled emission rates were estimated for each of the three types of AS producing plants covered by the NSPS. Credits for captured particulates which are recycled to process streams were calculated based on the current market prices for AS, and a cost effectiveness was determined for ech segment of the industry. The cost effectiveness varied from a savings of $36/Mg of particulates captured in the caprolactam by-product plant, to a cost of $655/Mg of particulates removed in the coke oven by-product plant. The synthetic plant demonstrated a savings of $21/Mg of particulates removed. The overall cost (rather than a cost savings) at the coke oven by-product plant is attributed to lower design gas and product flow rates through the dryer. This results in a lower uncontrolled emission rate and less particulates available for capture and recycle. All money values in this study are in March 1984 dollars.

Monitoring, Recordkeeping, and Reporting

The NSPS includes requirements for continuous monitoring of pressure drops

across particulate control equipment to ensure proper operation and maintenance of the system. In addition, continuous monitoring of feed streams to the AS reaction is required by the NSPS. Owners and operators are required to maintain these records for 2 years after measurements are made. Because no facilities have come under the NSPS, this requirement has created no burden on AS producers to date. No changes in the existing monitoring, recordkeeping, and reporting requirements are being proposed.

List of Subjects in 40 CFR Part 60

Air pollution control, Ammonium sulfate plants.

Dated: February 28, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-5261 Filed 3-5-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[AD-FRL-2790-2]

Standards of Performance for New Stationary Sources Monitoring Requirements; Appendix B, Alternative Procedures to Performance Specification 2 for SO_2 and NO_x Continuous Emission Monitoring Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this proposed rule is to add an alternative procedure to Performance Specification 2 for determining the relative accuracy (RA) of a continuous emission monitoring system (CEMS). The alternative, a calibration audit using cylinder gases or calibration cells, would apply only to a CEMS used at a source whose pollutant emission rate is less than 50 percent of the applicable standard. The proposed amendments define the criteria for the RA test waiver, the calibration audit procedure, the acceptance criteria, and the criteria that would lead to recision of the waiver in amendments to §60.13(c) and Appendix B, Performance Specification 2 (PS 2) of 40 CFR Part 60. The intended effect is to add flexibility to the requirements of the PS 2 and to lower the expense of CEMS certification without affecting the quality of CEMS data relative to the emission limits.

A public hearing, if requested, will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before May 20, 1985.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by March 27, 1985, a public hearing will be held on April 22, 1985 beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Shelby Journigan at (919) 541-5578 to verify that a hearing will occur.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by March 27, 1985.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention Docket Number A-84-46, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Shelby Journigan, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Docket. Docket No. A-84-46, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Galley 1, Waterside Mall, 401 M Street SW, Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Peter R. Westlin, Emission Measurement Branch, Emission Standards and Engineering Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

SUPPLEMENTARY INFORMATION: The EPA promulgated a revised PS 2 on May 25, 1983 (48 FR 23608), that included provisions for less strict RA requirements for CEMS's that measure low emission levels. The Agency has reviewed requests for a waiver of RA testing with reference methods in cases of very low emission levels and substituting a calibration audit procedure. The intent is to ease the burden of CEMS certification in cases where the emissions are low in relation to the emission limit, and absolute accuracy of the CEMS is not a critical consideration.

The Agency believes that a calibration audit, in lieu of a reference method RA test in cases of low emission levels, may be appropriate. The use of cylinder gases or gas cells is a much less expensive means of checking CEMS performance than a RA test. Fewer people, less equipment, fewer field and laboratory analyses, and a shorter amount of time are needed for the alternative procedures.

A primary concern of the Agency would be the need for certified CEMS data if the emission levels increase and approach the level of the emission standard. For this reason, criteria for determining whether a source is eligible for a waiver of RA testing and for conditions that would result in rescinding the waiver are included. Rescinding the waiver includes the requirement that the source owner or operator conduct a CEMS RA test within 30 days of the recision.

There are a number of issues for which the Administrator requests comments. The calibration audit defined in the proposal specifies a two-point audit of both the pollutant and diluent monitors, if applicable. Instrument checks performed in addition to the calibration audit are included in the proposed revisions. These instrument checks provide assurance that the CEMS is operating as designed. Included are generally described procedures for checking light source operation, data acquisition, response system operation, timing mechanisms, and mechanical operations. The opinion of the Agency is that cylinder gases or gas cells introduced to the measurement path of CEMS's can provide an indication of CEMS performance under restricted conditions. Comments are invited on the calibration audit approach, on the number of audit points, on audit gas cell certification procedures, and on other means of assessing CEMS performance.

The proposed amendments include a provision to rescind the waiver and to conduct a RA test should the emissions approach the level of the applicable standard. The trigger level for rescinding the waiver is 70 percent of the applicable emission limit for seven consecutive averaging periods. Comments are invited on the appropriateness of this provision and on whether other criteria should be used.

Miscellaneous

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact

analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any written EPA responses are available in the docket.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on small entities because this is not a new requirement but an alternative procedure.

This proposed rulemaking is issued under the authority of sections 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)).

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic Minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

Dated: February 7, 1985.

John C. Topping, Jr.,

Acting Assistant Administrator for Air and Radiation.

PART 60—[AMENDED]

It is proposed to amend 40 CFR Part 60, § 60.13(c) and Appendix B, Performance Specification 2 as follows:

1. Paragraph (c)(2) of § 60.13 is amended by adding paragraphs (iii) and (iv) and redesignating current paragraph (iii) as paragraph (v) as follows:

§ 60.13 Monitoring requirements.

* * * * *

(c) * * *

(2) * * *

(iii) An alternative to the reference method tests for determining relative accuracy is available for sources with emission rates demonstrated to be less than 50 percent of the applicable standard. A source owner or operator may petition the Administrator to waive the relative accuracy test in Section 7 of Performance Specification 2 and substitute the procedures in Section 10 if the results of a performance test conducted according to the requirements in § 60.8 of this subpart or other tests performed following the criteria in § 60.8 demonstrate that the emission rate of the pollutant of interest in the units of the applicable standard is less than 50 percent of the applicable standard. For sources subject to standards expressed as control efficiency levels, a source owner or operator may petition the Administrator to waive the relative accuracy test and substitute the procedures in Section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed to meet the control efficiency requirement.

(iv) The waiver of a CEMS relative accuracy test will be rescinded at such time following successful completion of the calibration audit that the continuous monitoring data indicate the source emissions approaching the level of the applicable standard. The criterion for rescinding the waiver is the collection of CEMS data showing that emissions have exceeded 70 percent of the applicable standard for seven, consecutive, averaging periods as specified by the applicable regulation(s). For sources subject to standards expressed as control efficiency levels, the criterion for rescinding the waiver is the collection of CEMS data showing that exhaust emissions have exceeded 70 percent of the level needed to meet the control efficiency requirement for seven, consecutive, averaging periods as specified by the applicable regulation(s). If this criterion is exceeded, the owner or operator must notify the Administrator and conduct a relative accuracy test as specified in Section 7 of Performance Specification 2 within 30 days of such occurrence.

* * * * *

Appendix B—Amended

2. A new Section 10 is added to Performance Specification 2 of Appendix B and current Section 10 is redesignated as Section 11, as follows:

* * * * *

Performance Specification 2. Specifications and Test Procedures for SO_2 and NO_x Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

10. Alternative Procedures.

10.1 Alternative to Relative Accuracy Procedure in Section 7. Section 60.13(c)(2)(iii) contains criteria for which the reference method relative accuracy may be waived and the following procedure substituted.

10.1.1 Conduct a complete instrument check following the manufacturer's written instructions. The checks should include operation of the light source, signal receiver, timing mechanism functions, data acquisition and data reduction functions, data recorders, mechanically operated functions (mirror movements, zero pipe operation, calibration gas valve operations, etc.), sample filters, sample line heaters, moisture traps, and other related functions of the CEMS, as applicable.

10.1.2 Challenge each monitor (both pollutant and diluent, if applicable) with audit gases of known concentrations or audit gas cells that produce known responses at two audit points within the following ranges:

Audit point	Audit range		
	Pollutant monitor	Diluent monitor for—	
		CO_2	O_2
1	20–30 percent of monitor calibration full scale.	5–8 percent by volume.	4–6 percent by volume.
2	50–60 percent of monitor calibration full scale.	10–14 percent by volume.	8–12 percent by volume.

Use a separate audit cylinder gas or gas cell for audit points 1 and 2. Do not dilute gas from a cylinder when challenging the monitor.

Operate each monitor in its normal sampling mode as nearly as possible. When using cylinder gases, pass the audit gas through all filters, scrubbers, conditioners, and other monitor components used during normal sampling and as much of the sampling probe as practical. The CEMS components used in the normal sampling mode should not be bypassed during the calibration audit when using gas cells. These include light sources, lenses, detectors, and reference cells. The monitor should be challenged at each audit point for a sufficient period of time to assure adsorption-desorption of the CEMS surfaces has stabilized.

Use audit cylinder gases that have been certified by comparision to National Bureau of Standards (NBS) gaseous standard reference material (SRM) or NBS/EPA-approved gas manufacturer's certified reference material (CRM) (See Citation 11.2) following EPA traceability protocol Number 1 (See Citation 11.3). As an alternative to protocol Number 1 audit gases, CRM may be used directly as audit gases. A list of gas manufacturers that have prepared approved CRM's is available from EPA at the address shown in Citation 11.2. Procedures for preparation of CRM are described in Citation 11.2.

Use audit gas cells certified by the manufacturer to produce a known response in the instrument. The cell certification procedure should include determination of instrument response produced by the gas cell in direct comparison with measurement of gases of known concentration. This can be accomplished using SRM or CRM gases in a laboratory source simulator or through

extended tests using reference methods at the CEMS location in the exhaust stack. These procedures are discussed in Citation 11.4. The audit cell certification procedure is subject to approval of the Administrator.

10.1.3 The differences between the known concentrations of the audit gases and the concentrations indicated by the monitor are used to assess the accuracy of the CEMS.

The calculations and limits of acceptable relative accuracy (RA) are as follows:

(a) For pollutant CEMS:

$$RA = \left[\frac{d}{AC} \times 100\right] < 15 \text{ percent}$$

Where:

d = Difference between response and the known concentration/response.

AC = The known concentration/response of the audit gas or cell.

(d) For diluent CEMS:

RA = [d] < 0.7 percent O_2 or CO_2, as applicable.

Note.—Waiver of the relative accuracy test in favor of the calibration audit does not preclude the requirements to complete the calibration draft (CD) tests nor any other requirements specified in the applicable regulation(s) for reporting CEMS data and performing CEMS draft checks or audits.

3. Section 9 is revised to read as follows:

* * * * *

9. *Reporting.*

At a minimum (check with the appropriate regional office, or State, or local agency for additional requirements, if any) summarize in tabular form the results of the CD tests and the relative accuracy tests or calibration audit as appropriate. Include all data sheets, calculations, charts (records of CEMS responses), and cylinder gas concentration certifications (if applicable), necessary to substantiate that the performance of the CEMS met the performance specifications.

3. Section 10 is redesignated Section 11, Citation 10.1 is redesignated 1, and is revised by adding 2, 3, and 4 to read as follows:

11. *Bibliography.*

1. * * *

2. "A Procedure for Establishing Traceability of Gas Mixtures to Certain National Bureau of Standards Standard Reference Materials." Joint publication by NBS and EPA. EPA–600/7–81–010. Available from U.S. Environmental Protection Agency, Quality Assurance Division (MD–77), Research Triangle Park, North Carolina 27711.

3. "Traceability Protocol for Establishing True Concentrations of Gases Used for Calibration and Audits of Continuous Source Emission Monitors. (Protocol Number 1)." June 1978. Protocol Number 1 is included in the *Quality Assurance Handbook for Air Pollution Measurement Systems, Volume III, Stationary Source Specific Methods.* EPA–600/4–77–027b. August 1977. Volume III is available from the U.S. EPA, Office of Research and Development Publications, 26 West St. Clair Street, Cincinnati, Ohio 45268.

4. "Gaseous Continuous Emission Monitoring Systems—Performance Specification Guidelines for SO_2, NO_x, CO_2, O_2, and TRS." EPA–450/3–82–026. Available from U.S. Environmental Protection Agency, Emission Standards and Engineering Division (MD–19), Research Triangle Park, North Carolina 27711.

[FR Doc. 85–5351 Filed 3–5–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2, 15, 22, 25, and 90

[Gen. Docket No. 84–1231; RM–4812, Doc. 84–1233; RM–4829, Doc. 84–1234; RM–4247]

Cellular Communications Systems, Frequencies Allocations, and the Use of Radio Frequencies; Extension of Comment and Reply Comment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period and denial of consolidation motions.

SUMMARY: This Order extends the time period in which to file comments and reply comments in response to the Notice of Proposed Rulemaking in General Docket Nos. 84–1231 (1/28/85; 50 FR 3809) and 84–1233 (1/11/85; 50 FR 1582) concerning cellular communications systems, frequency allocations, and the use of radio frequencies. Also, the Order denies motions to consolidate Docket Nos. 84–1231, 84–1233, and 84–1234. This action is taken to establish a uniform comment and reply comment date in all three dockets, while at the same time maintaining flexibility to deal with each proceeding individually.

DATES: Comments may now be filed on or before March 29, 1985. Reply comments may now be filed on or before April 29, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Spectrum Management Division, Office of Science and Technology, Federal Communications Commission, Washington, DC 20554 (202) 653–8169.

Order Extending Time for Comments and Denying Consolidation of Proceedings

In the matter of amendment of Parts 2 and 22 of the Commission's Rules Relative To Cellular Communications Systems; General Docket No. 84–1231, RM–4812; amendment of Parts 2, 15, and 90 of the Commission's Rules and Regulations To Allocate Frequencies in the 896–902 MHz and 935–941 MHz Bands for Private Land Mobile Use; General Docket No. 84–1233; Rm–4829; Amendment of Parts 2, 22, and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services; General Docket No. 84–1234, RM–4247.

Adopted: February 22, 1985.

Released: February 26, 1985.

By the Private Radio Bureau and Office of Science and Technology.

1. The Commission has before it several motions to extend time for comments and/or consolidate the above captioned rulemaking proceedings, as well as one motion opposing consolidation of the proceedings.

2. Currently, comments to the Notices of Proposed Rulemaking in the three dockets are due March 13, 1985 (84–1231); February 28, 1985 (84–1233); and March 29, 1985 (84–1234) respectively. All of the motions to extend time for comments propose a uniform comment date in all three proceedings, with the proposed date ranging from March 29, 1985 to April 30, 1985. The motions to consolidate proposed to go a step further. As stated by the Associated Public-Safety Communications Officers (APCO), "The three Notices of Proposed Rulemaking released by the Commission involve the allocation of frequencies and related issues that are inextricably interwined and, therefore, should not be addressed in a piece-meal manner by the Commission or interested parties in the public comment period. Without consolidation, APCO is concerned that the Commission will not be in the best position to address in a comprehensive manner the spectrum needs and public uses of the services involved in these proceedings, specifically the public safety services." (APCO Motion To Consolidate, p. 2).

3. We believe that the dockets are interrelated and that there is merit in establishing a uniform comment date. At

the same time, however, we believe that consolidating the dockets would diminish our flexibility in dealing with each item and the issue associated solely with any particular one. Ultimately, the proposals and the issues involved will be resolved based upon the established record from each proceeding. To the extend some issues are common and interrelated, the Commission will give due consideration. Commenters can address these interrelationships in their pleadings to be filed concurrently.

4. Concerning the uniform comment date to be established, we believe that the March 29, 1985 date set forth in Docket 84–1234 affords ample time for parties to comment in all three proceedings. This date is sixty days after the release of the Notice in Docket 84-1234, and seventy-two days after the release of the Notice in Docket 84-1231, and eighty-five days after the release of Notice in Docket 84–1233. Also, we believe that the reply comment date of April 29, 1985 established in Docket 84–1234 is appropriate for the other two dockets.

5. Therefore, it is ordered, that the *Motions for Extension of Time* are granted to the extent discussed above. Interested parties may file comments to any or all of the Notices of Proposed Rulemaking in General Dockets 84–1231, 84–1233, and 84–1234 on or before March 29, 1985 and may file reply comments on or before April 29, 1985. It is further ordered that the *Motions for Consolidation* are denied.

6. This action is taken pursuant to authority found in sections 4(i), 302, and 303 of the Communications Act of 1934 as amended, 47 U.S.C. 154(i) 302, and 303, and pursuant to §§ 0.31, 0.131, 0.241, 0.331, and 0.332 of the Commission's Rules.

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

Federal Communications Commission.

Michael T. N. Fitch,

Deputy Chief, Private Radio Bureau.

Robert S. Powers,

Chief Scientist

[FR Doc. 85–5317 Filed 3–5–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 2, 73, and 90

[Gen. Docket No. 84–902; RM–3975]

Allocation of Additional Channels in the Band 470–512 MHz for Public Safety Services; Order Extending Time for Reply Comment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: This Order extends the time period in which to file reply comments in response to the Notice of Proposed Rulemaking in General Docket No. 84–902 (November 21, 1984; 49 FR 45875) to allocate additional channels in the band 470–512 MHz for public safety services.

EFFECTIVE DATE: Reply comments may now be filed on or before March 5, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Don Precure, Spectrum Management Division, Office of Science and Technology, Federal Communications Commission, Washington, D.C. 20554, (202) 653–81710.

Order Extending Time for Comments

In the matter of amendment of Parts 2, 73, and 90 of the Commission's Rules and Regulations to allocate additional channels in the band 470–512 MHz for public safety services; General Docket No. 84–902, RM–3975.

Released: February 25, 1985.

By the Office of Science and Technology.

1. On October 11, 1984, the Commission released a Notice of Proposed Rulemaking in the above captioned proceeding. Comments to the Notice have been filed, and reply comments are currently due February 26, 1985.

2. On February 15, 1985, the Los Angeles County Sheriff's Department filed a *Motion for Extension of Time* for filing reply comments in the proceeding until March 5, 1985. In support of the Motion, the Sheriff states that the February 26 date provides insufficient time to analyze and respond to technical comments filed with respect to the Jones Report, a study commissioned by the Department to determine the potential interference impact of public safety utilization of UHF television spectrum upon the reception of station KSCI, San Bernardino, California, and filed with the Commission on January 11, 1985.

3. We believe the Department's request has merit. Accordingly, pursuant to sections 4(i), 302 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, and 303, and pursuant to § 0.241(d) of the Commission's Rules, it is ordered That the *Motion for Extension of Time* filed by the Los Angeles County Sheriff's Department is granted. Interested parties may file reply comments to the Notice of Proposed Rule Making on or before March 5, 1985.

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

Federal Communications Commission.

Robert S. Powers,

Chief Scientist.

[FR Doc. 85–5316 Filed 3–5–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 64

[CC Docket No. 85–26; FCC 85–56]

Policy and Rules Concerning the Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone and Telegraph Company, and Related Waiver Requests

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed amendment to rules.

SUMMARY: The Commission is proposing to relieve American Telephone and Telegraph Co. (AT&T) of the requirement that AT&T may offer customer premises equipment (CPE) only through a subsidiary separate from its regulated communications operations contained 47 CFR 64.702 of its Rules. The Notice also poses questions to enable the Commission to determine any safeguards which may still be necessary. AT&T would still be prohibited from offering enhanced services jointly with regulated communications offerings, subject to an appraisal of that prohibition in a subsequent proceeding. The proposed relief is based upon the tentative conclusion that, following its divestiture of local exchange operations, AT&T's ability to engage in anticompetitive practices has declined markedly, while structural separation hinders AT&T from competing effectively in the provision of CPE, to the detriment of the public. AT&T is also granted a conditional waiver of Part 64 of the Commission's rules to allow its subsidiary to engage in joint use of software subject to approval of an accounting and network information and disclosure plan. AT&T was also permitted to realign personnel services in its Technologies Sector. Such activities should lower AT&T's costs while causing minimal harm to competition. Another waiver request, relating to AT&T's provision of CPE to the federal government, is denied because the need for it was unsupported.

DATES: Comments due: 45 days after the release of this notice and replies by 30 days after AT&T files its responses.

ADDRESSES: All documents filed in this proceeding may be inspected and copied in the Commission's Public Reference Room, Room 239, 1919 M Street, NW., Washington, D.C. 20554, between 8:00 a.m. and 5:30 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Greg Vogt, (202) 632–4887.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 64

Communications common carriers, Communications equipment, Telephone, Separate corporation.

Memorandum Opinion and Order and Notice of Proposed Rulemaking

In the Matter of Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone & Telegraph Company; CC Docket 85–26; American Telephone & Telegraph Company, Petition for Relief from Structural Separation Requirements; ENF 84–17; American Telephone & Telegraph Company, Petition for Temporary Waiver of the Computer II Rules Concerning the Provision of Customer Premises Equipment to the Federal Government; ENF 84–43; American Telephone & Telegraph Company, Request to Permit AT&T Technologies, Inc. to provide personnel-related services to AT&T Information Systems, Inc.; ENF 84–56.

Adopted: January 31, 1985.

Released: February 22, 1985.

By the Commission.

I. Introduction

1. The American Telephone & Telegraph Company (AT&T) has filed petition seeking relief from structural separation requirements imposed upon it in the *Second Computer Inquiry* (*Computer II*) [1] regarding its provision of customer premises equipment (CPE) and enhanced services. AT&T's petition [2] and other pleadings cite fundamental changes in its operations and in the telecommunications industry in general since the *Computer II* rules were adopted. We hereby give notice that we are proposing to relieve AT&T from structural separation requirements for the provision of CPE. We invite comments on this proposal, as well as on any other issue which arises as a result of actions described in this order or in relevant pleadings filed by AT&T. We are deferring until a later proceeding the issue of whether AT&T's provision of enhanced services should continue to be subject to structural separation.

A. Summary

2. In *Computer II* the Commission permitted AT&T to engage in the provision of CPE and enhanced services only through a separate subsidiary. That subsidiary was required to operate independently from the remainder of the corporation and to comply with specific structural, financial, and accounting requirements and information flow restrictions. The Commission adopted these requirements to lessen the likelihood that AT&T's provision of CPE and enhanced services would result in harm to competition in those markets or cause ratepayers to fund CPE and enhanced services operations.

3. AT&T has undergone fundamental changes in its corporate structure as a result of the Modified Final Judgment (MFJ) [3] and market changes in the telecommunications industry. As described herein, we seek to ensure that our regulations impose the minimum restrictions necessary to achieve the Commission's goals. Specifically, we propose to remove the structural separation conditions from AT&T's provision of CPE. We are not, however, at this juncture, addressing the possible removal of structural separation for AT&T's offering of enhanced services, for we wish to address enhanced services issues in a separate proceeding. Regardless of our proposal to remove structural separation conditions from AT&T's provision of CPE, we remain concerned that permitting AT&T to engage in the unseparated provision of CPE might hinder the ability of nonaffiliated providers of CPE to obtain timely information regarding changes to the manner in which CPE is connected or operates with the network. We also remain concerned that the total amounts of funds which AT&T infuses into CPE and other unregulated operations not adversely affect ratepayers. We therefore seek suggestions from interested parties as to means less restrictive than structural separation to address these and other potential drawbacks of relieving AT&T from structural separation requirements for its provision of CPE.

4. In addition, in this order we grant AT&T a waiver of Section 64.702(c)(4) of our Rules to permit its unregulated affiliates to engage in the unrestricted use of proprietary software on a fully cost compensatory basis, and grant AT&T's request of August 28, 1984, to permit AT&T Technologies to provide personnel and recruiting services to its separated affiliate, AT&T Information Systems, Inc. (ATTIS). [4] We deny AT&T's request for a temporary waiver of the *Computer II* rules to permit ATTIS to provide computer support to AT&T Technologies for the provision of CPE to the federal government. [5]

B. Background

5. In the *Second Computer Inquiry* the Commission established certain policies regarding the provision of enhanced services and CPE by all common carriers. These policies include promoting cost-based pricing for regulated offerings, protecting ratepayers from adverse consequences of carrier provision of competitive CPE and enhanced services offerings, and promoting an environment in which all vendors of CPE and enhanced services may compete without unfair advantage. We remain committed to these policies. In this proceeding we address the issue of whether they can in some instances be promoted by means other than the structural separation imposed in *Computer II*.

6. The *Computer II* structural separation requirements were adopted with several objectives. They are intended to control AT&T's ability to cross-subsidize competitive offerings with revenues derived from monopoly communications services, while insulating ratepayers from liabilities incurred by AT&T's unregulated ventures. They are also designed to ensure that competing providers of unregulated products and services receive equal interconnection of their offerings to the basic services network, and to ensure that the basic transmission network remain a clear channel over which all services, whether basic or enhanced, could flow unimpeded. [6] The *Computer II* rules

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[1] Amendment of § 64.702 of the Commission's Rules and Regulations (Computer II), 77 FCC 2d 384 (Final Decision), *reconsideration*, 84 FCC 2d 50 (1981), *further reconsideration*, *89 FCC* 2d 512 (1980), *aff'd sub nom. Computer and Communications Industry Ass'n* v. *FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, *103 S. Ct. 2109 (1983)*, *second further reconsideration*, FCC 84–190 (released May 4, 1984).

[2] AT&T Petition for Relief from Structural Separation Requirements, filed April 30, 1984, File No. ENF 84–17.

[3] *United States* v. *AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 103 S. Ct. 1240 (1983).

[4] Letter from D.J. Culkin to Chief, Common Carrier Bureau, received August 28, 1984, File No. ENF 84–56.

[5] Petition of American Telephone and Telegraph Company for Temporary Waiver of § 64.702 of the Commission's Rules With Respect to the Provision of CPE to the Federal Government, filed July 17, 1984, File No. ENF 84–43.

[6] The *Computer II* rules define enhanced services as "services, offered over common carrier facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different or restructured information; or involve subscriber interaction with stored information." 47 CFR 64.702(a). Basic services are those in which a carrier offers a pure transmission capacity between two or more points

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prohibit AT&T and its *Computer II* subsidiary, whose initial and modified capitalization is subject to Commission approval, from, among other things, jointly marketing, installing and maintaining, and billing for products and services, and places conditions on their exchange of network-related and customer proprietary information. AT&T is prohibited from developing software-based products exclusively for the separate subsidiary but may develop "generic" software for sale to third parties on the same terms and conditions as are offered to the subsidiary. The subsidiary must compensate affiliates for research and development performed on its behalf. Like all other carriers which engage in the provision of enhanced services, AT&T's subsidiary must remain separate books of account for its unregulated activities and may obtain basic services from an affiliated carrier only at tariffed rates. The Commission has permitted affiliates to provide ATTIS with certain types of administrative services as specified in Commission decisions.

7. At the time these requirements were adopted, the Bell System was a vertically integrated company with assets estimated at $150 billion, and annual revenues that exceeded $69 billion in 1983. Prior to divestiture, AT&T provided exchange communications services through 22 wholly-owned and two partially-owned operating companies which operated more than 80% of the intrastate network, as well as interexchange services and CPE, which was generally provided as part of a bundled tariffed offering. At the time the *Computer II* decisions were adopted we found competition in the provision of CPE to be at a formative stage. AT&T also owned research, development and manufacturing facilities covering both network and customer premises equipment, the funds for which were largely derived from sales to affiliates which provided monopoly regulated services.

8. Since the *Computer II* decisions, however, fundamental changes in the structure of AT&T and the telecommunications industry in general have occurred. The most significant of these has been the divestiture of the Bell Operating Companies (BOCs) from AT&T pursuant to the MFJ. As a consequence of divestiture, AT&T is no longer engaged in the provision of local exchange telephone service. The MFJ permits AT&T, however, to enter almost any other line of business it chooses.[7] The BOCs, on the other hand, while barred from the provision of interexchange services and from manufacturing operations by the MFJ, have been permitted to provide CPE.[8] All of the BOCs have enterd the CPE market in competition with AT&T.

9. In addition, *Computer II* required the phased detariffing and unbundling of CPE from the offering of basic transmission services. Most of the embedded base of CPE owned by the BOCs prior to the divestiture has been transferred to ATTIS. The Commission has approved an additional capitalization of more than $6.5 billion to support ATTIS' provision of this equipment, subject to AT&T's compliance with a price predictability plan and the offering of sale or lease options to customers with embedded equipment.[9] Finally, the Commission recently authorized ATTIS to resell basic domestic services of any carrier including an affiliate, so long as such services are acquired at nondiscriminatory tariffed rates and are accounted for separately.[10]

10. Furthermore, there are strong indications that competition in the CPE market has grown significantly and will continue to grow. In the *Final Decision* in the *Second Computer Inquiry* we characterized competition in the provision of CPE as "infant yet promising."[11] It is currently estimated that there are approximately 3,000 suppliers of business CPE in the domestic market.[12] In 1983 independent manufacturers shipped more than 75% of PBXs and more than 70% of key telephone instruments.[13] The non-carrier share of installed key telephone instruments reached 19.2% in 1983 and is expected to reach almost 30% by 1988, and the non-carrier share of the market for installed PBXs reached 39% in 1983 and is projected at more than 43% by 1988.[14]

II. AT&T Petition for Relief From Structural Separation Requirements and Responses

11. On April 30, 1984, AT&T filed a petition requesting relief from the Computer II structural separation requirements. On June 4, 1984, the Commission issued a public notice requesting further information from AT&T on which to evaluate AT&T's petition, and setting a schedule for AT&T's response and pleadings by interested parties. An appendix to this Notice lists the more than 30 parites which filed comments and the more than 25 which responded to AT&T's supplemental information and filed reply comments.[15] Such parties include common carriers, providers of CPE and enhanced services, consumers of both regulated and competitive offerings, and agencies of the federal government. In addition, the Commission has received numerous informal comments supporting AT&T's petition.

12. AT&T asserts that it no longer exhibits the four characteristics enumerated in the order on *Reconsideration* of *Computer II* which make structural separation warranted for a comon carrier which engages in the provision of enhanced services and CPE.[16] AT&T argues that because of the

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"over a communications path that is virtually transparent in terms of its interaction with customer supplied information." *Final Decision*, 77 FCC 2d at 419-20.

[7] The MFJ bars AT&T from providing electronic publishing services through its own facilities for seven years from the date of divestiture. 552 F. Supp. at 225.

[8] We have required the BOCs to provide CPE and enhanced services through structural separation requirements similar, but not identical, to those imposed upon AT&T. *BOC Separation Order*, 95 FCC 2d 1117 (1984), *reconsideration*, 49 FR 26056 (June 26, 1984), *aff'd sub nom. Illinois Bell Tel. Co. v. FCC*, 740 F.2d 465 (7th Cir., 1984), petition for rehearing pending. The extent to which the BOCs may engage in the provision of enhanced services may be limited by the MFJ's restriction on their provision of "information services," which may encompass part or all of the enhanced services defined by the Commission. See *BOC Separation Order*, 95 FCC 2d at 1122, n.10.). In addition, unlike AT&T, the commission has permitted BOC regulated operations to provide billing for their subsidiaries, install and maintain residential and single-line telephones, and engage in dial-tone referral of prospective CPE customers. The BOC's subsidiaries have been permitted to file plans to act as agents for the sale of affiliates' regulated services. *BOC Sales Agency Order*, FCC 84-290 (released July 11, 1984), *recon. pending*.

[9] *Embedded CPE Detariffing Order*, 95 FCC 2d 1276 (1983), *recon. pending*.

[10] *ATTIS Resale Decision*, CC Docket 83-1375, 49 FR 28,835 (July 17, 1984), *recon. pending*, petition for stay denied, FCC 84-142 (released September 24, 1984).

[11] 77 FCC 2d at 467.

[12] NATA 1985 Telecommunications Source Book at 86.

[13] *Id.* at 70, 77.

[14] *Id.* at 65.

[15] A summary of AT&T's Petition for Relief and the pleadings filed in response to the public notice are available for public inspection at the Commission's offices.

[16] These include (1) the ability to engage in anticompetitive activity through control over "bottleneck" facilities i.e., local exchange and toll transmission facilities, on a broad national geographic basis; (2) the ability to engage in cross-subsidization to the detriment of the communications ratepayer; (3) vertical integration of the carrier and affiliated entities, with special emphasis upon research and development and manufacturing capabilities that are supported by communications derived revenues; and (4) the possession of sufficient resources to engage in competitive ventures through a separate subsidiary. *Reconsideration*, 84 FCC 2d at 72. The Commission has indicated that these characteristics are only

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divestiture of local exchange facilities, the growth of competition in the provision of interexchange services, the change in AT&T Technologies (the successor to Western Electric) from a supplier of equipment to captive operating companies to a competitor in actively competitive markets, and the penetration by other companies into the markets for both network equipment and CPE, it is no longer able, nor does it have the incentive, to engage in the anticompetitive activities which the *Computer II* requirements are meant to control. AT&T asserts that it cannot discriminate in the interconnection of competitor's offerings to its basic services network because the BOCs rather than AT&T devise the specifications for connecting CPE to the network and control the actual interconnection in most cases. Moreover, asserts AT&T, to discriminate would drive potential customers to the growing number of competing providers of basic services. AT&T represents that the decline in its share of the interexchange market and failure to meet its allowable rate return compel it to avoid loading costs of competitive ventures into revenue requirements. It further represents that it has lost a significant pool of captive revenues which might have been usable to cross-subsidize competitive ventures because Technologies estimates that only 13% of its sales are to AT&T Communications (ATTCOM), its common carrier affiliate, and that only 4% of Technologies' total sales are of products sold exclusively to ATTCOM.

13. In addition, argues AT&T, the *Computer II* structural separation requirements impose costs which far outweigh any limited benefits which they may still provide. Restrictions on the joint marketing of enhanced services, CPE and basic services assertedly prevent AT&T from providing the complete systems solutions which consumers want and need. The restrictions on providing enhanced services through network facilities stifle the development of new technologies which would improve the basic services network, contrary to the objectives of *Computer II*. Requirements that Technologies and Bell Laboratories, AT&T's manufacturing and research and development arms, deal with ATTIS on an arms length basis, purportedly lead to inefficiencies in developing and marketing competitive offerings, and require duplication of work force and expenses. In its reply comments, AT&T estimated duplicative expenses at more than $1 billion annually. Finally, AT&T argues that the inefficiencies impose on it by *Computer II* contribute to its difficulties in responding to foreign penetration and the deficits in the balance of trade in telecommunications equipment.

III. Comments

14. AT&T's position is supported fully by some end users, telecommunications unions, and by the Department of Defense. The BOCs generally agree with AT&T that structural separation is unwarranted following divestiture, but contend that they should be treated the same as AT&T, i.e., AT&T should be exempted from structural separation only if the BOCs are concurrently relieved. Most BOCs believe that if AT&T is relieved unilaterally, it will be able to dominate the CPE market, contrary to the Commission's goals of promoting competition in the offering of CPE.[17] The National Telecommunications and Information Administration (NTIA) supported AT&T's request to be relieved of structural separation in the provision of CPE, but urged caution in removing structural safeguards for the provision of enhanced services until the Commission has determined in a separate ongoing proceeding[18] whether AT&T continue to possess market power in the provision of interexchange services which would enable it to act anticompetitively in the provision of enhanced services. In addition, NTIA cautioned that the Commission should be careful to ensure that relieving AT&T of structural separation for some or all offerings not impede the flow of network information to providers of competitive products and services. Other parties, while generally urging that the Commission retain structural separation requirements, suggested that the Commission might relieve AT&T of individual conditions that may be outmoded and impose undue inefficiency, for example the rule prohibiting AT&T from marketing software-based products exclusively through its subsidiary.[19]

15. Parties opposing relief argue first that the relief requested by AT&T is premature.[20] These parties note that only recently did AT&T divest the BOCs, receive the embedded base from the BOCs, and obtain authorization for ATTIS to resell basic services. In addition, the effects of the MFJ's requirement that all interexchange carriers receive equal access to local exchange facilities, and of the Commission's subscriber line charges, have not reached a measurable stage. Even if AT&T's market share and putative market power in the interexchange market have declined to the levels alleged by AT&T, which is disputed, these parties assert that such reductions may be attributable to temporary dislocations caused by the above events. In any event, several opponents assert that the Commission should not act upon AT&T's petition in this proceeding until it has determined in the *Long-Run Regulation* proceeding whether AT&T still possesses market power in interexchange services that would enable it to act anticompetitively in other lines of business.

16. In addition, opponents contend AT&T still possesses not only market power but also the functional, if not literal, equivalent of bottleneck facilities which would enable it to act anticompetitively. These parties contend that AT&T dominates the provision of private line, WATS and 800 services in high-volume intercity markets, which are the key types of services to which CPE and enhanced services must be interconnected in order to compete effectively. Furthermore, AT&T purportedly can dictate the standards for products and services which must interoperate if not directly interconnect with its facilities. With regard to the provision of CPE, it is alleged that AT&T's ownership of the installed base provides it with undue leverage in promoting its own new CPE. It is also argued that despite its divestiture of the BOCs' bottleneck facilities and loss of a captive purchaser for its products, AT&T

guidelines in an overall analysis of the costs and benefits of requiring structural separation for any particular carrier, and that a carrier may be subject to structural separation even if it does not exhibit these characteristics to the same degree as did pre-divestiture AT&T. For example, in the *BOC Separation Order*, the BOCs were held to be subject to structural separation even though they exhibit control over bottleneck facilities on a regional rather than national basis. 95 FCC 2d at 1137.

[17] This notice does not deal with the issue of whether structural separation requirements remain warranted for the BOCs. Different issues are implicated concerning the BOCs. We remain committed to consider structural separation of BOC competitive offerings after two years have elapsed from the date the BOCs were required to fully implement separate structure. *BOC Separation Order*, 95 FCC 2d at 1140.

[18] Long-Run Regulation of AT&T's Basic Domestic Interstate Services, Notice of Inquiry, CC Docket No. 83-1147 (released October 27, 1983) [*Long-Run Regulation*].

[19] IBM, Comments at 11-12; US West BOCs, Comments at 10-12; Telecommunications International Union, Reply Comments at 5; Digital Equipment Corp., Reply Comments at 6-7.

[20] On January 18, 1985, ADAPSO filed a motion to accept supplemental comments on AT&T's Petition. AT&T opposed the motion. In light of our decision herein, *see* paragraph 30(3), *infra*, we see no need to accept ADAPSO's pleading and therefore deny its motion. ADAPSO is free to file its comments in response to this Notice.

possesses ample revenues from regulated offerings with which to cross-subsidize unregulated offerings, and that unseparated provision of regulated and unregulated offerings would produce large-scale common costs which could be shifted to the regulated side. With regard to the putative costs engendered because of structural separation, opponents contend that AT&T could even within the constraints imposed by *Computer II* reorganize its own operations to more effectively coordinate product and service development and marketing. They also contend that the *ATTIS Resale Decision* gave AT&T ample ability to provide its customers with systems solutions, a contention which AT&T disputes. Finally, opponents disagree with AT&T's contention that any possible cross-subsidization would be adequately detected by monitoring the accounting separation of regulated and unregulated operations.

IV. Discussion

A. Costs and Benefits of Continued Structural Separation of AT&T's Provision of CPE

17. The structural separation conditions we have imposed on AT&T and other carriers engaging in the provision of competitive offerings were never intended to be static or permanent. A fundamental precept beginning with the *Final Decision* in the *Second Computer Inquiry* has been that the need for structural separation for any particular carrier would depend on the circumstances peculiar to that carrier, and that the balance of costs and benefits of structural separation for a carrier will necessarily change with changes in that carrier's circumstances and in industry circumstances.[21] Relief from structural separation may be warranted for a particular carrier even though the benefits of structural separation have not dissipated totally. Thus, relief may be warranted if the benefits have so diminished that the costs of separation are more onerous than the benefits to ratepayers and competition which might ensue from maintaining structural safeguards. As discussed in the following paragraphs, we tentatively conclude that the costs of continuing to require structural separation for AT&T's provision of CPE outweighs the benefits.

18. It is indisputable that there have been fundamental changes in the circumstances of both AT&T and the telecommunications industry since we imposed structural separation on AT&T. AT&T is no longer the dominant provider of local exchange telephone service. Its assets and revenues, while still large, are substantially less than the total enjoyed by the predivestiture Bell System at the time the Commission required AT&T to provide enhanced services and CPE through structural separation. AT&T's share of new CPE installations has markedly declined due to intense competition in the CPE marketplace despite its continued possession of much of the installed base of CPE. For example, estimates by AT&T and by NATA indicate that AT&T's share of sales of new PBX's for 1982 and 1983 declined to the range of 23–32%.[22] The BOC's, having reentered the market for CPE, are a potentially potent source of competition. In addition, the BOC's are actively purchasing both network and terminal equipment from sources other than their former manufacturing affiliate, AT&T Technologies (formerly named Western Electric). AT&T Technologies, as noted above, as a consequence of divestiture, has been required to seek new customers in addition to affiliated companies and thus may be subject to marketplace checks on its pricing. On the other hand, we agree with the contentions of some commenters that AT&T's control of the installed base of CPE which the BOC's transferred to ATTIS at divestiture may give AT&T leverage in promoting its new CPE to installed base customers. We doubt, however, that the presence or absence of structural separation will affect the degree of any such leverage. In addition, we have the authority to enforce the Clayton Act should AT&T or other carriers engage in arrangements which contravene the antitrust laws.[23]

19. In light of these significant changes, we doubt contentions proffered by some parties that the balance of costs and benefits of structural separation for AT&T remains the same as when structural separation was first imposed. The first important benefit to consider is the role of structural separation in deterring anticompetitive practices such as discriminatory interconnection of CPE. AT&T, lacking local exchange bottleneck facilities, has far less ability to discriminate against competitors' CPE offerings through the installation and maintenance process. Moreover, while AT&T continues to play an important role in determining the characteristics of products that will interoperate with its network, AT&T is only one of a multiplicity of suppliers of such products which would be placed on the end of a transmission line. The participation of the BOCs in the provision of CPE places a check on the likelihood that AT&T could design a transmission system to preclude use of all but its own products and services without detection or marketplace retribution. This would prove to be superior to any competitive check which existed when the *Computer II* rules were adopted. Nor is it likely that AT&T can anticompetitively leverage consumers to unquestioningly accept its products as an adjunct to its services when it does not control the local loop and consumers have access to a multiplicity of alternative product and service combinations.

20. Some parties argue that AT&T already possesses all the flexibility it needs because ATTIS can resell basic services and can act as an ordering agent for its customers to obtain ATTCOM tariffed communications services. AT&T denies that resale or the ability to act as an ordering agent solves all its problems. Furthermore, some parties argue that the *Computer II* rules provide AT&T with sufficient flexibility to reorganize its manufacturing, development and marketing operations to solve its problems, for example, by transferring development personnel to ATTIS. AT&T denies that it could solve all of its *Computer II*-related problems through reorganization. For instance, ATTCOM would still be unable to provide incidental CPE even after a reorganization within the Technologies Sector. Parties should address what impact resale and ordering agency or AT&T's ability to reorganize consistent with the *Computer II* rules have on our tentative conclusion reached here to relieve AT&T from structural separation for its provision of CPE.

21. It is also likely that AT&T's ability and incentive to manipulate costs to maximize its profits in competitive ventures to the detriment of regulated services or to price predatorily in competitive ventures has declined significantly. The predivestiture AT&T had a significant pool of funds derived from monopoly ratepayers with which to attempt such activities. In addition to possessing revenues derived from monopoly exchange services, AT&T sold most of its products to captive affiliates.

[21] *BOC Reconsideration Order*, 49 FR at 26058, citing *Final Decision*, 77 FCC 2d at 389, 463.

[22] AT&T Petition at 62; North American Telecommunications Association 1985 Telecommunications Source Book, Satistical Review at 77; *See* ATTIS Resale Decision at n.27 (AT&T's share of CPE market is decreasing; ATTIS is expected to lack market power in CPE provision when the price predictability program for installed base terminates).

[23] 15 U.S.C. 21. We do not now have to decide whether AT&T has market power in interexchange services in order to conclude that the costs of structural separation for AT&T's provision of CPE now outweigh the benefits.

without the usual market checks on its prices. This gave AT&T substantial opportunity to shift costs to the ratepayer and recover them in rate proceedings while enabling AT&T to lower its CPE prices below cost-justified levels. In addition, unregulated affiliates such as Bell Laboratories and Western Electric could shift some of the costs of research, development, installation and maintenance and other activities benefitting competitive ventures to its products sold to regulated companies without effective marketplace scrutiny.

22. Structural separation, while not a foolproof deterrent to such activity, increases the detectability of such practices. There are substantial doubts whether such a remedy, however, is necessary at this juncture. AT&T is faced with growing competition in its regulated and unregulated ventures. Moreover, as noted, AT&T represents that most of its equipment sales are now to third parties, and therefore most of its sales of these products appear to be subject to marketplace checks. In light of these changes, AT&T's ability to engage in cost-shifting or predatory pricing should logically have diminished substantially, and its ability to succeed in such practices without marketplace retribution is questionable.

23. On the other hand, the costs of maintaining structural separation for AT&T may outweigh the limited benefits that remain since the risks structural separation was designed to control appear to have diminished. Structural separation imposes several costs on the public. It requires AT&T to maintain duplicative work forces and facilities, the cost of which AT&T has estimated as more than $1 billion annually.[24] It prevents the public from dealing with a single vendor for both network service and CPE needs, as numerous informal commenters have noted. Finally, it may make AT&T a less effective competitor in the CPE market, to the detriment of competition and the public interest. We are taking two steps to relieve possibly onerous costs short of immediately removing structural separation. We herein waive the prohibition against AT&T developing software-based products exclusively for marketing through ATTIS,[25] and grant AT&T's request for increased sharing of administrative services between AT&T Technologies and ATTIS. These actions, however, will not by themselves alleviate all of the problems of which AT&T complains.

24. We agree with opponents of AT&T's Petition for Relief that the *Computer II* rules do not preclude AT&T from reorganizing in a manner that will reduce some of these inefficiencies, as demonstrated by AT&T's reorganization in early 1984 along lines-of-business under the regulated Communications sector and the unregulated Technologies sector, and by its recently announced plans to shift certain lines of business, including manufacturing facilities and other resources, into ATTIS.[26] However, there appear to remain significant costs of duplication and barriers to efficient development even after these modifications. Morever, these actions illustrate some of the burdens which structural separtion imposes on the Commission as well as AT&T's, *i.e.*, due to the *Computer II* rules, AT&T must keep the Commission informed of internal restructuring which is essentially a matter of corporate judgment. This process can prove costly and disruptive to AT&T and requires the expenditure of limited Commission resources.

B. Proposed Relief and Questions Raised by Proposal

25. For the reasons stated above, we propose to remove some of the structural separation requirements which we have imposed on AT&T. We propose to permit AT&T to provide CPE on an untariffed basis without the need for structural separation from basic services. We would amend the *Computer II* rules to provide a blanket exemption for AT&T's participation in the provision of CPE. Under this proposal ATTCOM, AT&T Technologies, or other unseparated entities would be permitted to provide CPE to end users, market CPE jointly with basic services, and otherwise organize their offerings of CPE without regard to the *Computer II* structural separation requirements. Those requirements would remain in force, however, for the provision of enhanced services. ATTIS, as AT&T's enhanced service provider, would be the only entity within AT&T that would be permitted to provide enhanced services or to resell basic services on a nondominant basis. If ATTIS chose to continue to provide CPE, separately or in conjunction with enhanced services, it would be required to do so under the existing structural rules, either manufacturing the equipment itself or acquiring it on an arms' length basis from AT&T Technologies or other suppliers. Parties of course retain the opportunity to demonstrate that no relief is necessary, and are free to suggest lesser degrees of relief, for example, authorizing only a limited degree of joint marketing between AT&T's unregulated and regulated ventures. AT&T is hereby directed to describe the impact the relief we are proposing herein would have on its provision of CPE and other competitive offerings. AT&T should indicate whether, it would continue to provide competitive offerings both through ATTCOM and through an integrated Technologies sector. Parties are requested to comment on the desirability of such an approach and its consistency with remaining structural separation requirements if we remove structural separation requirements for CPE but not enhanced services. We intend to take action consistent with out proposal or any other actions which may prove warranted.

26. We request comment on this proposal from interested parties. We also request comment on alternatives that commenters believe would provide similar protection for ratepayers and CPE purchasers but might prove more efficient or more desirable in some other respect. We welcome alternatives proposals.

27. The BOCs are required to utilize Centralized Operations Groups (COGs) to ensure that all orders and installations of basis services to be connected to competing CPE vendors' products are handled in a non-discriminatory sequence.[27] Comment is solicited concerning whether AT&T should be required to establish and report to the Commission concerning similar procedures to ensure that enabling it to provide CPE and basic services on an unseparated basis does not unfairly prejudice competitors. Furthermore, parties, should address the means by which the Commission could enforce this mechanism absent

[24] It should be noted that AT&T enumerated the costs of duplication it asserts are caused by Computer II for the first time in its reply comments. Parties have not had the opportunity to comment on that information. Parties are requested to comment on this subject as well as on the effect of AT&T's announcement, made after the close of the pleading cycle in ENF 84-17, that it intends to move certain factories and lines-of-business from AT&T Technologies to ATTIS. In its comments, AT&T should describe this reorganization and identify what part of the $1 billion savings would be achieved through the reorganization. In addition, AT&T should quantify in its proposal savings achievable by our decision herein to waive restrictions on software development and to permit sharing of personnel services by Technologies and ATTIS.

[25] 47 CFR 64.702(c)(4).

[26] AT&T Press Release dated September 27, 1984.

[27] *NATA Petition for Emergency Relief*, FCC 84-132 (released April 11, 1984). Although the installation of AT&T services may actually be provided by the BOCs, AT&T would still process orders for those services.

structural separation of AT&T's CPE operations.

28. As we stated previously, we are deferring until a later proceeding the issue of whether AT&T's provision of enhanced services should continue to be subject to structural separation. Under the current proposal, ATTIS is the only entity within AT&T which is permitted to provide enhanced services and resell basis services as a nondominant carrier. It can purchase CPE for retail sale from any vendor including Technologies. ATTIS would still be required, however, to comply with all structural separation conditions even if it does provide CPE in conjunction with enhanced or resold, basic services. ATTCOM, AT&T Technologies or other unseparated entities, would be permitted to provide CPE but the instant proposal would not extend to unseparated entities the authority to resell basic services on a nondominant basis or provide enhanced services.

29. As clarified in the *Disclosure Order*,[28] § 64.702(d)(2) of our rules requires that when a carrier subject to structural separation communicates to its subsidiary, or to its research and development or manufacturing affiliates concerning a matter for the benefit of the subsidiary, network design or technical specificatgions, or information concerning changes to the network which could affect the interconnection or interoperation of competitive offerings with the network, that information must be publicly released concurrently with the intracorporate disclosure.[29] Pursuant to the *Reconsideration* of *Computer II*, and Part 68 of our Rules, all carriers must disclose such information within a reasonable time. However, the disclosure rules may be more restrictive to carriers subject to structural separation because we have required them to disclose information when it moves within the corporation, which may occur well before changes are actually made. Thus, as AT&T argues, its internal development of products may be hampered because it must disclose information at a far earlier stage in the development process than competitors. We seek comment on means by which we can preserve the fair disclosure of network-related information by AT&T without unduly hampering its development of CPE. Commenters should also address whether it is feasible to apply different rules for the disclosure of information to enhanced services operations than to CPE operations if one remains structurally separated and the other is not. The same concerns also apply to our rule requiring that the carrier not provide customer proprietary information to its subsidiary unless such information is available to other members of the public on equal terms and conditions.[30]

30. In addition to other issues raised by this Notice, AT&T should respond to the following questions. We expect AT&T to provide information sufficient to permit parties to give complete responses.

(1) Should AT&T be required to implement COG-like procedures to ensure that customers of competing providers of CPE do not receive unfair treatment in the interconnection of their CPE to the network?

(2) By what means short of structural separation can the Commission prevent AT&T's unseparated provision of CPE and basic services from leading to abuse of the intracorporate exchange of information concerning interoperability of competitive offerings with the network?

(3) AT&T should separately identify the costs it expects to save because of its planned reorganization to move certain lines of business from AT&T Technologies to ATTIS.

(4) Even if AT&T did have control over bottleneck facilities, such as interLATA toll facilities, would the existence of such control alter our tentative conclusion to relieve AT&T of structural separation for CPE?

(5) Describe the accounting systems and techniques AT&T would use to identify and allocate costs between regulated and unregulated businesses if structural separation requirements were eliminated.

(6) How should the ability of ATTIS to provide resold, basic services or to act as an ordering agent to obtain ATTCOM tariffed communications for its customers or AT&T's ability to reorganize itself consistent with the *Computer II* rules affect our tentative conclusion to relieve AT&T of structural separation for CPE?

(7) What impact, if any, will our tentative decision to relieve AT&T from structural separation for CPE have on AT&T compliance with our network information disclosure rule?

(8) To what extent is AT&T able to continue to set *de facto* interconnection standards for some CPE despite the fact that a local exchange carrier's facilities stand in between the customer and AT&T? *See* IDCMA Comments at 19–20 (July 18, 1984).

C. Actions Regarding Specific Computer II Restrictions

1. Waiver To Permit AT&T Technologies To Develop Proprietary Software for ATTIS

31. Among the specific burdens which AT&T asserts that *Computer II* places upon it is the inability to market products containing software exclusively developed for customers of AT&T through an exclusive marketing arm.[31] As AT&T notes, AT&T-Technologies is permitted to sell CPE directly only to a limited range of end users. The "software rule" requires ATTIS to develop its own software or contract with non-affiliated vendors for the development of software other than that sold "off the shelf" to all interested purchasers on the same terms and conditions. Technologies and ATTIS must deal with each other at arms' length, i.e., software based products developed by Technologies for sale to end users must be available for resale by any CPE vendor. ATTIS must pay fully compensatory prices for research and development efforts performed on its behalf by affiliated entities.[32] AT&T contends that, taken together, these requirements impair its ability to compete for several reasons. First, AT&T cannot use ATTIS as an exclusive channel for software-based products. Second, AT&T must prematurely decide whether a software-based product must be developed within Technologies or within ATTIS, leading to possible inefficiencies or duplication of effort if the decision proves wrong. Third, Technologies is denied the benefits of innovation and cost savings which could occur if it could jointly develop software for its own and ATTIS' offerings. Despite our finding in the *Second Computer Inquiry* that there are diseconomies of scale in software development and applications,[33] AT&T contends that, since the software rule was adopted, great changes have occurred in the field, including the large scale reuse of software modules in both network equipment and CPE. AT&T asserts that the software rule largely negates its ability to utilize the economies produced by such reuse. AT&T also contends that one of the bases for the software rule, the risk that AT&T could misallocate the costs of developing software incurred between

[28] Computer and Business Equipment Manufacturers Association, 93 FCC 2d 1226 (1983).

[29] *Id.* at 1248.

[30] 47 CFR 64.702(d)(3).

[31] AT&T Petition at 34–42.

[32] 47 CFR 64.702(c)(4).

[33] *Final Decision*, 77 FCC 2d at 479.

regulated and unregulated affiliates, has greatly decreased with divestiture.

32. Commenters were divided on the question of the continued justification for the software rule. Certain commenters believe that the rule is unjustified and that permitting joint development and marketing of software-based products within the Technologies sector would allow AT&T to efficiently utilize its resources and benefit consumers,[34] that the Commission can achieve its essential goal of avoiding shifting costs of software development to ATTCOM's revenue requirements as long as the network information disclosure rule is enforced,[35] and that continued application of the software rule retards network development.[36] Other parties support retention of the software rule as a safeguard against the possibility of cross-subsidization and improper disclosure of network design specifications to ATTIS.[37] ADAPSO contends that if joint development of software does indeed produce economies, ATTIS, with a capitalization of more than $10 billion, is of sufficient size to derive such economies through the independent development of software for CPE.[38]

33. We have determined that the costs of retaining the software rule outweigh the benefits of retention, which could be achieved through less onerous means. The inability to reuse software and to market exclusive products through ATTIS requires duplication and hampers AT&T's ability to design competitive CPE, in which its sales have already noticeably declined. On the other hand, we have already discussed in this Notice our tentative belief that the threat of cross-subsidization by AT&T has diminished. The rules against unfair disclosure of network-related information to ATTIS are applicable to situations in which software development is undertaken on behalf of ATTIS by affiliates. For these reasons, we conditionally grant a waiver of § 64.702(c)(4) of the rules to permit AT&T Technologies to contract with ATTIS for the development and sale of exclusively developed software and products containing such software. This waiver is conditioned on AT&T's filing, within thirty days from the release of this Notice, a plan describing steps it will take to ensure that it complies with the network information disclosure rule as defined in the *Disclosure Order*, 93 FCC 2d 1226 (1983), and describing the accounting mechanisms AT&T will employ to ensure that all direct and indirect costs involved in software development are not attributed to ratepayers and that ATTIS fully compensates affiliates for such costs. We hereby delegate to the Chief, Common Carrier Bureau, authority to approve or modify this plan. This waiver does not take effect until approval is granted.

2. AT&T's Request for Temporary Waiver To Facilitate a Single Point of Contact With All Departments of the Federal Government

34. On July 17, 1984, AT&T filed a petition for waiver of the *Computer II* structural separation requirements to permit AT&T Technologies to sell CPE to all entities within the federal government on the account of ATTIS until computer records regarding CPE formerly owned by the BOCs can be incorporated into Technologies' billing system.[39] The Department of Defense filed comments supporting AT&T's request and numerous agencies of the federal government have filed informal comments in support of AT&T. Several parties oppose the relief sought by AT&T.[40] AT&T proposes to consolidate its dealings with all federal government agencies and departments into a Federal Systems Organization within Technologies and therefore requests only a limited waiver through the end of 1985 to allow ATTIS to provide computer support to Technologies. AT&T asserts that paragraph 92 of the *Further Reconsideration* of *Computer II*[41] made clear that Technologies can sell CPE to the government as an end user. Various commenters oppose the request, disputing that *Computer II* unequivocally recognized Technologies' right to sell CPE to the federal government directly.[42] Therefore, opponents argue, AT&T should be made to request a broader waiver. Opponents also assert that permitting AT&T to establish the Federal Systems Organization in the manner described would be more costly than beneficial because reintegrating regulated and competitive offerings for such a large customer poses risks of substantial cross-subsidization and anticompetitive effects. Moreover, it is argued that the authorization of ATTIS to provide resold, basic services in conjunction with CPE and enhanced services should allow ATTIS to be the single point of contact to meet the government's needs. AT&T argues that the question of its ability to resell basic services to the government through ATTIS is a substitute for the waiver it seeks is irrelevant.

35. We are not convinced that it is necessary at this time to grant a waiver to AT&T regarding its provision of CPE to the federal government. We have recently granted AT&T a waiver to provide CPE on an unseparated basis for 21 national security and emergency preparedness systems.[43] AT&T needs no further waiver to utilize ATTIS's billing system for the 21 national security and emergency preparedness systems. We see no reason to readdress that decision by expanding its provisions on a government-wide basis before finally resolving the issues raised in this Notice. In any event if we grant the relief we are considering herein to remove structural separation for AT&T's provision of CPE, AT&T's petition will be moot.

3. AT&T's Request To Permit AT&T Technologies To Provide Administrative Services to ATTIS

36. By letter dated August 28, 1984, to the Chief of the Common Carrier Bureau, AT&T requests permission for AT&T Technologies, Inc., to provide ATTIS six administrative services which have not previously been authorized by the Commission. These are (1) administering Equal Employment Opportunity (EEO)

[34] API Central Committee, Comments at 7–8; Digital Equipment, Comments at 6–7; Telecommunications International Union at 5.

[35] IBM, Comments at 11–12.

[36] US West BOCs, Comments at 10–12.

[37] GTE, Comments at 18–22; ICA, Comments at 20–21; IDCMA, Comments at 38–40; NATA, Comments at 19–25; USTEL, Reply Comments at 5–6.

[38] ADAPSO, Reply Comments at 44–48; NATA, Reply Comments at 5–6.

[39] File No. ENF 84–43. The requested waiver would extend to a broader range of governmental communications systems than the waiver we recently granted to meet the National Security and Emergency Preparedness communications needs of certain emergency and defense-related agencies. *Procedures for Implementing the Detariffing of CPE and Enhanced Services*, FCC 84–652 (released January 4, 1985).

[40] Parties filing pleadings opposing AT&T's petition included American Satellite Co., Association of Long Distance Telephone Companies, the Bell Atlantic Companies, the BellSouth Companies, GTE Service Corp., MCI, the US West Companies, NYNEX Service Corp., Pacific Telesis, Rolm Corp., Southwestern Bell Telephone Co., and United Telecommunications, Inc.

[41] 88 FCC 2d at 544–45.

[42] We agree with the opponents that AT&T's interpretation of paragraph 92 of the Further Reconsideration is overly broad. Paragraph 92 only permitted Technologies (then Western Electric) to engage in its "traditional manner of conducting business." Further Reconsideration, 88 FCC 2d at 544. At that time Western Electric marketed CPE directly only to the Department of Defense and only in minor instances to other agencies. The BOCs provided CPE to the vast majority of federal agencies just like any other large customer. Therefore, AT&T's argument about the meaning of paragraph 92 is rejected.

[43] *Procedures for Implementing the Detariffing of CPE and Enhanced Services*, FCC 84–652 (released January 4, 1985).

and Affirmative Action policies and practices, and handling EEO charges and investigations; (2) administering programs to identify high potential management employees; (3) administering management job evaluation and salary classification practices, and providing suggested salaries for newly hired employees; (4) administering a benefits and relocation plan; (5) administering a data base covering personnel matters, benefits and payroll information; and (6) recruiting, interviewing, and referring to ATTIS candidates for management and non-management positions. Both ADAPSO and IDCMA filed comments opposing this request. AT&T has responded to these comments.

37. In our *General Departments Order*,[44] we approved AT&T's plan for the General Departments to provide various categories of services to the separate subsidiary, including personnel recruitment and management services. We denied, however, permission for other affiliates to provide such services absent a showing that a compelling need outweighed the potential increase in cross-subsidy between regulated and unregulated operations, the entanglement between affiliates which could undermine the efficacy of structural separation in the minds of employees, and the increased monitoring complexity exemplified by the 24 or more additional accounting systems which the Commission would be required to review. Subsequent to divestiture, AT&T has replaced the General Departments with a smaller corporate headquarters organization and has established within AT&T Technologies a consolidated personnel and labor relations organization replacing the personnel organizations within each company now in the Technologies sector. This arrangement was described in a report on post-divestiture sharing of administrative services submitted by AT&T on March 16, 1984. The range of administrative services provided to ATTIS as described in this report is subject to continuing review by the staff.

38. AT&T asserts in its request that the proposed sharing would reduce costs of providing personnel services and lead to efficiencies within its organization without passing on costs to ratepayers. AT&T represents that the sharing would permit the elimination of at least 155 positions, saving an estimated $8 million annually. It would permit Technologies to promote uniform personnel practices, promoting employee career development, and facilitating accurate matching of employees with career paths. AT&T asserts that this sharing would be wholly internal to its Technologies sector, and that there is no danger of confusing employees concerning *Computer II* requirements or of passing on costs to ratepayers. In addition, AT&T contends that even if this request is granted, the Commission's burden of monitoring accounting for shared services is smaller than prior to divestiture because it will not have to scrutinize 22 BOC systems for accounting for this sharing.

39. ADAPSO and IDCMA oppose the requested sharing on several grounds. First, they contend that it would weaken structural safeguards by blurring lines between companies. ADAPSO focuses on joint visits to college campuses on behalf of ATTIS and other Technologies companies, which it contends will inspire new recruits to believe that Technologies and ATTIS are one company. IDCMA contends that ATTIS' independence would be weakened should Technologies personnel evaluate and recommend candidates for employment by ATTIS. Both commenters also contend that the requested sharing would intermingle ATTIS and Technologies employees, leading to increases in prohibited information flows and cross-subsidization between regulated and unregulated sectors accomplished through Technologies' dealings with Communications. Both commenters further contend that the proposal would needlessly increase the complexity of the Commission's monitoring efforts by extending them into new activities, with IDCMA noting that the divestiture of the BOCs was already taken into account in our denial of reconsideration of the *Shared Services Order*.[45] Finally, ADAPSO contends that since AT&T could consolidate ATTIS and Technologies consistent with the *Computer II* rules, the asserted inefficiencies are caused by AT&T's own organizational choices rather than the *Computer II* rules and therefore the requested relief is unjustified.

40. AT&T responds that concerns about weakening *Computer II* safeguards are unjustified and that granting its request would not materially increase the Commission's monitoring burden. It contends that Technologies will merely advise ATTIS, leaving ATTIS responsibility for hiring, firing, supervising and evaluating candidates and employees based upon standards developed by a centralized organization. Moreover, asserts AT&T, existing procedures and disciplinary actions are available to curtail illicit information flows within the corporation. Finally, granting the proposal would add little detail to the monthly reports concerning the costs of shared services which the Commission already receives, and AT&T would account for the increased shared services consistently with the accounting systems which the Commission has already approved as properly allocating costs to ATTIS.

41. We have decided to grant AT&T's request pending our review of the total range of shared administrative services listed in its March 1984 report. Our approval is based upon AT&T's representations of cost savings and efficiencies which appear to outweigh any alleged damage to our structural separation requirements or the risk of impermissible cost-shifting or impermissible information flow between regulated operations and ATTIS. The services to be performed are not operational in nature and therefore the likelihood that approval will permit ATTIS to somehow obtain network related information or shift costs to regulated operations is limited. Moreover, as described earlier in this Notice, our concerns about AT&T engaging in significant cross-subsidization of unregulated activities have diminished, and as AT&T asserts, its proposal appears only to add incrementally to our review of its accounting system which we generally approved in our January 16, 1984 order.[46] Finally, AT&T has existing mechanisms to deal with information flow between regulated and unregulated operations which are subject to Commission monitoring. Nevertheless, we are still concerned with monitoring any situation which has the potential to promote prohibited information flow. We expect AT&T to ensure that new employees are made aware of the structural separation conditions and that any final decision regarding hiring, firing and evaluation of employees will continue to rest with ATTIS and not with Technologies. We need not address what the interviewers tell job applicants.

V. Regulatory Flexibility Act Certification

42. Pursuant to section 605(b) of the Regulatory Flexibility Act, we hereby

[44] 90 FCC 2d 184 (1982).

[45] *Shared Services Order*, 92 FCC 2d 876 (1982), *recon.*, FCC 83-355 at paras. 22-23 (released July 29, 1983).

[46] *AT&T Report on Services to be Shared Between Fully Separated Subsidiary and Affiliated Companies and Associated Costing Methodology*, FCC 83-601 (released January 16, 1984).

certify that this proceeding does not address a "proposed or final rule" that will "have a significant economic impact on a substantial number of small entities." The pertinent definition of "small entity" is "small business" which has the same meaning as "small business concern" under Section 3 of the Small Business Act. The section defines a small business concern as "one which is independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632. AT&T by its own estimates serves the majority of users of interexchange telecommunications services and the rules which the Commission is addressing herein were established for the very reasons that AT&T has been the dominant entity in its field of operation. Therefore, AT&T cannot be considered a "small entity" within the meaning of Section 605(b) of the Regulatory Flexibility Act.

43. In addition, no rules that may arise out of this proceeding will impose any regulatory requirements on, require any action by, or cause any direct impact on any entity other than AT&T. Therefore, because the rules that are the concern of this proceeding are being considered only for application to a large entity, AT&T, is no danger of violating the purpose of the Regulatory Flexibility Act of assuring that "laws and regulations designed for application to large scale entities [are not] applied uniformly to small business." 5 U.S.C. 601. To the extent that this proceeding is designed to determine whether AT&T's operations may no longer be of a scale requiring structural separation, it is consistent with the Regulatory Flexibility Act's purpose of "fit[ting] regulatory and informal requirements to the scale of the business . . . subject to regulation." *Id.*

VI. Ex Parte Contact Requirements

44. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rulemaking until the time a Public Notice is issued stating a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of a matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments or pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission staff that addresses the merits of the proceeding. Any person who submits an oral *ex parte* presentation addressing matters not fully convered in any previously filed written comments for the proceeding must prepare a written summary of the presentation. One the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, and a copy must be provided to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

45. In view of the extensive record already compiled, which is incorporated herein, pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, comments should be filed within 45 days after the release of this Notice. Interested parties may file comments within 30 days after AT&T files its response.[47] All relevant and timely comments and reply comments will be considered by the Commission before further action in this proceeding. The Commission may also consider any other relevant information brought to its attention.

46. In reaching its decision, the Commission may take into consideration information or a written summary indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. In accordance with § 1.419 of the Commission's Rules, an original and 5 copies of all comments, replies, or other documents filed in this proceeding shall be furnished to the Commission. Participants filing the required copies who also desire that each Commissioner receive a personal copy of the comments may file an additional 5 copies. Members of the general public who wish to express their interest by participating informally in this proceeding may do so by submitting one copy of their comments, without regard to form, provided that Common Carrier Docket No. is specified in the heading. Pleadings will be available for public inspection during regular business hours in the Commission's Public Reference Room, Room 239, 1919 M Street, N.W. in Washington, D.C.

VII. Ordering Clauses

47. Accordingly, It is ordered, That pursuant to the provisions of sections 4(i), 4(j), 201, 202, 203, 204, 205, 214, 220, 221, and 404 of the Communications Act of 1934, as amended, section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and § 1.411 *et. seq.*, there is hereby instituted a notice of proposed rulemaking concerning the matters described herein including those raised by the Petition for Relief from Structural Separation Requirements filed April 30, 1984, by the American Telephone and Telegraph Company. Members of the public are notified that any policies that may be established in this proceeding may be embodied in the Rules and Regulations of the Commission.

48. It is further ordered, That the request of the American Telephone and Telegraph Company, filed August 28, 1984, for AT&T Technologies, Inc., to provide personnel services to AT&T Information Systems, Inc., is granted.

49. It is further ordered, That the petition of the American Telephone and Telegraph Company, filed July 17, 1984, for a temporary waiver of Section 64.702 of the Commission's rules regarding the provision of customer premises equipment by AT&T Technologies, Inc. to the federal government, is denied.

50. It is further ordered, That Section 64.702(d)(4) of the Commission's Rules is conditionally waived as described herein, and provided American Telephone and Telegraph Company files information in conjunction with this waiver as described herein and subject to approval by the Chief, Common Carrier Bureau, pursuant to delegated authority.

51. It is further ordered, That the Secretary shall cause this Memorandum Opinion and Order and Notice of Proposed Rulemaking to be published in the **Federal Register.**

52. It is further ordered, That the Secretary shall send a copy of this Memorandum Opinion and Order and Notice of Proposed Rulemaking to the Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et. seq.*) (1980).

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

[47] We have stated our expectation that AT&T will provide information sufficient to permit informed comment on all issues in the reply comments. If AT&T's initial comments prove inadequate to permit parties to comment on its proposals, we are prepared to entertain requests for a period of 15 days in which parties may submit additional replies to AT&T's reply comments.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 85-5313 Filed 3-5-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-157; RM-3363]

TV Broadcast Station in Santa Barbara, CA; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: This action extends the time for filing comments in this proceeding for a 60 day period in order to review additional data released to the public regarding propagation characteristics in southern California.

DATES: Comments must be filed on or before April 15, 1985, and reply comments must be filed on or before April 30, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

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

SUPPLEMENTARY INFORMATION:

Order Extending Time for Comments and Reply Comments

In the matter of amendment of § 73.606(b), table of assignments, TV broadcast stations (Santa Barbara, California); BC Docket No. 80-157, RM-3363.

Adopted: February 15, 1985.
Released: February 22, 1985.

By the Chief, Mass Media Bureau.

1. The Commission has before it the *Notice of Proposed Rule Making*, 45 FR 28770, published April 30, 1980, proposing the assignment of VHF Channel *10 to Santa Barbara, California, with a reservation for non-commercial educational use, in response to a petition filed by KCPB, Inc. ("KCPB"). McGraw-Hill Broadcasting Company, Inc. ("McGraw-Hill"), licensee of Station KGTV-TV (Channel 10) San Diego, California, filed an opposition. A.D. Ring & Associates, Gordon Schlesinger, Ph.D., Blair Broadcasting, Inc. and Key Television also filed comments.

2. McGraw-Hill based its opposition on the claim of harmful interference along the southern California coast to the service of Station KGTV-TV. In support of its arguments, McGraw-Hill made an extensive technical showing. Subsequently, the Commission's Office of Science and Technology (OST) conducted a long term VHF/UHF measurement program of anomalous propagation conditions along the southern California coast.

3. By *Order*, released January 7, 1985, the Commission reopened the instant proceeding for a 45 day comment and reply period to give interested parties an opportunity to review the data compiled by OST.

4. After a further review of the propagation studies compiled to OST we have identified additional data that would be relevant to an analysis of this matter. We believe that due to the quantity and complexity of the technical data, it would be in the public interest to extend the comment period an additional 60 days.

5. Accordingly, it is ordered, That the time for filing comments and reply comments in BC Docket No. 80-157 (RM-3363) is extended to and including April 15, 1985 and April 30, 1985, respectively.

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

Federal Communications Commission.
James C. McKinney,
Chief, Mass Media Bureau.
[FR Doc. 85-5315 Filed 3-5-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-54; RM-4862]

Assignment of TV Broadcast Station in Duncan, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign UHF Television Channel 40 to Duncan, Oklahoma, in response to a petition filed by #52 Broadcasting Group, Inc. The proposal could provide a first UHF television service to that community.

DATES: Comments must be filed on or before April 22, 1985, and reply comments on or before May 7, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting

Notice of Proposed Rule Making

In the matter amendment of § 73.606(b) table of assignments, television broadcast stations (Ducan, Oklahoma) MM Docket No. 85-54, RM-4862.

Adopted February 15, 1985.
Released: February 28k 1985.

By the Chief, Policy and Rules Divison.

1. A petition for rule making has been filed by #52 Broadcasting Group, Inc., ("Petitioner") requesting the assignment of UHF Channel 40 to Ducan, Oklahoma, as its first television assignment. The petitioner has filed information in support of the proposal and indicated an interest in applying for the channel, if assigned.

2. Duncan (population 22,517)[1], seat of Stephens County (population 43,419) is located in south central Oklahoma, approximately 120 kilometers (75 miles) southwest of Oklahoma City.

3. We believe petitioner's proposal warrants consideration. Channel 40 can be assigned to Duncan in conformity with the minimum distance separation requirements of § 73.610 of the Commission's Rules and could provide the first local television service to this community. In view of the above, comments are invited on the proposal to amend the Television Table of Assignments, § 73.606(b) of the Rules, with regard to the following community:

City	Channel No.	
	Present	Proposed
Duncan, OK		40+

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before April 22, 1985, and reply comments on or before May 7, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel as follows: Julia L. Frey, Finley, Kumble, Wagner, Heine, Underberg, Manley & Casey, 1120 Connecticut Avenue, NW., Washington, D.C. 20036.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and*

[1] Population figures are from the 1980 U.S. Census.

604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau (202) 634–6530. However, members of the public should note that from time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in section 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85–5325 Filed 3–5–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 85–55; RM–4861]

Assignment of TV Broadcast Station in Bradenton, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign UHF Television Channel 66 to Bradenton, Florida, in response to a petition filed by Elektra Broadcasting Company. The proposal could provide a first UHF commercial television service to that community.

DATE: Comments must be filed on or before April 22, 1985, and reply comments on or before May 7, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations (Bradenton, Florida); MM Docket No. 85–55, RM–4861.

Adopted: February 15, 1985.
Released: February 28, 1985.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Elektra Broadcasting Company ("petitioner"), proposing to amend the Television Table of Assignments, § 73.606(b) of the Rules, by deleting the noncommercial educational reservation of Channel *19 in Bradenton, Florida, making it available for commercial use and substituting Channel *66 in lieu thereof. The proposal could provide for a first commercial television assignment in Bradenton. The petitioner filed information in support of the proposal and indicated an interest in applying for the channel, if assigned.

2. Bradenton (population 30,170) [1], seat of Manatee County (population 63,188), is located on the west coast of Florida, approximately 40 kilometers (25 miles) south of St. Petersburg, Florida.

3. Petitioner submitted an engineering report in support of its request, showing that Channel 66 could be assigned in conformance with § 73.610 of the Rules. However, it did not supply any information attempting to justify its

[1] Population figures are from the 1980 U.S. Census.

request for dereservation of Channel *19. Since the Commission generally retains the reservation of noncommercial educational channels, particularly where another channel is available which can be assigned, we propose to assign Channel 66 as a first commercial television assignment at Bradenton, and retain Channel *19 as a reserved channel.

4. Comments are invited on the proposal to amend the television table of assignments, § 73.606(b) of the Commission's Rules, with regard to the following community:

City	Channel No.	
	Present	Proposed
Bradenton, FL	*19	*19, 66

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before April 22, 1985, and reply comments on or before May 7, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel as follows: Thomas W. Fletcher, Cole, Raywid & Braverman, 1919 Pennsylvania Avenue, NW., Washington, D.C. 20006, (counsel for petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that section 603 and 604 of the Regulatory Flexibility Act Do Not Apply To Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petititoner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-4934 Filed 3-5-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-46; RM-4891]

Assignment of TV Broadcast Stations, in Tuscumbia and Selma, AL; and Fayetteville, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of UHF television Channel 52 for Channel 47 at Tuscumbia, Alabama, in response to a joint petition filed by Kadd Communications Corporation, permittee of Station WGEI (TV), Tuscumbia, and American Valley Broadcasting Company, licensee of Station WAFF (TV), Huntsville, Alabama, and modification of WGEI-TV's permit to reflect the change. Additionally, the proposal requires the substitution of

Channel *29 for vacant Channel *52 at Fayetteville, Tennessee. ACB Inc., permittee of Station WOTC (TV), Channel 29 in Selma, Alabama, is required to change its carrier offset to accommodiate the Fayetteville proposal.

DATES: Comments must be filed on or before April 22, 1985, and reply comments on or before May 7, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Stanley Schmulewitz, Mass Media Bureau, (202) 635-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Notice of Proposed Rule Making and Order to Show Cause

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Tuscumbia and Selma, Alabama; and Fayetteville, Tennessee). MM Docket No. 85-46, RM-4891.

Adopted: February 15, 1985.
Released: February 28, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a joint petition for rule making filed by Kadd Communications Corporation ("Kadd"), permittee of UHF television Station WGEI (Channel 47), Tuscumbia, Alabama, and American Valley Broadcasting Company ("AVBC"), licensee of Station WAFF (TV) (Channel 48), Huntsville, Alabama, seeking the substitution of UHF television Channel 52 for Channel 47 at Tuscumbia, and modification of the WGEI (TV) construction permit to specify operation on the new channel.

2. Petitioners' request is premised on their desire to eliminate mutual adjacent channel interference problems. Although the separation between WGEI (TV) and WAFF (TV) is approximately 66 miles, whereas 55 miles is required, petitioners claim that if Station WGEI (TV) commences operation on Channel 47, considerable interference to mutual service areas of the Huntsville-Decatur and the Tuscumbia-Florence-Sheffield markets would result. Therefore, Station WGEI (TV) seeks to change its operation from Channel 47 to Channel 52, to enable it to better serve its market area, without receiving or creating interference to Station WAFF (TV).

3. Petitioners claim that the presence of Station WAFF (TV) on adjacent Channel 48 would effectively prevent Station WGEI (TV) from serving its market area beyond its Grade B contour, including service to Decatur (population 42,002) and the Huntsville-Florence market east thereof, which it has served for many years.

4. Conversely, Station WGEI(TV), operating with minimal facilities, would cause significant interference to the existing off-the-air viewing of Station WAFF(TV) in the western portion of its ADI, including the areas of Florence (population 37,029) and Colbert County (population 54,519). Petitioners claim this situation would increase if WGEI(TV) were to improve its facilities, [1] to the extent it would virtually eliminate WAFF's off-the-air service to the countries of Colbert, Franklin (population 28,350), and Lauderdale (population 80,546), containing over 61,000 television households. Moreover, should WAFF)TV) increase its facilities in an attempt to regain its western market, petitioners claim it would result in even greater adjacent channel interference to Station WGEI(TV).

5. Thus, in order for Station WGEI(TV) to provide adequate service to its market area, while retaining the existing off-the-air service of Station WAFF(TV) within its market, petitioners request the substitution of Channel 52 for Channel 47 at Tuscumbia, and the concurent modification of the WGEI(TV) construction permit to reflect the change. Channel 52 can be assigned at the present transmitter site specified in WGEI-TV's construction permit.

6. In order to accomplish the proposed channel substitution at Tuscumbia, Channel *29 must be substituted for Channel *52 (vacant and unapplied for) at Fayetteville, Tennessee, with a site restriction 6.1 miles south of the community to avoid short spacing to Station WKSO(TV) (Channel *29), Somerset, Kentucky. Additionally, ACB, Inc., permittee of Station WOTC(TV) (Channel 29), Selma, Alabama, will be required to change its offset from "minus" to "zero" to accommodate the Fayetteville proposal. As required by Commission policy, both petitioners herein will be required to reimburse ACB, Inc. for its reasonable and prudent costs associated with the change in frequency offset of Station WOTC(TV), and should indicate a willingness to do so in their comments. Therefore, to enable the Commission to make a final determination herein, we are issuing an *Order to Show Cause* to ACB, Inc. to determine its willingness to modify its facilities to reflects a "zero" offset.

7. In view of the above, comments are invited on the proposals to amend the TV Table of Assignments, §73.606(b) of the Commission's Rules, with regard to the following communities.

Channel No.	City	
	Present	Proposed
Selma, AL	8, 29-	8, 29
Tuscumbia, AL	47-	52+
Fayetteville, TN	*52-	*29-

8. It is ordered, that, pursuant to section 316(a) of the Communications Act of 1934, as amended, ACB, Inc. Shall Show Cause why its permit should not be modified to specify operation on Channel 29, with a zero offset, at Selma, Alabama, as proposed herein, in lieu of its present operation on that channel with a minus offset.

9. Pursuant to §1.87 of the Commission's Rules, ACB may, not later than, April 22, 1985, request that a hearing be held on the proposed modifications. If the right to request a hearing is waived, it may not later than April 22, 1985, file a written statement showing with particularity why its license or application should not be modified as proposed in the *Order to Show Cause*. In that case, the Commission may call on ACB to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an *Order* modifying the license or application as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, ACB will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

10. It is further ordered, that the Secretary shall send a copy of this *Notice of Proposed Rule Making and Order to Show Cause* by Certified Mail, Return Receipt Requested, to the following: ACB, Inc., 1004 Crystal Court; Lexington, KY 40515.

11. Interested parties may file comments on or before April 22, 1985, and reply comments on or before May 7, 1985. Additionally, a copy of such comments should be served on the petitioners, as follows:

Howard Weiss, Esq., Mullin, Rhyne, Emmons & Topel, P.C., 1000 Connecticut Ave., NW.—Suite 500, Washington, D.C. 20036 (Counsel for Kadd Communications Corporation), and

Robert A Beizer, Esq. and Craig J. Blakeley, Esq., Schnader, Harrison, Segal & Lewis, 1111—19th Street, NW., Suite 1000, Washington, D.C.

[1] WGEI(TV) proposes operation with an ERP of 96 kW and antenna height of 513 ft. AAT (BPCT830728KG).

20036. (Counsel for American Valley Broadcasting Company).

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, §73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

13. For further information concerning this proceeding, contact Nancy V. Joyner, or Stanley Schmulewitz, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, §73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in replay comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85–5322, Filed 3–5–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 85–52; RM–4847, RM–4851]

Assignment of TV Broadcast Stations in Jackson, WY, Billings, MT, and Provo, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to assign VHF TV Channels 2 and 11 to Jackson, Wyoming, at the request of Metro Telecasting and Terrell Communications, respectively. In order to provide the first and second local television channels at Jackson, the offsets on Channel 2 at Billings, Montana, must be changed from "zero" to "minus" and on channel *11 at Provo, Utah, from "plus" to "minus."

DATES: Comments must be filed on or before April 22, 1985, and reply comments on or before May 7, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Notice of Proposed Rule Making and Orders to Show Cause

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations, (Jackson, Wyoming, Billings, Montana, and Provo, Utah) MM Docket No. 85–52, RM–4847, RM–4851.

Adopted: February 15, 1985.

Released: February 28, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration two petitions for rule making seeking the assignment of a VHF TV channel to Jackson, Wyoming. Metro Telecasting ("Metro") seeks the allocation of Channel 2 and Terrell Communications ("Terrell") requests the allocation of Channel 11. Both Metro and Terrell have stated their intention to apply for their respective channels, if assigned.

2. Jackson (population 4,511),[1] the seat of Teton County (population 9,355), is

[1] Population figures are taken from the 1980 U.S. Census.

located in western Wyoming, approximately 320 kilometers (200 miles) northeast of Salt Lake City, Utah. The assignment of Channels 2 and 11 could provide Jackson with its first and second local television services.

3. Both channels can be assigned in compliance with the Commission's minimum distance separation and other technical requirements if the offset on Channel 2 at Billings, Montana, occupied by Station KTVQ is changed from "zero" to "minus" and the offset on Channel *11 at Provo, Utah, occupied by Station KBYU–TV, is changed from "plus" to "minus." The eventual permittee for Channel 2 will be required to reimburse the licensee of Station KTVQ and the eventual permittee for Channel 11 will be required to reimburse the licensee of Station KBYU–TV for the reasonable expenses incurred by each as a result of their change in offsets. Metro and Terrell should indicate their willingness to reimburse.

4. Since Billings, Montana, is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence is required for the change there.

5. In view of the foregoing and the fact that the proposed assignments could provide Jackson with its first and second local television services, the Commission believes it appropriate to propose amending the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as concerns the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Billings, MT	2, 6, 8, *11, 14, and 20+.	2–, 6, 8, *11, 14, and 20+.
Provo, UT	*11+ and 16	*11– and 16.
Jackson, WY		2 and 11+.

6. Accordingly, it is ordered, that pursuant to § 316(a) of the Communications Act of 1934, as amended, KTVQ, Inc. ("KTVQ"), licensee of Station KTVQ, Billings, Montana, and Brigham Young University ("BYU"), licensee of Station KBYU–TV, Provo, Utah, shall show cause why their licenses should not be modified to specify operation on Channels 2– and *11–, respectively, as proposed herein instead of their present Channels 2 and *11+.

7. Pursuant to § 1.87 of the Commission's Rules, KTVQ and BYU may, not later than April 22, 1985, request that a hearing be held on their proposed modification. If the right to request a hearing is waived, KTVQ and BYU may, not later than April 22, 1985, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call upon KTVQ and BYU to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an *Order* modifying the individual licenses, as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, KTVQ and BYU will be deemed to have consented to the modifications as proposed herein and a final *Order* will be issued by the Commission if the above-mentioned channel modifications are ultimately found to be in the public interest.

8. It is further ordered, that the Secretary SHALL SEND a copy of this *Notice of Proposed Rule Making and Orders to Show Cause* by Certified Mail, Return Receipt Requested, to KTVQ, Inc., 3203 Third Avenue North, Billings, Montana 59101, and Brigham Young University, C–302 HFAC, Provo, Utah 84602.

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements, are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

10. Interested parties may file comments on or before April 22, 1985, and reply comments on or before May 7, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

June Gray, President, Metro Telecasting, P.O. Box 811, Stockbridge, Georgia 30281 (Petitioner for Channel 2)

Gary D. Terrell, Terrell Communications, 2420 Belair, Magnolia, Arkansas 71753 (Petitioner for Channel 11)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

12. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634:6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered

if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection by Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-5321 Filed 3-5-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR PART 76

[MM Docket No. 84-1297; FCC 84-607]

Form and Procedure for Ownership Reporting by Cable Television Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes deletion or substantial simplification of the cable television system ownership reporting requirements (Schedules 3 and 4 of FCC Form 325) and amendment of § 76.403 of the Commission's Rules (47 CFR 76.403), as needed, to reflect such deletion of simplification. The Commission has tentatively determined that existing reporting requirements are burdensome and that the costs they involve are no longer justified in view of the now less than critical need for the information they obtain.

DATES: Comments must be filed on or before April 5, 1985. Reply comments must be filed on or before April 22, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Thomas S. Walsh, Mass Media Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76

Cable television.

Notice of Proposed Rule Making

In the matter of amendment of part 76, subpart I, § 76.403 of the Commission's rules and regulations with respect to the form and procedure for ownership reporting by cable television systems, MM Docket No. 84-1297; FCC 84-607.

Adopted: December 4, 1984.
Released: February 11, 1985.
By the Commission.

1. The Commission, on its own motion, here proposes to amend its rules governing the reporting of ownership information by cable television systems. Specifically, we propose to alter § 76.403 of the Commission's Rules relating to the filing of Schedules 3 and 4 of FCC Form 325 to either eliminate entirely the reporting obligation or to substantially simplify it.

Background

2. The Commission first imposed formal ownership information reporting requirements on cable television systems in 1966.[1] While no form was then adopted, cable system operators were required to file information annually for each of their systems regarding: (a) The names, addresses, and business interests of all officers, directors, and persons having substantial legal or beneficial ownership interests in each system; (b) the number of subscribers to each system; (c) the television stations carried on each system; and, (d) the extent of any existing or proposed program origination by each system. The Commission determined that the information obtained through this reporting process would assist congressional consideration of the Commission's legislative proposals in the cable area and also would assist the Commission in the development of cable regulation.

3. Shortly after the announcement of the above reporting requirements, the Commission determined that the use of a form setting forth specific questions would facilitate submission of the desired information.[2] The original FCC Form 325 was used once, in 1966. Subsequently, Form 325 was revised and divided into three sections: general information, cable services, and ownership information.[3] The Commission collected ownership information on this version of the form through 1973.

4. Although annual reporting requirements for cable television systems remained, data collection was suspended in 1974 while the Commission reviewed its data collection methods. This review ultimately produced a plan to create a cable television computer data base and to alter the format of the annual report form to make it compatible with the new data base. Appropriate changes to Form 325 were made in 1976, including division of the form into two categories.[4] The first, Schedules 1 and 2, solicited information concerning the cable system community unit and local service. The second category, Schedules 3 and 4, requested data concerning operator ownership and control.[5] Rather than establishing a fixed annual filing date, separate schedules were mailed to each cable operator, who was required to complete and return the form within 60 days of the mailing. To expedite the process and reduce the burden on the operators, information stored in the Commission's computer data base was preprinted on the form. Operators were required to correct the information already on file with the Commission rather than to submit the same data year after year. Ownership data were collected on this revised form in 1976, but no such information was collected in 1977 or thereafter due to administrative resource problems in connection with the computerizaton of the data.

[1] *Second Report and Order* in Docket Nos. 14895, 15233, and 15971, 2 FCC 2d 725, 765 (1966).

[2] *See Order* in Docket No. 15791, 3 FCC 2d 403 (1966).

[3] *Third Report and Order* in Docket No. 18397, 32 FCC 2d 13 (1971).

[4] *Order*, 61 FCC 2d 1014 (1976).

[5] Copies of the current Schedules 3 and 4 of Form 325 are attached hereto as Appendix "A".

5. As designed, the existing ownership data collection system requires each cable operator to prepare one Schedule 3 for his business, one for each business entity which owns 25 percent or more of his business (parent), and one for each entity which owns 25 percent or more of the parent and the parent's patent, until all parents or all 25 percent shareholders are revealed. The same disclosure procedure is applicable to subsidiary interests as well. The number of Schedule 3 forms filed depends on the complexity of the operator's ownership structure. In addition, for each Schedule 3 filed, the operator must also submit data concerning each proprietor, partner, director, major officer, and 3 percent or more shareholder of the entity.[6] Finally, for each principal listed in Schedule 3, a separate Schedule 4 must be prepared. Schedule 4 solicits information regarding family relationships existing between persons listed in Schedule 3, whether stock is held in trust for a beneficial owner, and whether persons disclosed on Schedule 3 have any other telecommunications or newspaper interests. This detailed information was intended to support two basic Commission functions: Monitoring compliance with the cable television system ownership rules,[7] and formulating generalizations concerning ownership patterns in the cable industry in aid of our policy and rule making activities. In connection with the latter activity, it should be noted that substantial parts of our ownership rules have recently been codified, thereby eliminating the need for Commission policy determinations in these areas.[8]

[6] This information includes name, address, identification code, percentage interest, citizenship status, criminal status, and position within the entity (officer, director, etc.). If the business entity filing Schedule 3 is a corporation, information must also be provided regarding the number of shares of common and preferred stock authorized, issued and outstanding, treasury and unissued.

[7] Section 76.501 of the Commission's Rules prohibits common ownership of colocated cable systems and television broadcast stations as well as ownership of any cable system by a national television network. Section 63.54 of the rules also prohibits, with some exceptions, a telephone company from owning a cable system situated within the company's local service area.

[8] Cable Communications Policy Act of 1984, Pub. L. 98-549, 98 Stat. (1984). Section 613(a) of the statute prohibits common ownership of a television broadcast station and a cable system where the Grade B contour of the TV station covers any portion of the community served by the cable system. Section 613(b) prohibits, with certain specified exceptions, common ownership of a telephone company and a cable television system where the cable system provides service to subscribers within the service area of the telephone company.

Discussion

6. In reviewing our experience with the present and past reporting system, we have preliminarily concluded that the costs which the current system imposes are disproportionate to the benefits which it produces and that, accordingly, elimination or substantial simplification of the existing filing mechanism may be warranted. Our conclusion in this regard is motivated by several considerations. First, while the information available through Schedules 3 and 4 is useful in the context of our policy analysis and rule making function, we have not found it to be indispensible. Since ownership data has not been collected through Form 325 since 1976, we have had to rely upon other sources of information.[9] We do not believe that such reliance has had an adverse effect on our ability to evaluate ownership-related issues in the cable television industry. Moreover, in the event we perceive a significant information gap that is detrimentally affecting our deliberations, we have the option of specifically requesting the data necessary to close that gap.

7. Second, we are no longer convinced that an ownership reporting system of general applicability is required to monitor compliance with cable television rules. This approach is both burdensome to the Commission and runs counter to our belief that the onus of understanding and complying with rules should rest with the system operator in the first instance.[10] In this connection, it is important to note that our suggestion here affects only our involvement in monitoring compliance with the rules and does not bespeak a diminished concern for adherence to them. We retain our enforcement procedures, including monetary forfeiture, and fully intend to utilize them to guarantee compliance in appropriate cases. Furthermore, our proposal in no way precludes the solicitation of ownership information in a specific case or range of cases should developments indicate that is necessary to ensure compliance with the rules. We are simply suggesting that the routine, industry-wide collection of highly detailed ownership data does not now appear essential to our enforcement function.[11]

8. Finally, the burdens imposed by the existing reporting system are substantial. The report is very detailed and quite complex, often requiring considerable effort on the part of the system operator to complete. Indeed, these characteristics prompted us to exempt small system operators from the obligation to file Schedules 3 and 4 of Form 325 at all.[12] The intricate nature of the report not only results in significant costs for the operator but also increases the likelihood of inaccurate, incomplete, delinquent and duplicative filings. Additionally, the burdens placed on the Commission staff are appreciable. The volume and complexity of the filings make it difficult for the staff to monitor, verify or correct, and analyze the data.

9. In view of what we now regard as the questionable need for the data collected, we believe the costs which the ownership reporting system would impose are no longer justifiable. Accordingly, we invite comment on our proposal to eliminate or modify our present ownership reporting system by abandoning or substantially simplifying Schedules 3 and 4 of FCC Form 325 and appropriately amending § 76.403 of our Rules.[13] We specifically request that commenting parties address the question of whether a formal, comprehensive ownership reporting system is still necessary as an aid in establishing Commission policies and in monitoring compliance with cable cross-ownership rules. Insofar as commenting parties suggest a modification or alternative to the present reporting system, we request that they explicitly detail the nature of the alternative

[9] Ownership information is collected, for example, by such sources as *Broadcasting* and *Television Factbook*.

[10] *See Report and Order* in CT Docket No. 78-206, 69 FCC 2d 697 (1978), where the Commission abandoned the prior review and approval approach of the certification mechanism in favor of a simple registration process emphasizing operator responsibility for conformance to the rules.

[11] Certain aspects of the Commission's cable ownership rules are currently under review. *See, e.g., Notice of Proposed Rule Making* in CT Docket No. 82-434, 91 FCC 2d 76 (1982), where the Commission proposed deletion of the existing prohibition on ownership of cable systems by national television networks. To the extent that this proceeding might result in relaxation or elimination of current ownership restrictions, the compliance monitoring justification for the present ownership reporting system would be further eroded. We have also declined to adopt additional ownership-related rules in the cable television area. *See Report and Order* in Docket No. 18891, 91 FCC 2d 46 (1982) [multiple ownership limitations for cable rejected]. *See also* para. 5 and n.8 *supra*.

[12] 42 FR 19329, 19341 (April 13, 1977).

[13] FCC Form 327, Application for Cable Television Relay Service (CARS) Station Authorization, also includes an ownership and control section (Schedule B). While we are not prepared at this time to thoroughly examine the reporting requirements in CARS, particularly in the context of license renewals and transfers, we note that several questions in Schedule B are cross-referenced to Form 325. In light of our proposals herein, we also invite comment on necessary changes to Schedule B.

system and the relevant costs and benefits of the proposed system.[14] Also, parties are invited to comment on the significance to the present proceeding of the enactment of the Cable Communications Policy Act of 1984.

10. Authority for the proposed rule making instituted herein is contained in sections 4 (i) and (j), 303(r), and 403 of the Communications Act of 1934, as amended.

11. Pursuant to procedures set out in § 1.415 of the Commission's Rules, interested parties may file comments on or before March 20, 1985, and reply comments on or before April 4, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a statement of the nature and scope of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the report and order.

12. In accordance with the provisions of § 1.419 of the Rules, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of the comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one (1) copy. All timely comments will be considered, regardless of the number of copies submitted. In any event, all comments must contain reference to the appropriate docket number (MM Docket No. 84–1297). All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room, 1919 "M" Street NW., Washington D.C. 20554. For general information on how to file comments, please contact the FCC Consumer Assistance and Small Business Division at (202) 632–7000.

13. For purposes of this nonrestrictive notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments and formal oral arguments) addressing the merits of a pending proceeding and containing matter not fully covered in any previously filed written comments for the proceeding. Any person who submits a written *ex parte* presentation must submit a copy of that presentation to the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation must prepare a written summary of it; on the day of oral presentation, this written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally*, 1.1231 of the Commission's Rules.

14. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an initial regulatory flexibility analysis ("IRFA") of the expected impact on small entities of the proposals advanced herein. The IRFA is set forth in Appendix "B". Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the *Notice*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small business Administration, as required by section 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.*, (1981)).

For further information regarding this proceeding, contact Thomas S. Walsh, Mass Media Bureau, (202) 632–7792.

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

Federal Communications Commissions.

William J. Tricarico,

Secretary.

Note.—Copies of current Schedules 3 and 4 of Form 325 are included for purposes of comment as Appendix A. The forms are not published in the Code of Federal Regulations.

BILLING CODE 6712-01-M

[14] To the extent that retention of a simplified reporting system might primarily be founded on a concern for broadcast/cable cross-ownership issues, suitable modification of broadcast station reporting forms might permit collection of the necessary data and still allow elimination of Schedules 3 and 4 of Form 325.

FCC FORM 325
DECEMBER 1976

Appendix A

ANNUAL REPORT OF CABLE TELEVISION SYSTEMS

SCHEDULE 3

NOTE: DO NOT USE THIS FORM TO FILE INFORMATION PREVIOUSLY FILED

SCHEDULE 3. OWNERSHIP STRUCTURE. (File one Schedule 3 for each business entity in the cable operator business structure subject to limitations as indicated.)

1 LEGAL NAME OF ENTITY (IF PERSON, LIST LAST NAME FIRST)

USE TO CONTINUE BLOCK 1 IF NEEDED

2 E.I. NO (OR SOC. SEC. NO.)

IN ITEMS 3-7, indicate the following information for the business entity stated in Block 1

3 ENTER CODE TO INDICATE TYPE OF ENTITY — 1-Individual Person; 2-Partnership; 3-Corporation; 4-Association; 5-Government entity. ▶

4 List below the E.I. No. of any business entity which owns 25% or more of it.

5 List below the E.I. No. of any business entity of which it owns 25% or more of the stock.

6 If a corporation, indicate stock information below.

CLASS CODE: 1-Com. 2-Pref. 3-Other	Enter Code	If Voting Enter X	NO. AUTHORIZED	NO. ISSUED AND OUTSTANDING	NO. TREASURY	NO. UNISSUED

7 List each person (if individually owned); partners (if Partnership); officers and directors stockholders - owning 3% or more of the voting stock (if corporation).

LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED — Soc Sec. No. (E.I. No. if Corp)

CITY OF RESIDENCE (HEADQUARTERS IF CORPORATION) — ST — % INT — If Felon Enter X → — If Alien Enter X → — If Corp., enter: 1-Pres, 2-VP, 3-Sec. 4-Trs, 5-Dir., 6-other

LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED — Soc Sec. No. (E.I. No. if Corp)

CITY OF RESIDENCE (HEADQUARTERS IF CORPORATION) — ST — % INT — If Felon Enter X → — If Alien Enter X → — If Corp., enter: 1-Pres, 2-VP, 3-Sec. 4-Trs, 5-Dir., 6-other

Continue on back as needed.

NOTE: File a separate Schedule 4 for each person or business entity listed in Block 7.

8

7. LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED	Soc.Sec.No.(E.I.No.if Corp.)				
CITY OF RESIDENCE (Headquarters if Corporation)	ST.	% INT	If Felon Enter X →	If Alien Enter X →	IF CORP. ENTER: 1-Pres, 2-VP, 3-Sec, 4-Trs, 5-Dir, 6-Other

LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED	Soc.Sec.No.(E.I.No.if Corp.)				
CITY OF RESIDENCE (Headquarters if Corporation)	ST.	% INT	If Felon Enter X →	If Alien Enter X →	IF CORP. ENTER: 1-Pres, 2-VP, 3-Sec, 4-Trs, 5-Dir, 6-Other

LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED	Soc.Sec.No.(E.I.No.if Corp.)				
CITY OF RESIDENCE (Headquarters if Corporation)	ST.	% INT	If Felon Enter X →	If Alien Enter X →	IF CORP. ENTER: 1-Pres, 2-VP, 3-Sec, 4-Trs, 5-Dir, 6-Other

LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED	Soc.Sec.No.(E.I.No.if Corp.)				
CITY OF RESIDENCE (Headquarters if Corporation)	ST.	% INT	If Felon Enter X →	If Alien Enter X →	IF CORP. ENTER: 1-Pres, 2-VP, 3-Sec, 4-Trs, 5-Dir, 6-Other

LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED	Soc.Sec.No.(E.I.No.if Corp.)				
CITY OF RESIDENCE (Headquarters if Corporation)	ST.	% INT	If Felon Enter X →	If Alien Enter X →	IF CORP. ENTER: 1-Pres, 2-VP, 3-Sec, 4-Trs, 5-Dir, 6-Other

LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED	Soc.Sec.No.(E.I.No.if Corp.)				
CITY OF RESIDENCE (Headquarters if Corporation)	ST.	% INT	If Felon Enter X →	If Alien Enter X →	IF CORP. ENTER: 1-Pres, 2-VP, 3-Sec, 4-Trs, 5-Dir, 6-Other

LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED	Soc.Sec.No.(E.I.No.if Corp.)				
CITY OF RESIDENCE (Headquarters if Corporation)	ST.	% INT	If Felon Enter X →	If Alien Enter X →	IF CORP. ENTER: 1-Pres, 2-VP, 3-Sec, 4-Trs, 5-Dir, 6-Other

Specify below the person who has completed Schedule 3.

SIGNATURE	TITLE
PRINTED NAME OF PERSON SIGNING	DATE SIGNED

NOTE: File a separate Schedule 4 for each person or business entity listed in Block 7.

FCC FORM 325
DECEMBER 1976

ANNUAL REPORT OF CABLE TELEVISION SYSTEMS

SCHEDULE 4 9

NOTE: DO NOT USE THIS FORM TO FILE INFORMATION PREVIOUSLY FILED

SCHEDULE 4 - CONTROLLING PERSONS *(File one Schedule 4 for each person or business listed in Schedule 3, Block 7)*

1 NAME OF PERSON (LAST NAME FIRST) OR BUSINESS ENTITY

CONTINUE NAME IF NEEDED

2 Soc Sec No.(E.I.No.if business)

Indicate the following information regarding the above person or business entity, as applicable.

3 If a close family relationship exists between this person and another person listed in Schedule 3, Block 7 for the same business entity, describe the relationship below:

(Enter code and Soc. Sec. No)
This person is the
1 - Parent/Child
2 - Spouse
3 - Brother/Sister
of the person identified by the Soc. Sec. No.

Enter Code	SOC. SEC. NO.	Enter Code	SOC. SEC. NO.

4 If this person's voting stock in a corporation listed in Schedule 3, Block 1 is held for a beneficial owner, indicate below:

LEGAL NAME OF CORPORATION

CONTINUE NAME OF CORPORATION IF NEEDED | 1 | E.I. NO.

NAME OF BENEFICIAL OWNER

CONTINUE NAME OF OWNER IF NEEDED | SOC SEC NO.

CITY OF RESIDENCE | ST | IF FELON ENTER X ▶ | IF ALIEN ENTER X ▶

LEGAL NAME OF CORPORATION

CONT. NAME OF CORPORATION IF NEEDED | E.I. NO.

NAME OF BENEFICIAL OWNER

CONT. NAME OF BENEFICIAL OWNER IF NEEDED | SOC. SEC. NO.

CITY OF RESIDENCE | ST | IF FELON ENTER X ▶ | IF ALIEN ENTER X ▶

5 If this person or business entity has other telecommunications or newspaper interests as defined in the instructions, provide the following information for each interest.
(Nature of interest Code: 1-Officer, 2-Director, 3-Partner, 4-Stockholder, 5-Individual Owner.
Type of BUSINESS Code: 1-Broadcasting, 2-Cable TV Systems, 3- Cable TV Equipment, 4-Common Carrier, 5-Newspaper)

LEGAL NAME OF BUSINESS ENTITY REPRESENTING COMMUNICATIONS OR NEWSPAPER INTERESTS

CONTINUE NAME IF NEEDED | E.I. NO.

CITY OF BUSINESS HEADQUARTERS (if newspaper, city served) | ST | NATURE OF INTEREST: ENTER CODE | % Vot. Int. | If Fiduciary Interest Enter X ▶ | TYPE: Enter Code ▶

▶ CONTINUE ON BACK AS NEEDED:

10

5 LEGAL NAME OF BUSINESS ENTITY REPRESENTING COMMUNICATIONS OR NEWSPAPER INTERESTS

CONTINUE NAME IF NEEDED | E I NO.

CITY OF BUSINESS HQRS. (IF NEWSPAPER, CITY SERVED) | ST. | NATURE OF INTEREST: ENTER CODE | %Vot.Int. | If Fiduciary Interest Enter X → | TYPE: Enter Code →

LEGAL NAME OF BUSINESS ENTITY REPRESENTING COMMUNICATIONS OR NEWSPAPER INTERESTS

CONTINUE NAME IF NEEDED | E I NO.

CITY OF BUSINESS HQRS. (IF NEWSPAPER, CITY SERVED) | ST. | NATURE OF INTEREST: ENTER CODE | %Vot.Int. | If Fiduciary Interest Enter X → | TYPE: Enter Code →

LEGAL NAME OF BUSINESS ENTITY REPRESENTING COMMUNICATIONS OR NEWSPAPER INTERESTS

CONTINUE NAME IF NEEDED | E I NO.

CITY OF BUSINESS HQRS. (IF NEWSPAPER, CITY SERVED) | ST. | NATURE OF INTEREST: ENTER CODE | %Vot.Int. | If Fiduciary Interest Enter X → | TYPE: Enter Code →

LEGAL NAME OF BUSINESS ENTITY REPRESENTING COMMUNICATIONS OR NEWSPAPER INTERESTS

CONTINUE NAME IF NEEDED | E I NO.

CITY OF BUSINESS HQRS. (IF NEWSPAPER, CITY SERVED) | ST. | NATURE OF INTEREST: ENTER CODE | %Vot.Int. | If Fiduciary Interest Enter X → | TYPE: Enter Code →

LEGAL NAME OF BUSINESS ENTITY REPRESENTING COMMUNICATIONS OR NEWSPAPER INTERESTS

CONTINUE NAME IF NEEDED | E I NO.

CITY OF BUSINESS HQRS. (IF NEWSPAPER, CITY SERVED) | ST. | NATURE OF INTEREST: ENTER CODE | %Vot.Int. | If Fiduciary Interest Enter X → | TYPE: Enter Code →

LEGAL NAME OF BUSINESS ENTITY REPRESENTING COMMUNICATIONS OR NEWSPAPER INTERESTS

CONTINUE NAME IF NEEDED | E I NO.

CITY OF BUSINESS HQRS. (IF NEWSPAPER, CITY SERVED) | ST. | NATURE OF INTEREST: ENTER CODE | %Vot.Int. | If Fiduciary Interest Enter X → | TYPE: Enter Code →

LEGAL NAME OF BUSINESS ENTITY REPRESENTING COMMUNICATIONS OR NEWSPAPER INTERESTS

CONTINUE NAME IF NEEDED | E I NO.

CITY OF BUSINESS HQRS. (IF NEWSPAPER, CITY SERVED) | ST. | NATURE OF INTEREST: ENTER CODE | %Vot.Int. | If Fiduciary Interest Enter X → | TYPE: Enter Code →

SPECIFY BELOW THE PERSON WHO HAS COMPLETED SCHEDULE 4.

SIGNATURE	TITLE
PRINTED NAME OF PERSON SIGNING	DATE SIGNED

BILLING CODE 6712-01-C

Appendix B

Initial Regulatory Flexibility Act

I. *Reason for Action.* The proposed action will eliminate or substantially simplify the ownership reporting requirements now applicable to cable television systems and amend § 76.403 of the Rules accordingly. Such action would minimize the costs to cable operators resulting from an ownership reporting system that the Commission now believes to be unduly burdensome and possibly unnecessary.

II. *Objectives.* The proposed action will reduce the filing burdens of cable system operators. The objective is to eliminate comprehensive and mandatory filing requirements for ownership data no longer essential to the Commission's rule making or enforcement functions.

III. *Legal Basis.* The action taken by this *Notice* is authorized by sections 4 (i) and (j), 303 and 403 of the Communications Act of 1934, as amended.

IV. *Description, Potential Impact and Number of Small Entities Affected.* The proposed action will eliminate or significantly reduce the burdens of filing ownership information currently required for all cable system operators. Smaller entities will be positively affected because the burdens associated with supplying the Commission with ownership and control information will be substantially reduced.

V. *Recording, Record Keeping and other Compliance Requirements.* Elimination or simplification of Schedules 3 and 4 of FCC Form 325 will substantially reduce the filing and record keeping requirements of cable system operators. The Commission's record keeping burdens will also be reduced.

VI. *Federal Rules which Overlap, Duplicate, or Conflict with this Rule.* None.

VII. *Any Significant Alternative Minimizing Impact on Small Entities and Consistent with Stated Objectives.* None.

[FR Doc. 85-4224 Filed 3-5-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Coryphantha Robbinsorum (Cochise Pincushion Cactus) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine a plant, *Coryphantha robbinsorum* (Earle) A.D. Zimmerman (Cochise pincushion cactus), to be a threatened species. Populations of this plant are known to occur in Cochise County, Arizona, on State and private lands. There is one population in adjacent Sonora, Mexico. The U.S. populations are threatened with habitat destruction from grazing, exploration and possible drilling for oil, and over-collection. The proposal, if made final, will implement the protection provided by the Endangered Species Act of 1973, as amended, for *Coryphantha robbinsorum*. Critical habitat is not being proposed at this time. The Service seeks data and comments from interested parties on this proposal.

DATE: Comments from all interested parties must be received by May 6, 1985. Public hearing requests must be received by April 22, 1985.

ADDRESS: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Endangered Species, Albuquerque, New Mexico (see ADDRESSES above) (505/766-3972; FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Coryphantha robbinsorum was first collected by James, Jimmy, and John Robbins in 1976. The species was described by W.H. Earle in 1976 as *Cochiseia robbinsorum*. Hunt (1978 placed the taxon in *Escobaria*. A.D. Zimmerman made the combination *Coryphantha robbinsorum* in 1978.

Coryphantha robbinsorum is a small, unbranched cactus. The tubercles are tightly packed in 8 and 13 spirals in mature plants (5 and 8 spirals in smaller plants). The areoles are circular to broadly oval and filled with copious white hairs. A deep furrow runs on the upper surface of the tubercle. The radial spines number 11 to 17. Juvenile plants have 10 equal-length spines which are densely pubescent. Central spines are usually lacking. The bell-shaped flowers are pale yellow-green with a slight bronze cast. Anthers are yellow; the stigma lobes and style are green. Fruits are orange-red when ripe, but quickly turn dull red; seeds are black. Flowering occurs in March and April; fruit ripens in July and August (Zimmerman, 1978).

Coryphantha robbinsorum is historically known to occur in the Semidesert Grassland Community in Cochise County, Arizona. There is also a population in adjacent Sonora, Mexico. The population in Cochise County, Arizona if found on several isolated hills averaging about one hectar (2.47 acres), each. Within an area of 4 to 6 square miles (2.5 to 3.7 square kilometers), there are roughly 40 hectares (88.8 acres) occupied by the plants. All of the known population in Arizona is on a privately owned ranch and Arizona State lands. Plants are locally common over about half the range, and scattered to rare over the remainder. The population in Mexico was verified in late 1984.

Coryphantha robbinsorum occurs in the Semidesert Grassland at an elevation of 1280 meters (4,198 feet), on limestone hills. Dominant associated species are sandpaper bush (*Mortonia scabrella*), ocotillo (*Fouquieria splendens*), desert spoon (*Dasylirion wheeleri*), snakeweed (*Gutierrezia microcephala*), Palmer agave (*Agave palmeri*), amole (*Agave schottii*), and prickly pear (*Opuntia phaeacantha*).

The first Federal action involving this species began when *Coryphantha robbinsorum* was included as a category 2 species in a list of plants under review for threatened and endangered classification in the December 15, 1980, **Federal Register** (45 FR 82480). Category 2 includes taxa for which the Service has insufficient biological data to support a proposed rule. A status report was completed in 1982, and

Coryphantha robbinsorum was included as a category 1 species in the supplement to the 1980 notice which was published in the November 28, 1983, **Federal Register** (48 FR 53648). Category 1 includes taxa for which the Service presently has sufficient biological information to support listing as endangered or threatened.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species covered by the December 15, 1980, notice of review are considered to be under petition, and the deadline for making a finding on those species, including *Coryphantha robbinsorum*, was October 13, 1983. On October 13, 1983, and again on October 13, 1984, the petition finding was made that listing *Coryphantha robbinsorum* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made on or before October 13, 1985; this proposed rule constitutes the finding that the petitioned action is warranted and proposes to implement the action in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Part 424; see 49 FR 38900, October 1, 1984) set forth procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Coryphantha robbinsorum* (Earle) A.D. Zimmerman (Cochise pincushion cactus) are as follows:

A. *Present or threatened destruction, modification, or curtailment of its habitat or range.* Threats to the survival of *Coryphantha robbinsorum* include habitat destruction due to livestock grazing leading to trail formation, soil disturbance, and erosion channels and direct destruction of plants by trampling. One population studied by Phillips and Brian (1982) was immediately adjacent to a livestock water source; livestock trails leading to the tank and service roads were evident in topographically less rugged parts of the habitat. All of the known range in Arizona is on an active cattle ranch, including private land and State land leased for grazing. While overgrazing is not a serious problem, and the owners of the ranch are conservation-oriented and sympathetic to preservation of the cactus (Zimmerman, 1984), a change in grazing practices or ranch ownership could lead to rapid deterioration of present conditions.

A source of potentially serious concern is exploration for oil in the area. At least one deep well was drilled around 1976, and the access road passed through a *Coryphantha robbinsorum* population. Although no oil was found, additional exploration continues. The present ranch owners do not own the mineral rights to the area (Zimmerman, 1984).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Its recent recognition, small size and handsome appearance make *Coryphantha robbinsorum* a very desirable cactus for private collectors and the commercial trade. Brack (1984) noted its vulnerability to any stress, and stated that human collecting is the main threat to the species. He further stated that confidentiality of the location is the key factor in its protection. Zimmerman (1984) noted that more than half the total population is on less than 4 percent of the total habitat, some 40 hectares (88.8 acres). Because individuals of this species are so concentrated, they are potentially very vulnerable to commercial cactus exploitation. Density of plants on the remaining 96 percent of the habitat is very low. Theoretically, collectors could reduce the plants to 5 to 10 percent of their present numbers if the proper habitat were thoroughly searched. Finding the last plants, those not in the usual habitats and very sparsely distributed, would be nearly impossible. However, once reduced to widely scattered individuals in marginal habitat, the species might be unable to recover and might be vulnerable to extinction from natural events.

C. *Disease or predation.* No evidence of damage or death of plants from insects, pathogens, rodents, or other animals has been noted. Cattle do not intentionally graze plants, but inadvertent trampling and habitat damage by range cattle may be a serious threat, as described in "A," above (Phillips and Brian, 1982).

D. *The inadequacy of existing regulatory mechanisms.* The Arizona Native Plant Law (A.R.S. Chap. 7, Art. 1, Sec. 3-901 C.I.) includes all members of the cactus family on its list of protected plants. These may be collected only with a State permit and permission of the landowner. *Coryphantha robbinsorum* is not included in the more restrictive prohibited list, which allows collection only for scientific or educational purposes under permit (Sec. 3-901 B). The Native Plant Law provides no protection against habitat loss or incidential taking or destruction, the major risks to this species.

E. *Other natural or manmade factors affecting its continued existence. Coryphanta robbinsorum* has a much lower reproductive potential than most other cacti (Zimmerman, 1984), with an estimated average production of 3 fruits, with 20 seeds each, pr year per plant (Brack, 1984). According to Zimmerman (1984), absence of these cacti from nearly half the isolated patches of apparently suitable habitat may be the result of natural local extinctions. A delicate balance between local extinction and recolonization in small "islands" of suitable habitat may be a natural feature of the biology of the species. If such a balance exists, any reserve intended to provide for the survival of this species would have to encompass several adjacent patches of suitable habitat, in order to allow for local extinctions and re-colonization.

Range fires and competition with dense grasses could become threats should grazing be eliminated entirely (Zimmerman, 1984).

The low total estimated population and restriction to a specific habitat type within a very restricted geographic range intensify the effects of any adverse impacts to the species or its habitat (phillips and Brian, 1982).

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Coryphanta robbinsorum* as threatened. Threatened status seems appropriate because the population, while extremely limited in distribution and facing serious potential threats, has a sufficient number of plants to maintain self if not heavily impacted by collecting. The threats are mitigated by the remote, unpublicized location and the concern of the present landowners for preserving the cactus. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Coryphantha robbinsorum* because it restricted distribution, accessibility, and attractiveness to cactus collectors make

it vulnerable to threats from collection. The cactus may be sought as a curiosity by collectors of rare cacti if critical habitat maps are published in the Federal Register. Publication of such maps would call attention to this species, make specimens easy to locate, and make it more vulnerable to taking. Therefore, it would not be prudent to determine critical habitat for *Coryphantha robbinsorum* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out all listed species. Such actions are initiated by the Service following listing. The protection required by Federal agencies and taking prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species. This protection would now accrue to *Coryphantha robbinsorum*. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of *Coryphantha robbinsorum*. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. There would be no known impacts to Federal projects by the listing of *Coryphantha robbinsorum*, which occurs on private and State lands.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Coryphantha robbinsorum*, the trade prohibitions of section 9(a)(2) of the Act, as implemented by 50 CFR 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Section 4(d) provides for the extension of such protection to threatened plant species through regulations. This protection will apply to *Coryphantha robbinsorum* once revised regulations are promulgated. Permits for exceptions to this prohibition are available through section 10(a) and 4(d) of the Act, until revised regulations are promulgated to incorporate the 1982 amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Coryphantha robbinsorum* occurs on Arizona State and private lands. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

Coryphantha robbinsorum is listed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which requires a permit from the country of origin for export. International movement of this species is minimal. If the species is listed under the Act, the Service will review it to determine whether it should be listed on Appendix I of CITES.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of any endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Coryphantha robbinsorum;*

(2) The location of any additional populations of *Coryphantha robbinsorum* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Coryphantha robbinsorum.*

Final promulgation of the regulation on *Coryphantha robbinsorum* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Request must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Authors

The primary author of this proposed rule is Peggy Olwell, Office of Endangered Species, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3974; FTS 474–3972). The preliminary listing package was provided by Drs. Arthur Phillips, III, and Barbara G. Phillips, Museum of Northern Arizona, Flagstaff, Arizona. The editor is LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975; FTS 235–1975). Status information was provided by Dr. Barbara G. Phillips and Ms. Nancy Brian, Museum of Northern Arizona, Route 4, Box 720, Flagstaff, Arizona 86001 (602/774–5211).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under the family Cactaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*		
Cactaceae—Cactus Family:						
Coryphantha robbinsorum	Cochise pincushion cactus	U.S.A. (AZ), Mexico (Sonora)	T		NA	NA
*	*	*	*	*		

Dated: February 8, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–5383 Filed 3–5–85; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Santalum freycinetianum* Guad. var. *lanaiense* Rock (Lanai sandalwood or 'iliahi)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Santalum freycinetianum* var. *lanaiense* (lanai sandalwood or 'iliahi) to be an endangered species, under the authority contained in the Endangered Species Act of 1973, as amended. This plant is known only from two areas, one at Kanepu'u, island of Lanai, and the other comprising the submit ridge system of the island of Lanai, County of Maui, Hawaii. The 39 known individuals of this variety are vulnerable to any substantial habitat alteration and face the threats of grazing and browsing by federal game animals, rat predation on fruits, and the potential threats of taking and fire at the sites they occupy. A determination that *Santalum freycinetianum* var. *lanaiense* is an endangered species would implement the protection provided by the Endangered Species Act of 1973, as amended. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by May 6, 1985. Public hearing requests must be received by April 22, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

Santalum freycinetianum var. *lanaiense* is a small gnarled tree with leaves that vary from nearly round to twice as long as broad, and are dark green on the upper surface. The tree bears small clusters of bright red flowers. J.F. Rock discovered the sandalwood on the island of Lanai in 1910 and formally described it in 1913. Historically, it has been collected and/or reported from several widely spaced localities on the island. Sandalwood trade prior to this plant's discovery by the scientific community could have already reduced the number of trees by an unknown amount. Thirty-nine individuals of the variety are now known and are widely spaced over its range. These can be divided into two populations, one near Kanepu'u and the other near the summit of the island. Both populations occur on private lands owned by Castle and Cook, Inc.

The species is found in a range of habitats from dry lowland forests on well drained barren soils to mesic forests on shallow soils at higher elevations. The habitat has been severely degraded by grazing and browsing by livestock and exotic game animals. Much of the native vegetation has been removed, increasing wind erosion of the fragile soils. Rat predation on developing fruit has all but eliminated reproduction (Carr, 1981).

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823–27924) of its acceptance of this report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of its intention to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523–24572) to determine approximately 1,700 vascular

plant taxa to be endangered species. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, Federal Register publication. *Santalum freycinetianum* var. *lanaiense* was included in the July 1, 1975, notice and the June 16, 1976, proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, Federal Register publication (43 FR 17909–17916).

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. Subsequently, on December 10, 1979, the Service published a notice of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with other proposals that had expired (44 FR 70796–70797); this withdrawal included *Santalum freycinetianum* var. *lanaiense*. *Santalum freycinetianum* var. *lanaiense* was included in the December 15, 1980 (45 FR 82480–82569) notice of review of plant taxa as a candidate for listing. On February 15, 1983, the Service published a notice (48 FR 6752) of its prior petition finding that sufficient information exists to indicate that listing of this taxon may be warranted in accordance with section 4(b)(3)(A) of the Act. On October 13, 1983, and again on October 13, 1984, the petition finding was made that listing this taxon was warranted, but precluded by other pending listing actions in accordance with section 4(b)(3)(B)(iii) of the Act; notification of the 1983 finding appeared in the Federal Register of January 20, 1984 (49 FR 2485). Such a finding requires recycling of the petition pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made; consequently the Service finds that the petitioned action is warranted and hereby publishes a proposed rule for its implementation in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Part 424; see 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Santalum freycinetianum* Gaud. var. *lanaiense* Rock (Lanai sandalwood) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Only 39 individuals are presently known to be extant (Peter Connally, State Conservation Officer, Lanai City, pers. comm.). The recent decline in numbers of the species is largely due to loss of habitat. Natural vegetation has been eliminated over vast areas of Lanai and native dryland forests have been severely degraded (Spence and Montgomery, 1976). Agricultural development has removed large tracts of native vegetation, first for pasture and later for pineapple production. Cattle, sheep and axis deer, which had been introduced into this area, have removed and trampled vegetation, contributing to severe erosion of soils.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Extensive re;moval of Hawaiian sandalwoods for trade occurred from 1790 to 1820. The wood is valued for its fragrance and beauty and was used in making incense and in decorative woodworking. Although the species is no longer common enough for profitable commercial use, it may be threatened by individuals seeking the wood.

C. *Disease or predation.* The Lana'i sandalwood is grazed by introduced animals, including axis deer maintained for hunting, as demonstrated by the high browse line on the few remaining trees. Fruit predation by rats has resulted in virtual lack of reproduction in this taxon.

D. *The inadequacy of existing regulatory mechanisms.* No regulatory mechanisms exist at the present time to protect this taxon. Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies.

E. *Other natural or manmade factors affecting its continued existence.* Only one sapling has recently been observed, indicating that reproduction of *Santalum freycinetianum* var. *lanaiense* is almost non-existent. Several factors may contribute including reduction of the breeding population and rodent damage to fruit. The low numbers of individuals remaining has greatly reduced the gene pool for the species and may threaten its adaptive potential.

The Service has carefully assessed the best scientific information available, regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Santalum freycinetianum* var. *lanaiense* as endangered. The species is proposed for endangered status due to the imminent threat of extinction. This choice reflects the strong likelihood that without the institution of appropriate conservation measures, the species will become extinct. The conditions leading to a proposal without critical habitat designation are discussed in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor "B" in the "Summary of Factors Affecting the Species" sandalwood is used for incense and decorative wood products and in the past this taxon was extensively harvested. Taking is an activity difficult to enforce against and not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. Publication of critical habitat descriptions would make this species more vulnerable to collection. Therefore, it would not be prudent to determine critical habitat for *Santalum freycinetianum* var. *lanaiense* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requriements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requries Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its

critical habitat, if any is being proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1984). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continue existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. *Santalum freycinetianum* var. *lanaiense* is found on private land. No Federal action currently exists or is anticipated with regard to this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63, set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Santalum freycinetianum* var. *lanaiense*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 would apply. These prohibitions, in part, would make it illegal for any persons subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade in this species has been known since 1820. It is anticipated that few trade points involving *Santalum freycinetianum* var. *lanaiense* would be requested.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The prohibition would apply to *Santalum freycinetianum* var. *lanaiense* if it should be found on Federal land or if any of the land it is now found on should pass into Federal jurisdiction. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. As all known plants occur on private lands, it is anticipated that few, if any, taking permits will be requested for *Santalum freycinetianum* var. *lanaiense*. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant date concerning any threat (or lack thereof) to *Santalum freycinetianum* var. *lanaiense*;

(2) The location of any additional populations of *Santalum freycinetianum* var. *lanaiense* and the reason why any habitat of this taxon should or should not be designated as critical habitat;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Santalum freycinetianum* var. *lanaiense*.

Final promulgation of the regulation on *Santalum freycinetianum* var. *lanaiense* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Special Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Portland, Oregon 97232.

National Enviromental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Carr, G.D. 1981. Status Report on *Santalum freycinetianum* var. *lanaiense*. Research Coporation of the University of Hawaii, under contract 14–16–001–79090 to the U.S. Fish and Wildlife Service.

Spence, G.E., and S. Montgomery. 1976. Ecology of the dryland forest at Kanepu'u, Island of Lana'i. *Hawaiian Botanical Society Newsletter* 15:62–80.

Author

The primary author of this proposed rule is Carol A. Wilson, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Santalaceae, to the List of Endangered and Threatened Plants:

§17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• • • •		•	•			•
SANTALACEAE—Sandalwood family						
Santalum freycinetianum var. *lanaiense*.	Lanai sandalwood (Lanai 'iliahi).	U.S.A. (HI)	E		NA	NA
• • • •		•	•			•

Dated: February 14, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-5374 Filed 3-5-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Fragrant Prickly-Apply as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine the fragrant prickly-apple (*Cereus eriophorus* var. *fragrans* (Small) L. Benson) to be an endangered species under provisions of the Endangered Species Act of 1973, as amended. Critical habitat is not being proposed. This cactus occurs only within a limited area of St. Lucie County, Florida, where it is subject to threats from habitat destruction and the potential for collecting for horiticultural purposes. The proposal seeks to provide protection to this plant; public comments, as well as additional biological information concerning its status and threats, are hereby solicited.

DATES: Comments from all interested parties must be received by May 6, 1985. Public hearing requests must be received by April 22, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the address above.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Bentzien (904/791-2580; FTS 8/946-2580); see ADDRESSES section above.

SUPPLEMENTARY INFORMATION:

Background

Cereus eriophorus var. *fragrans* (fragrant prickly-apple) is a columnar species of the cactus family, Cactaceae, which is not only known from St. Lucie County, Florida (Austin, 1984). It has cane-like stems which measure 1–5 m. long, and sprawl over surrounding vegetation as they become larger. The cylindrical succulent stems have numerous spines and measure 2.5–5 cm. in diameter. The nocturnal flowers are scented, white or pink in color and measure 7.5–10 cm. in diameter.

The orange-red fruits measure 5–6 cm. long. This cactus is endemic to the east coast of Florida and occurs in coastal hammock vegetation types. These native vegetation types have largely disappeared from coastal Florida due to increasing urbanization which has taken place in recent years.

The fragrant prickly-apple was collected first by John K. Small in 1917 on sand dunes south of Ft. Pierce, Florida, and described as *Harrisia fragrans*. Subsequently, the cactus has been reported from a number of additional localities along the Florida east coast, but as Austin (1984) points out, this is the result of confusion in the botanical literature between *C. eriophorus* var. *fragrans* and *C. gracilis*. Benson (1982) in his recently published *The Cacti of the U.S. and Canada* describes the distribution of *Cereus eriophorus* var. *fragrans* as the Florida Atlantic coast and two sites in Monroe County, Florida. Florida botanists have recently searched the two Monroe County sites but no *Cereus eriophorus* was located and it is speculated that earlier accounts of *Cereus eriophorus* at these sites may have been due to misidentification of *Cereus gracilis*. Based on recent field work by Florida botanists the only population known to exist today is the St. Lucie county population. *Cereus eriophorus* var. *fragrans* is only positively known historically from two populations, the St. Lucie locality and a since extirpated population near Malabar.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act), and of its intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Cereus eriophorus* var. *fragrans* was included in the Smithsonian's report, the 1975 notice of review, and the 1976 proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication which also determined 13 plant species to be endangered or threatened species (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice withdrawing the June 16, 1976 proposal along with four other proposals which had expired.

The July 1, 1975, notice of review was replaced on December 15, 1980, by the Service's publication in the **Federal Register** (45 FR 82479) of a new notice of review for plants which included *Cereus eriophorus* var. *fragrans*. No comments on this taxon have been received in response to the 1980 plant notice. On February 15, 1983, the Service published a notice in the **Federal Register** (48 FR 6752) of its prior petition finding that sufficient information existed to show that the listing of this taxon may be warranted, in accord with section 4(b)(3)(A) of the Act as amended in 1982.

On October 13, 1983, the petition finding was made that listing *Cereus eriophorus* var. *fragrans* was warranted but precluded by other listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of the finding was published in the January 20, 1984, **Federal Register** (49 FR 2485). Such a

finding requires recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made; we find that the petitioned action is warranted and hereby publish the proposed rule to implement the action in accord with section 4(b)(3)(B)(ii) of the Act.

In August 1984, personnel from the Service's Vero Beach Office conducted a survey of the only presently known sites for this species. The field notes of Dr. Daniel Austin of Florida Atlantic University were used to compare the distribution as of 1980 with the present distribution (also see Austin *et al.*, 1980). Plants were observed at two of the three sites reported by Austin; an additional locality was also discovered. All three localities were within approximately 300 meters and thus probably constitute one biological population. Only 14 plants were located.

The area where the three groups of cactus were found is a high sandy ridge approximately 12 acres in area. All plants are on private land, although in proximity to lands owned by the Florida Department of Natural Resources. There are no roads into the area and thus access is somewhat limited; however there is evidence that off-road vehicles (ORVs) use the area.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisons of the Act (codified at 50 CFR Part 424; revised at 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in that Section. These factors and their application to *Cereus eriophorus* var. *fragrans* (Small) L. Benson, fragrant prickly-apple, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Cereus eriophorus* var. *fragrans* is known from only 14 plants in an extremely limited amount of habitat in east-central Florida. While access to the area is somewhat restricted, the Services' August 1984 survey showed tracks from off-road vehicles within 50 feet of the cactus at one locality. An additional locality was only 12 feet from a recently graded railroad right-of-way, and thus could easily be affected by routine maintenance. The cactus is known to have been extirpated from its other known poulation near Malabar, and one of Austin's localities from 1980 at the Port St. Lucie population could not be located in 1984. Because of the low number of plants and their clumped distribution at the Port St. Lucie population, this cactus is thus very susceptible to inadvertent destruction or modification of its habitat.

B. *Overutilization for commercial recreational, scientific, or educational purposes.* This species is not known to be in commerical trade. However, many species of cacti are commerically exploited, and it is likely that, because of rarity and the attractive nature of this species, it could be subject to collection if the exact location of the remaining plants became known. Near one of the three localities of the Port St. Lucie population, there is an area that has been extensively dug up by shovel. While there is no proof, it is at least a possibility that some individual plants could have been removed.

C. *Disease and predation.* Not known to be a problem with this species.

D. *The inadequacy of existing regulatory mechanisms. Cereus eriophorus* var. *fragrans* is offered protection under Florida Law, Chapter 65–426, section 865–06, which includes prohibitions concerning taking, transport, and the sale of plants listed under this law. *Cereus eriophorus* var. *fragrans* is included as threatened under the general category, Cacti. However, there is no habitat protection under Florida statutes, such as that provided under section 7 of the Act.

All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. This Convention regulates export of this plant, but does not regulate interstate trade in the cactus, or habitat destruction. No other Federal protective laws currently apply to this species. The Endangered Species Act would offer additional protection for the taxon.

E. *Other natural or manmade factors affecting its continued existence.* Restriction to specialized habitats and small geographically limited ranges tend to intensify any adverse effects upon the populations or the habitats of any rare plant. This is certainly true for *Cereus eriophorus* var. fragrans and is intensified by the loss of habitat which has already taken place.

The small remaining population of this cactus is also threatened by natural factors in the form of powerful storms. Small (1917) describes the destruction and damage of similar species due to windthrow after a hurricane passed over the Keys. The growth habit of *Cereus* makes it particularly vulnerable to this natural phenomenon. As more of the natural vegetation of coastal Florida is destroyed, the buffering against storms by nearby vegetation will decrease and the vulnerability of the remaining cacti will increase.

The careful assessment of the best scientific and commercial information available, as well as the best assessment of the past, present, and future threats faced by this taxon, were considered in determining the preferred action of this rule. Based on this evaluation, the preferred action is to list *Cereus eriophorus* var. *fragrans* as an endangered species. With only 14 individuals known, endangered status, seems an accurate assessment of the taxon's condition. Critical habitat is currently not prudent to propose for this species because doing so would increase risk to it, as detailed above under factor B. The attractive nature of this cactus coupled with rarity and very limited regulations against take make the species vulnerable to collecting, especially if maps were published in the **Federal Register** pinpointing exact locations.

Critical Habitat

The Endangered Species Act in section 4(a)(3), as amended, requires that to the maximum extent prudent and determinable, the secretary must designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). In the present case, the Service finds that designation of critical habitat is not prudent because no benefit to the taxon can be identified that would outweigh the potential threat of collection, which might be exacerbated by the required publication of a detailed critical habitat map.

The Service knows the land ownership of all areas where this species is found. Landowners will be contacted so that the Service may develop appropriate conservation measures to ensure the survival of this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and can result in conservation actions by Federal, State, and private agencies,

groups, and individuals. The Endangered Species Act provides the possibility for land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required by Federal agencies and applicable prohibitions are discussed in part below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Provisions for interagency cooperation implementing this section are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any of their actions that are likely to jeopardize the continued existence of a proposed species. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund or carry out are not likely to jeopardize the continued existence of the species or adversely modify its critical habitat. If an action may affect such a species, the Federal agency must enter into a formal consultation with the Service.

At present, all plants of the Port St. Lucie population of the fragrant prickly-apple are known only from private lands, and no Federal agencies are known to have involvement. If Federal activities are identified in the future that may affect *Cereus eriophorus* var. *fragrans*, consultation could be initiated as appropriate.

The Act, and its implementing regulations published in the June 24, 1977, **Federal Register** (42 FR 32373), set forth a series of general trade prohibitions and exceptions which apply to all endangered plant species. The regulations pertaining to endangered plants are found at §§ 17.61, 17.62, and 17.63 of 50 CFR and are summarized below. With respect to *Cereus eriophorus* var. *fragrans* all prohibitions of section 9(a)(2) of the Act, as implemented by § 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions could apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No such trade in *Cereus eriophorus* var. *fragrans* is known. It is not anticipated that many trade permits whould ever be issued since this plant is very rare in the wild.

Section 9 (a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession endangered plant species from areas under Federal jurisdiction. This prohibition would apply to this cactus. Permits for exceptions to this prohibition for scientific purposes or to enhance the propagation or survival of the species are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and these will be finalized following public comment. *Cereus eriophorus* var. *fragrans* does not occur on Federal lands; it is anticipated that few collecting permits for the fragrant prickly-apple will ever be requested.

In March 1973, all members of the family Cactaceae were included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The effect of this listing is that an export permit is required before international shipment may occur. Such shipment is strictly regulated by CITES member nations to prevent it from being detrimental to the survival of the species. If plants are certified as artificially propagated, international shipment requires export documents under CITES, and commercial shipments may be allowed.

Requests for copies of the regulations on plants, and inquiries regarding them, may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any appropriate party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Cereus eriophorus* var. *fragrans*;

(2) The location of any additional populations and the reasons why any habitat of this taxon should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this taxon; and

(4) Current or planned activities in the subject area and their possible impacts on the cactus.

Final promulgation of the regulations on *Cereus eriophorus* var. *fragrans* will take into consideration any comments and additional information received by the Service and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Austin, D. F. 1984. Resume of the Florida taxa of *Cereus* (Cactaceae). Florida Scientist 47(1):68–72.

Austin, D. F., C. E. Nauman, and B. E. Tatje. 1980. Endangered and threatened plant species survey in southern Florida and the National Key Deer and Great White Heron National Wildlife Refuges, Monroe County, Florida. Final report on contract 14–16–004–78–105 to U.S. Fish and Wildlife Service

Benson, L. 1982. The Cacti of the U.S. and Canada. Stanford University Press, Stanford, California

Small, J. K. 1917. The tree cactus of the Florida Keys. J. N.Y. Bot. Garden 18:199–203.

Author

The primary author of this proposed rule is Dr. C. Kenneth Dodd, Jr., Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975; FTS 8–235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under the Family Cactaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
CACTACEAE-Cactus family						
*	*	*	*	*	*	*
Cereus eriophorus var. *fragrans*	Fragrant prickly-apple	U.S.A. (FL)	E		NA	NA
*	*	*	*	*	*	*

Dated: February 13, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–5384 Filed 3–5–85; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Argyroxiphium sandwicense var. sandwicense ('ahinahina or Mauna Kea silversword)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Argyroxiphium sandwicense* var. *sandwicense* ('ahinahina or Mauna Kea silversword) to be an endangered species, under the authority contained in the Endangered Species Act of 1973, as amended. This plant is known only from one small population of 35 plants located on the east slope of Mauna Kea on the island of Hawaii, State of Hawaii. The lone population of this species is vulnerable to any substantial habitat alteration and faces the present threat of elimination through grazing and trampling by feral animals and the potential threat of damage by insect larvae. A determination that *Argyroxiphium sandwicense* var. *sandwicense* is an endangered species would implement the protection provided by the Endangered Species Act of 1973, as amended. The Service seeks data and comments from the public on this proposal and is requesting further information on the species' status.

DATES: Comments from all interested parties must be received by May 6, 1985. Public hearing requests must be received by April 22, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to Regional Director, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

This taxon was first collected in 1825 by James Macrae and was described in 1836 by De Candolle. When Macrae visited Mauna Kea, several populations of this silversword were extant on the upper slopes of the volcano and the species presumably numbered thousands of individuals. The only known collections of Mauna Kea silversword after 1916 are from the Wailuku River population. In 1916, the taxon was abundant at this site. However, today only about 35 individuals remain.

There has been some disagreement concerning the proper taxonomic disposition of this taxon. *Argyroxiphium sandwicense* has sometimes been interpreted broadly to include plants of both the islands of Maui and Hawaii, without any recognition of infraspecific taxa. Alternatively, the Maui plants have been segregated at the specific level as *A. macrocephalum*. Recent research supports the acceptance of an inclusive concept of the species, with one variety (var. *sandwicense*) confined to the island of Hawaii and one (var. *macrocephalum*) native to Maui. Both taxa are known as 'ahinahina in Hawaiian.

The Hawaii taxon historically occupied the alpine slopes of the Mauna Kea volcanic dome, mostly above the tree line and including barren alpine desert areas above other vegetation. The only known extant population is found in the upper limits of *Sophora* woodland and the alpine scrub above the tree line along the Wailuku River drainage. The Wailuku River population is found on State lands in the Mauna Kea Forest Reserve and on Hawaiian Home Lands.

There are also historic reports of silverswords from Hualalai and Mauna Loa on the island of Hawaii. The plants on Hualalai may have been *A. sandwicense* var. *sandwicense*. No specimens are known from this population, which is no longer believed to be extant. It may have represented an undescribed and now-extinct taxon. Reports from Mauna Loa are believed to have been based on the related *A. kauense*, which is endemic to Mauna Loa.

Argyroxiphium sandwicense var. *sandwicense* produces a globe-shaped basal rosette of dagger-shaped leaves up to 1 foot long and usually less than ½ inch wide, the leaves are cloaked with silvery hairs. These rosetts grow for 5 to 15 years, reaching diameters of 2 feet or more before producing a rather narrow flowering stalk has numerous branches, each bearing a flowering head about 1 inch in diameter with pinkish ray flowers. After flowering, plants with a single rosette die. Individual rosettes of multiple-rosette plants also die after flowering.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species. General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

Argyroxiphium macrocephalum was included in the June 16, 1976, proposal. It is apparent that this was mistaken, and that the intent was to indicate *A. sandwicense* in an inclusive sense.

comprising both the Maui and Hawaii taxa.

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A 1-year grace period was given to those proposals already more that 2 years old. Subsequently, on December 10, 1979, the Service published a notice of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with other proposals that had expired (44 FR 70796); this notice of withdrawal included *Argyroxiphium macrocephalum*.

Argyroxiphium sandwicense was included in the December 15, 1980 (45 FR 82479), updated review notice as a candidate species. *Argyroxiphium macrocephalum* was included in that notice as a tax on no longer under review because it was not considered to be a separate entity.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Part 424; see 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Argyroxiphium sandwicense* DC. var. *sandwicense* ('ahinahina or Mauna Kea silversword) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The species historically was abundant on Mauna Kea from the 8,500 foot level to the 12,000 foot level. The activity of feral animals (goats, cattle, sheep, pigs, and horses) that were first introduced just before the 19th century has eliminated the silversword from the fragile upper zones of its former range and has reduced the species throughout the range to one known population of about 35 individuals. Feral animal populations have vastly altered and degraded the vegetation of Mauna Kea in general (Warner 1960). Direct results of animal activity have been mechanical damage of aerial and subterranean plant parts, consumption of plant material and dispersal of exotic plant species. Secondary effects include wind and water erosion of the thin soil mantle after it has been stripped of stabililzing vegetation.

A portion of the only known extant population has been fenced by the State of Hawaii; however, the exclosure has not been effective against them more recently introduced mouflon sheep, which are currently threatening the species' survival by grazing and browsing activities.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* In the past, unnecessarily large quantities of fruit have been removed from the extant population for propagation. The species is of ornamental interest and is threatened by collection for horticultural purposes. Entire flowering stalks have often been removed by individuals hoping to propagate this attractive species from seed. Propagation of silverswords is not easy as few flowers produce viable seed and seed germination is low (Kobayashi 1974).

C. *Disease or predation* The closely related Haleakala silversword is damaged by the predacious larvae of insects such as *Rhynchephestia rhabdotis* and *Tephritis cratericola*, which were found to have damaged a mean of 60 percent of the seeds produced. An insect thought to be the latter or a similar insect has been observed on the Mauna Kea silversword (Carr 1982). Plants are severely grazed by introduced herbivores even within the exclosure area.

D. *The inadequacy of existing regulatory mechanisms.* No regulatory mechanisms exist at the present time. Federal listing would automatically invoke listing under Hawaiian State law, which prohibits taking and encourages conservation by State government agencies.

E. *Other natural or manmade factors affecting its continued existence.* The extremely small size of the only known remaining population of the species threatens its reproductive capacity and has resulted in a reduced gene pool that may threaten its adaptive capacity. The species grows as a rosette for between 5 and 15 years before flowering. This low reproductive potential has been severely affected by reduction of the population size. Very few individuals produce a fruit crop in any one year. For 2 or more years no plants may bloom and some years 4 or 5 plants may bloom.

Concurrent with population decline in insect-pollinated species such as the silversword is often a loss of co-evolved pollinator species. The drastic alteration of the upper forest zone on Mauna Kea in general (Warner 1960) may have resulted in a parallel reduction of potential pollinators.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by the species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Argyroxiphium sandwicense* var. *sandwicense* as endangered. This designation reflects the strong likelihood that, without the institution of appropriate conservation measures, the species is likely to become extinct throughout its range. A discussion of why critical habitat is not proposed to be designated is included in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species," *Argyroxiphium sandwicense* var. *sandwicense* is threatened by taking, an activity difficult to control and not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from areas under Federal jurisdiction.

The species is known only from lands owned by the State of Hawaii and from Hawaiian Home Lands. The State is aware of the existence of the species and has taken preliminary steps for protection. Upon Federal listing the silversword would be placed upon the Hawaii State list, which prohibits taking and encourages conservation by State governmental agencies. Management for the survival and recovery of the species can be coordinated between the U.S. Fish and Wildlife Service and the State of Hawaii. No additional benefit would accrue to *Argyroxiphium sandwicense* var. *sandwicense* through critical habitat designation, and publication of critical habitat descriptions could make this species even more vulnerable.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State,

and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section (7)(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Currently, no activities to be authorized, funded, or carried out by Federal agencies are known to exist that would affect *Argyroxiphium sandwicense* var. *sandwicense*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Argyroxiphium sandwicense* var. *sandwicense*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for safe this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade in this species is known. It is anticipated that few trade permits involving this species would be requested.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition would apply to *Argyroximphium sandwicense* var. *sandwicense* if it were found to occur on land under Federal jurisdiction. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. The only known extant propulation occurs on State of Hawaii lands. It is anticipated that few if any taking permits will be requested for the species. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903 or FTS 235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Argyroxiphium sandwicense var. Sandwicense;*

(2) The location of any additional populations of this taxon;

(3) Additional information concerning the range and distribution of this species or indicating any area that should or should not be designated as critical habitat; and

(4) Current or planned acitives in the subject area and their possible impacts on this taxon.

Final promulgation of the regulation on *Argyroxiphium sandwicense* var. *sandwicense* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Portland, Oregon 97232.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Carr, G. D. 1982. Status report on *Argyroxiphium sandwicense* var. *sandwicense*. Research Corporation of the University of Hawaii, under contract 14–16–001–79096 to the U.S. Fish and Wildlife Service. 41 pp.

Kobayashi, H. K. 1974. Preliminary investigations on insects affecting the reproductive stage of the silversword (*Argyroxiphium sandwicense* DC.) Compositae, Haleakala Crater, Maui, Hawaii. Proc. Haw. Ent. Soc. 21:397–402.

Warner, R. E. 1960. A forest dies on Mauna Kea. Pacific Discovery 13:6–14.

Author

The primary author of this proposed rule is Carol A. Wilson, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants, (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under Asteraceae, to the List of Endangered and Threatened Plants.

§ 17.12 **Endangered and threatend plants.** (h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—aster family:						
Argyroxiphium sandwicense var. *sandwicense.*	'ahinahina (Mauna Kea silversword).	U.S.A. (HI)	E		NA	NA

Dated: February 21, 1985.

Susan E. Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-5373 Filed 3-5-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Hymenoxys Texana To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The service proposes to determine a plant, *Hymenoxys texana*, to be an endangered species. This plant occurs on both public and private land is Harris County, Texas. The three known populations are currently being threatened by housing and road development of the area. There is no current management plan for *Hymenoxys texana*, nor is there State or Federal protection. A final determination of *Hymenoxys texana* to be an endangered species will implement the protection provided by the Endangered Species Act of 1973, as amended. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by May 6, 1985. Public hearing requests must be received by April 22, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 421 Gold Avenue, SW., Room 407, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Botanist, Endangered Species Staff, Albuquerque, New Mexico (see **ADDRESSES** above) (505-766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Hymenoxys texana was collected by F.W. Thurow in 1889 and 1890 in the vicinity of Hockley, Texas. Coulter and Rose (1891) described this new species as *Actinella texana*. Greene (1898) transferred this species to the genus *Picradenia*. Cockerell (1904) later transferred this species to the genus *Hymenoxys*. An additional specimen was also collected by Palmer around 1879–1880 from southwest Texas, between the Nueces and Frio Rivers on the Old San Antonio Road. However, recent field research has been unsuccessful in relocating this population (Mahler pers. comm. 1984). Three current populations of *Hymenoxys texana* have been located near Houston in Harris County, Texas (Mahler 1982). Two of the existing populations are located on private property in proximity to a current housing development area. However, one small population is located on public land adjacent to a county road right-of-way (Harris County, Department of Right-of-way pers. comm., 1984).

Hymenoxys texana is a member of the aster family. It is a small single stemmed or branching annual reaching up to 10 centimeters (cm) (3.9 inches) tall. The basal leaves are 4 to 5 millimeters (mm) (.16–.20 inches) broad with entire to toothed margins. Upper stem leaves become linear with entire margins. The flower heads are 4 to 6 mm (.16–.23 inch) tall, yellowish, with phyllaries partially indurate and keeled, in two series which are united basally. Flowering usually occurs in late March to early April. The three known populations of *Hymenoxys texana* occur in the northern part of the Gulf Coastal Prairie. They are found in poorly-drained swales or depressions in open grasslands with few other plants. The surrounding prairie vegetation is composed of plants measuring about 10 cm (3.9 inches) tall, with none being over 15 cm (5.9 inches) tall. These largely barren areas are sparsely vegetated with scattered individuals of an umbellifer (*Limnosciadium pumilum*) and a blue-green algae (*Nostoc* sp.) on the soil. The population biology and ecology of *Hymenoxys texana* are relatively unknown.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on December 15, 1974. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) of the Act, now incorporated in section 4(b)(3)(A), and of its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. *Hymenoxys texana* was included in the 1974 Smithsonian report, the notice of July 1, 1975, and the proposal of June 16, 1976.

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn, although a 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of the withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired. A revised notice for plants was published in the December 15, 1980, **Federal Register** (45 FR 82480) and included *Hymenoxys texana* as a category 1 species. Category 1 comprises taxa for which the Service has substantial information on biological vulnerability and threats to support the appropriateness of proposing to list the taxa as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Hymenoxys texana*, was October 13, 1983. On October 13, 1983, and again on October 13, 1984, the petition finding was made that listing *Hymenoxys texana* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notice of the 1983 finding was published on January 20, 1984 (49 FR 2485). Such a finding

requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made; this proposed rule constitutes the finding that the petitioned action is warranted, and proposes to implement the action, in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Part 424; see 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hymenoxys texana* (Coulter and Rose) Cockerell are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The main threat to *Hymenoxys texana* is habitat destruction. The three known populations occupy a total area of approximately 490 square meters (1600 square feet) and occupy in proximity to either a housing development or a road. They are especially vulnerable to accidential disturbance. A portion of one population has already been destroyed by the enlarging and paving of a county road. It is the policy of Harris County to update, maintain, and improve the county roads as needed (Harris County Services, pers. comm., 1984). Therefore, without proper protection planning, this small population is subject to possible elimination if any repairs, maintenance, or updating takes place in the near future. If current housing construction increases, as anticipated, along with road improvements, the few remaining populations could be severely damaged, or even destroyed.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Commercial trade in this plant is not known to exist, but potential exists for uncontrolled collecting and vandalism. The populations on private land would not be protected from taking by the Endangered Species Act, and all three populations are easily accessible.

C. *Disease or predation.* There is no known threat to this plant from disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* Currently, *Hymenoxys texana* is not protected by either Federal or State laws or regulations.

E. *Other natural or manmade factors affecting its continued existence.* The limited distribution of approximately 490 square meters (1600 square feet) in Harris County and small number of known populations (3) make the existence of this species particularly precarious. It is especially precarious when future housing and road development, which could result in a significant loss in the numbers of individuals, are considered. Because of the low numbers of plants, there is a small gene pool, resulting in a possibly reduced ability of the species to tolerate stress.

The Service has carefully assessed the best scientific & commercial information available regarding the past, present, and future threats faced by this species in determining to proposed this rule. Based on this evaluation, the preferred action is to list *Hymenoxys texana* as endangered without critical habitat. Endangered status seems appropriate because portions of one population have been destroyed by the enlarging and paving of a county road, while the other two populations remain imminently threatened by a nearby housing development. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time.

The Act does not protect endangered plants from taking or vandalism on lands that are not under Federal jurisdiction. The habitat of *Hymenoxys texana* is located along a highway and is easily accessible. Listing of a species, with attendant publicity, highlights its rarity and attractiveness to collectors. Determining critical habitat for this species would make it more vulnerable to taking by collectors and to vandalism. Therefore, it would not be prudent to determine critical habitat for *Hymenoxys texana* at this time. The location of populations of this plant could be brought to the attention of Harris County and other involved parties through regular communication channels. No net benefit would accrue from designating critical habitat for this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of its critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. However, *Hymenoxys texana* is not known to occur on Federal lands, and no Federal involvement with this species is currently known or expected.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Hymenoxys texana*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell

or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and state conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition would apply to *Hymenoxys texana*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Hymenoxys texana* occurs on private land and, at present, no populations are known to exist on Federal land. It is expected that few collecting permits for the species would ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903 or FTS 235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commerical trade, or other relevant data concerning any threat (or lack thereof) to *Hymenoxys texana*;

(2) The location of any additional populations of *Hymenoxys texana* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Hymenoxys texana*.

Final promulgation of the regulation on *Hymenoxys texana* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Cockerell, T.D.A. 1904. The North American species of *Hymenoxys*. Bulletin of Torrey Botanical Club 31(9):461–509.

Coulter, J.M., and J.N. Rose. 1891. *Actinella (Hymenoxys) texana*, n. sp. Botanical Gazette 16:27–28.

Greene, E.L. 1898. Studies in the Compositae VII. Pittonia 3:264–298.

Mahler, W.F. 1982. Status report on *Hymenoxys texana*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 10 pp.

Author

The primary author of this proposed rule is Peggy Olwell, Endangered Species Staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972). The preliminary listing package was provided by Catherine Coats, Herbarium, Southern Methodist University, Dallas, Texas 75275. The editor is LaVerne Smith, Office of Endangered Species, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975). Status information was provided by Dr. W.F. Mahler, Herbarium, Southern Methodist University, Dallas, Texas 75275 (214/692–2257).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*)

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family						
*	*	*	*	*		*
Hymenoxys texana	No common name	U.S.A. (TX)	E		NA	NA
*	*	*	*	*		*

Dated: February 8, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–5382 Filed 3–5–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 44
Wednesday, March 6, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement Regarding the Management of Historic Properties That Will Be Affected by the U.S. Army Corps of Engineers Red River Waterway Projects

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), with the U.S. Army, Corps of Engineers, Vicksburg District and the State Historic Preservation Officers of Arkansas and Louisiana providing for the treatment, protection and management of historic properties that will be affected by the Corps of Engineers Red River Waterway, Mississippi River to Shreveport, Red River Emergency Bank Protection, and Red River Levees and Bank Stabilization Below Denison Dam projects. The proposed Programmatic Memorandum of Agreement will establish mechanisms by which historic and cultural properties will be identified, evaluated, treated or protected in order to meet the requirements of section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

Comments Due: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Executive Director, Advisory Council on Historic Preservation, Western Division of Project Review, 730 Simms Street, Room 450, Golden, Colorado 80401, telephone (303) 236–2682.

Dated: February 28, 1985.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 85–5347 Filed 3–5–85; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forms Under Review by Office of Management and Budget

March 1, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Office, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Agricultural Marketing Service
Limes Grown in Florida under Marketing Order No. 911
Every four years
Farms; Businesses or other for-profit; Small businesses or organizations; 648 responses; 313 hours; not applicable under 3504(h)
William J. Doyle (202) 447–5975

• Foreign Agricultural Service
Certificate of Quota Eligibility
On occasion
Businesses or other for-profit; 600 responses; 100 hours; not applicable under 3504(h)
Carol Brick-Turin (202) 447–6939

Revision

• Agricultural Marketing Service
Marketing Order 991—Hops of Domestic Production
Annually
Farms; Businesses or other for-profit; 3,006 responses; 220 hours; not applicable under 3504(h)
Robert R. Boersma (202) 477–2256

• Economic Research Service
Cost of producing sugarcane and processing sugarcane and sugarbeets
On occasion
Farms; Small businesses or organizations; 187 responses; 187 hours; not applicable under 3504(h)
Ken Baum (202) 447–4190.

Reinstatement

• Agricultural Stabilization and Conservation Service
Payer's Request for Identification Numbers
CCC–343
On occasion
Individuals or households; 3,000 responses; 1,500 hours; not applicable under 3504(h)
Karl V. Choice (202) 447–4541.

• Forest Service
Timber Sale Bid Forms
FS 2400–14 and FS 2400–42a
On occasion
Business or other for-profit; Small businesses or organizations; 30,000 responses; 5,000 hours; not applicable under 3504(h)
Lloyd Olson (202) 475–3758.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 85–5398 Filed 3–5–85; 8:45 am]

BILLING CODE 3410–01–M

Food and Nutrition Service

Level of Donated-Food Assistance or Cash in Lieu Thereof for Nutrition Programs for the Elderly; Fiscal Year 1985

Correction

In FR Doc. 85-4272 beginning on page 7203 in the issue of Thursday, February 21, 1985, make the following corrections:

1. On page 7203, third column, second complete paragraph, last line, "to" should read "of".

2. On page 7204, first column, first paragraph, twelfth line, "a" should read "at".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Privacy Act of 1974

AGENCY: Office of the Secretary, Commerce.

ACTION: Revision of systems of records to provide for disclosures to debt collection agencies.

SUMMARY: This notice identifies the Department of Commerce systems of records subject to the Privacy Act which will be used in accordance with the Debt Collection Act of 1982 (Pub. L. 97-365) to provide information to private collection contractors retained to collect delinquent Government debts. The information will be furnished based on the revised routine uses for nine systems of records which contain financial data. The systems of records involved are: DEPT-1, DEPT-2, DEPT-9, DEPT-12, DEPT-13, DEPT-16, DEPT-17, DEPT-18, and NTIS-1.

Except for the addition of the provision for disclosures to debt collection agencies, all other changes being published are editorial in nature, and reflect organizational changes and other minor administrative revisions which have occurred since the publication of the notices in the Federal Register on December 31, 1981 (46 FR 63498). The nine revised systems notices are published in their entirety below.

EFFECTIVE DATE: The proposed new routine uses will become effective, without further notice, 30 days from the date of this publication, unless comments dictate otherwise.

ADDRESS: Written comments on the poposed new routine use may be sent or delivered to: Information Management Division, Attention: Mrs. Geraldine LeBoo, Office of Information Resources Management, Department of Commerce, Room 6622, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Mrs. Geraldine LeBoo, Information Management Division, (202)-377-4217.

Dated: February 28, 1985.

Marilyn S. McLennan

Chief, Information Management Division, Office of Information Resources Management.

COMMERCE/DEPT-1

SYSTEM NAME:

Attendance, Leave, and Payroll Records of Employees and Certain Other Persons—COMMERCE/DEPT-1.

SYSTEM LOCATION:

For Employees of Departmental Offices, BEA Census, EDA, ITA, PTO, MBDA, NOAA, NTIA, NTIS, USTTA: Management Service Center, U.S. Department of Commerce, Caller Service No. 6025, Germantown, Maryland 20874.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Commerce Department employees and certain other persons as categorized by organizational component above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, social security number and employee number, service computation date, grade, step, and salary; organization (code), retirement or FICA data as applicable; Federal, State, and local tax deductions, as appropriate; IRS tax lien data; savings bond and charity deductions; regular and optional Government life insurance deduction(s), health insurance deduction and plan of code; cash award data; jury duty data; military leave data; pay differentials; union dues deductions; allotments, by type and amount; financial institution code and employee account number, type of account; leave status and leave data of all types (including annual, compensatory, jury duty, maternity, military, retirement disability, sick, transferred, absence without leave, and without pay); time and attendance records, including number of regular, overtime, holiday, Sunday, and other hours worked; pay period number and ending date of living allowances; mailing address, co-owner and/or beneficiary of bonds, marital status and number of dependents; and "Notification of Personnel Action". The individual records listed herein are included only as pertinent or applicable to the individual employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C., Title 31 U.S.C. 66a, 492, Title 44 U.S.C. 3101, 3309.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Transmittal of data to U.S. Treasury and employee-designated financial institutions to effect issuance of paycheck to employees and distribution of pay according to employee directions for savings bonds, allotments, alimony, child support, and other authorized purposes.

Reporting: Tax withholding to Internal Revenue Service and appropriate State and local taxing authorities; FICA deductions to the Social Security Administration; dues deductions to labor unions; withholdings for health and life insurance to the insurance carriers and the U.S. Office of Personnel Management; charity contribution deductions to agents of charitable institutions; annual W-2 statements to taxing authorities and the individuals; wage, employment, and separation information to state unemployment compensation agencies, to the U.S. Department of Labor to determine eligibility for unemployment compensation, and to housing authorities for low-cost housing applications; and NOAA Corps data to U.S. Office of Personnel Management for preparation of statistical materials. Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collection delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718). Also, see routine use paragraph 1-5 and 8-13 of Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a (b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f), and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Both manual and machine-readable.

RETRIEVABILITY:

By name and/or employee or social security number.

SAFEGUARDS:

Physical, technical and administrative security is maintained, with all storage equipment and/or rooms locked when not in use. Admittance, when open, is restricted to authorized personnel only. All payroll personnel and computer operators and programmers are instructed and cautioned on the confidentiality of the records.

RETENTION AND DISPOSAL:

Retained on site until after GAO audit, then disposed of, or transferred either to Federal Records Storage Centers in accordance with the fiscal records program approval by GAO, as appropriate, or general Record Schedules of GSA.

SYSTEM MANAGER(S) AND ADDRESS:

Management Service Center, U.S. Department of Commerce, Caller Service No. 6025, Germantown, Maryland 20874.

NOTIFICATION PROCEDURES:

For BEA records, information may be obtained from: Chief, Mangement and Organization Branch, BEA, Tower Building, 1401 K Street, NW., Washington, D.C. 20230; For Census records, information may be obtained from: Associate Director for Management Services, Bureau of the Census, Federal Building 3, Washington, D.C. 20233;

For EDA records, information may be obtained from: Director, Office of Public Affairs, EDA, U.S. Department of Commerce, Washington, D.C. 20230;

For ITA record, information may be obtained from: Director, Office of Management and Systems, ITA, U.S. Department of Commerce, Washington, D.C. 20230;

For MBDA records, information may be obtained from: Privacy Officer, Office of Chief Counsel, MBDA, U.S. Department of Commrece, Washington, D.C. 20230;

For NBS and NTIS records, information may be obtained from: Deputy Director for Information Systems, Room A1105, Administration, Building, National Bureau of Standards, Gaithersburg, Maryland 20899;

For NOAA records, information may be obtained from: Director, Administrative and Technical Services, National Oceanic and Atmospheric Administration, Room 4213 Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230;

For NTIA records, information may be obtained from: Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20230;

For PTO records, information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231;

For USTTA records, information may be obtained from: Director, Office of Administration, USTTA, U.S. Department of Commerce, Washington, D.C. 20230;

For all other records, information may be obtained from: Chief, Information Management Divsion, Office of Information Resources Management, U.S. Department of Commerce, Washington, D.C. 20230.

Requester should provide name, social security number, and time or organizational unit of employment pursuant to the inquiry provisions of the Department's Rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Same address of the desired location as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address for desired location.

RECORD SOURCE CATEGORIES:

Subject individuals, those authorized by the individual to furnish information, supervisors, timekeepers, official personnel records, and IRS.

COMMERCE/DEPT-2

SYSTEM NAME:

Accounts Receivable—COMMERCE/DEPT-2.

SYSTEM LOCATION:

a. For Departmental offices, BEA ITA, USTTA, MBDA, Office of Financial Operations and Travel Management, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

b. For NBS and NTIA: National Bureau of Standards, Office of the Comptroller, Administration Building, Gaithersburg, Maryland 20899.

c. For NOAA: Office of Budget and Finance, National Oceanic and Atmospheric Administration, Room 6811 Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

d. For PTO: Office of Finance, U.S. Patent and Trademark Office, 2021 Jefferson Davis Highway, Arlington, Virginia 22202.

e. For CENSUS: Finance Division, Bureau of the Census Federal Building 3, Washington, D.C. 20233.

f. For NTIS: Accounting Division, National Technical Information Service, Springfield, Virginia 22161.

g. For EDA: Accounting Division, Economic Development Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Debtors owing money to organizational components identified in a. through g. including employees, former employees, business firms, general public, and institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address; amount owed, and service, overpayment or other accounting therefor, invoice number, if any.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701–09; 31 U.S.C. 951–953, 4 CFR 102.4, FPMR 101–7; Treasury Fiscal Requirements Manual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Billing debtors, reporting delinquent debts to credit bureaus, reporting to Office of Personnel Management for liquidating debts from retirement and other benefits. Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718). Also , see routine uses 1–5 and 8–13 of the Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f); and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Both manual and machine-readable records.

RETRIEVABILITY:

By name, and invoice number as appropriate.

SAFEGUARDS:

Physical security, handling by authorized personnel only.

RETENTION AND DISPOSAL:

Retained until payment is received and account is audited, then disposed of in accordance with Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

For records at location a.: Director, Office of Financial Operations and Travel Management, U.S. Department of Commerce, Washington, D.C. 20230.

For records at location b.: Comptroller, Office of the Comptroller, National Bureau of Standards, Administration Building, Gaithersburg, Maryland 20899.

For records at location c.: Director, Office of Budget and Finance, NOAA, Room 6811, Herbert C. Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

For records at location d.: Director, Office of Finance, U.S. Patent and Trademark Office, Washington, D.C. 20231.

For records at location e.: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

For records at location f.: Chief, Accounting Division, National Technical Information Service, Springfield, Virginia 22161.

For records at location g.: Chief, Accounting Division, Economic Development Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230.

NOTIFICATION PROCEDURE:

For ITA records at location a., information may be obtained from Director, Office of Management and Systems, ITA, U.S. Department of Commerce, Washington, D.C. 20230;

For USTTA records at location a., information may be obtained from Director, Office of Administration, USTTA, U.S. Department of Commerce, Washington, D.C. 20230; and

For all records at location a., information may be obtained from: Chief, Information Management Division, Office of Information Resources Management, U.S. Department of Commerce, Washington, D.C. 20230;

For NBS records at location b., information may be obtained from: Deputy Director of Administration, Room A1105, Administration Building, National Bureau of Standards, Gaithersburg, Maryland 20899.

For NTIA records at location b, information may be obtained from: Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20230;

For records at location c., information may be obtained from: Director, Administrative and Technical Services, National Oceanic and Atmospheric Administration, Room 4213 Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230;

For records at location d., information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231; and

For records at location e., information may be obtained from: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

For records at location f., information may be obtained from: Associate Director for Financial and Administrative Management, National Technical Information Service, Springfield, Virginia 22161.

For records at location g., information may be obtained from: Director, Office of Public Affairs, EDA, U.S. Department of Commerce, Washington, D.C. 20230.

Requester should provide name and address, and invoice number as appropriate, pursuant to the inquiry provisions of the Department's Rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individual, those authorized by the individual to furnish information, contracting officer as appropriate, accounting records.

COMMERCE/DEPT-9

SYSTEM NAME:

Travel Records (Domestic and Foreign) of Employees and Certain Other Persons—COMMERCE/DEPT-9.

SYSTEM LOCATION:

a. For employees of Departmental Offices, BEA, Census (for travel paid on or after July 1, 1982), EDA, ITA, MBDA, NBS, NOAA (except employees of NOAA regional offices listed in c. below), NTIA, NTIS, PTO, USTTA, members of DOC Advisory Committees; and private citizens invited to visit the Department: Management Service Center, U.S. Department of Commerce, Caller Service No. 6025, Germantown, Maryland 20874.

b. For employees of CENSUS (for travel paid prior to July 1, 1982): Finance Division, Bureau of the Census, Federal Building 3, Washington, D.C. 20233 and the following Regional Offices for intermittent CENSUS employees: 1365 Peachtree Streeet, NE., Atlanta, Georgia 30309; 441 Stuart Street, Boston, Massachusetts 02116; 230 South Tryon Street, Charlotte, North Carolina 28202; 55 East Jackson Boulevard, Chicago, Illinois 60604; 1100 Commerce Street, Dallas, Texas 75242; 7655 W. Mississippi Avenue (P.O. Box 26750), Denver, Colorado 80226; 231 W. Lafayette, Detroit, Michigan 48226; One Gateway Center, 4th and State Streets, Kansas City, Kansas 66101; 11777 San Vicente Boulevard, Los Angeles, California 90049; 26 Federal Plaza, New York City, New York 10278; 600 Arch Street, Philadelphia, Pennsylvania 19106; and 1700 Westlake Avenue, Seattle, Washington 98109.

For employees of NOAA regional offices: DOC/NOAA/EASC, RAS/EC5, 235 Monticello Avenue, Norfolk, Virginia 23510; DOC/NOAA/MASC, RAS/MC7 Room 5524, 325 Broadway, Boulder, Colorado 80303; DOC/NOAA/WASC, RAS/WC5, Operations Building, 7600 Sand Point Way, NE., Seattle, Washington 98115; and DOC/NOAA/CASC, RAS/CC5, Federal Building, Room 1758, 601 E. 12th Street, Kansas City, Missouri 64106.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, Advisory Committee Members, and official guests of the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, social security number, destination, itinerary, mode and purpose of travel; dates; expenses including amounts advanced (if any), amounts claimed, and amounts reimbursed; travel orders, travel vouchers, receipts, and passport record card.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Budget and Accounting Act of 1921; Accounting and Auditing Act of 1950; and Federal Claim Collection Act of 1966.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Transmittal to U.S. Treasury for payment, to State Department for passports. Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718). Also, see paragraphs 1–5 and 9–13 of the Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in their Fair Credit Reporting Act (15 U.S.C. 1681a(f)), and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and machine-readable.

RETRIEVABILITY:

Filed by name, social security number, or travel order number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Retained according to GSA Federal Travel Regulations, and then disposed of according to unit's Records Control Schedule.

SYSTEM MANAGERS(S) AND ADDRESS: For records at location a., Director, Management Service Center, U.S. Department of Commerce, Caller Service No. 6025, Germantown, Maryland 20874.

For records at location b., Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233 and the Director of the particular Regional Office listed above.

NOTIFICATION PROCEDURE:

For BEA records at location a., information may be obtained from: Chief, Management and Organization Branch, BEA Tower Building, 1401 K Street, NW., Washington, D.C. 20230;

For Census records at location a. and b., information may be obtained from: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233;

For EDA records at location a., information may be obtained from: Director, Office of Public Affairs, EDA, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230;

For ITA records at location a., information may be obtained from: Director, Office of Management and Systems, ITA, U.S. Department of Commerce, Washington, D.C. 20230;

For MBDA records at location a., information may be obtained from: Privacy Officer, Office of Chief Counsel, MBDA, U.S. Department of Commerce, Washington, D.C. 20230;

For NBS records at location a., information may be obtained from: Deputy Director of Administration, Room A1105, Administration Building, National Bureau of Standards, Washington, D.C. 20234.

For NOAA records at locations a. and c., information may be obtained from: Director, Administrative and Technical Services, National Oceanic and Atmospheric Administration, Room 4213, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230;

For NTIA records at location a., information may be obtained from: Privacy Officer NTIA, U.S. Department of Commerce, Washington, D.C. 20504.

For PTO records at location a., information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231.

For USTTA records at location a., information may be obtained from: Director, Office of Administration, USTTA, U.S. Department of Commerce, Washington, D.C. 20230; and

For all other records at location a., information may be obtained from: Chief, Information Management Division, Office of Information Resources Management, U.S. Department of Commerce, Washington, D.C. 20230.

Requester should provide name, travel order number, if known, and date of travel, in accordance with the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURES:

Requests should be address to: Same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individual, those authorized by the individual to furnish information, supervisors, and finance (or accounting) office standard references.

COMMERCE/DEPT-12

SYSTEM NAME:

Investigative and Inspection Records—COMMERCE/DEPT-12.

SYSTEM LOCATION:

Office of Inspector General, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former employees of the Department of Commerce and such other persons whose association with the Department relates to the alleged violations of the Department's rules of conduct, the Civil Service merit system, or any other criminal or civil misconduct, which affects the integrity or facilities of the Department of Commerce. The names of individuals and the files in their names may be: (1) Received by referral; or (2) initiated at the discretion of the Inspector General in the conduct of assigned duties.

b. Individuals who are: Witnesses; complainants; confidential or nonconfidential informants; suspects; defendants, parties who have been identified by the Office of the Inspector General or by other agencies, constituent units of the Department of Commerce and members of the general public in connection with the authorized functions of the Inspector General.

c. Current and former Commerce officials who are the subject of investigations initiated and conducted by the Office of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memoranda, and other documents citing complaints of alleged criminal or administrative misconduct. Investigative files which include: Reports of investigations to resolve allegations of misconduct or violations of law with related exhibits, statements, affidavits or records obtained during investigations; prior criminal or noncriminal records of individuals as they relate to the investigations; reports of actions taken by management personnel regarding misconduct; and reports from or to other law enforcement bodies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978 (Pub. L. 95-462); Executive Orders 12065 and 10450; 44 U.S.C. 3101; 28 U.S.C. 535; 18 U.S.C. including Sections 201, 202, 205, 207, 208, 209, 210, 211, 219, 285, 287, 508, 595, 600, 602, 603, 604, 607, 608, 641, 643, 653, 654, 798, 1001, 1719, 1905, 1913, 1917, 1918, 2071, 2073; 5 U.S.C. including Sections 301, 2302, 7311, 7324, 7352; 15 U.S.C. 1512; 31 U.S.C. 638(a)(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use for law enforcement purposes will include disclosure to the appropriate agency, whether Federal, State, local, foreign, or international, charged with the responsibility for investigating or prosecuting a violation of any law, rule, regulation or order. Routine use for law enforcement purposes will also include disclosure to individuals or to agencies, whether Federal, State, local, foreign or international, when necessary to further the ends of an investigation. Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718). See routine use paragraphs 1-5 and 8-13 in Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; and automated storage media.

RETRIEVABILITY:

Indices are alphabetical, cross referenced to file number.

SAFEGUARDS:

Locked cabinets in secured rooms or in guarded building, and used only by authorized screened personnel.

RETENTION AND DISPOSAL:

When cases are closed records are disposed of in accordance with the unit's Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Counsel to the Inspector General, Office of Inspector General, U.S. Department of Commerce, Washington, D.C. 20230.

NOTIFICATION PROCEDURE:

Information may be obtained from: Counsel to the Inspector General, Office of the Inspector General, U.S. Department of Commerce, Washington, D.C. 20230. Requester should provide name and association with the Department, if any, pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Same address as stated in the Notification selection above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individuals: Office of Personnel Management, FBI and other Federal, State, local, foreign and international agencies; individuals and organizations that have pertinent knowledge about the subject; and those authorized by the individual to furnish information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under 5 U.S.C. 552a(j)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the agency or component that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. The Inspector General Act of 1978, Pub. L. 95-462, mandates the Inspector General to recommend policies for, and to conduct, supervise and coordinate activities in the Department and between the Department and other Federal, State and local government agencies with respect to all matters relating to the prevention and detection of fraud in programs and operations administered or financed by the Department, and to the identification and prosecution of participants in such fraud. Under the Act, whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law, the Inspector General must report the matter expeditiously to the Attorney General. In addition to these principal functions pertaining to the enforcement of criminal laws, the Inspector General may receive and investigate complaints on information from various sources concerning the possible existence of activities constituting violations of law, rules or regulations, or mismanagement, gross waste of funds, abuses of authority or substantial and specific danger to the public health and safety. The provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a(j)(2) are as follows: 5 U.S.C. 552a(c) (3) and (4); 5 U.S.C. 552a(d); 5 U.S.C. 552a(e) (1), (2) and (3); 5 U.S.C. 552a(e)(4) (G), (H), and (I); 5 U.S.C. 552a(e) (5) and (8); 5 U.S.C. 552a(f); 5 U.S.C. 552a(g).

To the extent that the exemption under 5 U.S.C. 552a(j)(2) is held to be invalid, then the exemptions under 5 U.S.C. 552a (k)(1), (k)(2), and (k)(5) are claimed for all material which meets the criteria of these three subsections.

Provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a (k)(1), (k)(2) and (k)(5) are as follows: 5 U.S.C. 552a(c)(3); 5 U.S.C. 552a(d); 5 U.S.C. 552a(e)(1); 5 U.S.C. 552a(e)(4) (G), (H), and (I); 5 U.S.C. 552a(f).

Reasons for exemptions: In general, the exemption of this information and material is necessary in order to accomplish the law enforcement function of the Office of Inspector General, to prevent disclosure of classified information as required by Executive Order 12065, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and law enforcement personnel. Detailed reasons follow: Reasons for exemptions under 5 U.S.C. 552a (j)(2) and (k)(2):

(1) 5 U.S.C. 552a(C)(3) requires that upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in the alerting or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a (c)(4), (d), (e)(4) (G) and (H), (f) and (g) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; the agency procedures relating

to access to records and the contest of information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in records systems. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual, or to grant access to an investigative file could interfere with investigative and enforcement proceedings, deprive co-defendants of a right to a fair trial or other impartial adjudication, constitute an unwarranted invasion of personal privacy of others, disclose the identity or confidential sources, reveal confidential information supplied by these sources and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear or reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations, and to identify, detect, and apprehend violators.

(4) 5 U.S.C. 552a(e)(I) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to detect relevance or necessity of specific information in the early stages of a criminal or other investigation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which related to matters incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(5) 5 U.S.C. 552(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privilege under Federal programs. The application of the provision would impair investigations of illegal acts, violations of the rules of conduct, merit system and any other misconduct of the following reasons:

a. In certain instances the subject of an investigation cannot be required to supply information to investigators. In those instances, information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct, etc., must be obtained from other sources.

b. Most information colected about an individual under investigation is obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his activities.

c. The subject of an investigation will be alerted to the existence of an investigation if any attempt is made to obtain information from subject. This could afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

d. In any investigation, it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(6) 5 U.S.C. 552(a)(e)(3) requires that an agency must inform the subject of an investigation who is asked to supply information of:

a. The authority under which the information is sought and whether disclosure of the information is mandatory or voluntary,

b. The purposes for which the information is intended to be used,

c. The routine uses which may be made of the information, and

d. The effects on the subject, if any, of not providing the requested information. The reasons for exempting this system of records from the foregoing provision are as follows:

(i) The disclosure to the subject of the investigation as stated in (b) above would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.

(ii) If the subject were informed of the information required by this provision, it could seriously interfere with undercover activities requiring disclosure of undercover agents' identity and impairing their safety, as well as imparing the successful conclusion of the investigation.

(iii) Individuals may be contracted during preliminary information-gathering in investigations before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(7) 5 U.S.C. 552a(e)(5) requires that records be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about an individual. Since the law defines "maintain" to include the collection of information complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation it is not possible to determine this prior to collection of the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material which may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(8) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record of such individual is made available to any persons; under compulsory legal process when such process becomes a matter of public record. The notice requirements of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

Reasons for exemptions under 5 U.S.C. 552a(k)(1):

(1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the record at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of

the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation, and that such persons are subjects of that investigation, information which if known might cause damage to national security.

(2) 5 U.S.C. 552a (d), (e)(4) (G) and (H), and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records, and the contest of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigations undertaken in connection with national security; or could disclose the identity of sources kept secret to protect national security or reveal confidential information supplied by these sources.

(3) 5 U.S.C. 552a(3)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose the identity of sources kept secret to protect national security.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed :

a. Because it is not possible to detect relevance or necessity of specific information in the early stages of an investigation involving national security matters.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violators of laws other than those within the scope of his jurisdiction. In the interests of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining forms of evidence during an investigation, information may be supplied to the investigator which relate to matters incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

Reasons for exemptions under 5 U.S.C. 552a(k)(5):

(1) 5 U.S.C. 552a (c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must stated the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subject with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a(d), (e)(4)(G) and (H), and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records and the contest of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; co-defendants of a right to a fair trial; constitute an unwarranted invasion of personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by these sources; and disclose investigative techniques and procedures.

(3) 5 U.D.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations, and to make fair and objective decisions on qustions of suitability for Federal employment and related issues.

(4) 5 U.D.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to detect relevance or necessity of specific information in the early stages of an investigation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after that information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which relate to matters incidental to the main purpose of the investigation but which may relate to matters under investigative jurisdiction of another agency. Such information cannot readily be segregated.

COMMERCE/DEPT-13

SYSTEM NAME:

Investigative and Security Records—COMMERCE/DEPT-13.

SYSTEM LOCATION:

Departmental Office of Security, OS, Herbert C. Hoover Building, Washington, D.C. 20230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Nominees, members, and former members of public advisory committees, trade missions and export councils; employees, former employees, and prospective employees; research associates; and guest workers. Employees of contractors used, or which may be used, by the Department on national security classified projects.

Principal officers of some contractors used, or which may be used by the Department, principal officers and some employees of organizations, firms, or institutions which were recipients or beneficiaries, or prospective recipients or beneficiaries, of grants, loans, or loan guarantee programs of the Department prior to May 9, 1980.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; address; date and place of birth; Social Security Number; citizenship; physical characteristics; employment and military service history; credit references and credit records; education; medical history; arrest records; Federal employee relatives; dates and purpose of visits to foreign countries; passport numbers; names of spouses, relatives, references, and personal associates; activities; and security; and suitability materials. This system does not include records of EEO investigations. Such records are covered in a government-wide system noticed by the Office of Personnel Management and now the responsibility of the Equal Employment Opportunity Commission. For assistance contact the Privacy Officer for the Office of the Secretary.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 10450, 11478, 12065, 5 U.S.C. 301 and 7531–332; 15 U.S.C. 1501 et. seq.; 28 U.S.C. 533–535; 44 U.S.C. 3101; and Equal Employment Act of 1972.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information concerning nominees, members and former members of public advisory committees may be disclosed: (a) To OMB in connection with its committee management responsibilities; (b) to other Federal agencies which have joint responsibility for advisory committees or which receive or utilize advice of the committees; and (c) to a Federal, state or local agency, private organization or individual as necessary to obtain information in connection with a decision concerning appointment or reappointment of an individual to committee membership.

Information concerning (1) nominees, members, and former members of trade missions and export councils; (2) current employees, former employees, and prospective employees; (3) research associates; (4) guest workers; (5) employees of contractors used, or which may be used, by the Department on national security classified projects; (6) principal officers of some contractors used, or which may be used, by the Department; and (7) principal officers and some employees of organizations, firms or institutions which are recipients or beneficiaries or prospective recipients or beneficiaries of grants, loans, guarantee or other assistance programs of the Department;—may be disclosed to a private organization or individual as necessary to obtain information in connection with a decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit. Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718). See routine use paragraphs in Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Locked cabinets in secure rooms in guarded buildings, and used only by authorized screened personnel.

RETENTION AND DISPOSAL:

When cases are closed, records are disposed of in accordance with the unit's Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Security, OS, Herbert C. Hoover Building, Washington, D.C. 20230.

NOTIFICATION PROCEDURE:

Information may be obtained from: Chief, Information Management Division, Office of Information Resources Management, U.S. Department of Commerce, Washington, D.C. 20230. Requester should provide name and association with the Department, pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individuals; OPM, FBI and other Federal, state and local agencies; individuals and organizations that have pertinent knowledge about the subject; and, those authorized by the individual to furnish information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a (k)(1), (k)(2) and (k)(5), all information and material in the record which meets the criteria of these subsections are exempted from the notice, access, and contest requirements under 5 U.S.C. 522a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of the agency regulations because of the necessity to exempt this information and material in order to accomplish the law enforcement function of the agency, to prevent disclosure of classified information as required by Executive Order 12065, to assure the protection of the President, to prevent subjects of investigation from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of information, and to avoid endangering these sources and law enforcement personnel.

COMMERCE/DEPT-16

SYSTEM NAME:

Property Accountability Files—COMMERCE/DEPT—16

SYSTEM LOCATION:

a. For all libraries of the Department. For listing, see Directory of Libraries in the United States Department of Commerce, Department of Commerce, Washington, D.C.; or American Library Directory, biennial, R.R. Bowker Company, New York City.

b. For employees of Census: Administrative Services Division, Bureau of the Census, Federal Building 4, Washington, D.C. 20233, and the following Census Regional Offices: 1365 Peachtree Street, NE., Atlanta, Georgia 30309; 441 Stuart Street, Boston, Massachusetts 02116; 230 South Tryon Street, Charlotte, North Carolina 28202; 55 East Jackson Boulevard, Chicago,

Illinois 60604; 1100 Commerce Street, Dallas, Texas 75242; 7655 W. Mississippi Avenue (P.O. Box 26750), Denver, Colorado 80226; 231 W. Lafayette, Detroit, Michigan 48226; One Gateway Center, 4th and State Streets, Kansas City, Kansas 66101; 11777 San Vicente Boulevard, Los Angeles, California 90049; 26 Federal Plaza, New York City, New York 10278; 600 Arch Street, Philadelphia, Pennsylvania 19106; and 1700 Westlake Avenue, Seattle, Washington 98109.

c. For employees of NBS: Security Office, National Bureau of Standards, Administration Building, Gaithersburg, Maryland 20899. Instrument Shops Division, Shops Building, NBS, Gaithersburg, Maryland 20890; and Security Office, Radio Building, NBS, Boulder, Colorado 80302.

d. For employees of PTO: Users Service Section, Scientific Library, U.S. Patent and Trademark Office, Washington, D.C. 20231.

e. For NTIA: Office of Administration, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, general public, institutions, and anyone who charges out or signs for books or other materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; telephone number, title of book; identification of property or equipment; home and business address; employee I.D. number, position, job title; grade; organization; explanations for items not accounted for, correspondence; clearance; and key number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 40 U.S.C. 481–92; 15 U.S.C. 1518.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718). See routine use paragraphs 1–5 and 9–13 of Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(1)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)93)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper copy in file folders and trays and machine-readable media.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Records are located in lockable metal file cabinets, or lockable desks, or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Retained until property is accounted for, then disposed of in accordance with unit's Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

For records at location a.: the head of the respective library.

For records at location b.: Associate Director for Management Services, Bureau of the Census, Federal Building 3, Washington, D.C. 20233, and the Director of the particular Regional Office listed above.

For records at location c.: Security Officer, National Bureau of Standards, Administration Building, Gaithersburg, Maryland 20899.

For records at location d.: Program Manager, Scientific Library, U.S. Patent and Trademark Office, Washington, D.C 20231.

For records at location e.: Director of Administration, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20230.

NOTIFICATION PROCEDURE:

For records at location a.: Address communication to the library's parent organization (e.g., National Bureau of Standards), Attention: Privacy Officer, or use the Privacy Officer's official position title and address as listed in Apppendix B to the Department's rules which appear in 15 CFR Part 4b.

For records at location b.: Information may be obtained from: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

For records at location c.: Information may be obtained from: Deputy Director of Administration, Room A1105, Administration Building, National Bureau of Standards, Washington, D.C. 20234.

For records at location d.: Information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, D.C. 20231.

For records at location e.: Information may be obtained from: Privacy Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20230.

Requester should provide name and address pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individual, those authorized by the individual to furnish information, book cards, and supply person providing the equipment.

COMMERCE/DEPT–17

SYSTEM NAME:

Records of Cash Receipts—COMMERCE/DEPT–17.

SYSTEM LOCATION:

a. For Departmental offices, BEA, ITA, MBDA, USTTA, Office of Financial Operations and Travel Management, OS, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

b. For NTIS: Accounting Division, National Technical Information Service, Springfield, Virginia 22161.

c. For PTO: Office of Finance, U.S. Patent and Trademark Office, 2021 Jefferson Davis Highway, Arlington, Virginia 22202.

d. For Census: Finance Division, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

e. For NTIA: Office of Administration, National Telecommunications and Information Administrative, U.S. Department of Commerce, Washington, D.C. 20230.

f. For EDA: Accounting Division, Economic Development Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals paying for goods or services, reimbursing overpayments, or otherwise delivering cash to the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, the goods or service purchased, amount, date, check number, division or office, bank deposit, treasury deposit number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 66(a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718). See routine use paragraphs 1–5 and 9–13 of the Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and machine-readable.

RETRIEVABILITY:

Name and/or account or case number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Permanently maintained.

SYSTEM MANAGER(S) AND ADDRESSES:

For records at location a.: Director, Office of Financial Operations and Travel Management, U.S. Department of Commerce, Washington, D.C. 20230.

For records at location b.: Chief, Accounting Division, National Technical Information Service, Springfield, Virginia 22161.

For records at location c.: Director, Office of Finance, U.S. Patent and Trademark Office, Washington, D.C. 20231.

For records at location d.: Associate Director for Management Services, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

For records at location e.: Director of Administration, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For records at location f.: Chief, Accounting Division, Economic Development Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

NOTIFICATION PROCEDURE:

For BEA records at location a., information may be obtained from: Chief, Management and Organization Branch, BEA, Tower Building, 1401 K Street, NW., Washington, D.C. 20230;

For ITA records at location a., information may be obtained from: Director, Office of Management and Systems, ITA, U.S. Department of Commerce, Washington, D.C. 20230;

For MBDA records at location a., information may be obtained from: Privacy Officer, Office of Chief Counsel MBDA, U.S. Department of Commerce, Washington, D.C. 20230;

For USTTA records at location a., information may be obtained from: Director, Office of Administration, USTTA, U.S. Department of Commerce, Washington, D.C. 20230; and

For all other records at location a., information may be obtained from: Chief, Information Management Division, Office of Information Resources Management, U.S. Department of Commerce, Washington, D.C. 20230;

For records at location b., information may be obtained from: Associate Director for Financial and Administrative Management, National Technical Information Service, Springfield, Virginia 22161.

For records at location c., information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231;

For records at location d., information may be obtained from: Associate Director for Management Services, Bureau of the Census, Federal Building 3, Washington, D.C. 20233;

For records at location e., information may be obtained from: Privacy Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20230;

For records at location f., information may be obtained from: Director, Office of Public Affairs, EDA, U.S. Department of Commerce, Washington, D.C. 20230;

Requester should provide name, address, date of receipt, an check number or case number pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURE:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR part 4b. USE above address.

RECORD SOURCE CATEGORIES:

Subject individual and those authorized by the individual to furnish information.

COMMERCE/DEPT–18

SYSTEM NAME:

Employees Personnel Files Not Covered By Notices of Other Agencies-COMMERCE/DEPT–18.

SYSTEM LOCATION:

a. For all Departmental employees: Departmental Office of Personnel, Room 5001, U.S. Department of Commerce, Washingotn, D.C. 20230 (for automated records and for selected records relating to Senior Executive Service and Departmental Honor Awards).

b. For employees of Departmental Offices, NTIA, NTIS, MBDA, and USTTA: Departmental Office of Personnel Operations, Room 5008, U.S. Department of Commerce, Washington, D.C. 20230.

c. For employees of CENSUS: Office of Personnel, Bureau of the Census, Federal Building 3, Room 3260, Washington, DC 20233;

d. For employees of ITA; Office of Personnel, International Trade Administration, Room 3512, U.S. Department of Commerce, Washington, DC 20230;

e. For employees of NBS: Office of Personnel, National Bureau of Standards, Administration Building Room A123, Gaithersburg, Maryland 20899;

f. For employees of NOAA: Office of Personnel, National Oceanic and Atmospheric Administration, Rockville, Maryland 20852, and the following Administrative Support Centers:

DOC/NOAA/EASC, RAS/EC5, 235 Monticello Avenue, Norfolk, Virginia 23510; DOC/NOAA/MASC, RAS/MC7, Room 5534; 325 Broadway, Boulder,

Colorado, 80303; DOC/NOAA/WASC, RAS/WC5, Operations Building, 7600 Sand Point Way, N.E., Seattle, Washington 98115; and

DOC/NOAA/CASC, RAS/CC5, Federal Building, Room 1758, 601 E. 12th Street Kansas City, Missouri 64106.

g. For employees of PTO, Office of Personnel, U.S. Pantent and Trademark Office, U.S. Department of Commerce, Room 9C06, Crystal Plaza 2, Arlington, Virginia 22202;

h. For employees of EDA, Personnel Management Division, Economic Development Administration, Room 7089 U.S. Department of Commerce, Washington, D.C. 20230; and

i. For any Department employee: The immediate office of an imployee's supervisor(s), for records which have been disclosed to someone else.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees

CATEGORIES OF RECORDS IN THE SYSTESM:

All personnel records in the Department which are subject to the Privacy act but are not covered in the notices of systems of records published by other agencies with influence upon personnel mangement in the Department such as the Office of Personnel Mangement, Merit System Protection Board, Equal Employment Opportunity Commission, Department of State or Department of Labor. The records of this system may include, but are not limited to Employee Development; Incentive Awards; Employee Relations; Grievance Records; Medical; Work-related Injury or Illness Claims; Grievance Records; Medical; Career Management Program Ship Personnel; Employee Overseas Assignment; Minority Group Statistics Program, Work Performance and Appraisal Records; including supervisory records which have been disclosed; Re-employment and Priority Placement Program; Executive Assignments and Merit Pay Actions; Merit Assignment Programs; Retirements; Within-Grade Denials (Reconsideration File); and Automated Employee Information System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 5 U.S.C. 4101 et seq., 5 U.SC. 1302, 3302, E.O. 10577, 3 CFR 1954–1958 Comp. p. 218, E.O. 12107, 3 CFR 1978 Comp. p264; and Federal Personnel Manual and related directives of the agencies citied above.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

a. Information concerning current or former employees may be disclosed to a private organization or individual as necessary to obtain information in connection with a decision concerning the assignment, hiring, or retention of an individual, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to officials of the Office of Personnel Management, Merit Systems Protection Board, including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, or the Equal Employment Opportunity Commission, the Department of State, or the Department of Labor when requested in performance of their authorized duties.

d. To disclose, in reponse to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

e. To provide information to officials or labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

f. To disclose information to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718).

g. See routine uses paragraphs in the Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f), and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and machine-readable.

RETRIEVABILITY:

Filed by name and/or social security number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Retained according to Unit's Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

For records at location a: Director, Office of Personnel, Room 5001, U.S. Department of Commerce, Washington, D.C. 20230;

For records at location b: Director, Office of Personnel Operations, Room 5008, U.S. Department of Commerce, Washington, D.C. 20230;

For records at location c: Chief of Personnel, Bureau of the Census, Federal Building 3, Room 3260, Washington, D.C. 20233;

For records at location d: Director, Office of Personnel, International Trade Administration, U.S. Department of Commerce, Room 3512, Washington, D.C. 20230;

For records at location e: Chief, Personnel Division, National Bureau of Standards, Administration Building, Room A123, Gaithersburg, Maryland 20899;

For records at location f: Chief, Personnel Division, WSC5, National Oceanic and Atmospheric Administration, NBOC2, Rockville, Maryland 20852, and the Director of the particular Administrative Support Center listed above;

For records at location g: Personnel Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Room 9C06, Crystal Plaza 2, Arlington, Virginia 22202;

For records at location h: Personnel Management Division, Economic Development Administration, Room 7089, Washington, D.C. 20230; and

For records at location i: Employee's supervisor(s).

NOTIFICATION PROCEDURE:

For BEA records at locations a. and b., information may be obtained from: Chief, Management and Organization Branch, BEA, Tower Building, 1401 K Street, NW., Washington, D.C. 20230;

For NTIA records at locations a. and b., information may be obtained from: Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20504;

For NTIS records at locations a. and b., information may be obtained from: Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20230;

For MBDA records at locations a. and b. information may be obtained from: Privacy Officer, Office of Chief Counsel, MBDA, U.S. Department of Commerce, Washington, D.C. 20230;

For USTTA records at locations a. and b., information may be obtained from: Director, Office of Administration, USTTA, U.S. Department of Commerce, Washington, D.C. 20230;

For all other records at locations a. and b., information may be obtained from Chief, Information Management Division, Office of Information Resources Management, U.S. Department of Commerce, Washington, D.C. 20230;

For records at location c., information may be obtained from Associate Director for Management Services, Bureau of the Census, Federal Building 3, Washington, D.C. 20233;

For records at location d., information may be obtained from: Privacy Act Officer, Office of Management and Systems, International Trade Administration, Room 4001B, U.S. Department of Commerce, Washington, D.C. 20230.

For records at location e., information may be obtained from: Deputy Director of Administration, Room A1105, Administration Building, National Bureau of Standards, Gaithersburg, Maryland 20899.

For records at location f., information may be obtained from: Director, Administrative and Technical Services, National Oceanic and Atmospheric Administration, Room 4213, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

For records at location g., information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231.

For records at location h., information may be obtained from: Personnel Management Division, Economic Development Administration, Room 7089, U.S. Department of Commerce, Washington, D.C. 20230; and

For records at location i., information may be obtained from: Privacy Officer for employee's unit.

Requester should provide name, social security number, and time or organization unit of employment pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURE:

Request from individuals should be addressed to: Same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individual and those authorized by the individual to furnish information; others involved in references of the individual; physicians; employee's supervisor; for grievance records information is also provided by the testimony of witnesses, by agency officials, and from related correspondence from organizations or persons.

COMMERCE/NTIS-1

SYSTEM NAME:

Individuals interested in NTIS Publications, Shipped Order Addresses, Customer Account Records, and Subscriber Files—COMMERCE/NTIS-1.

SYSTEM LOCATION:

Automated Data Processing Division and Document Distribution and Reproduction Division, Office of Computer and Communications Service and Document Services Division, NTIS, 5285 Port Royal Road, Springfield, Virginia 22161.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who order and/or purchase products and services from NTIS and all individuals who have requested (that they be placed on the NTIS promotional mailing list) NTIS promotional literature.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; address; nine-digit taxpayer identification number; items ordered; items sent; amount of purchases, date order received; date order mailed; NTIS deposit account or customer code number; total charge to date; whether account collectible or not; categories of publications ordered by each purchaser; when subscription expired; amount of deposit.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 1151-57; 41 U.S.C. 104, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records maintained in the system are disclosed to NTIS sales agents; and to individuals, organizations, Federal agencies, and State and local governments contributing publications to NTIS for their market research and sales accounting purposes, through the mechanism of providing them the names and addresses of individuals (and others) who have purchased their publications. "Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718)." Also see general routine uses (#1 through 6, #8 through 10, and #12 of Prefatory Statement notice in the **Federal Register** on October 2, 1975 (40 FR 45635), and amended on November 7, 1975 (40 FR 52074) and August 17, 1976 (41 FR 34805), #4, #5, #9 and #13 of Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12):

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), and the Federal Claims Collection Act of 1968 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, film files, magnetic tape and disc files.

RETRIEVABILITY:

Filed by individual identifier such as deposit account number of credit card account number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal tape vaults in secured rooms or premises with access limited to those whose official duties require access. The data can also be obtained at in-house computer terminals used by those whose official NTIS duties require access.

RETENTION AND DISPOSAL:

Records are updated regularly and maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, (Automated Data Processing Division) Office of Computer and

Communications Services, NTIS, (5285 Port Royal Road), Springfield, Virginia 22161.

NOTIFICATION PROCEDURE:

Information may be obtained from: Director, Office of Administrative Management, NTIS (Sills Building), Springfield, Virginia 22161. Requester should provide name and address in accordance with the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department rules for access, for contesting contents and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individuals and NTIS transaction files.

[FR Doc. 85-5340 Filed 3-5-85; 8:45 am]

BILLING CODE 3510-BR-M

International Trade Administration

Short Supply Determinations on Steel Pipe and Tube; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.—EEC Pipe and Tube Arrangement with respect to:

(a) Carbon hollow drill steel in round sections with outside diameters ranging from 1¼ inch to 1½ inch and interior diameters of 1/32 inch to ½ inch, used in the manufacture of blast furnace tapping rods.

(b) Carbon hollow deformed bars with bar body diameters of 5/16 inch to 2 inches, diameters including the deformed pattern of 1 1/16 inch to 2 3/16 inch, and interior diameters and ¼ inch to ½ inch, used as anchor bolts to reinforce or attach materials to layered rock formations.

(c) Alloyed or carbon hollow mining drill steel of either a hexagon or round shape: The hexagon hollows measuring from ⅞ inch to 1 ⅞ inch across flats with interior diameters of ¼ inch to ¾ inch, the round hollows measuring 1¼ inch to 2 1/32 inches in outside diameter and 1 1/32 inch to 9/16 in inside diameter, used to manufacture mining drill rods.

EFFECTIVE DATE: Comments must be submitted no later than March 18, 1985.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Agreements Compliance Division, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, D.C. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Agreements Compliance Division, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., Washington, D.C. 20230, Room 3087B, (202) 377-4036.

SUPPLEMENTARY INFORMATION: On January 10, 1985, the United States (U.S.) and European Economic Community (EEC) concluded a clarification of the Pipe and Tube Arrangement agreed to on October 21, 1983. The January 10 clarification provides in Article 8 that ". . . the U.S. shall accept exports of pipes and tubes in addition to those permitted under sections 1 and 2 where a shortage of supply is identified, i.e., where the U.S. industry is unable to meet demand in the United States for a particular product." Under the terms of Article 8 the Department ". . . shall make a decision under this section on the basis of objective evidence from all relevant sources."

We have received a request for acceptance under short supply provisions for the following products:

(a) Carbon hollow drill steel in round sections with outside diameters ranging from 1¼ inch to 1½ inch and interior diameters of 1/32 inch to ½ inch, used in the manufacture of blast furnace tapping rods.

(b) Carbon hollow deformed bars with bar body diameters of 5/16 inch to 2 inches, diameters including the deformed pattern of 1 1/16 inch to 2 3/16 inch, and interior diameters of ¼ inch to ½ inch, used as anchor bolts to reinforce or attach materials to layered rock formations.

(c) Alloyed or carbon hollow mining drill steel of either a hexagon or round shape: the hexagon hollows measuring from ⅞ inch to 1⅞ inch across flats with interior diameters of ¼ inch to ¾ inch, the round hollows measuring 1¼ inch to 2 1/32 inches in outside diameter and 1 1/32 inch to 9/16 inch in inside diameter, used to manufacture mining drill rods.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 18, 1985. Comments should focus on the economic factors involved in granting or denying these requests.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of their submission and also submit with it a submission without proprietary information which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

February 28, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-5356 Filed 3-5-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Request for Nominations to the National Advisory Committee on Oceans and Atmosphere

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice requesting nominations to the National Advisory Committee on Oceans and Atmosphere.

SUMMARY: The Department of Commerce seeks recommendations for nominations that will be submitted to the President for six members of the National Advisory Committee on Oceans and Atmosphere. The appointees will take office on July 1, 1985. Members should have knowledge in the following areas of direct concern to the Committee: (1) One or more of the disciplines and fields included in marine science and technology, marine industry, marine-related state or local governmental functions, coastal zone management or other fields directly appropriate for consideration of matters of ocean policy; or (2) one or more of the disciplines and fields included in atmospheric science, atmospheric-related state and local governmental functions, or other fields directly appropriate for consideration of matters of atmospheric policy.

EFFECTIVE DATE: Recommendations will be accepted until April 1, 1985.

ADDRESS: Recommendations will be accepted until April 1, 1985.

ADDRESS: Recommendations or nominations should be submitted to James W. Winchester, Associate Administrator, NOAA, Room 5126,

Herbert C. Hoover Department of Commerce Building, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT:
Ellen Campbell, Office of the Associate Administrator, NOAA, telephone (202) 377–5938.

SUPPLEMENTARY INFORMATION: The National Oceanic and Atmospheric Administration of the Department of Commerce is seeking recommendations for nominees for six vacancies on the National Advisory Committee on Oceans and Atmosphere (NACOA). NACOA was created by Pub. L. 95–63:

(1) To undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management and the status of the marine and atmospheric science and service programs of the United States;

(2) To advise the secretary of Commerce with respect to the carrying out of programs administered by the National Oceanic and atmospheric Administration.

NACOA is composed of 18 members appointed by the President, who serve staggered three-year terms. The act specifies that members of NACOA shall be appointed from among individuals who are eminently qualified by way of knowledge and expertise in the areas of direct concern to the Committee.

Members of NACOA are expected to attend approximately 9 annual meetings of the Advisory Committee in Washington, D.C., or other locations around the country and to devote substantial time and interest to participation in subcommittees and the development of written documents that can serve as the basis for NACOA actions to fulfill its statutory functions. Members serve as paid consultants and are reimbursed for their travel expenses.

Any interested person may suggest him or her self or other individuals for membership. A complete resume of the individual should be included, along with a statement that the person nominated is aware of the nomination, has the time and interest to serve on the Committee, and appears to have no conflict of interest that would preclude a Committee membership. Letters in support of the nomination may also be submitted.

Dated: March 1, 1985.

James W. Winchester,

Associate Administrator, National Oceanic and Atmospheric Administration.

[FR Doc. 85–5416 Filed 3–5–85; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increasing the Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

Feruary 28, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 28, 1985. For further information contact Diana Solkoff, International Trade Specialist (202) 377–4212.

Background

A CITA directive dated May 10, 1984 (See 49 FR 20751) established restraint limits for specified categories of cotton, wool and man-made fiber textile products, including women's girls' and infants' trousers in Category 348 and men's and boys' other coats in Category 634, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1984. In the CITA directive published below the limits for Categories 348 and 634 are being increased to 275,501 dozen (Category 348) and 110,944 dozen (Category 634) to account for carryover, carryforward, carryforward used, and swing, variously applied, under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka. To the extent used, the carryforward applied to Category 348 will be deducted from the applicable category limit during the agreement year which begins on June 1, 1985.

A description of textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

February 28, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of May 10, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka.

Effective on February 28, 1985, you are directed to increase the restraint limits established for the following categories in the directive of May 10, 1984 to the limits indicated, according to the terms of the Bilateral Cotton, Wool and Man-made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka.[1]

Category	Amended Twelve-Month Limit [2] (dozen)
348	275,501
634	110,944

[2] The limits have not been adjusted to account for any imports exported after May 31, 1984.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–5336 Filed 3–5–85; 8:45 am]

BILLING CODE 3510-DR-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket Nos. CRT 80–4, 81–1, 82–1, 83–1]

Further Amendment to Order Granting Further Partial Distributions 1979, 1980, 1981 and 1982 Cable Royalty Distribution

FOR FURTHER INFORMATION CONTACT:
Marianne Mele Hall, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Room 450, Washington, D.C. 20036 (202) 653–5175.

By order dated February 4, 1985, the Copyright Royalty Tribunal ("Tribunal") directed the further partial distribution of 1979, 1980, 1981 and 1982 royalty fees pursuant to section 111(d)(5)(C) of the

[1] The agreement provides, in part, that (1) within the aggregate and group limits, specific limits may be exceeded by designated percentages, provided an equal amount in equivalent square yards is deducted from another specific limit; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Copyright Act of 1976, 17 U.S.C. 111(d)(5)(C). *See* 50 FR 5290 (February 7, 1985), *as supplemented* 50 FR 6027 (February 13, 1985). Subsequent to the issuance of this order, the Tribunal received a pleading joined in by all of the Copyright Owner representatives who had participated in the 1979–82 proceedings. The Copyright Owners requested that the Tribunal make a larger distribution than that proposed in the February 4, 1985 Order. Their request was based upon the following principles to which all the parties had agreed solely for purposes of securing a larger partial distribution of 1979–82 royalties at this time:

1. A further partial distribution of 1979–82 royalties should take place on March 7, 1985.

2. Past distributions plus the March 7, 1985 distribution should result in all parties having received the same percentage of their proportionate shares of the 1979–82 funds, as those shares have been determined in the Tribunal's most recent allocation decisions.

3. This percentage should be applied against the "Adjusted Total Fund" as set forth in the Tribunal's notice published at 50 FR 6030 (February 13, 1985) ("February 13 Notice"). The Tribunal calculated that "Adjusted Total Fund" by (a) totalling the amounts previously distributed to all parties and the amounts remaining in the fund on February 7, 1985; and then (b) subtracting from this total the amounts reflecting the "additional" interest which the Tribunal considers to be due the Devotionals.

4. The amount of the Devotionals' "additional" interest is that which is identified in the Tribunal's February 13 Notice. This interest is also to be distributed to the Devotionals on March 7, 1985.

5. The percentages to be applied against the "adjusted total funds" are 96 percent for 1979; 86 percent for 1980; 96 percent for 1981; and 96 percent for 1982.

5. Attached to this order are tables, prepared by the Copyright Owners, which reflect the above agreed-upon principles. The figures in the final column of each table represent the amount of their proposed further partial distribution.

The Copyright Owners and the Tribunal believe that the amounts which would remain in the 1979–82 funds after the proposed partial distributions are adequate to accommodate any possible adjustments that might be occasioned by pending judicial review of the Tribunal's prior allocation decisions. If no such adjustments must be made after these decisions are no longer subject to appeal, the royalties remaining after the March 7, 1985 distribution would be distributed to the parties in their proportionate shares, as those shares have been determined in the Tribunal's most recent final allocation orders. (*See* Column 1 of each of the attached tables.)

The Tribunal has consistently encouraged voluntary agreements among the parties and has supported the earliest possible distribution of the maximum amount of royalties not subject to controversy. Both of these principles are, of course, embodied in that portion of the Copyright Act of 1976 governing the cable royalty distribution proceedings. *See* 17 U.S.C. 111(d)(5). Accordingly, the Tribunal has determined to order a further partial distribution of 1979, 1980, 1981, and 1982 royalties consistent with the Copyright Owners' joint proposal.

The Tribunal hereby rescinds its February 4, 1985 partial distribution order and directs the distribution to each party of the amounts set forth in the final column of each of the attached tables. This distribution will take place on March 7, 1985. As reflected in the attached tables, Multimedia already has received some 140 percent of its share of the 1982 fund. The Tribunal, therefore, further directs Multimedia to reimburse the 1982 fund including interest for the difference between the amount of the 1982 royalties which it has already received and the amount to which it is entitled under the 96 percent distribution ordered above. Such reimbursement is to be made no later March 7, 1985.

Dated: March 4, 1985.

Marianne Mele Hall,

Chairman.

	Percent allocation	50 pct distribution, 5/82—7/2/82	35.5 pct distribution, 11/83 and 3/84—1/12/84	Total received to 2/6/85	96 pct of adjusted fund in real dollars	Distribution needed to attain 96 pct pro rata (in real dollars)
Total fund		$21,380,030	$23,290,015			$23,668,381
1979 PHASE I						
Program syndicators (see below):						
Joint sports and NCAA	15.00	$1,600,950	$136,945		$3,406,247	$385,571
(JS 5.5 pct-3/15/84			1,284,781	$3,022,676		
PBS	5.25	560,332	496,310	1,056,642	1,192,886	136,244
NAB (Phase I and II)	5.06	540,054	555,234	1,095,288	1,149,715	54,427
Music	4.25	453,603	401,753	855,356	965,670	110,314
Canadian	.75	80,048	83,844	163,892	170,412	6,520
NPR	.25	26,682	29,113	55,795	56,804	1,009
Devotionals	.35				79,526	[1] 79,526
1979 PHASE II						
Program syndicators (70 pct):						
MPAA	67.41	7,232,406	6,408,248	13,640,654	15,316,662	1,676,008
Multimedia	1.12	119,538	104,339	223,877	254,482	30,605
SIN	.49	52,297	45,648	97,945	111,336	13,391
Mutual of Omaha	.07	7,471	6,521	13,992	15,905	1,913
Total	100.000	10,673,381	9,552,736	20,226,117	22,721,645	2,495,528

[1] Devotionals also to receive "additional interest" in the amount of $1,361. *See* 50 FR 6030 (Feb. 13, 1985).

NOTE.—All dollar amounts have been rounded to the nearest whole dollar.

	Percent allocation	50 pct, 5/80—5/6/83	30 pct, 8/80—8/11/83	Total to 2/6/85	86 pct of adjusted fund in real dollars	Distribution needed to attain 86 pct pro rata (in real dollars)
Total fund		[1] $26,450,000	$26,825,913			$27,725,061
1980 Phase I						
Program syndicators:						
Joint sports	14.9473	$1,983,750	$1,207,166	$3,190,916	$3,563,967	$373,051
PBS	5.2316	694,312	422,508	1,116,820	1,247,399	130,579
NAB (Phase I and II)	5.0422	669,185	407,217	1,076,402	1,202,240	125,838

	Percent allocation	50 pct, 5/80—5/6/83	30 pct, 8/80—8/11/83	Total to 2/6/85	86 pct of adjusted fund in real dollars	Distribution needed to attain 86 pct pro rata (in real dollars)
Music	4.2351	562,062	342,030	904,092	1,009,798	105,706
Canadian	.7474	99,187	60,358	159,545	178,207	18,662
NPR	.2500	33,062	20,119	53,181	59,609	6,428
Devotionals	.3500				83,453	[2] 83,453
1980 Phase II						
Program syndicators: (69.75%)						
MPAA	67.5920	8,970,517	5,458,805	14,429,322	16,116,334	1,687,012
Multimedia	(1.1161	148,120	90,135	238,255	266,117	27,862
SIN	(.4883	64,802	39,434	104,236	116,428	12,192
Total	(100.0000)	13,224,997	8,047,772	21,272,768	23,843,552	2,570,783

[1] Approximate.
[2] Devotionals also to receive "additional interest" in the amount of $8,450. *See* 50 Fed. Reg. 6030 (Feb. 13, 1985).
NOTE.—All dollar amounts have been rounded to the nearest whole dollar.

	Percent allocation	85 pct distribution, 8/83	5 pct distribution, 11/83	6.5 pct distribution, 4/84	Total received to 2/6/85	96 pct of adjusted fund in real dollars	Distribution needed to attain 96 pct pro rata (in real dollars)
Total fund		$32,280,745	$33,851,575	$34,627,943			$35,281,529
1981 PHASE I (Settled as per 1979 and 1980 Remand)							
Settling Parties:							
Program syndicators:							
Joint sports	14.9473	$4,115,795	$253,887	$337,613	$4,707,295	$5,062,690	$355,395
PBS	5.2316	1,440,528	88,860	118,171	1,647,559	1,771,957	124,398
NAB (Phase I & II)	5.0422	1,388,395	85,644	113,891	1,587,930	1,707,807	119,877
Music	4.2351	1,166,141	71,935	95,666	1,333,742	1,434,440	100,698
Canadian	.7474	205,790	12,694	16,898	235,382	253,146	17,764
NPR	.2500	68,596	4,231	5,626	78,453	84,676	6,223
Devotionals	.3500					118,546	[1] 118,546
1981 PHASE II							
Program Syndicators (69.75%):							
MPAA	67.5920	18,611,625	1,148,076	1,526,696	21,286,397	22,893,590	1,607,193
Multimedia	1.1161	307,313	18,957	25,209	351,479	378,026	26,547
SIN	.4883	134,449	8,294	11,046	153,789	165,389	11,600
Total		27,438,632	1,692,578	2,250,816	31,382,026	33,870,267	2,488,241

[1] Devotionals also to receive "additional interest" in the amount of $24,464. *See* 50 Fed. Reg. 6030 (Feb. 13, 1985).
NOTE.—All dollar amounts have been rounded to the nearest whole dollar.

	Percent allocation	90 pct distribution, 12/1/83	96 pct of adjusted fund in real dollars	Distribution needed to attain 96 pct pro rata (in real dollars)
Total fund		42,160,356		43,765,854
1982 PHASE I (Settled as per 1979 land 1980 Remand with adjustment for pro rata distribution of Devotionals share.)				
Settling Parties:				
Program syndicators (see below):				
Joint Sports	14.8466	$5,691,648	$8,237,833	$546,185
PBS	5.1974	1,992,077	2,183,699	191,622
NAB	5.0093	1,919,983	2,104,669	184,686
Music	4.2074	1,612,634	1,767,749	155,115
Canadian	.7425	284,562	311,963	27,381
NPR	.2500	94,861	105,038	10,177
Devotionals	1.0000		420,152	[1] 420,152
1982 PHASE II				
Program syndicators (89.2982):				
MPAA	67.5657	25,737,632	28,387,884	2,650,252
Multimedia	.6930	424,976	291,166	[2] (133,810)
SIN	.4881	185,927	205,076	19,149
Total	100.0000	37,944,320	42,015,229	4,070,909
Settling sports parties (14.8496)				

[1] Devotionals also to receive "additional interest" in the amount of $55,916. *See* 50 Fed. Reg. 6030 (Feb. 13, 1985).
[2] Overpayment.
Note.—All dollar amounts have been rounded to the nearest whole dollar.

[FR Doc. 85-5337 Filed 3-5-85; 8:45 am]
BILLING CODE 1410-08-M

DEPARTMENT OF DEFENSE

Defense Systems Management College Board of Visitors; Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Defense Systems Management College Board of Visitors

Meeting. The agenda will include a review of accomplishments related to the system acquisition education, system acquisition research, and information collection and dissemination missions. It will also include a review of the DSMC plans, resources and operations. The meeting is open to the public; however, because of limitations on the space available, allocation of seating will be made on a first-come, first-serve basis. Notice of this meeting is required under Presidential Executive Order 11671, June 7, 1972.

DATE: March 28, 1985, 7:30 a.m. to 2:30 p.m.

ADDRESS: Defense Systems Management College, Building 202, Fort Belvoir, Virginia 22060-5426.

FOR FURTHER INFORMATION CONTACT: Ms. Radean Kerns, Bldg 202, Fort Belvoir, Virginia, telephone (703) 664-6480. Persons desiring to attend should contact Ms. Kerns.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 1, 1955.

[FR Doc. 85-5338 Filed 3-5-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 20, 1985.

The USAF Scientific Advisory Board will meet in general session at Brooks AFB, San Antonio, Texas, on April 17, 1985 from 8:30 a.m. to 5:00 p.m. and on April 18, 1985 from 8:30 a.m. to 2:00 p.m.

The purpose of the meeting will be to present classified briefings on Protection of Man in a Hostile Environment and Advances in Biotechnology for Air Force Applications and the Man-machine Interface to the full Board membership and special guests. The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-5415 Filed 3-5-85; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate; Restriction of Eligibility for Grant Award

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(a), it intends to award on a restricted eligibility basis a continuation grant to the National Academy of Sciences in Support of the Board on Ocean Science and Policy. The DOE support under this grant will be $30,000 over a 12 month period.

Procurement Request No.: 01-85ER60319.000

Project Scope—The National Academy of Sciences, through the Board on Ocean Sciences and Policy of the Commission on Physical Sciences, Mathematics and Resources, is to address and report on major ocean sciences and policy issues of interest to DOE and other Federal Departments, Agencies, and Offices. The results of the 1985 program will be reported and made available to sponsoring entities, interested parties, and to the public. Eligibility for this continuation award is restricted to the National Academy of Sciences, chartered by Congress to conduct scientific research for the Government, to permit continuance of efforts initiated several years ago.

FOR FURTHER INFORMATION CONTACT: James P. Beiriger, MA-452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-1024.

Issued in Washington, D.C., on *February 27, 1985.*

Ben Goldman,

Director, Contract Operations, Division "A", Office of Procurement Operations.

[FR Doc. 85-5353 Filed 3-5-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreement; Japan; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of The United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S-JA-356, to the Research Reactor Institute, Kyoto University, Japan, 7 grams of uranium-233, 10 plates containing a total of 20 milligrams of uranium-233, on titanium, 100 milligrams of uranium-234, one gram of uranium-235, and 5 plates containing a total of 10 milligrams of plutonium-239 on titanium. These materials are to be used for the study of neutron cross sections and fission mass yields.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: February 28, 1985.

Richard H. Williamson,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 85-5344 Filed 3-5-85; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; International Atomic Energy Agency; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the International Atomic Energy Agency (IAEA) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S-IA-126, to the Instituto Nacional de Investigaciones Nucleares, Mexico, 2 grams of uranium enriched to 93.28% in U-235, and 2 grams of uranium enriched to 97.66% in U-235, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department.

Dated: February 28, 1985.

Richard H. Williamson,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 85-5345 Filed 3-5-85; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Initial Offer of Long-Term Power Contracts; Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) on Long-Term Power Contracts and Request for Recomendations.

SUMMARY: BPA hereby gives notice of its intent to prepare and consider an EIS on its long-term power contracts offered under section 5(g) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act), 16 U.S.C. 839-839h (1982).

BPA was required by the Pacific Northwest Power Act to offer new long-term power contracts to its customers. This was done in August 1981. BPA prepared an Environmental Report to accompany the initial offer of contracts but did not prepare an EIS. BPA has been ordered by the United States Court of Appeals for the Ninth Circuit to prepare an EIS at this time. *Forelaws on board v. Johnson*, 743 F.2d 677, 21 ERC 1850, No. 82-7319 (9th Cir. Sept. 25, 1984), petition for rehearing denied January 21, 1985.

The EIS will analyze major policy choices made for the initial contracts, particularly for terms affecting energy conservation, renewable resources, and the protection of fish and wildlife. Alternatives to contract terms adopted by BPA that were proposed in the initial negotiations and that were analyzed in the Environmental Report will be considered. Additional alternative contract terms may be developed in the scoping process. The EIS will provide information on the environmental consequences of contract terms as they now exist and of alternative contract terms as they are developed in the scoping process.

BPA encourages and will consider written recommendations on appropriate alternatives to the present contrct terms. Send recommendations to the address below by April 5, 1985. Public scoping meetings will be held later this spring. **Federal Register** notice will be made at least 15 days in advance for the time and place of scoping meetings.

Responsible Official: Mr. Roy B. Fox, Environmental Coordinator for the Office of Power and Resources Management, is the official responsible for the develpment of the EIS on long-term power contracts.

ADDRESS: Written recommendations and comments should be submitted to Mr. Fox at P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION: Questions regarding the EIS should be directed to Mr. Fox at 502-230-4238 in Portland, or Ms. Lynn Baker, Public Involvement Office, 503-230-3478 in Portland. Toll-free lines: Oregon callers outside of Portland may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048

Issued in Portland, Oregon, on February 21, 1985.

Robert E. Ratcliffe,

Acting Administrator.

[FR Doc. 85-5346 Filed 3-5-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-293-000, et al.]

American Electric Power Service, Corp. et al; Electric Rate and Corporate Regulation Filings

February 22, 1985.

Take notice that the following filings have been made with the Commission:

1. American Electric Power Service Corporation

[Docket No. ER85-293-000]

February 22, 1985.

Take notice that on February 11, 1985, American Electric Power Service Corporation (AEP) tendered for filing on behalf of its affiliate Indiana & Michigan Electric Company (I&ME), which is an AEP affiliated operating subsidiary, Modification No. 20 dated January 30, 1985 to the Interconnection Agreement dated November 27, 1961 between Illinois Power Company (Illinois) and I&ME. The Commission has previously designated the 1961 Agreement as I&ME's Rate Schedule FERC No. 23 and Illinois' Rate Schedule FERC No. 9.

Sections 1 and 2 of Modification No. 20 provides for an increase in the transmission demand rate for Short Term Power when I&ME is the supplying party to $0.46 per kilowatt per week and to $0.092 per kilowatt per day. Section 4 increaeses the Limited Term Power transmission demand rate, when I&ME is the supplying party, to $2.00 per kilowatt per month. Sections 3 and 5 revise the generation demand compensation sections of the Short Term Power and Limited Term Power Service Schedules to provide rates. The proposal rates included in this Modification No. 20 for Short Term and Limited Term Power are similar to the rates for Transmission Service presently filed and accepted for filing by the Commission.

AEP requests an effective date of April 15, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Illinois Power Company, Public Service Commission of Indiana, and Michigan Public Service Commission.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power & Light Company

[Docket No. ER85-291-000]

February 22, 1985.

Take notice that on February 8, 1985, Florida Power & Light Company (FPL) tendered for filing the following documents:

Amendment Number One to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and the City of Starke, Florida (Rate Schedule FERC No. 79)

Amendment Number Two to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and the City of Starke, Florida.

Amendment Number Three to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and the City of Starke, Florida.

FPL states that under Amendment Number One, Amendment Two, and Amendment Number Three, FPL will transmit power and energy for City of Starke as is required in the implementation of its interchange agreements with: (1) Jacksonville Electric Authority; (2) with the City of St. Cloud and the City of Kissimmee; and (3) with the Sebring Utilities Commission, respectively.

FPL requests waiver of the Commission's regulations be granted and that the proposed amendments be made effective immediately.

FPL states that copies of the filing were served on the Superintendent of

Power Resources, City of Starke, Florida.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Portland General Electric Company

[Docket No. ER85-295-000]

February 22, 1985.

Take notice that on February 11, 1985, Portland General Electric Company (PGE) tendered for filing a Summary of Sales made under the Company's first revised Electric Service Tariff, Volume No. 1, during December of 1984, along with a cost justification for the rates charged.

Copies of this filing were served upon parties having service agreements with PGE, parties to the Intercompany Pool Agreement (revised), intervenors in Docket No. ER77-131 and the Oregon Public Utility Commissioner.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Iowa Public Service Company

[Docket No. ER85-294-000]

February 22, 1985.

Take notice that on February 11, 1985, Iowa Public Service Company (IPS) tendered for filing two executed Transmission Service Agreements both dated January 8, 1985, whereby IPS will provide transmission service for Corn Belt Power Cooperative of Neal Station Generating Unit No. 4 capacity and associated energy effective January 1, 1985 and November 1, 1983, respectively.

IPS requests an effective date as noted above and therefore requests a waiver of the Commission's notice requirements.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power & Light Company.

[Docket No. ER85-299-000]

February 22, 1985.

Take notice that on February 13, 1985, Pennsylvania Power & Light Company (PP&L) tendered for filing as an initial rate schedule an executed Power Supply Agreement dated March 16, 1983 between PP&L and the Borough of Lansdale, Pa. (Lansdale). Under the proposed rate schedule, PP&L will provide full requirements service to Lansdale. PP&L's rates and charges for service to Lansdale will be the same as those charged by PP&L for service to its present Group 1—Transmission customers receiving service at 66 kv or higher.

PP&L requests an effective date of June 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing has been served upon Lansdale and the Pennsylvania Public Utility Commission.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Black Hills Power and Light Company

[Docket No. ER85-296-000]

February 22, 1985.

Take notice that on February 11, 1985, Black Hills Power and Light Company (Black Hills) tendered for filing an agreement between Black Hills and the City of Gilette, Wyoming which provides for the sale of seasonal non-firm energy.

Black Hills requests an effective date of February 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were supplied to the City of Gilette, Wyoming, and the regulatory commissions of the states of Wyoming and South Dakota.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Central Hudson Gas & Electric Corporation

[Docket No. ER85-297-000]

February 22, 1985.

Take notice that on February 11, 1985, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing as a supplement to its Rate Schedule FERC No. 22 a letter of agreement and notification dated January 28, 1985 between Central Hudson and New York State Electric and Gas Corporation. Central Hudson states that this letter provides for a decrease in the monthly facilities charge from $7,121.23 to $5,981.25 in accordance with Article IV.1 of its Rate Schedule FERC No. 22, a decrease in the monthly Transmission Charge from $6,090.89 to $5,860.55 in accordance with Articles V and VI of its Rate Schedule FERC No. 22 and an increase in the annual Operation and Maintenance Charge from $2,994.84 to $3,237.42 in accordance with Article IV.2 of its Rate Schedule FERC No. 22.

Central Hudson requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing by Central Hudson were served upon New York State Electric and Gas Corporation.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company

[Docket No. ER85-290-000]

February 22, 1985.

Take notice that on February 8, 1985, Northern States Power (Minnesota), tendered for filing three related contracts entitled 345 KV Joint Transmission Network (JTN) Agreement between Cooperative Power Association and Northern States Power Company (NSP) and United Power Association (JTN Agreement) dated October 9, 1984; Facilities Agreement for Initial Equalization of the Joint Transmission Network between Cooperative Power Association and NSP and United Power Association (Facilities Agreement) dated October 9, 1984; and Purchase Agreement, dated October 9, 1984.

The JTN Agreement essentially provides for the establishment of a joint transmission network and the ongoing rights and responsibilities of NSP, UPA and CPA in that network. The Facilities Agreement defines the property to be transferred and constructed by each party to the joint transmission network to reach initial parity of investment in the network. The Purchase Agreement provides the transfer of certain transmission properties to NSP by UPA and CPA. The purpose of these related contracts is to establish a joint transmission network among NSP, Cooperative Power Association and United Power Association.

NSP requests an effective date of April 15, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER85-292-000]

February 22, 1985.

Take notice that on February 8, 1985, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Four to Agreement to Provide Specified Transmission Service Between FPL and the Sebring Utilities Commission (Sebring) (Rate Schedule FERC No. 64).

FPL states that under Amendment Number Four, FPL will transmit power and energy for Sebring Utilities Commission as is required in the implementation of its interchange agreement with City of Starke, Florida (Starke).

FPL requests that waiver of the Commission's Regulations be granted and that the proposed Amendment be made effective immediately.

FPL states that copies of the filing were served on Sebring Utilities Commission.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Idaho Power Company

[Docket No. ER85-298-000]

February 22, 1985.

Take notice that on February 12, 1985, Idaho Power Company (Idaho) tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during December, 1984, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company	Supplement 38
Sierra Pacific Power Company	Supplement 34
Portland General Electric Company	Supplement 31
Southern California Edison Company	Supplement 25
San Diego Gas & Electric Company	Supplement 20
Washington Water Power Company	Supplement 26
Los Angeles Water & Power Company	Supplement 21
City of Glendale	Supplement 20
Puget Sound Power & Light Company	Supplement 12
Pacific Gas & Electric Company	Supplement 6

Idaho requests an effective date of December 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure [18 CFR 385.211 and 385.214]. All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5332 Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-227-000, et al.]

Bethlehem Steel Corp., et al., Bethlehem Facility; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications

Comment date: Thirty days from the publication in the **Federal Reister**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission:

1. Bethlehem Steel Corporation, Bethlehem Facility

[Docket No. QF85-227-000]

February 20, 1985.

On January 31, 1985, Bethlehem Steel Corporation, 8th and Eaton Avenues, Bethlehem, Pennsylvania, 18056, submitted for filing an application for certification of a facility as a qualifying facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located at Bethlehem's ssteel operation facilities in Bethlehem, Pennsylvania, and is a topping-cycle cogeneration unit. The facility will supply steam and electricity to Bethlehem's steel plant. The cogeneration facility includes a topping cycle steam turbine generator and a condensing steam turbine generator. The facility's primary energy source is waste by-products consisting of coke oven gas and blast furnance gas. The power production capacity is 30 MW. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

2. AES Placerita, Inc.

[Docket No. QR85-179-000]

February 21, 1985.

On January 7, 1985, AES Placerita, Inc., (Applicant) of 1925 N. Lynn Street, Suite 1200, Arlington, Virginia 22209 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submttal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the TOSCO Enhanced Oil Recovery Corporation's Placerita oil field in Newhall, California. The facility will consist of two gas-turbine generators exhausting to a heat recovery steam generator. The steam will be used to drive a steam-turbine generator and for injection into oil wells to enhance oil recovery. The primary energy source will be natural gas. The electric power production capacity will be 102 MW. Construction is scheduled to begin in July 1986 and operation is expected to commence about mid-1987.

3. Syngas Systems, Inc.

[Docket No. QF85-220-000]

February 22, 1985.

On February 1, 1985, Syngas Systems, Inc. (Applicant) of Three 555 Timmons Lane, Suite 8000, Houston, Texas 77027, submitted for filiing an application for certification of a facility as a qualifying facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located at 4601 Indiana Street, Building 13, Golden, Colorado 80403. Sixteen tons per day (dry basis) of whole tree wood chips are gasified in an air blown, downdraft gasifier to produce a low Btu fuel gas which is cooled and cleaned of tar and particulates and used as fuel for a turbosupercharged internal combustion engine specially configured for the low Btu gas. The engine drives a 480 volt, 3 phase, 60 Hz synchronous machine to produce a net output of 750 kW. The facility will be interconnected with the Public Service Company of Colorado system.

4. Medical Cogen

[Docket No. QF85-211-000]

February 22, 1985.

On January 28, 1985, Medical Cogen (Applicant) of Merritt Peralta Medical Center, Hawthorne and Webster Streets, Oakland, California 94623 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at the Merritt Peralta Medical Center, Hawthorne and Webster Streets, Oakland, California. The cogeneration facility will consist of two 1430 kW engine generators and associated heat recovery equipment. Heat will be recovered from the engine exhausts to produce 120 psig steam, and 15 psig steam will be produced from the cooling jackets around the engines. The steam generated will be fed into the existing hospital distribution systems. A new 120 psig line and a condensate return line will be run to Peralta. In addition, new low-pressure absorption-type chillers will be installed at each hospital to fully utilize the steam produced.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5333 Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-22-000]

Aquenergy Systems, Inc., Complainant, v. Saluda River Electric Cooperative, Inc. and Blue Ridge Electric Cooperative, Inc., Respondents; Complaint

March 1, 1985.

Take notice that on February 21, 1985, Aquenergy Systems, Inc. (Aquenergy) submitted for filing a complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure 18 CFR 385.206, against Saluda River Electric Cooperative, Inc. (Saluda River) and Blue Ridge Electric Cooperative, Inc. (Blue Ridge).

Aquenergy requests that the Commission issue an order requiring Saluda River and Blue Ridge to provide the appropriate and relevant data and information from which their avoided costs can be determined.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 29, 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. 85-5379 Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7522-001]

Cairo/Wickliffee Associates; Surrender of Preliminary Permit

March 4, 1985.

Take notice that Cairo/Wickliffee Associates, Permittee for the proposed Cairo/Wickliffee Hydro Project No. 7522, has requested that its preliminary permit be terminated. The permit was issued on February 3, 1984, and would have expired January 31, 1986. The project would have been located on the Ohio River near Cairo, Ballard County, Kentucky. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on February 1, 1985, and the preliminary permit for Project No. 7522 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5378, Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-20-000]

Colorado Interstate Gas Co. v. MIGC, Inc.; Complaint

February 28, 1985.

On February 19, 1985, Colorado Interstate Gas Company (CIG) filed a complaint pursuant to 18 CFR 271.1105(d)(3) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (1984), requesting that the Production-Related Costs Board order refunds of production-related costs charged to CIG by MIGC, Inc. (MIGC) contrary to 18 CFR 271.1104 (1984).

CIG states that it buys natural gas from MIGC that MIGC purchases from its affiliate, MGPC, Inc. (MGPC). CIG contends that MIGC knowingly and willfully violated 18 CFR 271.1104(e) regarding the retroactive collection of production-related charges for the period July 25, 1980 to June 1, 1982 when MIGC executed a contract amendment with MGPC. CIG also contends that MIGC incorrectly paid substantially inflated retroactive charges based on the wellhead Btu content of the gas rather than the lower Btu content of the residue gas at the tailgate of MGPC's plants where the sale of the gas to MIGC occurs. Finally, CIG contends that the overall rate at which CIG was billed for production-related cost charges from March 7, 1983 significantly and inexplicably rose beginning in May, 1984, despite no major changes in MGPC's system. CIG states that it cannot quantify the amounts paid for the prospective charges.

CIG requests either (1) a complete disallowance and refund with interest of all production-related costs billed by MIGC for the period July 25, 1980 to December 31, 1984, or (2) a disallowance and refunds with interest for the retroactive period July 25, 1980 to June 1, 1982 and a recalculation of all charges for the period June 1, 1982 to December 31, 1984.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a) (1984), MIGC must file an answer to CIG's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. MIGC shall file its answer with the Commission on or before March 13, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 13, 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. 85-5375 Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-13-000]

Crystal Oil Co.; Petition for Adjustment

March 1, 1985.

On December 31, 1984, Crystal Oil Company filed with the Federal Energy Regulatory Commission a petition for an adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and Rules 1101 through 1104 of the Commission's rules.[1]

Commission Order Nos. 399 [2] and 399-A [3] implement the decision of the United States Court of Appeals for the District of Columbia Circuit in *Interstate Natural Gas Association of America* v. *FERC*,[4] and require Crystal, as a first-seller of natural gas, to make refunds to its gas purchasers resulting from the court-ordered adjustment in the method used to measure the energy content of natural gas.

Crystal asserts that the Btu refund billings received from two of its gas purchasers, Arkansas Louisiana Gas Company (Arkla) and United Gas Pipe Line Company (United), should be offset by monies (including the interest thereon) allegedly owed to Crystal by these purchasers. Additionally, Crystal asserts that its refund obligations should be further reduced by the amount of Btu refunds which allegedly were improperly billed Crystal by Arkla and United. Accordingly, Crystal requests an adjustment from the Btu refund requirements of Commission Order Nos. 399 and 399-A so that Crystal may reduce its refund obligations by monies allegedly due and owing to Crystal by Arkla and United and by amounts erroneously billed Crystal by these two purchasers.

Subpart K of Part 385 of the Commission's Rules sets out the procedures that apply to this adjustment proceeding. Any person who wishes to participate in this proceeding shall file a petition to intervene in accordance with Subpart K. All such petitions must be filed within 15 days after this notice is published in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5380 Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

[1] 15 U.S.C. 3301, 3412(c) and 18 CFR 385.1101 through 385.1104 (1984), respectively.

[2] Order No. 399, *Refunds Resulting From Btu Measurement Adjustments*, III FERC Statutes and Regulations ¶ 30,597 (1984).

[3] Order No. 399-A, *Refunds Resulting From Btu Measurement Adjustments*, III FERC Statutes and Regulations ¶ 30,612 (1984).

[4] 716 F.2d 1 (1983), *cert. den.* 104 S. Ct. 1616 (1984).

[Project No. 8454-001]

Fountain City Associates; Surrender of Preliminary Permit

March 4, 1985.

Take notice that Fountain City Associates, Permittee for the Mississippi Lock and Dam No. 5A, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 8454 was issued on January 31, 1985, and would have expired on December 31, 1987. The project would have been located on the Mississippi River in Winona County, Minnesota, and Buffalo County, Wisconsin.

The Permittee filed its request on February 1, 1985, and the preliminary permit for Project No. 8454 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5376 Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-315-000]

Iowa-Illinois Gas and Electric Co.; Filing

March 1, 1985.

The filing Company submits the following:

Take notice that Iowa-Illinois Gas and Electric Company (Iowa) on February 21, 1985, tendered for filing a proposed change in its Rate Schedule WES-M (applicable only to the cities of Buffalo, Callender and Farnhamville, Iowa), FPC Wholesale Electric Tariff, Original Volume No. 1, Second Revised Sheet No. 7, proposed to be effective May 1, 1985, corrects a previous reference error. The change reflected in 4th Revised Sheet No. 8 and 3rd Revised Sheet No. 9, also proposed to be effective May 1, 1985, would increase revenues from jurisdictional sales and service by $54,899 based on the 12-month period ending December 31, 1983.

Iowa states that the reason for the proposed increased revenues is because its operating income has declined to a level which provides an inadequate return.

Copies of the filing were served upon the cities of Buffalo, Callender and Farnhamville, Iowa, and the Iowa State Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 March 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. 85-5381 Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7488-001]

Spottsville Associates; Surrender of Preliminary Permit

March 4, 1985.

Take notice that Spottsville Associates, Permittee for the proposed Spottsville Hydro Project No. 7488, has requested that its preliminary permit be terminated. The permit was issued on January 25, 1984, would have expired December 31, 1985. The project would have been located on the Green River near Spottsville, Henderson County, Kentucky. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on February 1, 1985, and the preliminary permit for Project No. 7488 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5377 Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 4G2987/T479, FRL-2786-6]

FMC Corp.; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the herbicide, command 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodity soybeans. This temporary tolerance was requested by FMC Corporation.

DATE: This temporary tolerance expires March 1, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245 CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-1800).

SUPPLEMENTARY INFORMATION: FMC Corporation, Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103, has requested in pesticide petition PP 4G2987 the establishment of a temporary tolerance for residues of the herbicide, command 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone derived from its application in or on the raw agricultural commodity soybeans at 0.05 part per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 279-EUP-93, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. FMC Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires March 1, 1986. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: February 20, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-4999 Filed 3-5-85; 8:45 am]

BILLING CODE 6560-50-M

[PP4G3073/T477; FRL-2786-Y]

Micro Gene Systems, Inc., Establishment of Exemptions From Requirements of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established exemptions from the requirement of tolerances for residues of the biological insecticide codling moth granulosis virus in or on the raw agricultureal commodities white corn and sweet corn.

DATE: These temporary exemptions from the requirement of tolerances expire June 18, 1985.

FOR FURTHER INFORMATION CONTACT:

By mail: Timothy Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Sw., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-2609).

SUPPLEMENTARY INFORMATION: Micro Gene Systems, Inc., 210 Frontage Rd., West Haven, CT 06516, has requested in pesticide petition PP 4G3073 the establishment of exemptions from the requirement of tolerances for residues of the biological insecticide codling moth granulosis virus in or on the raw agricultural commodities white corn and sweet corn.

These temporary exemptions from the requirement of tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 51456-EUP-1 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemptions from the requirement of tolerances will protect the public health. Therefore, the temporary exemptions from the requirements of tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredients to be used must not exceed the quantity authorized by the experimental use permit.

2. Micro Gene Systems, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary exemptions from the requirements of tolerances expire June 18, 1985. Residues remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemptions from the requirements of tolerances. These temporary exemptions from the requirement of tolerances may

be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that the regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: February 20, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-5001 Filed 3-5-85; 8:45 am]

BILLING CODE 6560-50-M

[PP 1G2431/T478; FRL-2786-5]

Extension of Temporary Tolerance; Rohm and Haas Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for residues of the chemical hybridizing agent potassium and its related metabolite in or on the raw agricutural commodity wheat.

DATE: This temporary tolerance expires March 1, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the **Federal Register** of October 6, 1982 (47 FR 44154), announcing the extension of a temporary tolerance for residues of the chemical hybridizing agent potassium 1-(p-chlorophenyl)-1,4-dihydro-6-methyl-4-oxo-pyridazine-3-carboxylate and its related metabolite in or on the raw agricultural commodity wheat (second generation, grown out of the hybrid seed and untreated male parent) at 1.0 part per million (ppm). This tolerance was issued in response to pesticide petition PP 1G2431, submitted by Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105.

This temporary tolerance has been extended to permit the continued marketing of the raw agricultural commodity named above when treated in accordance with the provisions of experimental use permit 707–EUP–95, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of this temporary tolerance will protect the public health. Therefore, the temporary tolerance has been extended on the condition that the presticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Rohm and Haas Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires March 1, 1986. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accorance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981, (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: February 20, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-5000 Filed 3-5-85; 8:45 am]

BILLING CODE 6560-50-M

[PF–404; FRL–2786–3]

Pesticide Tolerance Petitions; Rhone-Poulenc Inc. and Mobay Chemical Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain raw agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF–404] and the petition number, attention Product Manager (PM) named in each petition, at the following addresses:

Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Information Services Section (TS–757C), Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS–767C), Attn: (Product Manager (PM) named in

each petition). Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location and telephone No.	Address
PM-12, Jay Ellenberger.	Rm. 202, CM#2 (703-557-2386).	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202.
PM-21, Henry Jacoby.	Rm. 227, CM#2 (703-557-1900).	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 5E3214.* Rhone-Poulenc Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852. Proposes amending 40 CFR 180.399 by establishing tolerances for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(methyl-ethyl)-2,4-dioxo-1-imidazolidinecarboximide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidine-carboximide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide] in or on the agricultural commodities blueberries, boysenberries, currants, and rasberries at 15 parts per million (ppm). The proposed analytical method for determining residues is gas chromatography with a Ni63 electron-capture detector. (PM-21)

2. *PP 5E3187.* Mobay Chemical Corp., P.O. Box 4913, Hawthorn Road, Kansas City, MO 64120. Proposes amending 40 CFR Part 180 by establishing tolerances for the residues of the insecticide (*Z*)-alpha-[[(diethoxyphosphinothioyl)oxy]imino] benzeneacetonitrile and its cholinesterase-inhibiting metabolites in or on the agricultural commodity corn, sweet (kernels plus cops with husk removed at 0.05 ppm.

The proposed analytical method for determining residues is gas chromatography with phosphor thermionic or flame-photometer detector. (PM-12)

(Sec. 408(d)(2) 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: February 20, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-4992 Filed 3-5-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180658; FRL 2789-6]

Montana Department of Agriculture; Application for Emergency Exemption to Use Sodium Monofluoroacetate; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a request for an emergency exemption from the Montana Department of Agriculture (hereafter referred to as the "Applicant") to use the active ingredient sodium monofluoroacetate (Compound 1080) to control Columbian ground squirrels (*Spermophilus columbianus*) on 17,789 acres of cropland and 15,858 acres of improved pastureland in 16 counties of Montana. EPA is soliciting comment before making the decision whether or not to grant the exemption.

DATE: Comments must be received on or before March 21, 1985.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP-180658," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Jim Tompkins, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, D.C. 20460.

Office location and telephone number: Rm. 716B, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1192).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of sodium monofluoroacetate (CAS Reg. 62-74-8) grain bait to control Columbian ground squirrels in 16 counties (Beaverhead, Broadwater, Deer Lodge, Flathead, Granite, Jefferson, Lake, Lewis & Clark, Lincoln, Madison, Mineral, Missoula, Powell, Ravalli, Sanders, and Silver Bow) in Montana. Information in accordance with 40 CFR Part 166 was submitted as part of this request. Compound 1080 was previously used in Montana for control of ground squirrels under specific exemptions during 1979, 1981, 1982, 1983, and 1984.

The Applicant claims that because Columbian ground squirrels like to eat grains, grasses, and cultivated legumes they cause substantial damage to Western Montana's staple crops, principally small grains and hay. Damage studies show that moderate to high numbers of squirrels can remove about one-fourth of a small grain crop and damage 15 percent and 8 percent of first and second cuttings of alfalfa, and that additional damage is caused by mounds of earth and rock next to rodent burrows. The Applicant estimates that potential damages could amount to $389,620 in cropland and to $211,926 in pastureland, a total of approximately $601,543 in damages. Baiting costs at $2.33 per acre will result in a cost benefit amounting to approximately $514,591 from use of this pesticide. A damage study conducted in 1979 indicated that the specific exemption prevented a total of $1,417,000 in damages by the pest. A 1981 damage study showed an average of $13.51 herbage loss per acre to the Columbian ground squirrels.

Five pesticides are currently registered for controlling Columbian ground squirrels: Strychnine, zinc phosphide on grain baits, diphacinone in bait stations, and two burrow fumigants—gas cartridges and aluminum phosphide. The Applicant indicates that control with strychnine and zinc phosphides is usually 70 percent or less, and that many farmers feel using strychnine is a waste of time and money because of poor control. Burrow fumigants are effective in the spring when soil moisture is high enough to prevent gas leakage. However, the

cost and time required to use gas cartridges on dense squirrel populations is prohibitive.

The Applicant proposes to use technical grade sodium monofluoroacetate with hulled, rolled oats as the carrier. Up to 13,459 pounds of 0.05 percent grin bait (requiring 120 ounces of technical grade sodium monofluoroacetate, 90 percent pure) will be used. The bait compound is to be scattered at a rate of 0.16 ounce of bait along each active burrow entrance using a calibrated dipper. Any land treated with bait shall not be grazed for a period of 14 days, with the exception of cattle which may be grazed after a period of 7 days. Application would be under the supervision of a licensed pesticide applicator or pest control consultant. Each applicator would be trained in:

1. The biology and ecology of the Columbian ground squirrel.
2. The safe handling of the toxic bait.
3. Proper placement of the bait.
4. Consideration of environmental conditions before baiting is begun.
5. Necessary recordkeeping.
6. Other competency standards.

Treatments would be made particularly during the breeding season and early gestation period in the spring and after the young have emerged and begun to forage independently, limited by the time period of from March 1, 1985, through August 31, 1985.

A notice of Rebuttable Presumption Against Registration and continued registration (RPAR) with respect to rodenticide products containing Compound 1080 was published in the **Federal Register** on December 1, 1976 (41 FR 52792). RPAR criteria determined to have been met or exceeded for Compound 1080 were:

(1) Acute toxicity to mammals and birds,

(2) Significant reduction in populations of nontarget organisms and fatalities to members of endangered species, and

(3) Lack of emergency treatment.

The Agency published Position Document No. 3/3 on November 4, 1983 (48 FR 50935), which outlined the Agency's findings and recommendations concerning the use of Compound 1080. Position Document No. 4, which will present the Agency's final determination with respect to use of Compound 1080, is expected in the near future.

This notice does not constitute a decision by EPA on the application itself. Use of the chemical sodium monofluoracetate, better known as "1080," has been determined to be of national interest and therefore, the Agency has decided that public notice and opportunity for public comment pursuant to 40 CFR 166.10 is called for as a part of the informal adjudication for specific exemptions. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before March 21, 1985, and should bear the identifying notation "OPP 180658." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by Montana.

Dated: February 25, 1985.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 85-5139 Filed 3-5-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50630; RL-2788-6]

Issuance of Experimental Use Permits; American Hoechst Corp., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail; the product manager cited in each experimental use permit at the address below:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

8340-EUP-9. Extension. American Hoechst Corporation, Route 202-206 North, Someville, NJ 08876. This experimental use permit allows the use of 191.1 pounds of the herbicide ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy propanoate on turfgrass to evaluate the control of various weeds. A total of 510 acres are involved; the program is authorized in the States of Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Virginia, and Wisconsin. The experimental use permit is effective from May 1, 1985 to May 1, 1986. (Richard Mountfort, PM 23, Rm. 253, CM#2, (703-557-1830))

52300-EUP-1. State of California, Health and Welfare Agency, Vector Biology and Control Branch, 744 P St., Sacramento, CA 95814. This experimental use permit allows the use of $2-10^{11}$ spores of the fungus Oospores of *Lagenidium giganteum* on rice fields to evaluate the control of mosquito larvae. A total of 20 acres are involved; the program is authorized only in the State of California. The experimental use permit is effective from January 14, 1985 to January 14, 1986. This permit is issued with the limitation that all crops will be destroyed or used for research purposes only. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703-557-2690))

45639-EUP-4. Renewal. Nor-AM Chemical Company, P.O. Box 7495, 3509 Silverside Road, Wilmington, DE 19803. This experimental use permit allows the use of 78 pounds of the insecticide amitraz on approximately 8,800 cattle to evaluate the control of ticks. The program is authorized only in the States of California, Missouri, New Mexico, Oklahoma, and Texas and the Territory of Puerto Rico. The experimental use permit was previously effective from March 17, 1982 to March 17, 1983. The permit is now effective from October 17, 1984 to April 25, 1985. A temporary tolerance for residues of the active ingredient in or on the fat, meat, and meat by-products of cattle has been established. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703-557-2386))

707-EUP-106. Issuance. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 50 pounds of the herbicide oxyfluorfen on rice to evaluate the control of various weeds. A total of 100 acres are involved; the program is authorized only in the States of Arkansas, California, Louisiana, Mississippi, and Texas. The experimental use permit is effective from January 14, 1985 to January 31,

1986. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Richard Mountfort, PM 23, Rm. 253, CM#2, (703–557–1830))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95–369; 92 Stat. 828 (7 U.S.C. 136c))

Dated: February 20, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–5133 Filed 3–5–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–42056A; FRL–2788–7]

Commonwealth of the Northern Mariana Islands; Approval of State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA grants final approval of the Commonwealth of Northern Mariana Islands State Plan for the Certification of Commercial and Private Applicators of Restricted Use Pesticides (CNMI Plan).

EFFECTIVE DATE: March 6, 1985.

FOR FURTHER INFORMATION CONTACT: Kathryn Papalia, Region IX, Environmental Protection Agency, 215 Fremont St., San Francisco, CA 94195, (415–974–8119).

SUPPLEMENTARY INFORMATION: Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136b), and the implementing regulations of 40 CFR Part 171 require each State wishing to certify applicators to submit a plan to EPA for approval. Any State certification program shall be maintained according to the State Plan approved by EPA.

A notice of Intent to Approve CNMI State Plan by EPA was published in the **Federal Register** of November 7, 1984 (49 FR 44552). No comments were received on the Notice of Intent to Approve and EPA finds that all criteria for an approvable State plan have been met.

EPA is following the Congressional intent of FIFRA that States shall certify applicators of restricted use pesticides and hereby grants final approval to the CNMI Plan.

Dated: February 11, 1985.

John Wise,

Acting Regional Administrator, Region IX.

[FR Doc. 85–5132 Filed 3–5–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–42058A; FRL–2788–4]

Territory of American Samoa; Contingent Approval of State Plan for Certification of Pesticide Applicators of Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA grants contingent approval of the Territory of American Samoa State Plan for the Certification of Commercial and Private Applicators of Restricted Use Pesticides (American Samoa State Plan).

EFFECTIVE DATE: March 6, 1985.

ADDRESS: Copies of the plan are available for review at the following location:

1. Library, Region IX, Environmental Protection Agency, San Francisco, CA 91405.
2. Environmental Quality Commission, Office of the Governor, American Samoa Government, Pago Pago, American Samoa 96799.

FOR FURTHER INFORMATION CONTACT: Kathryn Papalia, Region IX, Environmental Protection Agency, 215 Fremont St., San Francisco, CA 91405, (415–974–8119).

SUPPLEMENTARY INFORMATION: A notice of intent to grant contingent approval of the American Samoa State Plan by EPA and solicitation of comment was published in the **Federal Register** of November 7, 1984 (49 FR 44552). No comments were received.

EPA is following the Congressional intent of FIFRA that States shall certify applicators of restricted used pesticides and hereby grants contingent approval of the American Samoa State Plan.

Upon promulgation by American Samoa of the required regulations for implementation of its State Plan, EPA will issue a notice of final approval of the American Samoa State Plan.

Dated: February 11, 1985.

Judith E. Ayres,

Regional Administrator, Region IX.

[FR Doc. 85–5135 Filed 3–5–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–42057A; FRL–2788–5]

Trust Territory of the Pacific Islands; Approval of State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA grants final approval of the Trust Territory of the Pacific Islands State Plan for the Certification of Commercial and Private Applicators of Restricted Use Pesticides (Trust Territory Plan).

EFFECTIVE DATE: March 6, 1985.

FOR FURTHER INFORMATION CONTACT: Kathryn Papalia, Region IX, Environmental Protection Agency, 215 Fremont St., San Francisco, CA 94105, (415–974–8119).

SUPPLEMENTARY INFORMATION: Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136b), and the implementing regulations of 40 CFR Part 171 require each State wishing to certify applicators to submit a plan to EPA for approval. Any State certification program shall be maintained according to the State Plan approved by EPA.

A Notice of Intent to Approve the Trust Territory State Plan by EPA was published in the **Federal Register** of November 7, 1984 (49 FR 44553). No comments were received on the Notice of Intent to Approve and EPA finds that all criteria for an approvable State plan have been met.

EPA is following the Congressional intent of FIFRA that States shall certify applicators of restricted use pesticides and hereby grants final approval to the Trust Territory State Plan.

Dated: February 8, 1985.

Judith E. Ayres,

Regional Administrator, Region IX.

[FR Doc. 85–5134 Filed 3–5–85; 8:45 am]

BILLING CODE 6560–50–M

[OW-3-FRL-2790-8]

Groundwater System of a Limestone Aquifer of the Piedmont Region in Seven Valleys, York County, PA; Sole Source Aquifer Designation; Final Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Administrator of the U.S. Environmental Protection Agency has determined that the groundwater system of the Conestoga Limestone formation of the Piedmont region which underlies part of York County, Pennsylvania, in the vicinity of the Borough of Seven Valleys (denominated "Seven Valleys" aquifer), is the sole or principal source of drinking water for that part of York County and that such aquifer, if contaminated, would create a significant hazard to public health. This determination is in response to a petition submitted by Opposing Unnecessary Chemical Hazards, Inc. (O.U.C.H.) requesting that the Administrator of EPA make a determination under section 1424(e) of the Safe Drinking Water Act, Pub. L. 93-523, as amended, that the Conestoga Limestone aquifer underlying the Borough of Seven Valleys and a portion of North Codorus Township is a sole or principal source of drinking water for the area. As a result of this action, Federal financially assisted projects in the designated area will be subject to EPA review pursuant to section 1424(e) to ensure that these projects are designed and constructed so that they do not create a significant hazard to public health.

EFFECTIVE DATE: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. eastern standard time on March 14, 1985. This determination shall become effective on April 15, 1985.

ADDRESS: The date on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region III, Water Supply Branch, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.

FOR FURTHER INFORMATION CONTACT: S. Stephen Platt, Water Supply Branch, Environmental Protection Agency, Region III at the above address or at (215) 597-9017 or FTS-597-9017.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to section 1424(e) of the Safe Drinking Water Act (Pub. L. 93-523) the Administrator of the Environmental Protection Agency has determined that the Conestoga Limestone Aquifer is the sole or principal source of drinking water for the Borough of Seven Valleys and a portion of North Codorus Township in York County, Pennsylvania. The aquifer supplies drinking water to the public water systems and individual (single family) wells. Pursuant to section 1424(e), Federally financially assisted projects, constructed on the Conestoga Limestone aquifer or within its streamflow source zone, will be subjected to EPA review.

Background Information

The Safe Drinking Water Act (Pub. L. 93-523) was enacted on December 16, 1974. Section 1424(e) of the Act states:

> "If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of the law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer."

On September 24, 1981, Opposing Unnecessary Chemical Hazards, (O.U.C.H.), Inc., of Seven Valleys, Pennsylvania, petitioned the Administrator of EPA, pursuant to section 1424(e) of the Safe Drinking Water Act, to designate a small portion of the Conestoga Limestone formation in York County, Pennsylvania denominated "Seven Valleys" as the sole or principal source of drinking water for such area which, if contaminated would create significant hazard to public health. A notice of receipt of this petition, together with a request for comments, was published in the **Federal Register** on February 2, 1982 (47 FR 4737).

One comment was received as a result of the public notice. The comment forwarded the opinion that the intent of the petition was to obstruct development of a proposed chemical landfill and that the landfill would have no impact on the water quality of the Seven Valleys Aquifer. A Sole Source designation requires that the section 1424(e) review process be applied only to projects which receive Federal financial assistance. No evidence has been presented to indicate that this landfill would receive Federal funding and, consequently, be subjected to section 1424(e) review. The proposal to operate a chemical waste landfill also has no influence on the Agency's determination to designate the area.

Upon review of the petition, EPA has determined that the streamflow source zones of the designated area are portions of the drainage basins of the East Branch of West Branch Codorus Creek and South Branch Codorus Creek. Therefore, upon designation, protection will be extended to these drainage basins.

Description of the Designated Portion of the Conestoga Limestone Formation and its Stream Flow Source Zones.

The Conestoga formation consists of limestone that is argillaceous in places and interbedded with thin partings of graphite shale. The area over which Federally financially assisted projects will be reviewed includes both the designated portion of the Conestoga formation and its streamflow source zone. The designated area consists of the following: The area directly overlying the Conestoga Limestone formation in the vicinity of Sinsheim, Jefferson, and Seven Valleys and the streamflow source zones of that portion of the Conestoga Limestone Formation. The stream flow source zones include the drainage basins of the East Branch of West Branch Codorus Creek, from its headwaters to its confluence with West Branch Codorus Creek, and the South Branch Codorus Creek from its headwaters to the town of Glatfelters and including the drainage basins of Fishel Creek, Buffalo Valley Creek, Brush Valley Creek, Krebs Valley Creek, Glen Rock Valley Creek, Trout Run, and Cherry Run.

Information Utilized in the Determination

The surface area of the aquifer is about 4 square miles and the area of the stream flow source zone is approximately 75 square miles. An enlarged map of the area and all the information utilized in this determination, which includes the petition, written comments, and various technical publications, are available to the public and may be inspected during normal business hours at the office of the Environmental Protection Agency, Region III, Sixth and Walnut Streets, Philadelphia, Pennsylvania.

Basis for Determination

On the basis of the information which is available to this Agency, the Administrator has made the following

findings, which are the basis for the determination noted above:

1. The portion of the "Seven Valleys" aquifer underlying the designated area is the principal drinking water source for this area. Seven Valleys Public Water Supply derives 25,000 gallons per day (gpd) from the aquifer to serve about 700 people. No treatment is currently provided to this supply. The remaining residents in the designated area, approximately 1,000 people, have private wells which supply, collectively, about 35,000 gpd. It is difficult to obtain accurate water-use figures for the area, especially for ground water use. This is because the aquifer boundaries do not coincide with any statistical-unit boundaries and domestic wells are seldom equipped with water meters. A standard estimate of 35 gallons/person/day was used for the private supplies. This 60,000 gpd is approximately 95 percent of the drinking water supplied by ground water.

2. There is no existing alternative drinking water source which provides 50 percent or more of the drinking water to the designated area. This is because this area is rural in nature and the nearest existing alternative supply is at a distance.

3. The designated portion of the "Seven Valleys" aquifer is susceptible to contamination through the recharge or streamflow source zone from abandoned wells, septic tanks, leaking fuel tanks, and leaching from open dumps and improperly operated landfills. Isolated incidents of nitrate contamination and contamination of private wells in the streamflow source zone by an abandoned landfill have been documented. Since the ground water contamination can be difficult or impossible to reverse, and because this aquifer system is heavily relied upon for drinking water purposes by the general population, contamination of the aquifer would pose a significant hazard to public health.

4. Water enters the "Seven Valleys" aquifer through level precipitation and the streamflow source zone. Ground water levels are controlled by precipitation patterns. The water table follows the surface topography of the area. Ground water flow is a major component of streamflow in the area.

Project Review

When the EPA Administrator publishes this determination for a sole or principal drinking water source, the consequence is that no commitment for Federal financial assistance may be made if the Administrator finds that the Federally-assisted project may contaminate the aquifer through a recharge zone so as to create a significant hazard to public health * * *. Safe Drinking Water Act 1424(e), 42 U.S.C. 300h–3(e). In many cases, these Federally-assisted projects may also be analyzed in an "Environmental Impact Statement" ("EIS") under the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4332(2)(C). All EIS's, as well as any other proposed Federal actions affecting an EPA program or responsibility, are required by Federal law (under the so-called "NEPA/309" process)[1] to be reviewed and commented upon by the EPA Administrator.

Therefore to streamline EPA's review of the possible environmental impacts on designated aquifers, when an action is analyzed in an EIS, the two reviews will be consolidated, and both authorities will be cited. The EPA review (under the Safe Drinking Water Act) of Federally-assisted projects potentially affecting sole or principal source aquifers, will be included in the EPA review (under the "NEPA/309" process) of any EIS accompanying the same Federally-assisted project. The letter transmitting EPA's comments on the final EIS to the lead agency will be the vehicle for informing the lead agency of EPA's actions under 1424(e).

Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this certification the term "small entity" shall have the same meaning given in section 601 of the RFA. This action is only applicable to the area covered by the petition submitted by O.U.C.H. The only effected entities will be those area-based businesses, organizations or governmental jurisdictions that submit applications for Federal financial assistance to a Federl agency. While the number of small entities which submit such applications cannot be anticipated, EPA has stated that it "will not be concerned with reviewing, on an individual basis, small isolated commitments of financial assistance" (42 FR 31621, September 29, 1977). Thus the number of projects reviewed in this area should be very small; protection of the aquifer will normally require review of larger, potentially contaminating or overpumping projects such as housing projects, highways or sewage treatment plants which would not ordinarily be small entities under the FRA (42 FR 51621, 51622).

For those small entities which are subject to review, the impact of today's action will not be significant. As noted in the **Federal Register** preamble cited above, most projects subject to this review will be preceded by a ground-water impact assessment under other Federal laws, such as the National Environmental Policy Act (NEPA). Integration of those related review procedures with Sole Source Aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving a grant of assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, nor will it cause any major increases in costs or proces, or have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States' enterprises to compete in domestic or export markets. Today's action only affects Seven Valleys and the surrounding area. It provides an additional review of ground-water protection measures, including any instituted by local authorities, for only those projects which request Federal financial assistance in this area.

Dated: February 28, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85–5350 Filed 3–5–85; 8:45 am]

BILLING CODE 6560–50–M

[1] 42 U.S.C. 7609 requires EPA to conduct this review. The "309" in a "NEPA/309" derives from the original source of this general requirement: Section 309 of the Clean Air Act.

FEDERAL COMMUNICATIONS COMMISSION

Sanibel Broadcasting Co., et al.; Erratum

In the matter of Applications of:	
Sanibel Broadcasting Co., Sanibel, Fl.	MM Docket No. 85–13, File No. BPH–830204AH.
Hillebrand Broadcasting, Inc., Sanibel, FL.	File No. BPH–830217AI.

Buenos Aires Radio, Sanibel, FL.	File No. BPH-830531AK.
Gumbo Limbo Broadcasting, Inc., Sanibel, FL.	File No. BPH-830610AC.
Pearlyn Ionie Miller et al, d.b.a. Sanibel Radio, Ltd., Sanibel, FL.	File No. BPH-830622AF.
Island Broadcasting, Inc., Sanibel, FL.	File No. BPH-830713AA.
Martin R. Schneider & Martin P. Schneider d.b.a. Sanibel, Captiva FM Associates, Sanibel, FL.	File No. BPH-830714AL.
Punta Ybel Communications, Sanibel, FL.	File No. BPH-830714AM.
Sanibel Communications Co., Sanibel, FL.	File No. BPH-830714AN.
Riviera Communications-Sanibel, Inc., Sanibel, FL.	File No. BPH-830714AO.
High Tech Industries, Inc., Sanibel, FL.	File No. BPH-830714AP.
Sophia G. Dirks d.b.a. Island Sounds, Sanibel, FL.	File No. BPH-830714AQ.
Harte-Hanks Radio, Inc. (WRBQ), Tampa, FL.	File No. BPH-830714AT.

For Construction Permit for a New FM Station; Erratum.

Released: February 13, 1985.

The Hearing Designation Order in the above entitled proceeding adopted January 16, 1985, is corrected to show the release date as February 12, 1985.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-5318 Filed 3-5-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; American President Lines, Ltd.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10352. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010689-002.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.
Barber Blue Sea
The East Asiatic Company
Evergreen Marine Corp. (Taiwan), Ltd.
Hanjin Container Lines, Ltd.
Hapag-Lloyd Trans-Pacific Service
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korea Marine Transport Co., Ltd.
Lykes Brothers Steamship Co., Inc.
A.P. Moller—Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
NYK Line
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.
Orient Overseas Container Line, Inc.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would modify the agreement to specifically list Macau as a port of destination.

By Order of the Federal Maritime Commission.

Dated: March 1, 1985.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-5389 Filed 3-5-85; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed; Puget Sound Tug and Barge Co.

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the suporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No. 117-010726.

Title: Western Alaska Space Charter Agreement.

Parties: Puget Sound Tug & Barge Company, Foss Alaska Line, Inc.

Synopsis: The proposed agreement would establish a chartering arrangement between the parties in the trade between Seattle, Washington and ports in Western Alaska. The agreement would remain in effect until the completion of the last voyage of the 1985 season.

Filing Party: William H. Fort, Esquire, Kominers, Fort, Schlefer & Boyer, 1401 New York Avenue, NW., Washington, D.C. 20005.

Agreement No. 121-010729.

Title: Seattle Terminal Agreement.

Parties: Port of Seattle (Port), Puget Sound Tug and Barge Co. (PSTBC).

Synopsis: Agreement No. 121.010729 provides for a twenty year lease between the parties commencing on June 1, 1985 running through May 31, 2005. The premises will be located at Pier No. 2 at the Port of Seattle. The lease provides PSTBC with space for chassis and container staging area in connection with their rail-barge activity at the premises. The cargo handled is solely of a interstate domestic nature moving between Seattle and Alaska.

Filing Party: Beryl J. Barker, Senior Property Manager, Port of Seattle, Post Office Box 1209, Seattle, Washington 98111.

By Order of the Federal Maritime Commission.

Dated: March 1, 1985.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-5390 Filed 3-5-85; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 85-3]

Matson Navigation Company, Inc. Proposed Overall Rate Increase of 2.5 Percent Between United States Pacific Coast Ports and Hawaii Ports; Availability of Finding of No Significant Impact

March 1, 1985.

Upon completion of an environmental assessment, the Federal Maritime Commission Office of Energy and Environmental Impact has determined that the Commission's investigation in Docket No. 85-3 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

Docket No. 85-3 is an investigation of Matson Navigation Company, Inc.'s proposed overall 2.5 percent rate increase between United States Pacific Coast ports and Hawaiian ports.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-5391 Filed 3-5-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Manufacturers Hanover Corp., et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 27, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Manufacturers Hanover Corporation*, New York, New York; to engage *de novo* in sale as agent or broker of credit related involuntary unemployment insurance directly related to extensions of credit made or acquired by its subsidiaries.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Standard Chartered Bank plc*, London, England; *Standard Chartered Overseas Holdings, Limited*, London, England; and *Union Bancorp*, Los Angeles, California; to engage *de novo* through its subsidiary, Stanchart Real Estate Investment Advisors, Inc., San Francisco, California, in the activities of acting as investment or financial advisor pursuant to § 225.25(b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, February 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5335 Filed 3-5-85; 8:45 am]

BILLING CODE 6210-01-M

Pioneer American Holding Company Corp., 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 March 29, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Pioneer American Holding Company Corp.*, Carbondale Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank, Carbondale, Pennsylvania.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First National Corporation*, Orangeburg, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank, Orangeburg, South Carolina.

c. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Minooka Bancorp, Inc.*, Minoka, Illinois; to become a bank holding company by acquiring 83.98 percent of the voting shares of Tri-County Bank of Minooka, Minooka, Illinois.

2. *Westbanco, Inc.*, Westville, Illinois; to acquire 59.09 percent of the voting

shares of of Minooka Bancorp, Minooka, Illinois thereby indirectly acquiring Tri-County Bank of Minooka, Minooka, Illinois.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Quinlan Bancshares, Inc.*, Quinlan, Texas; to become a bank holding by acquiring 100 percent of the voting shares of Quinlan State Bank, Quinlan, Texas.

Board of Governors of the Federal Reserve System, February 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5334 Filed 3-5-85; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of December 17-18, 1984

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the Committee's Policy Directive issued at its meeting held on December 17-18, 1984.[1]

The following domestic policy directive was issued to the Federal Reserve Bank of New York:

The information reviewed at this meeting indicates a mixed pattern of developments but on balance suggests that economic activity is continuing to expand in the current quarter at a rate approximating the considerably reduced pace recorded in the third quarter. Nonfarm payroll employment rose substantially further outside of manufacturing in November, and the civilian unemployment rate fell from 7.4 to 7.2 percent. After two months of decline industrial production increased somewhat in November, largely reflecting a rebound in auto production from strike-reduced levels. Retail sales registered a large gain in November after changing little in October. Information on outlays suggests substantially slower expansion in business fixed investment, following exceptionally rapid growth earlier. Since the beginning of the year, broad measures of prices generally have continued to rise at rates close to, or somewnat above, those recorded in 1983, and the index of average hourly earnings has risen somewhat more slowly.

Growth of the monetary aggregates strengthened markedly in November. The November expansion in M1 offset the decline in October, and this aggregate has grown little on balance since early summer; from the fourth quarter of 1983 through November, M1 grew at a rate in the lower half of the Committee's range for 1984. Growth in the broader aggregates was especially rapid in November, bringing M2 to the midpoint of its longer-run range and M3 a bit further above the upper limit of its range. Expansion in total domestic nonfinancial debt is continuing above the Committee's monitoring range for the year, reflecting very large government borrowing and strong private credit growth. Interest rates have fallen further since the November meeting of the Committee, with the largest declines concentrated in short-term markets. On November 21, the Federal Reserve approved a reduction in the discount rate from 9 to 8½ percent.

Since early November the foreign exchange value of the dollar against a trade-weighted average of major foreign currencies has appreciated substantially, reversing most of the previous decline from its mid-October peak. The merchandise trade deficit in October was significantly reduced from the rate in the third quarter, mainly reflecting a sharp decline in non-oil imports.

The Federal Open Market Committee seeks to foster monetary and financial conditions that will help to reduce inflation further, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee agreed at the July meeting to reaffirm the ranges for monetary growth that it had established in January: 4 to 8 percent for M1 and 6 to 9 percent for both M2 and M3 for the period from the fourth quarter of 1983 to the fourth quarter of 1984. The associated range for total domestic nonfinancial debt was also reaffirmed at 8 to 11 percent for the year 1984. It was anticipated that M3 and nonfinancial debt might increase at rates somewhat above the upper limits of their 1984 ranges, given developments in the first half of the year, but the Committee felt that higher target ranges would provide inappropriate benchmarks for evaluating longer-term trends in M3 and credit growth. For 1985 the Committee agreed to tentative ranges of monetary growth, measured from the fourth quarter of 1984 to the fourth quarter of 1985, of 4 to 7 percent for M1, 6 to 8½ percent for M2, and 6 to 9 percent for M3. The associated range for nonfinancial debt was set at 8 to 11 percent.

The Committee understood that policy implementation would require continuing appraisal of the relationships not only among the various measures of money and credit but also between those aggregates and nominal GNP, including evaluations of conditions in domestic credit and foreign exchange markets.

In the implementation of policy in the short run, the Committee seeks to reduce pressures on reserve positions consistent with growth of M1, M2, and M3 at annual rates of around 7, 8, and 9 percent, respectively, during the period from November to March. Somewhat more rapid growth of M1 would be acceptable in light of the currently estimated shortfall in growth for the fourth quarter relative to the Committee's expectations at the beginning of the period, particularly in the context of sluggish growth in economic activity and continued strength of the dollar in exchange markets. Greater restraint on reserve positions might be acceptable in the event of substantially more rapid monetary growth and indications of significant strengthening of economic activity and inflationary pressures. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that pursuit of the monetary objectives and related reserve paths during the period before the next meeting is likely to be associated with a federal funds rate persistently outside a range of 6 to 10 percent.

By order of the Federal Open Market Committee, February 27, 1985.

Stephen H. Axilrod,

Secretary.

[FR Doc. 85-5395 Filed 3-5-85; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Authorizations for Domestic Open Market Operations

In accordance with the Committee's rules regarding availability of information, notice is given that on December 17-18, 1984, paragraph 1(a) of the Committee's authorization for domestic open operations was amended to raise from $4 billion to $6 billion the limit on changes between Committee meetings in System Account holdings of U.S. government and federal agency securities, effective immediately, for the period ending with the close of business on February 13, 1985.

[1] The Record of Policy actions of the Committee for the meeting of December 17-18, 1984, is filed as part of the original document. Copies are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Note.—For paragraph 1(a) of the authorization, see 36 FR 22697, November 27, 1971.

By order of the Federal Open Market Committee, February 27, 1985.

Stephen H. Axilrod,

Secretary.

[FR Doc. 85-5396 Filed 3-5-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 81N-0314]

Sulfiting Agents; Reexamination of Gras Status; Availability of Final Report

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the final report of the ad hoc Review Panel on the Reexamination of the GRAS Status of Sulfiting Agents (the ad hoc Review Panel) is publicly available. The ad hoc Review Panel was formed by the Federation of American Societies for Experimental Biology (FASEB), Life Sciences Research Office.

DATE: The final report was delivered to FDA on January 31, 1985, and was publicly available February 1, 1985.

ADDRESSES: Requests for a copy of the final report should be sent to FASEB Special Publications, FASEB, 9650 Rockville Pike, Bethesda, MD 20814, along with $12 to cover the cost. A limited number of copies are available. In the near future the report will be available from the National Technical Information Service, 5275 Port Royal Rd., Springfield, VA 22161. Copies are on display at the Life Sciences Research Office, FASEB (address above) and at the Dockets Management Branch, Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sue Ann Anderson, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030.

SUPPLEMENTARY INFORMATION: In 1976, the Select Committee on GRAS Substances (the Select Committee), which was formed by FASEB, evaluated the GRAS status of the sulfiting agents in a report (PB-265-508), which is available from the National Technical Information Service. Based in part on that report, in 1982 FDA proposed to affirm that the use of sulfiting agents in food is generally recognized as safe (GRAS) (47 FR 29956; July 9, 1982). However, a large quantity of data and information on sulfiting agents in food and reports of health effects possibly associated with the consumption of sulfiting agents have become available since the Select Committee completed its review.

In the **Federal Register** of July 9, 1984 (49 FR 27994), FDA announced that it intended to reexamine the GRAS status of sulfiting agents. FDA also announced that the ad hoc Review Panel, which had been formed by the Life Sciences Research Office under a contract with FDA, was about to begin a reexamination of all relevant scientific data that bear on the human effects of food uses of these ingredients. In the **Federal Register**, of October 25, 1984 (49 FR 42984), FDA announced the availability of the tentative report of the ad hoc Review Panel and requested comments on the report at an open meeting on November 29, 1984.

In its final report, the ad hoc Review Panel presents its evaluation of the safety of the use of the sulfiting agents (potassium metabisulfite, sodium bisulfite, sodium metabisulfite, potassium bisulfite, sodium sulfite, and sulfur dioxide).

Dated: February 27, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-5327 Filed 3-5-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 76N-0231, NADA Nos. 12-738 and 65-059]

Norwich-Eaton Pharmaceuticals; Furaltadone; Withdrawal of Approval of Certain NADA's

Correction

In FR Doc. 85-3448, appearing on page 5816 in the issue of Tuesday, February 12, 1985, the first line of the second column should have read, "Stat. 345-347 (21 U.S.C. 360b(e)) and".

BILLING CODE 1505-01-M

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (**Federal Register**, Vol. 46, No. 223, pp. 56911-56934, dated Thursday, November 19, 1981; **Federal Register**, Vol. 48, No. 3, pp. 512-518, dated Wednesday, January 5, 1983; **Federal Register**, Vol. 49, No. 124, p. 26150, dated Tuesday, June 26, 1984; and **Federal Register**, Vol. 49, No. 164, pp. 33342-33343 dated Wednesday, August 22, 1984) is amended to reflect the Secretary's approval of changes to the organizational structure of HCFA. A brief summary of the changes follows:

- The Office of Direct Reimbursement (ODR) has been abolished. The functional statement for ODR is deleted, and the functional statement of the Office of the Associate Administrator for Management and Support Services is amended to reflect the abolishment of ODR.
- The organizational title of the Office of Financial and Actuarial Analysis is changed to the Office of the Actuary to provide a more descriptive title.

The Specific Changes to Part F. are Detailed Below

- Section FH.10. The Office of the Associate Administrator for Management and Support Services (FH) (Organization) is amended as follows:

1. Change reference "B.," the organizational title of the Office of Financial and Actuarial Analysis, to the Office of the Actuary (FHG). The administrative code will remain the same.

2. Delete reference "E." The Office of Direct Reimbrusement.

- Section HF.20. is amended to delete references to functions formerly assigned to the Office of Direct Reimbursement. The new functional statement for the Associate Administrator for Management and Support Services reads as follows:

Section FH.20. Office of the Associate Administrator for Management and Support Services (FH) (Functions)

The Associate Administrator for Management and Support Services is responsible for the direction and implementation of HCFA policies, rules, and procedures in the areas of financial, personnel, and contracts management, project grant administration, management evaluation and analysis, and administrative services; the nationwide operation of a centralized Automated Data Processing (ADP) and telecommunications facility; establishing and maintaining computerized records supporting HCFA programs; administering an actuarial program which includes the analysis of health

care financing issues; developing and coordinating information and statistical plans and policies; maintaining a statistical data system which will provide program accountability data to the Administrator, HCFA, the Congress and the public; and equal employment opportunity and civil rights programs.

• Section FH.20.B. is amended to change the organizational title of the Office of Financial and Actuarial Analysis to the Office of the Actuary. The new Section FH.20.B. title reads as follows:

B. Office of the Actuary (FHC)

• Section FH.20.E. The Office of Direct Reimbursement is deleted in its entirety, including FH.20.E.a., Technical Support Staff; FH.20.E.b., Division of Provider Reimbursement; FH.20.E.c., Division of Claims Processing; and FH.20.E.d., Division of Health Services Studies.

Dated: February 25, 1985.

Margaret M. Heckler,

Secretary, Health and Human Services Department.

[FR Doc. 85-5341 Filed 3-5-85; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Institute Board of Scientific Counselors, June 27 and 28, 1985, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N214, Bethesda, Maryland 20205. This meeting will be open to the public from 9:30 a.m. to 4:00 p.m. June 27 and from (9:30 a.m. to 12 noon on June 28 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 12 noon to adjournment June 28 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-4236, will provide a summary of the meeting and a roster of the Board members. Substantive program information may be obtained from Dr. Jack Orloff, Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, phone (301) 496-2116.

Dated: February 19, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-5330 Filed 3-5-85; 8:45 am]

BILLING CODE 4140-01-M

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority; Public Health Service

Notice is hereby given that the Offices of Engineering Services which were established in Public Health Service regional offices II, VI, and X effective September 1, 1984 (49 FR 35251-54, September 6, 1984) will become operational on March 17, 1985.

Dated: February 26, 1985.

Robert Graham, MD.,

Administrator, Health Resources and Services Administration.

[FR Doc. 85-5331 Filed 3-5-85; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[516 DM 6, Appendix 10]

National Environmental Policy Act; Proposed Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of proposed instructions for the Minerals Management Service.

SUMMARY: This notice announces a proposed appendix to the Department's National Environmental Policy Act (NEPA) procedures for the Minerals Management Service (MMS). The proposed appendix consolidates instructions for those functions transferred from the Geological Survey (GS) and the Bureau of Land Management (BLM) to the MMS upon its establishment. The Department's procedures were published in the Federal Register on April 23, 1980 (45 CFR 27541) and revised on May 21, 1984 (49 FR 21437). Appendix 2 for the GS was published on January 23, 1981 (46 FR 7485) as was the original Appendix 5 for the BLM (46 FR 7492).

DATE: Comments due by April 1, 1985.

ADDRESS: Comments to Joseph W. Gorrell, Deputy Assistant Secretary—Policy, Budget and Administration, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Blanchard, Director of Environmental Project Review, Office of the Secretary, Department of the Interior, Washington, DC 20240; telephone (202) 343-3891, FTS 343-3891. For MMS, contact Ms. Mary Ann Turner, Environmental Operations Branch, (703) 860-6461, FTS 860-6461.

SUPPLEMENTARY INFORMATION: This proposed appendix to the Departmental Manual (516 DM 6, Appendix 10) provides specific NEPA compliance instructions to the Minerals Management Service. In particular, it provides information about MMS organizational responsibilities for NEPA compliance, advice to applicants, actions normally requiring the preparation of an environmental impact statement, and categorical exclusions from the NEPA process. The proposal consolidates in one appendix the MMS NEPA responsibilities transferred to it from the GS and the BLM.

The appendix must be taken in conjunction with the Departmental procedures (516 DM 1-6) and the Council on Environmental Quality's regulations implementing the procedural provisions of NEPA (40 CFR 1500-1508). In addition, the MMS is preparing a handbook of technical guidance on how to apply these procedures to its programs.

Comments on the proposed appendix which are received by April 1st will be carefully considered in preparing the final appendix. Comments received after that date will also be considered to the extent practicable.

OUTLINE

Chapter 6 (516 DM 6) Managing the NEPA Process
Appendix 10–Minerals Management Service
10.1 NEPA Responsibility
10.2 Guidance for Applicants
10.3 Major Actions Normally Requiring an EIS
10.4 Categorical Exclusions.

Date February 25, 1985.

Bruce Blanchard, Director,

Environmental Project Review.

Department of the Interior, Departmental Manual, Minerals Management Service

[516 DM 6; App. 10]

10.1 National Environmental Policy Act (NEPA) Responsibility

A. The Director/Deputy Director are responsible for NEPA compliance for Minerals Managment Service (MMS) activities.

B. The Associate Director for Offshore Minerals Management is responsible for ensuring NEPA compliance for all offshore MMS activities.

C. The Chief, Offshore Environmental Assessment Division (OEAD), is responsible for NEPA-related policy and guidance for MMS activities, including monitoring MMS activities to ensure NEPA compliance, assuring the quality control of MMS environmental documents, and managing the review of non-MMS environmental documents. The office is the focal point for all NEPA matters and information about MMS environmental documents or the NEPA process can be obtained by contacting it or the appropriate Region.

D. The Regional Directors are responsible to the Associate Director for Offshore Minerals Management for overall direction and integration of the NEPA process into their activities and for NEPA compliance in their Regions.

10.2 Guidance to Applicants

A. *General.* (1) Applicants should make initial contact with the Regional Director of the office where the affected action is located.

(2) Potential applicants may secure from Regional Directors a list or program regulations or other directives/guidance providing advice or requirements for submission of environmental information. The purpose of making these regulations known to potential applicants in advance is to assist them in presenting a detailed, adequate, and accurate description of the proposal and alternatives when they file their application and to minimize the need to request additional information. This is a minimum list, and additional requirements may be identified after detailed review of the formal submission and during scoping.

B. *Regulations.* The following partial list identifies MMS Outer Continental Shelf (OCS) regulations and other guidance which may apply to a particular application.

(1) Grants of pipeline rights-of-way and related facilities on the OCS (30 CFR Part 256, Subpart N).

(2) Exploration, development and production activities, Environmental Report (30 CFR Part 250, § 250.34–3).

(3) Aiir quality (30 CFR Part 250, § 250.57).

(4) Geological and geophysical explorations of the OCS (30 CFR Part 251, § 251.6–2(b)).

(5) OCS Pipelines Rights-of-Way, A Procedures Handbook.

(6) Guidelines for Preparing OCS Environmental Reports.

10.3 Major Actions Normally Requiring an EIS

A. The following proposals will normally require the preparation of an EIS:

(1) Approval of a 5-year offshore oil and gas leasing program.

(2) Approval of offshore lease sales.

(3) Approval of an offshore oil and gas development and production plan in any area or region of the offshore, other than the central or western Gulf of Mexico, when the plan is declared to be a major Federal action in accordance with section 25(e)(1) of the OCS Lands Act Amendments of 1978.

B. If, for any of these actions, it is proposed not to prepare an EIS, an environmental assessment will be prepared and handled in accordance with § 1501.4(e)(2).

10.4 Categorical Exclusions

In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the MMS also performs, the following MMS actions are designated categorical exclusions unless the action qualifies as an exception under Appendix 2 of 516 DM 2:

A. *General.* (1) Inventory, data, and information collection, including the conduct of environmental monitoring and non-destructive research programs.

(2) Actions for which MMS has concurrence or co-approval with another Bureau if the action is a categorical exclusion for that Bureau.

B. *Internal Program Initiatives.* (1) All resource evaluation activities including surveying, mapping, and geophysical surveying which do not use solid or liquid explosives.

(2) Collection of geologic data and samples including geologic, paleontologic, mineralogic, geochemical, and geophysical investigations which does not involve drilling beyond 50 feet of consolidated rock or beyond 300 feet of unconsolidated rock, including contracts therefor.

(3) Acquisition of existing geological or geophysical data from otherwise private exploration ventures.

(4) Well logging, digital modeling, inventory of existing wells, and installation of recording devices in wells.

(5) Establishment and installation of any research/monitoring devices.

(6) Test of exploration drilling and downhole testing included in a project previously subject to the NEPA process.

(7) Insignificant revisions to the approved 5-year leasing program.

(8) Prelease planning steps such as the Call for Information and Area Identification.

C. *Permit and Regulatory Functions.* (1) Issuance and modification of regulations, Orders, Standards, Notices to Lessees and Operators, Guidelines, and field rules for which the impacts are limited to administrative, economic, or technological effects and the environmental impacts are minimal.

(2) Approval of production measurement methods, facilities, and procedures.

(3) Approval of off-lease storage in existing facilities.

(4) Approval of unitization agreements, pooling, or communitization agreements.

(5) Approval of commingling of production.

(6) Approval of suspensions of operations and suspensions of production.

(7) Approval of lease consolidation applications, lease assignments or transfers, operating rights, operating agreements, lease extensions, lease relinquishments, and bond terminations.

(8) Administrative decisions and actions and recordkeeping such as:

(a) Approval of applications for pricing determinations under the Natural Gas Policy Act.

(b) Approval of underground gas storage agreements from a presently or formerly productive reservoir.

(c) Issuance of paying well determinations and participating area approvals.

(d) Issuance of drainage determinations.

(9) Aproval of offshore geological and geophysical mineral exploration activities, except when the proposed activity includes the drilling of deep stratigraphic test holes or uses solid or liquid explosives.

(10) Approval of an offshore lease or unit exploration, development/production plan or a Development Operation Coordination Document in the central or western Gulf of Mexico (30 CFR 250.2) which does not require an

an environmental report from an operator pursuant to Item 3 of NTL 80–6.

(11) Approval of minor revisions of or minor variances from activities described in an approved offshore exploration or development/production plan including pipeline applications.

(12) Approval of an Application for Permit to Drill (APD) an offshore oil and gas exploration or development well, when said well and appropriate mitigation measures are described in an approved exploration plan, development plan, production plan, or Development Operations Coordination Document.

(13) Preliminary activities conducted on a lease prior to approval of an exploration or development/production plan or a Development Operations Coordination Plan. These are activities such as geological, geophysical, and other surveys necessary to develop a comprehensive exploration plan, development/production plan, or Development Operations Coordination Plan.

(14) Approval of Sundry Notices and Reports on Wells.

(15) Rights-of-way, easements, temporary use permits, and any revisions thereto that do not result in a new pipeline corridor to shore.

D. *Royalty Functions.* All functions of the Associate Director for Royalty Management including, but not limited to, such activities as: approval of royalty payment procedures, including royalty oil contracts; and determinations concerning royalty quantities and values, such as audits, royalty reductions, collection procedures, reporting procedures, and any actions taken with regard to royalty collections (including similar actions relating to net profit and windfall profit taxes).

[FR Doc. 85–5385, Filed 3–5–85; 8:45 am]

BILLING CODE 4310–MR–M

Bureau of Land Management

[5–00250–GP5–113]

Filing of Plats of Survey; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the dated hereinafter stated:

Willamette Meridian

Oregon

T. 30 S., R. 10 W.,
T. 30 S., R. 11 W.

Accepted January 18, 1985, and officially filed February 7, 1985.

T. 30 S., R. 13 W.,
T. 31 S., R. 13 W.

Accepted January 12, 1985, and officially filed February 7, 1985.

T. 16 S., R. 16 E.,
T. 16 S., R. 17 E.

Accepted January 25, 1985, and officially filed February 7, 1985.

T. 23 S., R. 6 W.,
T. 8 S., R. 1 E.

Accepted February 8, 1985, and officially filed February 11, 1985.

T. 28 S., R. 7 W.,
T. 40 S., R. 6 E.,
T. 12 S., R. 41 E.

Accepted February 15, 1985, and officially filed February 19, 1985.

The above-listed plats represent dependent and corrective resurveys, subdivisions, remonumentations, and a supplemental plat.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: February 22, 1985.

Champ C. Vaughan, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–5365, Filed 3–5–85; 8:45 am]

BILLING CODE 4310–33–M

[AA–6680–B]

Alaska Native Claims Selection Paug-Vik Incorporated; Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a modified decision to issue conveyance under the provisions of section 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, will be issued to Paug-Vik Incorporated, Limited for approximately 250 acres. The lands involved are in the vicinity of Naknek.

Seward Meridian, Alaska (Partially Surveyed)

T. 17 S., R. 45 W.
Sec. 15 and 22.

A notice of the modified decision will be published once a week for four (4) consecutive weeks, in the Anchorage Times. Copies of the modified decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, ((907) 271–5960).

Except as modified by this decision, the decision of August 5, 1983, stands as written. Pursuant to the provisions of Pub. L. 96–487, the Bureau of Land Management makes the final administrative determination concerning navigability of water bodies. This modified decision concerns only navigability, therefore, no appeals to this modified decision will be accepted.

Barbara A. Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–5383 Filed 3–5–85; 8:45 am]

BILLING CODE 4310–JA–M

Fish and Wildlife Service

Endangered Species; Receipt of Application for Permit; Philip B. Larsen, et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–690367

Applicant: Philip B. Larsen, Elk Ridge Aviaries, Redway, CA.

The applicant requests a permit to import 5 male and 5 female captive-born golden parakeets (*Aratinga guarouba*) from Carterton Breeding Aviaries, Carterton, England, for enhancement of propagation.

PRT–690359

Applicant: New York Zoological Society, Bronz, NY.

The applicant requests a permit to import one male and one female captive bred Japanese cranes (*Grus japonensis*) from the East Berlin Zoo, Democratic Republic of Germany, for enhancement of propagation.

PRT–690284

Applicant: Betty C. Tanner, Duarte, CA.

The applicant requests a permit to import a pair of captive-born golden parakeets (*Aratinga guarouba*) from Carterton Breeding Aviaries, Oxford, England, for enhancement of propagation.

PRT–690379

Applicant: Jimmie C. Rosenbruch, St. George, UT.

The applicant requests a permit to import the sport-hunted trophy of a bontebok (*Damaliscus d. dorcas*) culled from the captive herd of Skietkuil Ranch, Hutchinson, South Africa, for the purpose of enhancement of survival of the herd.

PRT–690422

Applicant: Robert D. Irvine, Salt Lake City, UT.

The applicant requests a permit to import the sport-hunted trophy of a bontebok (*Damaliscus d. dorcas*) culled

from the captive herd of Skietkuil Ranch, Hutchinson, South Africa, for the purpose of enhancement of survival of the herd.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: February 27, 1985.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-5362 Filed 3-5-85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co. USA

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Exxon Company, U.S.A., Unit Operator of the Grand Isle Block 16 Field Federal Unit Agreement No. 14-08-0001-2932, submitted on February 15, 1985, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Grand Isle Block 16 Field Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: February 25, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-5368 Filed 3-5-85; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

Revised Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The revised proposal for the collection of information listed below has been submitted to the OMB (Office of Management and Budget) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The material originally submitted to OMB on October 23, 1984, has been revised as a result of public comments received. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau offices listed below. Written comments and suggestions on the requirement should be sent directly to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503.

Title: Acreage Limitation, 43 CFR Part 426

Abstract: Respondents to this information collection include landholders who own or lease irrigation land, as defined in 43 CFR Part 426, and water user districts, which must summarize the information received from the landholders. Landholders are required to submit relevant information concerning their irrigation landholdings in order to establish their compliance with Reclamation law, and to determine the appropriate water rate for each landholding.

Bureau Forms No.: 7-1781A, 7-1781B, 7-2180, 7-2181, 7-2182, 7-2183, 7-2184, 7-2185, 7-2187, 7-2188, 7-2189, 7-2190, 7-2191, 7-2193, 7-2194, 7-2197, and 7-2198.

Frequency: Annually, or when landholding change occurs.

Description of Respondents: Irrigation landholders, as defined in 43 CFR Part 426, and water user districts.

Annual Responses: 4,283

Annual Burden Hours: 13,213

Bureau Offices

Commissioner, Bureau of Reclamation, Department of the Interior, 18th and C Street, NW., Washington, DC 20240

Regional Director, Pacific Northwest Region, Bureau of Reclamation, 550 West Fort Street, PO Box 043, Boise, ID 83724, (208) 334-1160

Regional Director, Mid-Pacific Region, Bureau of Reclamation, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825, (916) 484-4270

Regional Director, Lower Colorado Region, Bureau of Reclamation, Nevada Highway and Park Street, PO Box 427, Boulder City, NV 89005, (702) 293-7651

Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, PO Box 11568, Salt Lake City, UT 84147, (801) 524-4419

Regional Director, Southwest Region, Bureau of Reclamation, 714 South Tyler, Suite 201, Amarillo, TX 79101, (806) 378-5430

Regional Director, Upper Missouri Region, Bureau of Reclamation, 316 North 26th Street, PO Box 2553, Billings, MT 59103, (406) 657-6833

Regional Director, Lower Missouri Region, Bureau of Reclamation, Building 20, Denver Federal Center, PO Box 25247, Denver, CO 80225, (303) 236-0595.

Dated: February 27, 1985.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 85-5436 Filed 3-5-85; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-201 (Final)]

Egg Filler Flats From Canada; Rescheduled Hearing

AGENCY: International Trade Commission.

ACTION: Rescheduling of the hearing to be held in connection with the subject investigation.

SUMMARY: The Commission hereby announces the rescheduling of the hearing to be held in connection with the subject investigation from 10:00 a.m. on April 19, 1985 to 10:00 a.m. on June 13, 1985.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's rule of practice and procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, August 15, 1984).

EFFECTIVE DATE: February 28, 1985.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–523–0296), Office of Investigations, U.S. International Trade Commission, 701 E Street NW, Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1985 the Commission instituted the subject investigation and scheduled a hearing to be held in connection therewith for April 19, 1985 (50 FR 3215 February 21, 1985). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from March 26, 1985 to May 31, 1985. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule. As provided in section 735(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(2)(B)), the Commission must make its final determination in antidumping investigations within 45 days of Commerce's final determination, or in this case by July 15, 1985.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on May 28, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on June 13, 1985 at the U.S. International Trade Commission Building, 701 E Street NW, Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 28, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on May 31, 1985 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is June 7, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials musta be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, August 15, 1984)).

Written submissions

All legal arguments economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on June 21, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 21, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8, as amended by 49 FR 32569, August 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, August 15, 1984).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: February 28, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–5388 Filed 3–5–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–239 and 731–TA–248 (Preliminary)]

Certain Ethyl Alcohol From Brazil

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701–TA–239 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of certain ethyl alcohol, for nonbeverage purposes, provided for in item 427.88 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Brazil. As provided in section 703(a), the Commission must complete preliminary countervailing duty investigations in 45 days, or in this case by April 11, 1985.

The Commission also gives notice of the institution of preliminary antidumping investigation No. 731–TA–248 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of certain ethyl alcohol, for nonbeverage purposes, provided for in item 427.88 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at elss than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping duty investigations in 45 days, or in this case by April 11, 1985.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and B

(19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, August 15, 1984).

EFFECTIVE DATE: February 25, 1985.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–523–4612), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to petitions filed on February 25, 1985, by counsel on behalf of the Ad Hoc Committee of Domestic Fuel Ethanol Producers.

Participation in the investigations. Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, August 15, 1984), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference. The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on March 19, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Tedford Briggs (202–523–4612) not later than March 15, 1985, to arrange for their appearance. Parties in support of the imposition of antidumping and/or countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before March 21, 1985, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32569, August 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, August 15, 1984).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: March 1, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–5386 Filed 3–5–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-196 (Final)]

Certain Red Raspberries From Canada; Rescheduled Hearing

AGENCY: International Trade Commission.

ACTION: Rescheduling of the hearing to be held in connection with the subject investigation.

SUMMARY: The Commission hereby announces the rescheduling of the hearing to be held in connection with the subject investigation from 10:00 a.m. on April 25, 1985, to 10:00 a.m. on May 14, 1985.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, August 15, 1984).

EFFECTIVE DATE: February 11, 1985.

FOR FURTHER INFORMATION CONTACT: Stephen A. Vastagh (202–523–0283), Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background. On December 18, 1984, the Commission instituted the subject investigation and scheduled a hearing to be held in connection therewith for April 25, 1985 (50 FR 1136, January 9, 1985). Subsequently, the Department of Commerce extended the date for its final determination in the investigation to May 2, 1985. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule. As provided in section 735(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(2)(B)), the Commission must make its final determination in antidumping investigations within 45 days of Commerce's final determination, or in this case by June 17, 1985.

Staff report. A public version of the prehearing staff report in this investigation will be placed in the public record on April 26, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing. The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on May 14, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 1, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on May 6, 1985, in Room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 8, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing brief's and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2),

as amended by 49 FR 32569, August 15, 1984)).

Written submissions. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24), and must be submitted not later than the close of business on May 21, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 21, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8, as amended by 49 FR 32569, August 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must by submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, August 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: February 26, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-5405 Filed 3-5-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-244 (Preliminary)]

Natural Bristle Paint Brushes From the People's Republic of China

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-244 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of natural bristle paint brushes, with or without handles, provided for in item 750.65 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by April 5, 1985.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, August 15, 1984).

EFFECTIVE DATE: February 19, 1985.

FOR FURTHER INFORMATION CONTACT: Lawrence Rausch (202-523-0286), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on February 19, 1985, by the United States Paint Brush Manufacturers and Suppliers Ad Hoc Import Action Coalition, Washington, DC.

Participation in the investigation. Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, August 15, 1984), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on March 15, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Lawrence Rausch (202-523-0286), not later than March 13, 1985, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before March 19, 1985, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32569, August 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, August 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: February 25, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-5401 Filed 3-5-85; 8:45 am]

BILLING CODE 7020-02-M

Termination of Countervailing Duty Investigation Concerning Chain of Iron or Steel From Japan

AGENCY: International Trade Commission.

ACTION: Termination of countervailing duty investigation under section 104(b)(1) of the Trade Agreements Act of 1979, with regard to chain of iron or steel from Japan.

EFFECTIVE DATE: February 25, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Vera Libeau, Office of Investigations, telephone number (202) 523-0368.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, section 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such an industry would be materially retarded, if the order were to be revoked. On November 15, 1982, the Commission received a request from the Government of Japan for the review of the outstanding countervailing duty order on chain of iron or steel from Japan. Notice of the countervailing duty order was published on August 24, 1978, in the **Federal Register** (43 FR 37685).

On December 3, 1984, the Commission was notified by letter that the National Association of Chain Manufacturers, the original petitioner for the countervailing duty order, wished to withdraw its request for the imposition of countervailing duties under the above referenced countervailing duty order.

While there is no provision in the Trade Agreements Act of 1979, or in its legislative history, permitting termination of a transition case investigation, termination of a properly instituted countervailing duty investigation is permitted under section 704(a) of the Tariff Act of 1930. That section directs the Commission to solicit public comment prior to termination and approve such termination only if it is in the public interest. Termination authority is explicit in cases based on newly filed countervailing duty petitions; it is implied with respect to existing countervailing duty orders.

On December 27, 1984, (49 FR 50316) the Commission published a notice in the **Federal Register** requesting public comment by January 28, 1985, on the proposed termination of the Commission investigation on chain of iron or steel from Japan. No adverse comments were received in response to the Commission's notice.

The Commission is therefore terminating its investigation on chain of iron or steel from Japan (T.D. 78-295). The termination of this investigation has the same effect as a determination that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, if the countervailing duty order were to be revoked.

In addition to publishing this **Federal Register** notice, the Commission is serving a copy of this notice on all persons who have written the agency in connection with this investigation and is also notifying the Department of Commerce of its action in this case.

By order of the Commission.

Issued: March 1, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-5387 Filed 3-5-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-190 (Final)]

Stainless Steel Wire Cloth From Japan

AGENCY: International Trade Commission.

ACTION: Rescheduling of the hearing to be held in connection with the subject investigation.

SUMMARY: The Commission hereby announces the rescheduling of the hearing to be held in connection with the subject investigation from 10:00 a.m. on March 19, 1985, to 10:00 a.m. on March 26, 1985.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 21, 1985.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202)-523-4612), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background. On January 3, 1985, the Commission instituted the subject investigation and scheduled a hearing to be held in connection therewith for March 19, 1985 (50 FR 3422). On February 14, 1985, the Commission received a request from the petitioner, supported by the respondents, to reschedule the public hearing from March 19, 1985, to March 26, 1985. The Commission, therefore, is revising its schedule in the investigation to assist the parties to the investigation. Unless the investigation is extended by the Department of Commerce, Commerce will make its final less than fair value determination on or before March 12, 1985, and the Commission will make its final injury determination by May 2, 1985, as provided in sections 735(a) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(a) and 1673d(b)).

Staff report. A public version of the prehearing staff report in this investigation will be placed in the public record on March 4, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing. The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on March 26, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 12, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on March 18, 1985, in Room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 20, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, August 15, 1984)).

Written submissions. All legal arguments, economic analyses, and factual materials relevant to the public

hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on March 29, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 29, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: February 22, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-5407 Filed 3-5-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-243 (Preliminary)]

Certain Expansion Tanks From the Netherlands

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-243 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Netherlands of pre-pressurized, diaphragm-type expansion tanks for use in closed water systems, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by April 1, 1985.

For further information concerning the conduct of this investigatioin and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, August 15, 1984).

EFFECTIVE DATE: February 14, 1985.

FOR FURTHER INFORMATION CONTACT: George Deyman (202-523-0481), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on February 14, 1985, by Amtrol, Inc., West Warwick, RI.

Participation in the investigation. Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, August 15, 1984), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on March 8, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact George Deyman (202-523-0481) not later than March 5, 1985, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before March 12, 1985, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32469, August 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submission must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, August 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: February 25, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-5403 Filed 3-5-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-238 (Preliminary)]

12-Volt Motorcycle Batteries From Taiwan

Determination

On the basis of the record [1] developed in the subject investigation the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of 12-volt motorcycle batteries, provided for in item 683.05 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On January 11, 1985, a petition was filed with the Commission and the Department of Commerce by General Battery Corp., Reading, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of 12-volt motorcycle batteries from Taiwan. Accordingly, effective January 11, 1985, the Commission instituted preliminary antidumping investigation No. 731-TA-238 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of January 23, 1985 (50 FR 3038). The conference was held in Washington, DC, on February 1, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on February 25, 1985. A public version of the Commission's report, 12-volt Motorcycle Batteries from Taiwan (Investigation No. 731-TA-238 (Preliminary), USITC Publication 1654, February 1985), contains the views of the Commission and information developed during the investigation.

By order of the Commission.

[1] The record is defined in § 207.21(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

Issued: February 26, 1985

Kenneth R. Mason,

Secretary.

[FR Doc. 85-5402 Filed 3-5-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-192]

Certain Spring Balance Arm Lamp Heads; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presenting officer in the above-captioned investigation termination the following respondents on the basis of a settlement agreement: BC Imports Inc.; Prestigeline, Inc.; Fleco Industries, Inc.; Lite-Tron, Light World, Inc., & Light Frantastic of Texas; Sansui Industries Co.; Sansui Industries Co., Ltd.; J.K. Gill; Associated Graphics, Inc.; City Electric, Inc.; Pay 'n Pak Stores, Inc.; Advanced Tool Technology, Inc.; Lightways, Inc.; Lightning Bug, Ltd., Inc, and Lighting Resource, and J&D International.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on February 22, 1985.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: February 22, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-5406 Filed 3-5-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Decision Not To Review Initial Determination Granting Motion To Terminate One Respondent; Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determination (ID) granting motion for termination of one respondent; issuance of consent order.

SUMMARY: The Commission has determined not to review the ID of a Commission administrative law judge granting a motion for termination of the investigation as to one respondent and the entry of a consent order. By virtue of the Commission's decision not to conduct a review, the ID has become the Commission's determination. (See 19 CFR 210.53(h), as amended at 49 FR 46123 (November 23, 1984)). The consent order requested by the parties has been issued.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION:

Background. Investigation No. 337-TA-174 is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 USC 1337) in the importation or sale of certain woodworking machines, by reason of unfair acts and practices by numerous Taiwanese and U.S. companies. (See 48 FR 55786 (December 15, 1983); 49 FR 23464 (June 6, 1984).) The complainant is Delta International Machinery Corp. (See 49 FR 23463 (June 6, 1984).)

On December 14, 1984, complainant Delta and respondent Rexon Industrial Corp. filed a joint motion requesting termination of the investigation as to Rexon and the entry of a consent order based on Rexon's settlement agreements with Delta (Motion No. 174–69). The Commission investigative attorney filed a response supporting the motion.

On January 18, 1985, the presiding administrative law judge issued an ID granting the motion. Copies of the ID were served on other Federal agencies. Comments from the public were solicited, but none were received. (See 50 FR 4286 (January 30, 1985).)

The parties did not file petitions for review, and the Commission determined that a review of the ID on the Commission's own motion was not warranted. (See 19 CFR 210.55, as amended at 49 FR 46123 (November 23, 1984).) The ID thus became the Commission's determination. (See 19 CFR 210.53(h), as amended at 49 FR 46123 (November 23, 1984).)

Termination of the investigation as respondent Rexon furthers the public interest by conserving the resources of the Commission and the parties.

Public inspection. The ID, the consent order, the settlement agreement, and all other nonconfidential documents on the record of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0471.

By order of the Commission.

Issued: February 25, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–5397 Filed 3–5–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–174]

Certain Woodworking Machines; Commission Partial Review and Reversal of Initial Determination Terminating the Investigation as to Thirteen Respondents on the Basis of Consent Orders

AGENCY: International Trade Commission.

ACTION: Partial review and reversal of the initial determination (ID) of a Commission administrative law judge (ALJ).

SUMMARY: The Commission conducted a self-initiated review of an ID granting thirteen motions to terminate the above-captioned investigation with respect to certain respondents on the basis of a consent order. The ID was reversed with respect to one motion. The ID was not reviewed with respect to the remaining motions. The unreviewed portion of the ID thus became the Commission's determination. (See 19 C.F.R. 210.53(h), as amended in 49 Fr 46123 November 23, 1985).

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

SUPPLEMENTARY INFORMATION:

Background. Investigation No. 337–TA–174 is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain woodworking machines, by reason of unfair acts and practices by numerous Taiwanese and U.S. companies. (See 48 FR 55786 (December 15, 1983); 49 FR 23464 (June 6, 1984).) The complainant is Delta International machinery Corp. (See 49 FR 23463 (June 6, 1984).)

On December 3, 1984, complainant Delta and the following respondents filed joint motions for termination of the investigation as to those respondents and the entry of consent orders based on their settlement agreements with Delta: Nu-Way Machinery Corp., Tien Chien Enterprises Co., Ltd., Equipment Importers, Inc., Yung Li Hsing Electric Works Co., Ltd., Chiu Ting Machinery Co., Ltd., Upsix Industrial Co., Ltd., Grizzly Imports, Inc., Shih Hsin Machinery Industrial Co., Ltd., Dankey International Incorp., Kuang Yung Machinery Co., Ltd., Astro-Pneumatic Tool Co., Shen Kung Machinery Industrial Co., Ltd., and Taiwan Sheng Tsai Industrial Co., Ltd. The Commission investigative attorney filed a response supporting the motions.

On January 11, 1985, the presiding administrative law judge issued an ID granting the motions (Order No. 51). Copies of the ID was served on other Federal agencies. Although comments from the public were solicited (50 FR 3039, January 23, 1985), none were received.

Although the parties did not petition for review of the ID, the Commission conducted a partial review on the Commission's own motion. (See 19 C.F.R. 210.55, as amended at 49 FR 46123 November 23, 1984).) The Commission reversed the ID with respect to the motion filed by Delta and respondent Equipment Importers (Motion No. 174–54), because the parties had not filed a copy of the proposed consent order, as required by 19 CFR 212.20(b). The Commission determined not to review the ALJ's findings with respect to the motions filed by Delta and the remaining respondents—i.e., Nu-Way, Tien Chien, Yung Li Hsing, Chiu Ting, Upsix, Grizzly, Shih Hsin, Dankey, Kuang Yung, Astro-Pneumatic, Shen Kung, and Taiwan Sheng Tsai (Motions Nos. 174–51, 53, 55, 57–60, and 62–66). By virtue of the Commission's decision not to review the ID as to the aforesaid motions, the unreviewed portion of the ID became the Commission's determination. (See 19 CFR 210.53(h), as amended in 49 FR 46123 November 23, 1985).

Termination of the investigation as to respondents Nu-Way, Tien Chien, Yung Li Hsing, Chiu Ting, Upsix, Grizzly, Shih Hsin, Dankey, Kuang Yung, Astro, Shen Kung, and Taiwan Sheng Tsai furthers the public interest by conserving the resources of the Commission and the parties.

Public inspection. Copies of the ID, the Commission's Action and Order, and all other nonconfidential documents on the record of the investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0471.

By order of the Commission.

Issued: February 25, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–5404 Filed 3–5–85; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-127X)]

Railroad Abandonments, Seaboard System Railroad, Inc.; Abandonment Exemption in Lake County, IN

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. 10903 *et seq.*, the abandonment by Seaboard System Railroad, Inc., of 5,069.5 feet of track in Lake County, IN, subject to standard labor protection.

DATES: This exemption is effective on April 5, 1985. Petitions for reconsideration must be filed by March 26, 1985. Petitions for stay must be filed by March 18, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 127X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representatives: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write 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: February 25, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Lamboley commented with a separate expression. Chairman Taylor would have required Seaboard to notify the two affected shippers.

James H. Bayne,

Secretary.

[FR Doc. 85–5343 Filed 3–5–85; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Section) to the National Council on the Arts will be held on March 18–20, 1985 from 9:00 am–5:30 pm in the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC.

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 sections 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, DC 20506, or call (202) 682–5433.

February 22, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–5366 Filed 3–5–85; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Art in Public Places Section) to the National Council on the Arts will be held on March 18–20, 1985 from 9:00 am–6:00 pm in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC.

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, DC 20506, or call (202) 682–5433.

February 22, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–5367 Filed 3–5–85; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee; Meeting

Correction

FR Doc. 85–5169 was published in the Sunshine Act Meetings section on page 8436 in the issue of Friday, March 1, 1985. It should have appeared in the regular Notices section of the issue.

BILLING CODE 1505–02–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 OL, 50–414 OL]

Duke Power Co., et al; Oral Argument

In the matter of Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2).

Notice is hereby given that, in accordance with the Appeal Board's order of February 26, 1985, oral argument on the appeals of Palmetto Alliance and Carolina Environmental Study Group from the Licensing Board's three partial initial decisions (LBP–84–24, 19 NRC 1418 (1984); LBP–84–37, 20 NRC 933 (1984); and LBP–84–52, 20 NRC 1484 (1984)), will be held at *10:00 a.m. on Wednesday, April 3, 1985, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

Dated: February 28, 1985.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85–5410 Filed 3–5–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–289 OLA]

Metropolitan Edison Co.; Rescheduling Oral Argument

In the matter of Metropolitan Edison Company, (Three Mile Island Nuclear Station, Unit No. 1), (Steam Generator Repair).

Notice is hereby given that, in accordance with the Appeal Board's order of February 28, 1985, oral argument previously calendared for March 27, 1985 has been rescheduled for *2:00 p.m., Wednesday, April 3, 1985, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

Dated: February 28, 1985.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85–5409 Filed 3–5–85; 8:45 am]

BILLING CODE 7590–01–M

Three Mile Island Unit 2 Cleanup; Progress Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Information notice.

SUMMARY: The Commission is issuing this Information Notice to provide its views on the status of both the cleanup

of Three Mile Island, Unit 2 (TMI–2), and the funding situation for that cleanup. As explained below, although the cleanup has not proceeded as expeditiously as the Commission would have hoped, the Commission finds that at this time General Public Utilities Nuclear ("GPUNC" or "licensee") is making reasonable progress in accomplishing cleanup objectives, and there appears to be reasonable assurance that there will be adequate funding for the cleanup for the next several years.

FOR FURTHER INFORMATION CONTACT: Dr. Bernard J. Snyder, Director, Three Mile Island Program Office, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–7761.

SUPPLEMENTARY INFORMATION: The accident at TMI–2 on March 28, 1979 resulted in substantial damage to the reactor core and to certain reactor systems and components, and the facility was contaminated with a large amount of radioactive material. Although the facility is presently in a safe shutdown condition, the core is in a condition and configuration for which it was not designed. Hence it is important that the cleanup proceed as promptly as safety considerations will permit, and to this end the Commission has been closely monitoring the licensee's progress and future plans.

In August 1980 the licensee informed the Commission that removal of the reactor vessel head, the first significant step in reactor defueling, would be accomplished by June 1982, containment building decontamination would be completed by December 1983, and reactor fuel removal finished by April 1984. In July 1981 the licensee revised its schedule and estimated that the reactor fuel would be removed by February 1985, and containment building decontamination would be completed by August 1986, with less significant cleanup activities continuing past that date. The licensee's December 1982 schedule estimated reactor head removal by June 1986, and completion of containment building decontamination by March 1988. The licensee's latest estimate, dated July 2, 1984, provided the staff with a revised that provides for a schedule target date for the completion of reactor fuel removal from the primary system by June of 1987.

This most recent schedule depends, in part, on adequate funding. The funding for the cleanup as proposed by Pennsylvania Governor Richard Thornburgh—the Thornburgh Plan—provides that funding will come from the utility industry, ratepayers, and the Federal and State governments. While funding by the taxpayers and Federal and State governments has been in place for several years, until recently no significant funds have been forthcoming from the industry.

The Commission was becoming increasingly concerned with both the pace of the cleanup and the possibility that funding shortfalls might even further slow down that effort. The Commission expressed its concerns regarding the cleanup in a May 30, 1984 meeting with the independent Advisory Panel for the Decontamination of TMI–2. At that meeting, the Commission stated that it would explore options the agency has for expediting the cleanup, including issuing an order directing the licensee to complete the cleanup by a set date.

Accordingly, in June 1984, the Commission directed the NRC staff to explore means to expedite the cleanup effort. This endeavor included consideration of alternative methods to accomplish the cleanup as well as actions that would compel the licensee to complete specific cleanup milestones by specified dates.

Several significant events occurred while this effort was underway. The Edison Electric Institute (EEI) renewed efforts to secure industry contributions. In a letter dated September 5, 1984, EEI informed the Commission that, beginning in 1985 for a period of six years, an EEI program will contribute $25 million annually to the cleanup of TMI–2 for a total of $150 million. These funds would be provided by EEI member companies on a volunteer basis, and, to the extent necessary, Pennsylvania and New Jersey electric utilities have agreed to provide research and development grants each year in an amount to maintain an annual funding level of $25 million per year for this program.

On December 28, 1984, GPUNC received a check from EEI for $10.9 million which represents partial payment on the $25 million 1985 commitment. The NRC staff was informed that three additional 1985 quarterly payments, each of $4.7 million, will be made to GPUNC on April 1, July 1, and October 1, 1985. These three payments are in the form of supplement research and development grants from six Pennsylvania and New Jersey utilities. The industry's share of the cleanup funds appears as reasonably assured as the other sources of funding. Also at the end of December the State of New Jersey provided a check for $3.7 million representing the State's appropriations for the cleanup for 1984 and 1985. GPUNC expects that the State of New Jersey will appropriate an additional $1.8 million per year for four more years after 1985.

In late 1983 the upper GPUNC management structure responsible for the cleanup began and a new management structure responsible for the cleanup was assembled. Concurrently, progress in the cleanup began to improve, and in February 1984 the polar crane test was successfully conducted. Five months later a significant milestone in the progress of the cleanup was reached when the reactor pressure vessel head was removed. Recently, in December 1984, the reactor vessel plenum was jacked up 7½ inches allaying fears that it may be stuck and require cutting to remove. Removal of the plenum, scheduled in May 1985, represents the last major hurdle prior to fuel removal operations. The licensee's management has informed the Commission that they are committed to accelerate the pace of the cleanup with the goal of conforming to the December 1982 schedule by the end of 1986.

The Commission finds that in view of these events it is not necessary at this time to consider alternative methods to expedite the cleanup or to seek more assurances of funding. Although the Commission has been disappointed by the earlier pace of the cleanup, the Commission believes that the licensee is now making reasonable progress toward accomplishing cleanup objectives, and that the funding situation is as assured as reasonably possible.

Commissioner Asselstine would have issued an enforceable order setting out a schedule for completion of TMI–2 cleanup which could only be modified for good cause.

Although the Commission has decided to take no action at this time, the Commission will continue to monitor closely both the licensee's progress in completing the cleanup and the funding situation. Should conditions change in a manner that could significantly impact the pace of the cleanup, the Commission will promptly reconsider the necessity of taking whatever action is deemed appropriate to ensure adequate protection of the public health and safety.

Dated at Washington, DC this 1st day of March, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85–5411 Filed 3–5–85; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Policy Letter 77-2; Section 502(c) of Pub. L. 95-89, August 4, 1977; Rescission

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: Rescission of OFPP Policy Letter 77-2.

SUMMARY: OFPP Policy Letter has, by its own terms, become inoperative and is, therefore, rescinded.

FOR FURTHER INFORMATION CONTACT: Owen Birnbaum, Deputy Associate Administrator for Policy Development, (202) 395-3254.

SUPPLEMENTARY INFORMATION: OFPP Policy Letter 77-2, September 30, 1977, implemented section 502(c) of Pub. L. 95-89, August 4, 1977, which amended section 15(c) of the Small Business Act to provide that:

(c) During fiscal year 1978, public and private organizations and individuals eligible for assistance under section 7(h) of this Act shall be eligible to participate in such contracts or any part thereof in an aggregate amount to exceed $100,000,000: Provided, however, That the Administration, not later than March 1, 1979, shall prepare and transmit to the Select Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives, a report on the impact of contracts awarded to such organizations and individuals on small business.

Section 15(c) was subsequently amended to extend such eligibility to participate in small business set-asides through FY 83. Congress did not, however, extend the eligibility beyond FY 83.

Accordingly, Policy Letter 77-2 is by its own terms, inoperative. Therefore, the Policy Letter should be, and hereby is, rescinded.

This notice has the concurrence of the Director of the Office of Management and Budget.

Dated: February 8, 1985.

William E. Mathis,

Acting Administrator.

[FR Doc. 85-5369 Filed 3-5-85; 8:45 am]

BILLING CODE 3110-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 09/09-5359]

Orlando Capital Corp.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of Revision 6 of the Rules and Regulations (13 CFR 107.102 (1984)) by Orlando Capital Corporation, 977 North Broadway, Third Floor, Los Angeles, California 90012 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. *et. seq.*)

The proposed officers, directors and shareholders are:

Name and address	Title or relationship	Percentage of ownership
Enock Ho, 1621 Orlando Road, Pasadena, CA 91106.	President/CEO/Director	100
Patsy Ho, 1621 Orlando Road, Pasadena, CA 91106.	Secretary/Treasurer/ Director.	0
Raymond Leung, 1190 B. Walnut Grove, Rosemead, CA 91770.	Vice President/Director	0

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

The Applicant will conduct its operations in the State of California.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership is such concerns by persons whose participating in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Steet, NW., Washington, D.C. 20416.

A copy of the Notice will be published in a newspaper of general circulation in Los Angeles, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 25, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-5360 Filed 3-5-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0285]

Future Money Corp.; License Surrender

Notice is hereby given that Future Money Corporation, Two Energy Square, Dallas, Texas 75206, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended, (the Act). Future Money Corporation was licensed by the Small Business Administration on November 28, 1984.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on February 14, 1985, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

Dated: February 20, 1985.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-5361 Filed 3-5-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 85-Z-64; Docket 42907]

Proposed Revocation of Air Carrier Certificates

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause, Order 85-2-64 Docket 47907.

SUMMARY: The Department of Transportation is proposing to revoke the air carrier certificates of Aircore Aviation, Inc., and Astro-Wing Airlines, Inc., for noncompliance with the insurance, reporting and continuing fitness requirements for certificated air carriers.

DATES: All interested persons having objections to the Department issuing an order making final the tentative fundings, shall file their objections with

the Department and serve them upon the carrier or carriers involved, no later than March 27, 1985.

ADDRESSES: Objections should be filed in Docket 42907, and sent to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Chief, Special Authorities Division, Office of Aviation Operations, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 (202) 755-3812.

Dated: February 28, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-5412 Filed 3-5-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

[FRA General Docket No. H-83-2]

Petitions for Waiver of Compliance; Norfolk Southern Corp., et al.

The Federal Railroad Administration's Freight Car Safety Standards (49 CFR Part 215) prohibit a railroad from keeping a freight car in service if it has a defective wheel. Since a wheel that has been thermally abused presents a significant risk of sudden failure and consequent derailment, § 215.103(h) defines such wheels as defective.

FRA recently initiated a rulemaking proceeding to improve the clarity of this provision. In response to the notice of proposed rulemaking issued on June 22, 1984, one commenter suggested that FRA's regulatory approach to thermally abused wheels was intrinsically flawed because it relies on a scientifically unjustified detection methodology. This commenter, the Association of American Railroads (AAR), suggested that FRA consider initiating a test program to obtain date about the thermal abuse of freight car wheels. The test program contemplated by the AAR would involve a waiver of compliance with FRA's regulation to permit one type of freight car wheel, generally described as a "curved plate," "S plate," or "low stress" wheel, to remain in service until that wheel displays clear evidence of thermal abuse such as thermal cracking. The service record of these wheels would then be compared to that of wheels removed from service under FRA's rule so as to validate or invalidate the current industry detection approach, which is premised on visual observation of discoloration criteria.

Four railroads, Norfolk Southern Corporation (NS), Consolidated Rail Corporation (Conrail), Union Pacific (UP), and Atchison, Topeka and Santa Fe (ATSF), have now filed specific proposals with FRA concerning a suggested test program. The NS and Conrail proposals were described by FRA in a notice that appeared in the March 1, 1985 issue of the **Federal Register** (50 FR 8432). In the subsequently filed UP and ATSF proposals, FRA has been offered additional equipment to be used in any test progam that FRA deems appropriate. ATSF volunteered the use of a fleet of approximately 16,000 hopper cars and notes that these cars are in dedicated service. These cars travel approximately 15,000 miles annually with nearly 80 percent of that mileage occurring on ATSF trackage. The commodities normally hauled in these cars include grain, cement, wood chips, aggregate and coal. In addition, UP has offered the use of a fleet of approximately 21,000 freight cars that includes box, gondola, flat and hopper cars. None of these cars are used to haul commodities that are classified as hazardous materials and they accumulate most of their mileage while operating on UP's own lines.

FRA invites interested parties to participate in this proceeding by submitting written comments, data or views on the appropriateness of initiating any test program concerning this topic; the nature and scope of the test program being requested by NS, Conrail, ATSF and UP, if a test program is deemed appropriate; and the safeguards or conditions needed to assure the safety of operations during any recommended test program. Interested parties also may desire to attend the public hearing scheduled for March 12, 1985. This hearing was announced in the **Federal Register** on December 17, 1984 (49 FR 48952) in connection with FRA's pending proposal to clarify its existing regulatory provision on this issue. FRA anticipates that persons testifying at this hearing will address the topic of initiating the type of test program sought by ATSF, UP, NS, and Conrail as a means of validating or invalidating FRA's regulatory provision. This hearing is scheduled to begin at 1:00 pm on March 12, 1985, in Room 8334 of the Nassif Building located at 400 Seventh Street SW., Washington, D.C.

All communications concerning this proceeding should identify the appropriate docket number (FRA General Docket No. H-83-2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590. Communications received before April 15, 1985 will be considered by FRA before taking any further action. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201 of the Nassif Building at the above address.

Issued in Washington, D.C. on March 1, 1985.

Joseph W. Walsh,

Associate Administrator for Safety

[FR Doc. 85-5364 Filed 3-5-85; 8:45 am]

BILLING CODE 4910-06-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 44
Wednesday, March 6, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, March 11, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

South Coast Thrift and Loan Association, an operating noninsured industrial bank located at 1421 West MacArthur Boulevard, Santa Ana, California.

Parker Industrial Bank, an operating noninsured industrial bank located at 6524 E. Parker Road, Parker, Colorado.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,187-L (Amended)
Banco Creditory Ahorro Ponceno, Ponce, Puerto Rico
Case No. 46,188-NR
Penn Square Bank, National Association, Oklahoma City, Oklahoma

Memorandum regarding the Liquidation Asset Management Information System Project.

Memorandum and resolution re: Final amendments to Parts 332 and 337 of the Corporation's rules and regulation, entitled "Powers Inconsistent With Purposes of Federal Deposit Insurance Law," and "Unsafe or Unsound Banking Practices," respectively, which permit insured State nonmember banks to offer check guaranty services to retail banking deposit customers and to sponsor such customers in credit card agreements with other banks.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to autority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Proposed amendments to Part 338 of the Corporation's rules and regualtions, entitled "Fair Housing," which would provide that insured State nonmember banks having assets of $50 million or less and having received fewer than 25 home loan applications in the prior calendar year would no longer be required to collect and record in a log-sheet certain data concerning home loan applications, with the Corporation's baord of Directors retaining the right to required such recordkeeping by a bank if it has reason to believe the bank may be engaged in discriminatory home loan practices (including illegal prescreening).

Memorandum and resolution re: Final amendment to Part 333 of the Corporation's rule and regualtions, entitled "Extension of Corporate Powers," which would permit insured nonmember banks to offer and administer, with certain limitations, self-directed Individual Retirement and Keogh Plan accounts.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: March 4, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-5501 Filed 3-4-85; 3:47 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, March 11, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enfrocement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liqudating agent of those assets:

Case No. 46,177 (Amended)
Costa Mesa Subregional Office, Costa Mesa, California

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552 (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation at (202) 389–4425.

Dated: March 4, 1985.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85–5502 Filed 3–4–85; 3:47 pm]
BILLING CODE 6714–01–M

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NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 4, 11, 18, and 25, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 4

Wednesday, March 6

9:30 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)
10:30 a.m.
Discussion/Possible Vote on Full Power Operating License for Waterford-3 (Public Meeting) (*postponed* from February 26)
2:00 p.m.
Briefing on EEO Program (Public Meeting)

Thursday, March 7

2:00 p.m.
Meeting with Advisory Panel on TMI-2 Cleanup (Public Meeting)
3:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 11—Tentative

Tuesday, March 12

2:00 p.m.
Briefing by Staff on Use of Check Pilot Approach for Reactor Operator Requalification (Public Meeting)

Thursday, March 14

10:00 a.m.
Briefing on Further Actions on Source Term (Public Meeting)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) (Tentative)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 18—Tentative

Wednesday, March 20

2:00 p.m.
Briefing by NUMARC on Status of NUMARC Initiatives (Public Meeting)

Thursday, March 21

10:00 a.m.
Discussion of Proposed Revisions to Part 35 (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 25—Tentative

Tuesday, March 26

2:00 p.m.
Discussion of Motion to Disqualify in TMI-1 Restart Case (Closed—Ex. 10)

Thursday, March 28

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: "Status Report and Discussion of Options on Shoreham" title changed to "Discussion of Options Concerning Shoreham Formal Adjudication," meeting held on February 25.

Discussion of Pending Investigations and Possible Enforcement Action (Closed—Ex. 5, 7 & 10) was held February 28.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Andrew L. Bates,
Office of the Secretary.
[FR Doc. 85–5408 Filed 3–1–85; 5:01 pm]
BILLING CODE 7590–01–M

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PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL (NORTHWEST POWER PLANNING COUNCIL)

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open.

TIME AND DATE: March 13–14, 1985, 9:00 a.m.

PLACE: Council Offices, 850 SW. Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

March 13, 1985

- Public Comment on Washington Public Power Supply System Nuclear Plants Nos. 1 and 3 Issue Paper.
- Council Decision on Washington Public Power Supply System Nuclear Plants Nos. 1 and 3 Cost Assumptions.
- Staff Presentation on Re-Evaluation of the Model Conservation Standards Issue Paper.
- Staff Presentation on Cost and Availability of Resources Issue Paper.
- Staff Presentation and Public Comment on Analysis of Conservation Availability and Cost (Conservation Supply Function Issue Paper).

March 14, 1985

- Staff Presentation on Analysis of Forecast Loads Staff Report.
- Public Comment on Preliminary Load Forecast.
- Staff Presentation on Proposed Council Intertie Access Policy Issue Paper.
- Staff Presentation on Critical Water Planning Issue Paper.
- Staff Presentation on Combustion Turbine Cost-Effective Issue Paper.
- Public Comment on Status Report on Hood River, End Use Load and Conservation Assessment Project (ELCAP), and Elmhurst Conservation Demonstration Project.
- Status Report on 1985 Fish Passage Plan.
- Council Business.

Public comment will follow each item.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong (503) 222–5161.

Edward Sheets,
Executive Director.
[FR Doc. 85–5420 Filed 3–4–85; 10:09 am]
BILLING CODE 0000–00–M

federal register

Wednesday
March 6, 1985

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 20, 21, 22, 170, 200, 211, 213, 250, 251, and 252

Distribution and Use of Denatured Alcohol and Rum, and Tax-Free Alcohol; Final Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 20, 21, 22, 170, 200, 211, 213, 250, 251 and 252

[T.D. ATF-199; Re: Notice No. 389]

Distribution and Use of Denatured Alcohol and Rum, and Tax-Free Alcohol

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends and recodifies regulations relating to distribution and use of denatured alcohol and rum, and tax-free alcohol. This final rule also liberalizes qualification, bonding, operational, recordkeeping and reporting requirements for users and dealers of denatured alcohol and rum, and users of tax-free alcohol.

EFFECTIVE DATE: This final rule is effective on June 4, 1985. New permits will be issued to current permittees and the new procedures for withdrawal of specially denatured spirits or tax-free alcohol will apply to these new permits. Until the new permits are issued, current withdrawal permits remain valid.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

This final rule revises and recodifies regulations in 27 CFR Parts 211 and 213 relating to the acquisition, disposition and use of denatured and tax-free spirits. Denatured spirits are used in the manufacture of many industrial products, while tax-free spirits are normally limited to medical and scientific use. Both denatured and tax-free spirits are acquired free of the excise tax imposed on alcohol intended for beverage use. Persons wishing to deal in or use specially denatured alcohol or rum, and use tax-free alcohol are required by law to apply for and receive a permit. Under previous regulations, users were also required to apply for and obtain a withdrawal permit which set forth the maximum amount of spirits authorized to be on-hand, in transit or unaccounted for at any one time. This authorized amount was based on the estimated quantity of spirits required for one month. In most cases a user could withdraw, during a given month, up to twice the amount authorized by the withdrawal permit. However, the total quantity withdrawn in any one year could not exceed a quantity equal to 12 times the amount authorized by the withdrawal permit.

Users and dealers were required to file a bond, except States, any political subdivision thereof, the District of Columbia, the United States or any of its governmental agencies, and small users withdrawing 120 gallons or less of denatured spirits annually, or 240 proof gallons or less of tax-free spirits annually. The penal sum of the bond was based on the tax on all spirits on-hand, in transit or unaccounted for at one time.

In addition to the limitations on withdrawals and limitations of the amount on-hand, users of specially denatured spirits were required to submit a formula and a label for each article made. A person who purchased an article in bulk for bottling, labeling, reprocessing, resale, or simply to use, was required to obtain written authorization on Form 2622. Users and dealers were required to submit annual reports of transactions in specially denatured spirits or tax-free alcohol.

In general, users of tax-free alcohol or specially denatured spirits have not historically posed a serious jeopardy to the revenue. Therefore, ATF believes that liberalization of the regulatory requirements imposed on these individuals is justified, to the extent that the revenue and the public safety are not jeopardized.

Published Documents

On October 23, 1981, ATF published a notice of proposed rulemaking, Notice No. 389, in the **Federal Register** (46 FR 51929). This notice proposed to recodify 27 CFR Parts 211 and 213 into 27 CFR Parts 20 and 22, respectively. In addition, the notice proposed numerous liberalizing changes relating to qualification, bonding, operational, and recordkeeping/reporting requirements affecting users of specially denatured spirits and tax-free alcohol. In response to this notice, ATF received 17 comments.

On May 25, 1982, ATF published a final rule, T.D. ATF-103, in the **Federal Register** (47 FR 22522) eliminating the annual expiration of withdrawal permits issued to users. That final rule, based on Notice No. 389, eliminated an annual requalification requirement for more than 6,200 user permittees.

On June 21, 1982, ATF issued Industry Circular 82-7 which reported the issuance of ATF Rul. 82-5, A.T.F.Q.B. 1982-2, 44, allowing distilled spirits plant proprietors, dealers of specially denatured spirits, and others to apply for variances to use commercial records in lieu of Government forms covering the transfer of nontaxpaid commodities to qualified recipients. After this ATF Ruling was issued, several suppliers of specially denatured spirits or tax-free alcohol applied for and received permission to discontinue using Form 1473 covering shipments to user permittees.

This final rule implements all of the remaining changes proposed in Notice No. 389.

Revisions Affecting Both Specially Denatured Spirits and Tax-Free Alcohol

Withdrawal Procedures and Allowances

The new regulations on withdrawal of specially denatured spirits and tax-free alcohol provide greater cost benefits to users than any other provision of this final rule. ATF is eliminating the limitation on the quantity authorized to be on-hand, in transit, or accounted for at any one time. ATF is also eliminating the requirement that only a specified quantity is authorized to be withdrawn in one calendar month. These requirements are replaced with an annual withdrawal allowance, enabling users to purchase up to a one-year supply at one time. This will result in user savings in shipping charges, punitive charges for small orders imposed by some suppliers, and volume purchase discounts. These cost savings will be a benefit to small businesses and small government agencies, enabling them to purchase specially denatured spirits or tax-free alcohol at the same unit cost as large businesses and government agencies. An intangible benefit to the general economy is reduced energy consumption since several thousand users will be able to reduce shipments from as many as 12 annually to as few as one. Although these regulations will result in larger quantities in transit and on-hand, ATF believes that any increased jeopardy to the revenue is outweighed by the overall beneficial impact on the economy.

The new regulations eliminate the annual withdrawal permit. A user or dealer will show its eligibility to receive specially denatured spirits or tax-free alcohol by providing a copy of the user's/dealer's permit to each prospective supplier. This procedure eliminates the operational burden of obtaining the withdrawal permit from the current supplier and forwarding it to another supplier in order to change suppliers. Also, since the old withdrawal permit forms had shipments recorded on them, the new procedure protects the privacy of the user's

purchasing history from access by other suppliers.

Qualification

Limited Industrial Use Permits are eliminated because all of the benefits of the Limited Industrial Use Permit system are extended to all users, large and small, as discussed above.

The amount of information requested on qualifying documents is now considered to be the minimum possible amount which is necessary to identify the applicant and to determine that the applicant's intended use of specifically denatured spirits or tax-free alcohol is permitted by law. Storage facilities and other equipment are no longer described on the application except for stills and related equipment used in recovery operations. Thus, a change in storage facilities no longer requires notification or approval by ATF.

The underlying statute, 26 U.S.C. 5271, specifically requires that officers directors, principal stockholders, partners, and sole proprietors meet certain personal and professional criteria in order to hold an industrial alcohol permit. ATF conducts background investigations, including criminal records checks of these individuals. The previous regulations, and ATF policies, waived these investigations for many individuals except for those persons who were directly involved in permit operations or who held a 10% proprietary interest in the permittee entity. These policies are carried into the new regulations more clearly, so that applicants will find it easier to identify which individuals or which titles of offices need to be listed on the application. This will reduce the amount of information submitted to the Government.

Bonding

Notice No. 389 proposed to change the method for computing the penal sum of the surety bond filed by users and dealers. The previous method to determine the penal sum was to multiply the maximum quantity authorized to be on-hand, in transit, and unaccounted for at any one time by its tax value. Since there no longer is a limitation on the quantity authorized to be on-hand, in transit, and unaccounted for at any one time, the new method to determine the penal sum is based on annual withdrawals. The tiered scales of penal sums proposed in Notice No. 389 are adopted unchanged, giving an advantage to users which are small entities. The percentage of users of specially denatured spirits who are exempted from filing a surety bond increases from 43%, under previous regulations, to 75%, under the new regulations. The percentage of users of tax-free alcohol who are exempt from filing a surety bond increases from 36%, under previous regulations, to 75%, under the new regulations.

The changes revising amounts and methods of computing penal sums of bonds, would not relieve a permittee of tax liability, as established by law, if any specially denatured spirits or tax-free alcohol is misused.

ATF received one comment criticizing the liberalized bonding requirements from the Surety Association of America. The Surety Association believes that increasing the lower limit for unbonded permittees from 120 gallons to 5,000 gallons "seems a bit too high." The comment also states, "The proposed rules may have overlooked the important role underwriters have played in producing the favorable history of these bonds by protecting the excise taxes due to the government. Eliminating bonds could unleash unfavorable results upon the losses incurred by the government in the future if underwriters do not have an opportunity to exert their control and selectivity." However, as stated in Notice No. 389, the lower limit of 5,000 gallons per annum is based on the bonding threshold established by law for small Fuel Alcohol Plants. Under the Crude Oil Windfall Profits Tax Act of 1980, Pub. L. 96-223, a small Fuel Alcohol Plant may produce up to 10,000 proof gallons per annum of potable alcohol for fuel use without a surety bond. ATF believes that an equivalent amount (*i.e.* 5,000 gallons at 200° proof) of nonpotable specially denatured spirits does not pose a greater jeopardy to the revenue. Therefore, an annual limit of 5,000 gallons of specially denatured spirits is established as the lower threshold requiring a surety bond.

Form 1473 (5110.16)

Notice No. 389 proposed to eliminate the requirement for distilled spirits plant (DSP) proprietors and bonded dealers of specially denatured spirits to prepare, and users to complete, ATF Form 1473 (5110.16), Shipment and Receipt of Specially Denatured, Tax-Free, or Recovered Spirits. Under previous regulations, each shipment of denatured spirits, recovered spirits, or tax-free alcohol was accompanied by an ATF Form 1473 (5110.16). In addition, DSP's and bonded dealers normally prepare and forward a commercial invoice or shipping memo which duplicates most of the information on ATF Form 1473 (5110.16). ATF regional offices receive and maintain a copy of each ATF Form 1473 (5110.16). A random check of the ATF file copies has not uncovered any major problem. Therefore, the Government derives very little practical utility from requiring users to submit this form to ATF.

In lieu of preparing ATF Form 1473 (5110.16), DSP's and bonded dealers will use commercial invoices or other shipping/receipt records. These commercial records routinely contain sufficient information for ATF personnel to identify and trace the quantity and kind of spirits removed, received, reconsigned or returned. Preparation of ATF Form 1473 is replaced with a requirement to prepare a "Record of Shipment," a commercial record showing the kind of information routinely used on invoices or shipping records. The requirement to submit a record of shipment to ATF is removed.

Destruction and Reconsignment/Return of Shipments

The previous requirement to obtain written approval in order to destroy specially denatured spirits has been replaced with a requirement to prepare a record of the destruction. The previous requirement to obtain written approval in order to destroy tax-free alcohol has been replaced with a requirement to file a written notice of intent to destroy.

The previous requirements relating to returning or reconsigning shipments are substantially liberalized. Written approval is no longer required for either of these activities. In addition, a user of specially denatured spirits may now ship to another user. However, the regional director (compliance) may require a user to obtain a dealer's permit if shipments to other users are excessive. A user of tax-free alcohol may ship to another user, but only in case of an emergency. In these cases, the user must file a written notice of intent describing the emergency. However, these shipments must be made without remuneration, since the law does not permit dealing in tax-free alcohol.

Annual Reports

Users of tax-free alcohol and dealers in specially denatured spirits will no longer be required to submit annual reports. Each user of specially denatured spirits will continue to be required to submit a reduced annual report containing data used by ATF to identify the types of products made with specially denatured spirits (previously, ATF Form 1482, Part III). This information is necessary for protection of the revenue and public safety. It identifies which permittees are making the articles that are most likely to be

diverted to illegal use, *i.e.* the articles which are most easily recovered and the articles which are most likely to be identified as containing beverage alcohol. However, the remaining data previously submitted in the annual report of users of specially denatured spirits has been eliminated (previously, ATF Form 1482, Parts I and II).

The balanced accountings of specially denatured spirits or tax-free alcohol prepared and submitted annually by users and dealers will no longer be submitted to ATF: ATF Form 1451, for users of tax-free alcohol, ATF Form 1482, Parts I and II, for users of specially denatured spirits, and ATF Form 1478, for dealers of specially denatured spirits. The requirement to perform and record an annual balanced accounting is retained. However, this requirement is considered to be a usual and customary business record.

Use of Alcohol by United States

Agencies of the United States Government may obtain specially denatured spirits or tax-free alcohol for nonbeverage purposes using withdrawal procedures similar to those discussed previously for other permittees. The application forms and permit forms have been merged for specially denatured spirits and tax-free alcohol. Thus, a Federal agency may file one application for both specially denatured spirits and tax-free alcohol, and ATF will issue one permit authorizing withdrawal and use of both kinds of spirits. The requirement for a permit for beverage use of spirits by a Federal agency has been eliminated, since a permit is not specifically mandated by law.

Revisions Affecting Only Specially Denatured Spirits

Samples of Specially Denatured Spirits for Applicants and Prospective Applicants

There is a continuing need for a system to allow applicants and prospective applicants to obtain samples of specially denatured spirits for development of articles in order to determine if an Industrial Use Permit is desired. The underlying statute, 26 U.S.C. 5271, requires an application and a permit to receive and use specially denatured spirits. Under the previous regulations, a sample permit system using ATF Form 1512, provided applicants and prospective applicants with an opportunity to obtain samples of specially denatured spirits. However, the previous regulations permitted samples of 1 quart to be obtained without a permit, based on a longstanding policy that dispensing 1 quart to a nonpermittee does not circumvent the permit system required by law. ATF now believes that this amount can be increased to 5 gallons with no increased jeopardy to the revenue. However, suppliers will not be allowed to dispense more than 5 gallons per annum to nonpermittees. In addition, the regional director (compliance) may waive the requirement for a permit if a prospective applicant can demonstrate that more than 5 gallons is necessary to determine if a permit is desired.

Withdrawal of Specially Denatured Spirits

In addition to the liberalized withdrawal procedures previously discussed, the new regulations do not control which specific formulas of specially denatured spirits may be withdrawn. Under previous regulations, withdrawal permits specified which formulas of specially denatured spirits could be withdrawn. A user who wanted to develop a new article requiring a formula of specially denatured spirits which was not authorized by the withdrawal permit, was required to obtain an amended withdrawal permit authorizing withdrawal of the new formula of specially denatured spirits. Under the new regulations, a user permittee may withdraw any formula of specially denatured spirits. Thus, development of a new article does not require an amended permit.

ATF Form 1467 (5110.15)

Notice No. 389 proposed to eliminate the requirement for bonded dealers to prepare ATF Form 1467 (5110.15), Details of Packages Filled With Denatured Spirits. Implementing regulations for the Distilled Spirits Tax Revision Act of 1979 (27 CFR Part 19) eliminated the need for DSP proprietors to prepare this form by authorizing the use of commercial records. Therefore, the requirement to prepare ATF Form 1467 is removed as proposed. Commercial records of packages filled are usual and customary business records.

Formulas for Articles

General. Notice No. 389 proposed to modernize regulations governing formula approval for articles made with specially denatured spirits. Previous regulations required formula approval for each article made with specially denatured spirits. This requirement dates from the Prohibition era and was oriented toward the prevention of illicit diversion of denatured spirits to beverage use.

In regulating the use of specially denatured spirits in recent years, experience has failed to indicate any significant effort to divert spirits to avoid tax payment. Therefore, the legal obligation to protect the revenue has shifted toward protecting the public safety. Protecting public safety, with respect to articles made with denatured spirits, includes prohibiting from the marketplace any article which could be mistaken for a product intended for internal human use or beverage use.

Some types of articles are more likely to be suitable for conversion to beverage use. These articles include perfume, cologne, aftershave lotion, other body type lotions, mouthwash, some types of hair tonic, and similar articles. Most of these articles will continue to require formula approval by ATF.

Most other articles are less likely to be identified as containing alcohol suitable for conversion to beverage use. These articles include ink, shampoo, and some types of soaps, detergents and cleaning solvents. Many of these articles can now be made without filing a formula for approval by ATF.

General-use formulas. Since the underlying statute, 26 U.S.C. 5273, requires that articles be made in accordance with an approved formula, ATF is establishing, in the Code of Federal Regulations, a series of general-use formulas which would include broad categories of articles. An article made in accordance with an approved general-use formula would be exempt from the requirement to file a formula for approval with ATF. Articles containing the ingredients prescribed in approved general-use formulas contain sufficient denaturing materials to be fully denatured beyond easy recovery of beverage alcohol.

This final rule establishes general-use formulas for proprietary solvents, special industrial solvents, reagent alcohol and rubbing alcohol, based on previous regulations. Based on an analysis of currently approved formulas, general-use formulas are also established for inks, tobacco flavors, articles with low alcohol content and toilet preparations containing 10% essential oils. The Director will authorize new general-use formulas by approving them as alternate methods. Approval of new general-use formulas may also be made through ATF Rulings published in the ATF Bulletin.

Notice No. 389 requested comments proposing general-use formulas and ATF received one such comment from National Distillers and Chemical Company. Their proposed general-use formula reads, "For every 100 parts of SDA Formula 3–A there shall be added *no* less than 3 parts of one or any

combination of (1) methyl isobutyl ketone, (2) methyl *n*-butyl ketone, (3) nitropropane (mixed isomers), (4) ethyl acetate, (5) isopropyl alcohol, (6) methyl alcohol, (7) rubber hyrdrocarbon solvent (gasoline), (8) *n*-propanol, (9) ethylene glycol monoethyl ether, or (10) toluene." ATF believes that some of these proposed ingredients are not suitable in a general-use formula because they do not have sufficient denaturing properties at the level of 3 parts per 100. However, many of these possible combinations fit within the general-use formulas prescribed in the new regulations.

Other changes relating to formulas. A new regulation has been added which describes when a change of process or ingredients does not require submission of a revised formula.

New regulations have been added enumerating longstanding formula approval policies, some of which were previously issued as Revenue Rulings, Revenue Procedures, or ATF Rulings.

Samples of articles submitted with a formula for approval have been eliminated, except when requested by the Director. However, samples of essential oils used in perfumes and similar products made with S.D.A. Formula No. 39–C are still required to be submitted to ensure that they possess sufficient denaturing properties. This requirement also applies to any other ingredient which is not adequately described in the formula. This provision allows manufacturers to protect proprietary secrets by using generic terms in formulas (*e.g.* "essential oil") while still providing for adequate protection of the revenue.

Formulas, statements of process, and other proprietary information submitted for examination are considered to be trade secrets. This kind of information is protected from public disclosure under the Freedom of Information Act, Pub. L. 93–502, 88 Stat. 1563, 5 U.S.C. 552(b)(4). ATF will continue to employ the same safeguards which have been successful, for many years, in protecting this information from public disclosure.

Labels for Articles

ATF's main emphasis for requiring label approval for articles was to ensure that the labels did not imply that the article was suitable for internal human use or beverage use. It is unlawful to manufacture, sell, or offer for sale any article containing denatured spirits which is intended for internal human use or beverage use (26 U.S.C. 5273). A criminal penalty of $10,000 and/or 5 years imprisonment is imposed on the distribution of articles made with denatured spirits for internal human use or beverage use (26 U.S.C. 5607). ATF's review of labels for articles has disclosed so few labels in noncompliance that retaining the requirement is no longer deemed necessary. ATF further believes that manufacturers are concerned about product integrity and that they would not make an overt attempt to imply that an article was suitable for internal human use or beverage use.

Therefore, the new regulations eliminate the requirement that manufacturers of articles file and obtain label approval from ATF. However, standards for minimum labeling information are retained. Manufacturers may voluntarily submit labels to ATF for a determination that the label complies with the requirements of the law.

Rebottlers and Reprocessors

The previous regulations required reprocessors and rebottlers of articles to obtain written permission from ATF in order to receive bulk shipments of articles, to file formulas for reprocessing, to file labels for approval, and to maintain records available for ATF inspection.

Reprocessors and rebottlers receive articles which have already been produced in accordance with approved formulas by user permittees. Therefore, except where it is determined that an article poses jeopardy to the revenue or a threat to public safety, ATF is eliminating the requirements described above for all reprocessors and rebottlers of articles. Reprocessors and rebottlers may voluntarily submit article labels to ATF for a determination that the label complies with the requirements of the law.

This revision eliminates a large paperwork burden on both industry and the Government. ATF Form 2622 (5150.26), Application to Procure, Reprocess, Bottle, Repackage, or Resell Products Containing Specially Denatured Alcohol, is eliminated. However, a letter application reporting the same information may still be required if ATF has reason to believe that an article being reprocessed or rebottled poses jeopardy to the revenue or a threat to public safety.

Miscellaneous Amendments

This final rule makes conforming changes in regulation references to 27 CFR Part 212 which was recodified as Part 21, Formulas for Denatured Alcohol and Rum, in T.D. ATF–133, published in the **Federal Register** on June 2, 1983 (48 FR 24672). In addition, Part 21 is amended to allow for the use of S.D.A. Formula 3–A in the manufacture of Proprietary Solvents, and to change the names of two product codes which are affected by the establishment of general-use formulas.

Conforming changes in Parts 19 and 251 eliminate the requirement for preparation and submission of ATF Form 1473 (5110.16) and provide for the use of commercial documents in lieu of the form. Conforming changes in Part 200 reflect the elimination of the withdrawal permit as an enumerated category of permit. Conforming changes in Part 250 retain equal tax treatment for industrial spirits, denatured spirits, and products made with denatured spirits entering the United States from Puerto Rico or the Virgin Islands. Conforming changes throughout the chapter reflect the new part numbers for the recodified regulations.

A new regulation has been added in Part 252 to allow exporters of liquors to apply for and use alternate methods and procedures. This regulation is patterned after similar provisions throughout the chapter. An exporter may now be granted a variance from a requirement of Part 252 if the exporter's alternative method or procedure provides equal protection of the revenue and does not pose a burden to the Government in administering Part 252. The notice and public procedure requirements of 5 U.S.C. 553(b) are deemed unnecessary in this case because the new regulation is a rule of procedure which gives exporters the same privilege of obtaining a regulation variance which applies to all other persons regulated by ATF.

Certain Revenue Rulings, ATF Rulings, and Revenue Procedures are made obsolete by this final rule because they relate to subjects which are no longer regulated, or because they have been incorporated in the new regulations. These are listed after the Derivation and Distribution Tables, below.

Numerous minor editorial, clarifying, and implementing changes are contained in the recodified Parts 20 and 22.

Effect on Public-Use Forms

The following forms have been made obsolete by the new regulations:

ATF Form 133 (5150.29)—Manufacturing Record of Products Containing Specially Denatured Alcohol

ATF Form 1450 (1550.13)—Application and Withdrawal Permit to Procure Spirits Free of Tax

ATF Form 1451 (5150.28)—Report of Tax-Free Alcohol User

ATF Form 1467 (5110.15)—Details of Packages Filled with Denatured Spirits

ATF Form 1473 (5110.16)—Shipment and Receipt-Specially Denatured, Tax-Free or Recovered Spirits
ATF Form 1477 (5150.15)—Application and Withdrawal Permit of Bonded Dealer to Procure Specially Denatured Spirits
ATF Form 1478 (5150.10)—Bonded Dealer's Report of Specially Denatured Alcohol or Rum
ATF Form 1485 (5150.12)—Application and Withdrawal Permits of User to Procure Specially Denatured Spirits
ATF Form 1512 (5150.14)—Application and Permit to Procure Samples of Specially Denatured Spirits
ATF Form 2622 (5150.26)—Application to Procure, Reprocess, Bottle, Repackage, or Resell Products Containing Specially Denatured Alcohol
ATF Form 4326 (5150.21)—Application for Limited Industrial Use and Withdrawal Permit
ATF Form 4327 (5150.11)—Limited Withdrawal Permit to Procure Specially Denatured Spirits or Tax-Free Alcohol
ATF Form 5150.34—Redenaturation of Recovered Denatured Spirits

The following forms have been consolidated, revised, and renumbered by the new regulations:

ATF Form 1474 (5150.30)—Application for Permit to Deal in Specially Denatured Spirits, ATF Form 1479 (5150.23)—Application for Permit to Use Specially Denatured Spirits, and ATF Form 2600 (5150.22)—Application for Permit to Use Alcohol Free of Tax, are consolidated as ATF Form 5150.22—Application for Industrial Alcohol User Permit.

ATF Form 1447 (5150.9)—Permit to Use Alcohol Free of Tax, ATF Form 1476 (5150.16)—Permit to Deal in Specially Denatured Alcohol or Rum, and ATF Form 1481 (5150.17)—Permit to Use Specially Denatured Alcohol or Rum, are consolidated as ATF Form 1550.9—Industrial Alcohol User Permit.

ATF Form 1448 (5150.25)—Tax-Free Alcohol User's Bond, ATF Form 1475 (5150.24)—Bond of Dealer in Specially Denatured Alcohol and/or Rum, and ATF Form 1480 (5150.20)—Bond of User of Specially Denatured Alcohol or Rum, are consolidated as ATF Form 5150.25—Industrial Alcohol Bond.

ATF Form 1444 (5150.33)—Tax-Free Spirits for Use of the United States, and ATF Form 1486—Specially Denatured Spirits for Use of the United States, are consolidated as ATF Form 5150.33—Alcohol for Use of the United States.

ATF Form 1479-A (5150.19)—Formula for Article Made with Specially Denatured Alcohol or Rum, has been renumbered as ATF Form 5150.19.

As previously discussed, ATF Form 1482 (5150.18)—User's Report of Denatured Alcohol or Rum, has been revised by eliminating Parts I and II, and making the entire report consist only of the previous Part III. This form is renumbered as ATF Form 5150.18.

Executive Order 12291

It has been determined that this final rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more, it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the 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. This final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. This 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 collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget (OMB). In response to Notice No. 389, ATF received 17 comments, 12 of which discussed paperwork burdens. In accordance with 5 CFR Part 1320, the following is a discussion of those comments.

GATX Terminals Corporation's offices in Carteret, NJ, and San Pedro, CA, Block Drug Company, Inc., Procter & Gamble Co., and National Distillers and Chemical Corporation were in favor of the proposed elimination of withdrawal permits.

Baltimore County General Hospital and Block Drug Company, Inc., were in favor of the proposed elimination of annual reports.

Good Samaritan Medical Center, Milwaukee, WI, was in favor of reduced filing of Power of Attorney forms.

GATX Terminals Corporation's office in San Pedro, CA, Block Drug Company, Inc., Procter & Gamble Co., and National Distillers and Chemical Corporation were in favor of the proposed elimination of Form 1473.

Publicker Industries, Inc., was in favor of the proposed elimination of the requirement to obtain written approval for returning shipments to a supplier.

Procter & Gamble Co., and National Distillers and Chemical Corporation were in favor of the proposed elimination of mandatory label approval, and the proposed establishment of general-use formulas as a means of reducing the number of formulas which must be filed for approval.

Shell Chemical Company was in favor of reduced filing of Form 1512, and the elimination of the requirement to obtain written approval for a chemical distributor to repackage special industrial solvents.

In addition to the comments by National Distillers and Chemical Corporation discussed above, they were also in favor of the proposed elimination of limited-use permits, the proposed elimination of requirements relating to rebottlers and reprocessors of articles, and the proposed elimination of Form 1467.

The following organizations were generally in favor of the proposed reductions in paperwork, without commenting on specific paperwork burdens: American Pharmaceutical Association, Monsanto Plastics & Resins Co., and American Society of Hospital Pharmacists.

All of the suggested improvements related to recordkeeping and/or reporting contained in public comments are implemented in this final rule. Moreover, this final rule fulfills the purpose of the Paperwork Reduction Act because it does not impose a single new recordkeeping or reporting requirement, it eliminates many of the previous requirements, and it streamlines nearly all of the remaining requirements to fit within usual and customary business records maintained by regulated industry members.

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol,

Tobacco and Firearms.

Derivation Table for Part 20

The requirements of—	Are derived from—
Subpart A	
§ 20.1	§ 211.1.
§ 20.2	§ 211.2.
§ 20.3	§ 211.3.
Subpart B	
§ 20.11	§ 211.11.
Subpart C	
§ 20.21	§ 211.21.
§ 20.22	§ 211.22.
§ 20.23	§ 211.23.
§ 20.24	§ 211.24.
§ 20.25	§ 211.25.
§ 20.26	§ 211.26.
§ 20.27	§ 211.27.
§ 20.28	§ 211.28.
§ 20.31	§ 211.31.
§ 20.33	§ 211.33.
§ 20.36	§ 211.34.
§ 20.37	§ 211.35.
Subpart D	
§ 20.41	§§ 211.41, 211.42.
§ 20.42	§§ 211.43, 211.52.
§ 20.43	§ 211.44.
§ 20.44	§ 211.48.
§ 20.45	§ 211.53.
§ 20.48	§ 211.45.
§ 20.49	§ 211.46.
§ 20.50	§ 211.49.
§ 20.51	§ 211.50.
§ 20.52	§ 211.51.
§ 20.53	§ 211.54.
§ 20.54	New.
§ 20.55	§ 211.47.
§ 20.56	§ 211.55.
§ 20.57	§ 211.56.
§ 20.58	§ 211.60.
§ 20.59	§ 211.63.
§ 20.60	§ 211.57.
§ 20.61	§ 211.58.
§ 20.62	§ 211.59.
§ 20.63	§ 211.62.
§ 20.64	New.
§ 20.66	§ 211.64.
§ 20.68	§ 211.65.
Subpart E	
§ 20.71	§§ 211.71, 211.72.
§ 20.72	New.
§ 20.73	§ 211.73.
§ 20.74	§ 211.73a.
§ 20.75	§ 211.73b.
§ 20.76	§ 211.74.
§ 20.77	§ 211.75.
§ 20.78	§ 211.76.
§ 20.79	§ 211.77.
§ 20.80	§ 211.78.
§ 20.81	§ 211.79.
§ 20.82	§ 211.80.
Subpart F	
§ 20.91	§ 211.101.
§ 20.92	§ 211.107.
§ 20.93	New.
§ 20.94	§ 211.105.
§ 20.95	Rev. Rul. 71-410.
§ 20.100	§ 211.108.
§ 20.101	New.
§ 20.102	§ 211.192.
§ 20.103	§ 211.192.
§ 20.104	ATF Rul. 75-14.
§ 20.111	New.
§ 20.112	§§ 211.180, 211.181, 211.182.
§ 20.113	§ 211.170.
§ 20.114	New.
§ 20.115	Do.
§ 20.116	Do.

Derivation Table for Part 20—Continued

The requirements of—	Are derived from—
§ 20.117	§ 211.199.
§ 20.118	§ 211.187.
§ 20.119	New.
Subpart G	
§ 20.131	New.
§ 20.132	§§ 211.30, 211.198.
§ 20.133	§§ 211.104, 211.193, 211.194, 211.266.
§ 20.134	§§ 211.195, 211.186-211.188.
§ 20.135	§ 211.196.
§ 20.136	§ 211.33a.
§ 20.137	New.
Subpart H	
§ 20.141	§ 211.111.
§ 20.142	§ 211.112.
§ 20.143	§ 211.115.
§ 20.144	§ 211.116.
§ 20.145	§ 211.117.
§ 20.146	§ 211.118.
§ 20.147	§ 211.121.
§ 20.148	§ 211.122.
§ 20.149	§ 211.125.
Subpart I	
§ 20.161	§§ 211.136, 211.166.
§ 20.162	§§ 211.138, 211.167.
§ 20.163	§§ 211.139, 211.168.
§ 20.164	§ 211.91.
§ 20.165	§§ 211.92, 211.93.
§ 20.166	§ 211.94.
§ 20.167	§ 211.95.
§ 20.170	§ 211.243.
§ 20.171	§ 211.148.
§ 20.172	§§ 211.149, 211.202.
§ 20.175	§ 211.137.
§ 20.176	§ 211.140.
§ 20.177	§ 211.141.
§ 20.178	§ 211.142.
§ 20.179	§ 211.143.
§ 20.180	§ 211.145.
§ 20.181	§ 211.146.
§ 20.182	§ 211.147.
§ 20.189	§ 211.169.
§ 20.190	§ 211.169.
§ 20.191	§§ 211.193, 211.194.
§ 20.192	§ 211.265.
Subpart J	
§ 20.201	§ 211.241.
§ 20.202	§ 211.242.
§ 20.203	§ 211.243.
§ 20.204	§ 211.245.
§ 20.205	§ 211.244.
Subpart K	
§ 20.211	§ 211.211.
§ 20.212	§ 211.212.
§ 20.213	§ 211.213.
§ 20.214	§ 211.217.
§ 20.215	§ 211.219.
§ 20.216	§ 211.218.
Subpart L	
§ 20.221	§ 211.251.
§ 20.222	§ 211.251.
Subpart M	
§ 20.231	§§ 211.252, 211.255.
§ 20.232	§§ 211.253, 211.255.
§ 20.233	§ 211.256.
§ 20.234	§§ 211.254, 211.257.
§ 20.235	§ 211.255.
Subpart N	
§ 20.241	§ 211.232.
§ 20.242	§ 211.231.
§ 20.243	§ 211.233.
§ 20.244	§ 211.235.
§ 20.245	§ 211.236.
§ 20.246	§ 211.237.
Subpart O	
§ 20.251	§ 211.281.
§ 20.252	§§ 211.282, 211.283.
§ 20.253	§ 211.284.
Subpart P	
§ 20.261	§ 211.261.
§ 20.262	§ 211.264.
§ 20.263	§ 211.265.
§ 20.264	§ 211.265.
§ 20.265	§ 211.267.
§ 20.266	§ 211.272.
§ 20.267	§ 211.273.
§ 20.268	§ 211.274.

Distribution Table for Part 211

The requirements of—	Are now found in—
Subpart A	
§ 211.1	§ 20.1.
§ 211.2	§ 20.2.
§ 211.3	§ 20.3.
Subpart B	
§ 211.11	§ 20.11.
Subpart C	
§ 211.21	§ 20.21.
§ 211.22	§ 20.22.
§ 211.23	§ 20.23.
§ 211.24	§ 20.24.
§ 211.25	§ 20.25.
§ 211.26	§ 20.26.
§ 211.27	§ 20.27.
§ 211.28	§ 20.28.
§ 211.29	Obsolete.
§ 211.30	§ 20.132.
§ 211.31	§ 20.31.
§ 211.33	§ 20.33.
§ 211.33a	§ 20.136.
§ 211.34	§ 20.36.
§ 211.35	§ 20.37.
Subpart D	
§ 211.41	§ 20.41.
§ 211.42	§ 20.41.
§ 211.42a	Obsolete.
§ 211.43	§ 20.42.
§ 211.43a	Obsolete.
§ 211.44	§ 20.43.
§ 211.45	§ 20.48.
§ 211.46	§ 20.49.
§ 211.47	§ 20.55.
§ 211.48	§ 20.44.
§ 211.49	§ 20.50.
§ 211.50	§ 20.51.
§ 211.51	§ 20.52.
§ 211.52	§ 20.42(a)(9).
§ 211.53	§ 20.45.
§ 211.54	§ 20.53.
§ 211.55	§ 20.56.
§ 211.56	§ 20.57.
§ 211.57	§ 20.60.
§ 211.58	§ 20.61.
§ 211.59	§ 20.62.
§ 211.60	§ 20.58.
§ 211.61	§ 20.57.
§ 211.62	§ 20.63.
§ 211.63	§ 20.59.
§ 211.64	§ 20.66.
§ 211.65	§ 20.68.

DISTRIBUTION TABLE FOR PART 211—Continued

The requirements of—	Are now found in—
Subpart E	
§ 211.71	§ 20.71.
§ 211.72	§ 20.71.
§ 211.73	§ 20.73.
§ 211.73a	§ 20.74.
§ 211.73b	§ 20.75.
§ 211.74	§ 20.76.
§ 211.75	§ 20.77.
§ 211.76	§ 20.78.
§ 211.77	§ 20.79.
§ 211.78	§ 20.80.
§ 211.79	§ 20.81.
§ 211.80	§ 20.82.
Subpart F	
§ 211.91	§ 20.164.
§ 211.92	§ 20.165.
§ 211.93	§ 20.165.
§ 211.94	§ 20.166.
§ 211.95	§ 20.167.
§ 211.96	Obsolete.
Subpart G	
§ 211.101	§ 20.91.
§ 211.102	Obsolete.
§ 211.103	Do.
§ 211.104	§ 20.133.
§ 211.105	§ 20.94.
Subpart H	
§ 211.106	Obsolete.
§ 211.107	§ 20.92.
§ 211.108	§ 20.100.
§ 211.111	§ 20.141.
§ 211.112	§ 20.142.
§ 211.113	Obsolete.
§ 211.114	Do.
§ 211.115	§ 20.143.
§ 211.116	§ 20.144.
§ 211.117	§ 20.145.
§ 211.118	§ 20.146.
§ 211.119	Obsolete.
§ 211.120	Do.
§ 211.121	§ 20.147.
§ 211.122	§ 20.148.
§ 211.123	Obsolete.
§ 211.124	Do.
§ 211.125	§ 20.149.
Subpart I	
§ 211.131	Obsolete.
§ 211.132	Do.
§ 211.134	Do.
§ 211.135	Do.
§ 211.136	§ 20.161.
§ 211.137	§ 20.175.
§ 211.138	§ 20.162.
§ 211.139	§ 20.163.
§ 211.140	§ 20.176.
§ 211.141	§ 20.177.
§ 211.142	§ 20.176.
§ 211.143	§ 20.179.
§ 211.144	Obsolete.
§ 211.145	§ 20.180.
§ 211.146	§ 20.181.
§ 211.147	§ 20.182.
§ 211.148	§ 20.171.
§ 211.149	§ 20.172.
Subpart J	
§ 211.161	Obsolete.
§ 211.162	Do.
§ 211.163a	Do.
§ 211.164	Do.
§ 211.165	Do.
§ 211.166	§ 20.161.
§ 211.167	§ 20.162.
§ 211.168	§ 20.163.
§ 211.169	§ 20.189.
§ 211.170	§ 20.113.
§ 211.171	Obsolete.
§ 211.172	Do.
§ 211.173	Do.
§ 211.174	Do.
§ 211.175	Do.
§ 211.176	Do.

DISTRIBUTION TABLE FOR PART 211—Continued

The requirements of—	Are now found in—
§ 211.177	Do.
§ 211.178	Do.
§ 211.179	Do.
§ 211.180	§ 20.112.
§ 211.181	§ 20.112.
§ 211.182	§ 20.112.
§ 211.183	Obsolete.
§ 211.183a	Do.
§ 211.184	Do.
§ 211.185	Do.
§ 211.185a	Do.
§ 211.185b	Do.
§ 211.186	§ 20.134.
§ 211.187	§§ 20.118, 20.134.
§ 211.188	§ 20.134.
§ 211.190	Obsolete.
§ 211.190a	Do.
§ 211.190b	Do.
§ 211.190c	Do.
§ 211.190d	Do.
§ 211.190e	Do.
§ 211.191	Do.
§ 211.192	§§ 20.102, 20.103.
§ 211.193	§§ 20.133, 20.191.
§ 211.194	§§ 20.133, 20.191.
§ 211.195	§ 20.134.
§ 211.196	§ 20.135.
§ 211.197	Obsolete.
§ 211.198	§ 20.132.
§ 211.199	§ 20.117.
§ 211.200	Obsolete.
§ 211.201	§ 20.133.
§ 211.202	§ 20.172.
Subpart K	
§ 211.211	§ 20.211.
§ 211.212	§ 20.212.
§ 211.213	§ 20.213.
§ 211.214	Obsolete.
§ 211.215	Redundant.
§ 211.217	§ 20.214.
§ 211.218	§ 20.216.
§ 211.219	§ 20.215.
Subpart L	
§ 211.231	§ 20.242.
§ 211.232	§ 20.241.
§ 211.233	§ 20.243.
§ 211.234	Obsolete.
§ 211.235	§ 20.244.
§ 211.236	§ 20.245.
§ 211.237	§ 20.246.
Subpart M	
§ 211.241	§ 20.201.
§ 211.242	§ 20.202.
§ 211.243	§§ 20.170, 20.203.
§ 211.244	§ 20.205.
§ 211.245	§ 20.204.
Subpart N	
§ 211.251	§§ 20.221, 20.222.
§ 211.252	§ 20.231.
§ 211.253	§ 20.232.
§ 211.254	§ 20.234.
§ 211.255	§§ 20.231, 20.232, 20.235.
§ 211.256	§ 20.233.
§ 211.257	§ 20.234.
§ 211.258	Obsolete.
Subpart O	
§ 211.261	§ 20.261.
§ 211.262	Obsolete.
§ 211.263	Do.
§ 211.264	§ 20.262.
§ 211.265	§§ 20.192, 20.263.
§ 211.266	Obsolete.
§ 211.267	§ 20.265.

DISTRIBUTION TABLE FOR PART 211—Continued

The requirements of—	Are now found in—
§ 211.268	Obsolete.
§ 211.269	Do.
§ 211.270	Do.
§ 211.271	§ 20.264.
§ 211.272	§ 20.266.
§ 211.273	§ 20.267.
§ 211.274	§ 20.268.
§ 211.275	Obsolete.
Subpart P	
§ 211.281	§ 20.251.
§ 211.282	§ 20.252.
§ 211.283	§ 20.252.
§ 211.284	§ 20.253.
§ 211.285	Obsolete.

DERIVATION TABLE FOR PART 22

The Requirements of—	Are derived from—
Subpart A	
§ 22.1	§ 213.1.
§ 22.2	§ 213.2.
§ 22.3	§ 213.3.
Subpart B	
§ 22.11	§ 213.11.
Subpart C	
§ 22.21	§ 213.21.
§ 22.22	§ 213.22.
§ 22.23	§ 213.23.
§ 22.24	§ 213.24.
§ 22.25	§ 213.25.
§ 22.26	§ 213.26.
§ 22.27	§ 213.27.
§ 22.31	§ 213.28.
§ 22.33	§ 213.30.
§ 22.35	§ 213.31.
§ 22.36	§ 213.32.
Subpart D	
§ 22.41	§ 213.41.
§ 22.42	§§ 213.42, 213.51.
§ 22.43	§ 213.43.
§ 22.44	§ 213.47.
§ 22.45	§ 213.52.
§ 22.48	§ 213.44.
§ 22.49	§ 213.45.
§ 22.50	§ 213.48.
§ 22.51	§ 213.49.
§ 22.52	§ 213.50.
§ 22.53	§ 213.53.
§ 22.54	§ 213.114.
§ 22.55	§ 213.46.
§ 22.57	§ 213.54.
§ 22.58	§§ 213.55, 213.58.
§ 22.59	§ 213.56.
§ 22.60	§ 213.57.
§ 22.61	§ 213.59.
§ 22.62	§ 213.60.
§ 22.63	§ 213.61.
§ 22.64	§ 213.63.
§ 22.66	§ 213.62.
§ 22.68	§ 213.69.
Subpart E	
§ 22.71	§ 213.71.
§ 22.72	New.
§ 22.73	§ 213.72.
§ 22.74	§ 213.72a.
§ 22.75	§ 213.72b.
§ 22.76	§ 213.73.
§ 22.77	§ 213.74.
§ 22.78	§ 213.75.
§ 22.79	§ 213.76.
§ 22.80	§ 213.77.
§ 22.81	§ 213.78.
§ 22.82	§ 213.79.

DERIVATION TABLE FOR PART 22—Continued

The Requirements of—	Are derived from—
Subpart F	
§ 22.91	§ 213.91.
§ 22.92	§§ 213.92, 213.93.
§ 22.93	§§ 213.94, 213.95.
Subpart G	
§ 22.101	§ 213.101.
§ 22.102	§ 213.108.
§ 22.103	§ 213.102.
§ 22.104	§ 213.103.
§ 22.105	§ 213.104.
§ 22.106	§ 213.105.
§ 22.107	§ 213.106.
§ 22.108	§ 213.107.
Subpart H	
§ 22.111	§ 213.114.
§ 22.112	§ 213.115.
§ 22.113	§ 213.116.
§ 22.114	§ 213.117.
Subpart I	
§ 22.121	§ 213.151.
§ 22.122	§ 213.152.
§ 22.123	§ 213.153.
§ 22.124	§ 213.155.
§ 22.125	§ 213.154.
Subpart J	
§ 22.131	§ 213.131.
§ 22.132	§ 213.132.
§ 22.133	§ 213.133.
§ 22.134	§ 213.134.
Subpart K	
§ 22.141	New.
§ 22.142	§ 213.161.
Subpart L	
§ 22.151	§ 213.162.
§ 22.152	§ 213.163.
§ 22.153	§ 213.166.
§ 22.154	§ 213.164.
§ 22.155	New.
Subpart M	
§ 22.161	§ 213.171.
§ 22.162	§ 213.172.
§ 22.163	§ 213.174.
§ 22.164	§ 213.175.
§ 22.165	§ 213.176.
Subpart N	
§ 22.171	§ 213.141.
§ 22.172	§ 213.142.
§ 22.173	§ 213.143.
§ 22.174	§ 213.144.
§ 22.175	§ 213.145.
§ 22.176	§ 213.146.

DISTRIBUTION TABLE FOR PART 213

The Requirements of—	Are now found in—
Subpart A	
§ 213.1	§ 22.1.
§ 213.2	§ 22.2.
§ 213.3	§ 22.3.
Subpart B	
§ 213.11	§ 22.11.
Subpart C	
§ 213.21	§ 22.21.
§ 213.22	§ 22.22.
§ 213.23	§ 22.23.
§ 213.24	§ 22.24.
§ 213.25	§ 22.25.

DISTRIBUTION TABLE FOR PART 213—Continued

The Requirements of—	Are now found in—
§ 213.26	§ 22.26.
§ 213.27	§ 22.27.
§ 213.28	§ 22.31.
§ 213.30	§ 22.33.
§ 213.31	§ 22.35.
§ 213.32	§ 22.36.
Subpart D	
§ 213.41	§ 22.41.
§ 213.41a	Obsolete.
§ 213.42	§ 22.42.
§ 213.42a	Obsolete.
§ 213.43	§ 22.43.
§ 213.43a	Obsolete.
§ 213.44	§ 22.48.
§ 213.45	§ 22.49.
§ 213.46	§ 22.55.
§ 213.47	§ 22.44.
§ 213.48	§ 22.50.
§ 213.49	§ 22.51.
§ 213.50	§ 22.52.
§ 213.51	§ 22.42(a)(9).
§ 213.52	§ 22.45.
§ 213.53	§ 22.53.
§ 213.54	§ 22.57.
§ 213.55	§ 22.58.
§ 213.56	§ 22.59.
§ 213.57	§ 22.60.
§ 213.58	§ 22.58(c).
§ 213.59	§ 22.61.
§ 213.60	§ 22.62.
§ 213.61	§ 22.63.
§ 213.62	§ 22.66.
§ 213.63	§§ 22.64, 22.66.
Subpart E	
§ 213.71	§ 22.71.
§ 213.72	§ 22.73.
§ 213.72a	§ 22.74.
§ 213.72b	§ 22.75.
§ 213.73	§ 22.76.
§ 213.74	§ 22.77.
§ 213.75	§ 22.78.
§ 213.76	§ 22.79.
§ 213.77	§ 22.80.
§ 213.78	§ 22.81.
§ 213.79	§ 22.82.
Subpart F	
§ 213.91	§ 22.91.
§ 213.92	§ 22.92(a).
§ 213.93	§ 22.92(b).
§ 213.94	§ 22.93(b)(1).
§ 213.95	§ 22.93(b)(2).
Subpart G	
§ 213.101	§ 22.101.
§ 213.102	§ 22.103.
§ 213.103	§ 22.104.
§ 213.104	§ 22.105.
§ 213.105	§ 22.106.
§ 213.106	§ 22.107.
§ 213.107	§ 22.108.
§ 213.108	§ 22.102.
§ 213.109	Obsolete.
§ 213.110	Do.
§ 213.111a	Do.
§ 213.112	Do.
§ 213.113	Do.
§ 213.114	§§ 22.54, 22.111.
§ 213.115	§ 22.112.
§ 213.116	§ 22.113.
§ 213.117	§ 22.114.
§ 213.118	Redundant.
Subpart H	
§ 213.131	§ 22.131.
§ 213.132	§ 22.132.
§ 213.133	§ 22.133.
§ 213.134	§ 22.134.
Subpart I	
§ 213.141	§ 22.171.
§ 213.142	§ 22.172.
§ 213.143	§ 22.173.
§ 213.144	§ 22.174.

DISTRIBUTION TABLE FOR PART 213—Continued

The Requirements of—	Are now found in—
§ 213.145	§ 22.175.
§ 213.146	§ 22.176.
Subpart J	
§ 213.151	§ 22.121.
§ 213.152	§ 22.122.
§ 213.153	§ 22.123.
§ 213.154	§ 22.125.
§ 213.155	§ 22.124.
Subpart K	
§ 213.161	§ 22.142.
§ 213.162	§ 22.151.
§ 213.163	§ 22.152.
§ 213.164	§ 22.154(a).
§ 213.165	§ 22.139.
§ 213.166	§ 22.153.
§ 213.167	§ 22.154(b).
Subpart L	
§ 213.171	§ 22.161.
§ 213.172	§ 22.162.
§ 213.173	Obsolete.
§ 213.174	§ 22.163.
§ 213.175	§ 22.164.
§ 213.176	§ 22.165.

Obsolete Rulings and Procedures

The following Revenue Rulings and ATF Rulings are obsolete because they have been incorporated in the new regulations:

Rev. Rul. 57–429, 1957–2, C.B. 962
Rev. Rul. 58–22, 1958–1 C.B. 597
Rev. Rul. 64–298, 1964–2 C.B. 564
Rev. Rul. 64–317, 1964–2 C.B. 317
Rev. Rul. 71–410, 1971–2 C.B. 454
ATF Rul. 74–14, 1974 ATF C.B. 38
ATF Rul. 75–3, 1975 ATF C.B. 48
ATF Rul. 75–14, 1975 ATF C.B. 47
ATF Rul. 79–5, A.T.F.Q.B. 1979–1, 24
ATF Rul. 79–19, A.T.F.Q.B. 1979–4, 9
ATF Rul. 80–1, A.T.F.Q.B. 1980–1, 17

The following Revenue Rulings, Revenue Procedures, and ATF Rulings are obsolete because they relate to subjects which are no longer regulated:

Rev. Rul. 54–160, 1954–1 C.B. 320
Rev. Rul. 57–86, 1957–1 C.B. 606
Rev. Rul. 58–31, 1958–1 C.B. 595
Rev. Proc. 60–21, 1960–2 C.B. 991
Rev. Rul. 60–343, 1960–2 C.B. 611
Rev. Proc. 61–4, 1961–1 C.B. 890
Rev. Rul. 61–50, 1961–1 C.B. 811
Rev. Rul. 61–132, 1961–2 C.B. 276
Rev. Rul. 61–154, C.B. 1961–2 277
Rev. Rul. 62–36, 1962–1 C.B. 352
Rev. Rul. 65–160, 1965–1 C.B. 587
Rev. Rul. 65–306, 1965–2 C.B. 508
Rev. Rul. 66–228 1966–2 C.B. 536
Rev. Proc. 68–43, 1968–1 C.B. 146
Rev. Rul. 70–646, 1970–2 C.B. 319
Rev. Rul. 72–56, 1972–1 C.B. 420
ATF. Rul. 77–9, 1977 ATF C.B. 176
ATF. Rul. 77–22, 1977 ATF C.B. 173.

List of Subjects in 27 CFR Parts 19, 20, 21, 22, 170, 200, 211, 213, 250, 251 and 252

Administrative practice and procedure, Advertising, Alcohol, Authority delegations, Chemicals claims, Cosmetics, Labeling, Packaging containers, Reporting and recordkeeping requirements, Surety bonds, Transportation.

Authority and Issuance

This regulation is issued under the authority contained in 26 U.S.C. 7805 (68A Stat. 917).

Accordingly, Title 27, CFR, is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Section A. Part 19 is amended as follows:

Paragraph 1. The Table of Sections for Part 19 is amended by revising the heading of § 19.779 as follows:

Sec.

* * * * *

19.779 Record of shipment of spirits and specially denatured spirits withdrawn free of tax.

* * * * *

Par. 2. Section 19.3 is revised to read as follows:

§ 19.3 Related regulations.

Regulations relating to this part are listed below:

27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.
27 CFR Part 2—Nonindustrial Use of Distilled Spirits and Wine.
27 CFR Part 3—Bulk Sales and Bottling of Distilled Spirits.
27 CFR Part 4—Wine Labeling and Advertising.
27 CFR Part 5—Labeling and Advertising Distilled Spirits.
27 CFR Part 20—Distribution and Use of Denatured Alcohol and Rum.
27 CFR Part 21—Formulas for Denatured Alcohol and Rum.
27 CFR Part 22—Distribution and Use of Tax-Free Alcohol.
27 CFR Part 30—Gauging Manual.
27 CFR Part 170—Miscellaneous Regulations Relating to Liquor.
27 CFR Part 194—Liquor Dealers.
27 CFR Part 196—Stills.
27 CFR Part 197—Drawback on Distilled Spirits Used in Manfacturing Nonbeverage Products.
27 CFR Part 200—Rules of Practice in Permit Proceedings.
27 CFR Part 231—Taxpaid Wine Bottling Houses.
27 CFR Part 240—Wine.
27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR Part 251—Importation of Distilled Spirits, Wine, and Beer.
27 CFR Part 252—Exportation of Liquors.
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

§ 19.11 [Amended]

Par. 3. The definitions of *Article, Recovered article,* and *Spirits residue* in § 19.11 are amended by replacing "Part 211" with "Part 20".

§ 19.69 [Amended]

Par. 4. The first sentence of § 19.69 is amended by replacing "Part 211" with "Part 20".

§ 19.186 [Amended]

Par. 5. Paragraph (a) of § 19.186 is amended by replacing the words "Forms 5110.38 and 1479–A" with the word "formulas".

Par. 6. Paragraph (b) of § 19.187 is amended to read as follows:

§ 19.187 Adoption of formulas.

* * * * *

(b) *Form 5150.19.* The adoption by a successor of approved Forms 5150.19 (or previously approved Forms 1479–A) shall be in accordance with § 20.63 of this chapter.

* * * * *

Par. 7. Paragraph (a) of § 19.460 is revised to conform to the new formula for SDA Formula No. 1. As revised, § 19.460(a) reads as follows:

§ 19.460 Conversion of denatured alcohol formulas.

(a) *Conversion of Formula No. 1.* Any specially denatured alcohol, except Formulas No. 3–A and No. 30, may be converted into specially denatured alcohol, Formula No. 1, by the addition of methyl alcohol and either denatonium-benzoate, N.F. (BITREX), methyl isobutyl ketone, mixed isomers of nitropropane, or methyl *n*-butyl ketone in accordance with the formulation prescribed in § 21.32 of this chapter. For specially denatured alcohol Formulas No. 3–A and No. 30, the methyl alcohol content shall be reduced to the level prescribed for specially denatured alcohol Formula No. 1 by the addition of ethyl alcohol before adding one of the other ingredients prescribed in § 21.32 of this chapter.

* * * * *

§ 19.471 [Amended]

Par. 8. Section 19.471 is amended by replacing "Part 211" with "Part 20".

Par. 9. Paragraphs (a), (b), and (d)(1) of § 19.536 are amended to read as follows:

§ 19.536 Authorized withdrawals free of tax.

* * * * *

(a) On receipt of a signed photocopy of a permit, issued under Part 22 of this chapter, to procure spirits for nonbeverage purposes and not for resale or use in the manufacture of any product for sale, as provided in 26 U.S.C. 5214(a)(3);

(b) On receipt of a signed photocopy of a permit, issued under Part 22 of this chapter, to procure spirits by and for the use of the United States or any governmental agency, any State, any political division of a State, or the District of Columbia, for nonbeverage purposes as provided in 26 U.S.C. 5214(a)(2);

* * * * *

(d) * * *

(1) On receipt of a signed photocopy of a permit to procure specially denatured spirits, issued under Part 20 of this chapter.

* * * * *

Par. 10. Section 19.537 is revised by deleting the requirement to prepare Form 1473, and providing for the use of commercial documents. As revised, § 19.537 reads as follows:

§ 19.537 Withdrawal of spirits free of tax.

Spirits withdrawn free of tax under § 19.536 (a), (b), or (c) shall be withdrawn in approved containers and shipped to the consignee designated in the permit. Unless the spirits are in cases or are to be withdrawn on the production or filling gauge, the proprietor shall gauge each container. If the spirits are in packages which are to be gauged, the proprietor shall prepare a package gauge record according to § 19.769, and attach it to the record of shipment. For each shipment the proprietor shall prepare a record of shipment (shipping invoice, bill of lading, or another document intended for the same purpose) and forward the original to the consignee, in accordance with § 19.779. Bulk conveyances used to transport spirits withdrawn free of tax under this section shall be secured in accordance with § 19.96.

(Approved by the Office of Management and Budget under control number 1512–0334)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

Par. 11. Section 19.538 is revised to read as follows:

§ 19.538 Withdrawal of spirits by the United States.

(a) *Nonbeverage use.* (1) Government agencies of the United States, intending to procure specially denatured spirits or

spirits free of tax for nonbeverage purposes, shall make application for and receive a permit, Form 5150.33, from the Director. Permits may be issued to Government agencies of the United States for:

(i) Withdrawal and use of specially denatured spirits, in accordance with Part 20 of this chapter;

(ii) Withdrawal and use of alcohol free of tax for nonbeverage purposes, in accordance with Part 22 of this chapter; or

(iii) Importation and use of alcohol free of tax for nonbeverage purposes, in accordance with Part 251 of this chapter.

(2) All permits previously issued to Government agencies of the United States for use of spirits or specially denatured spirits on Form 1444 shall remain valid and will be regulated by the same provisions of this chapter as it refers to permits on Form 5150.33.

(3) A Government agency shall forward a signed copy of its permit, Form 5150.33, for retention by the proprietor of the distilled spirits plant for the initial purchase. Subsequent orders with the same vendor shall refer to the permit number.

(4) In the case of a Government agency holding a single permit for use of other sub-agencies, the signed copy of the permit shall contain an attachment listing all other locations authorized to procure spirits under that permit.

(5) For each shipment under this section, the proprietor shall prepare a record of shipment and forward the original to the consignee agency, in accordance with § 19.779.

(b) *Beverage use.* (1) Distilled spirits may be withdrawn free of tax, under 26 U.S.C. 7510, for use for beverage purposes by Government agencies of the United States on receipt of a proper Government purchase order signed by the head of the agency, or an authorized delegate.

(2) For each withdrawal under paragraph (b)(1) of this section, each case removed shall be plainly marked "For Use of the United States" in addition to the marks required by Subpart R of this part.

(3) For each withdrawal under paragraph (b)(1) of this section, the proprietor shall prepare a record containing the information required by § 19.761 for a record of tax determination. The proprietor shall mark this record "Free of Tax For Use of the United States."

(Act of August 16, 1954, Ch. 736, 68A Stat. 900 (26 U.S.C. 7510); sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended, 1375, as amended (26 U.S.C. 5271, 5313))

Par. 12. Section 19.539 is amended by revising the first sentence to eliminate the requirement of obtaining approval of the regional director (compliance) for shipment. As amended, § 19.539 reads as follows:

§ 19.539 Disposition of excess spirits.

Upon discontinuance of use of spirits or specially denatured spirits withdrawn free of tax under § 19.538, a Government agency may dispose of excess spirits (a) to another Government agency (the receiving agency is required to have a permit under Part 20 or 22 if the spirits were withdrawn for nonbeverage purposes), (b) by returning the spirits to the proprietor of a distilled spirits plant, or (c) in any manner authorized by the Director. In no case may such spirits be disposed of to the general public, or otherwise than as provided in this section.

(Act of August 16, 1954, Ch. 736, 68A Stat. 900 (26 U.S.C. 7510); Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended, 1375, as amended (26 U.S.C. 5271, 5313))

Par. 13. Section 19.540 is revised to provide for the use of commercial records of disposition in lieu of preparing Form 1473, increasing the authorized size of a sample from one quart to five gallons, eliminating Form 1512, and other conforming and editorial changes. As revised, § 19.540 reads as follows:

§ 19.540 Removal of denatured spirits and articles.

(a) *Specially denatured spirits.* Specially denatured spirits withdrawn free of tax under § 19.536(d) shall be shipped in approval containers to the consignee designated on the permit. If such spirits are for export or for transfer to a foregin-trade zone, they shall be withdrawn under the applicable provisions of Part 252 of this chapter. If such spirits are for shipment to a qualified user, dealer, or an applicant or prospective applicant under paragraph (c)(2)(ii) of this section, the proprietor shall prepare a record of shipment in accordance with § 19.779. Bulk conveyances used to transport specially denatured spirits shall be secured in accordance with the provisions of § 19.96.

(b) *Completely denatured alcohol.* No permit, application, or notice is required for removal of completely, denatured alcohol from bonded premises.

(c) *Samples of denatured spirits.* (1) The proprietor may take samples of denatured spirits free of tax which may be necessary for the conduct of business.

(2) The proprietor may furnish samples of specially denatured spirits:

(i) To dealers in, and users of, specially denatured spirits in advance of sales; or

(ii) To applicants or prospective applicants for permits to use specially denatured spirits, for experimental purposes or for use in preparing samples of a finished product for submission on request by the Director.

(A) Proprietors shall maintain records to ensure that samples of specially denatured spirits dispensed to nonpermittees do not exceed five gallons per calendar year. Records of samples of less than five gallons shall be maintained as provided in § 19.766.

(B) Samples in excess of five gallons may be furnished to nonpermittees only after the consignee provides the proprietor with a letterhead application approved by the regional director (compliance) under § 20.252 of this chapter. The proprietor shall retain the approved letterhead application on file as a part of the record of transaction.

(C) For each shipment of a sample in excess of five gallons under paragraph (c)(2)(ii)(B) of this section, the proprietor shall prepare a record of shipment and forward the original to the consignee, in accordance with § 19.779.

(3) Each sample of specially denatured spirits withdrawn under the provisions of paragraph (c)(2) of this section shall have a label affixed showing the following information:

(i) The word "Sample", and the words "Specially Denatured Alcohol", or "Specially Denatured Rum", whichever is applicable;

(ii) The name, address, and plant number of the proprietor; and

(iii) The formula number.

(d) *Articles.* Removal of articles from bonded premises shall be in accordance with the provisions of Part 20 of this chapter.

(Approved by the Office of Management and Budget under control number 1512–0337)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1370, as amended (26 U.S.C. 5214, 5271))

Par. 14. Section 19.541 is revised to incorporate conforming changes to read as follows:

§ 19.541 Reconsignment.

(a) *Reconsignment.* When, prior to or on arrival at the consignee's premises, spirits or specially denatured spirits withdrawn free of tax under § 19.536 are not accepted by the consignee or by a carrier, the spirits may be reconsigned (1) to the consignor, (2) to another proprietor for return to the bonded premises under the provisions of § 19.685, or (3) to another permittee

holding a valid permit issued under Part 20 or 22 of this chapter, as applicable.

(b) *Consent of surety.* In case of reconsignment to bonded premises, the provisions of § 19.685, relating to consent of surety in respect to return of spirits or specially denatured spirits withdrawn free of tax, are applicable.

(c) *Records of reconsignment.* In the case of reconsignment, the consignor shall cancel the initial record of shipment and prepare a new record of shipment, if shipment is to another permittee or proprietor. The new record of shipment shall be marked "Reconsignment." File copies of the canceled and the new record of shipment will be annotated to cross reference each other.

(Records relating to tax-free alcohol approved by the Office of Management and Budget under control number 1512-0334; records relating to specially denatured spirits approved by the Office of Management and Budget under control number 1512-0337)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§§ 19.581, 19.583 and 19.592 [Amended]

Par. 15. Sections 19.581, 19.583, and 19.592 are amended by replacing "Part 211" with "Part 20", wherever it appears.

Par. 16. The first sentence of § 19.604 is revised to conform the caution label requirement with the revised requirement of Part 20. As revised, § 19.604 reads as follows:

§ 19.604 Caution label.

Each container of completely denatured alcohol containing five gallons or less, sold or offered for sale, shall be labeled to show, in plain, legible letters, the words "Completely Denatured Alcohol" and the following statement "Caution—contains poisonous ingredients." * * *

Par. 17. Paragraph (d) of § 19.606 is amended to read as follows:

§ 19.606 Marks on bulk conveyances.

* * * * *

(d) Bulk conveyances used to transport articles or wine shall conform to the requirements of Part 20 or 240 of this chapter, as applicable.

* * * * *

§§ 19.683 and 19.684 [Amended]

Par. 18. Sections 19.683 and 19.684 are amended by replacing "Part 211" with "Part 20", wherever it appears.

§ 19.685 [Amended]

Par. 19. (a) Paragraph (a) of § 19.685 is amended by replacing "Part 211 or 213" with "Part 20 or 22", by replacing "Part 213" with "Part 22", and by replacing "Part 211, 213, or 252" with "Part 20, 22, or 252". (b) The first sentence of paragraph (c) of § 19.685 is removed since it refers to Form 1473 which has been eliminated.

Par. 20. Section 19.779 is revised by changing the section heading and incorporating the use of commercial documents in lieu of Form 1473. As revised § 19.779 reads as follows:

§ 19.779. Record of shipment of spirits and specially denatured spirits withdrawn free of tax.

(a) *General.* The proprietor shall prepare a record of shipment, and forward the original to the consignee and file a copy, when:

(1) Samples of specially denatured spirits in excess of five gallons are withdrawn in accordance with § 19.540(c)(2);

(2) Spirits are withdrawn free of tax in accordance with § 19.536(a)—(c); and

(3) Specially denatured spirits are withdrawn free of tax in accordance with §§ 19.536(d) and 19.540.

(b) *Form of record.* (1) The record of shipment prescribed in this section may consist of a proprietor's commercial invoice, bill of lading, or another document intended for the same purpose. Any commercial document used as a record of shipment shall:

(i) Be preprinted with the name and address of the proprietor,

(ii) Be sequentially numbered, and

(iii) Be consistently used for the intended purpose.

(2) In addition to any other information on the document, the record of shipment shall contain, as applicable, the following information:

(i) Date of shipment;

(ii) Name, address, and permit number of consignee;

(iii) Kind of spirits;

(iv) Proof of spirits;

(v) Formula number(s), for specially denatured spirits;

(vi) Number and size of containers;

(vii) Package identification numbers or serial numbers of containers; and

(viii) Total wine gallons (specially denatured spirits) or total proof gallons (tax-free alcohol).

(Records relating to tax-free alcohol approved by the Office of Management and Budget under control number 1512-0334; records relating to specially denatured spirits approved by the Office of Management and Budget under control number 1512-0337)

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

PART 211—[REVISED AND REDESIGNATED PART 20]

Section B. Part 211 is revised and redesignated as Part 20 as follows:

1. The regulations in this part supersede 27 CFR Part 211 in its entirety.

2. These regulations do not affect any act done or any liability or right accruing, or accrued, or any suit or proceeding had or commenced before the effective date of these regulations.

3. The regulations in this part are effective on June 4, 1985.

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

Subpart A—Scope

Sec.

20.1 General.
20.2 Territorial extent.
20.3 Related regulations

Subpart B—Definitions

20.11 Meaning of terms.

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Authorities

20.21 Forms perscribed.
20.22 Alternate methods or procedures; and emergency variations from requirements.
20.23 Approval of formulas and statements of process.
20.24 Allowance of claims.
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20.26 Bonds and consents of surety.
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20.31 Applicable laws and regulations; persons liable for tax.

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20.36 Execution under penalties of perjury.
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Subpart D—Qualification of Dealers and Users

Application for Permit, Form 5150.22

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Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805); Sec. 201, Pub. L. 85–859, 72 Stat. 1370–1373, as amended (26 U.S.C. 5271–5275), unless otherwise noted.

Subpart A—Scope

§ 20.1 General.

The regulations in this part relate to denatured distilled spirits and cover the procurement, use, disposition, and recovery of denatured alcohol, specially denatured rum, and articles containing denatured spirits.

§ 20.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia and to denatured spirits and articles coming into the United States from Puerto Rico or the Virgin Islands.

§ 20.3 Related regulations.

Regulations related to this part are listed below:

16 CFR Chapter I—Federal Trade Commission.
16 CFR Chapter II—Consumer Product Safety Commission.
21 CFR Chapter I—Food and Drug Administration, Department of Health and Human Services.
27 CFR Part 19—Distilled Spirits Plants.

27 CFR Part 21—Formulas for Denatured Alcohol and Rum.
27 CFR Part 196—Stills.
27 CFR Part 200—Rules of Practice in Permit Proceedings.
27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer.
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

Subpart B—Definitions

§ 20.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms have the meanings given in this section. Words in the plural form include the singular, and vice versa, and words importing the masculine gender include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

Alcohol. Those spirits known as ethyl alcohol, ethanol, or spirits of wine, from whatever source or by whatever process produced; the term does not include such spirits as whisky, brandy, rum, gin, or vodka.

Area supervisor. The supervisory officer of the Bureau of Alcohol, Tobacco and Firearms area office.

Article. Any substance or preparation in the manufacture of which denatured spirits are used, including the product obtained by further manufacture or by combination with other materials, if the article subjected to further manufacture or combination contained denatured spirits.

ATF Officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Bulk conveyance. Any tank car, tank truck, tank ship, or tank barge, or a compartment of any such conveyance, or any other container approved by the Director for the conveyance of comparable quantities of denatured spirits or articles.

CFR. The Code of Federal Regulations.

Completely denatured alcohol. Those spirits known as alcohol, as defined in this section, denatured under the completely denatured alcohol formulas prescribed in Subpart C of Part 21 of this chapter.

Dealer. A person who holds a permit to deal in specially denatured alcohol or specially denatured rum for resale to persons authorized to purchase or receive specially denatured alcohol or specially denatured rum in accordance with this part.

Denaturant. Any one of the materials authorized under Part 21 of this chapter for addition to spirits in the production of denatured spirits.

Denatured spirits. Alcohol or rum to which denaturants have been added as provided in Part 21 of this chapter.

Denaturer. The proprietor of a distilled spirits plant who denatures alcohol or rum under Part 19 of this chapter.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC 20226.

Distributor. Any person who sells completely denatured alcohol, other than a proprietor of a distilled spirits plant who sells such alcohol at the plant premises, and any person who sells articles containing completely or specially denatured alcohol or specially denatured rum, other than the manufacturer, except where otherwise specifically restricted in this part.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the claim, form, or other document or, where no form of declaration is prescribed, with the declaration—

I declare under the penalties of perjury that this ——— (insert type of document, such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.

Fiduciary. A guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

Gallon. The liquid measure equivalent to the volume of 231 cubic inches.

Liter or litre. A metric unit of capacity equal to 1,000 cubic centimeters of alcohol, and equivalent to 33.814 fluid ounces. A liter is divided into 1,000 milliliters. The symbol for milliliter or milliliters is "ml".

Manufacturer or user. A person who holds a permit to use specially denatured alcohol or specially denatured rum to recover completely or specially denatured alcohol, specially denatured rum, or articles.

Permit. The document issued under 26 U.S.C. 5271(a), authorizing a person to withdraw and deal in or use specially denatured alcohol or specially denatured rum or to recover denatured alcohol, specially denatured rum, or articles under specified conditions.

Permittee. Any person holding a permit, Form 5150.9, issued under this part to withdraw and deal in or use (including recover) denatured spirits.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Proof. The ethyl alcohol content of a liquid at 60° Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof gallon. A gallon at 60° Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60° Fahrenheit referred to water at 60° Fahrenheit as unity, or the alcoholic equivalent thereof.

Proprietary solvents. Solvents which are manufactured with specially denatured alcohol under the proprietary solvent general-use formula in this part.

Recover. To salvage, after use, specially denatured spirits, completely denatured alcohol without all of its original denaturants, or any article containing denatured spirits, if (1) the original article was made with specially denatured spirits and the salvaged article does not contain all of the original ingredients of the article, or (2) the original article was made with completely denatured alcohol and the salvaged article does not contain all of the original denaturants of the completely denatured alcohol.

Recovered article. An article containing specially denatured spirits salvaged without all of its original ingredients, or an article containing completely denatured alcohol salvaged without all of the original denaturants of the completely denatured alcohol.

Recovered denatured alcohol. Denatured alcohol (except completely denatured alcohol containing all of its original denaturants) which has been recovered.

Recovered denatured rum. Denatured rum which has been recovered.

Region. A Bureau of Alcohol, Tobacco and Firearms Region.

Regional director (compliance). The principal ATF regional official responsible for administering regulations in this part.

Restoration. Restoring to the original state (except that the restored material may or may not contain denaturants to the same extent as the original material) of recovered denatured alcohol, recovered specially denatured rum, or recovered articles containing denatured alcohol or specially denatured rum. Restoration includes bringing the alcohol content of the recovered product to 190° of proof or more or to not less than the original proof if less than 190°.

Restoration also includes the removal of foreign materials by any suitable means.

Rum. Any spirits produced from sugar cane products and distilled at less than 190° proof in such manner that the spirits possess the taste, aroma, and characteristics generally attributed to rum.

Secretary. The Secretary of the Treasury or his delegate.

Special industrial solvents. Solvents which are manufactured with specially denatured alcohol under special industrial solvent general-use formula in this part.

Specially denatured alcohol or S.D.A. Those spirits known as alcohol, as defined in this section, denatured under the specially denatured alcohol formulas prescribed in Part 21 of this chapter.

Specially denatured rum or S.D.R. Those spirits known as rum, as defined in this section, denatured under the specially denatured rum formula prescribed in Part 21 of this chapter.

Specially denatured spirits. Specially denatured alcohol or specially denatured rum.

Spirits or distilled spirits. Alcohol or rum as defined in this part.

Tank truck. A tank-equipped semi-trailer, trailer, or truck, conforming to the requirements of this part.

This chapter. Chapter I, Title 27, Code of Federal Regulations.

U.S.C. The United States Code.

Subpart C—Administrative Provisions

Authorities

§ 20.21 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part, including bonds, applications, notices, claims, reports, and records. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) ATF Publication 1322.1, Public Use Forms, is a numerical listing of forms issued by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC. 20402.

(c) Requests for forms should be mailed to the ATF Distribution Center, 3800 South Four Mile Run Drive, Arlington, Virginia 22206.

§ 20.22 Alternate methods or procedures; and emergency variations from requirements.

(a) *Alternate methods or procedures.*—(1) *Application.* A permittee, after receiving approval from the Director, may use an alternate method or procedure (including alternate construction or equipment) in lieu of a method or procedure prescribed by this part. A permittee wishing to use an alternate method or procedure may apply to the regional director (compliance). The permittee shall describe the proposed alternate method or procedure and shall set forth the reasons for its use.

(2) *Approval by Director.* The Director may approve the use of an alternate method or procedure if:

(i) The applicant shows good cause for its use;

(ii) It is consistent with the purpose and effect of the procedure prescribed by this part, and provides equal security to the revenue;

(iii) It is not contrary to law; and

(iv) It will not cause an increase in cost to the Government and will not hinder the effective administration of this part.

(3) *Exceptions.* The Director will not authorize an alternate method or procedure relating to the giving of a bond.

(4) *Conditions of approval.* A permittee may not employ an alternate method or procedure until the Director has approved its use. The permittee shall, during the terms of the authorization of an alternate method or procedure, comply with terms of the approved application.

(b) *Emergency variations from requirements.*—(1) *Application.* When an emergency exists, a permittee may apply to the regional director (compliance) for a variation from the requirements of this part relating to construction, equipment, and methods of operation. The permittee shall describe the proposed variation and set forth the reasons for using it.

(2) *Approval by regional director (compliance).* The regional director (compliance) may approve an emergency variation from requirements if:

(i) An emergency exists;

(ii) The variation from the requirements is necessary;

(iii) It will afford the same security and protection to the revenue as intended by the specific regulations;

(iv) It will not hinder the effective administration of this part; and

(v) It is not contrary to law.

(3) *Conditions of approval.* A permittee may not employ an emergency variation from the requirements until the regional director (compliance) has approved its use. Approval of variations from requirements are conditioned upon compliance with the conditions and limitations set forth in the approval.

(4) *Automatic termination of approval.* If the permittee fails to comply in good faith with the procedures, conditions or limitations set forth in the approval, authority for the variation from requirements is automatically terminated and the permittee is required to comply with prescribed requirements of regulations from which those variations were authorized.

(c) *Withdrawal of approval.* The Director may withdraw approval for an alternate method or procedure, or the regional director (compliance) may withdraw approval for an emergency variation from requirements, approved under paragraph (a) or (b) of this section, if the Director or the regional director (compliance) finds that the revenue is jeopardized or the effective administration of this part is hindered by the approval.

(Approved by the Office of Management and Budget under control number 1512-0336)

(Act of August 16, 1954, Ch. 736, 68A Stat. 917 (26 U.S.C. 7805); Sec. 201, Pub. L. 85-859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

§ 20.23 Approval of formulas and statements of process.

The Director is authorized to approve all formulas for articles and statements of process relating to recovery operations or other activities required to be submitted on Form 5150.19.

§ 20.24 Allowance of claims.

The regional director (compliance) is authorized to allow claims for losses of specially denatured alcohol or specially denatured rum.

§ 20.25 Permits.

The Director shall issue permits covering the use of specially denatured alcohol by the United States or a Governmental agency as provided in § 20.222. The regional director (compliance) shall issue the industrial alcohol user permit, Form 5150.9, required under this part.

§ 20.26 Bonds and consents of surety.

The regional director (compliance) is authorized to approve all bonds and consents of surety required by this part.

§ 20.27 Right of entry and examination.

An ATF officer may enter, during business hours or at any time operations are being conducted, any premises on which operations governed by this part are conducted to inspect the records and reports required by this part to be kept on those premises. An ATF officer may also inspect and take samples of distilled spirits, denatured alcohol,

specially denatured rum or articles (including any substance for use in the manufacture of denatured alcohol, specially denatured rum or articles) to which those records or reports relate.

§ 20.28 Detention of containers.

(a) *Summary detention.* An ATF officer may detain any container containing, or supposed to contain, spirits (including denatured spirits and articles), when the ATF officer believes those spirits, denatured spirits, or articles were produced, withdrawn, sold, transported, or used in violation of law or this part. The ATF officer shall hold the container at a safe place until it is determined if the detained property is liable by law to forfeiture.

(b) *Limitations.* Summary detention may not exceed 72 hours without process of law or intervention of the regional director (compliance). The person possessing the container immediately before its detention may prepare a waiver of the 72 hours limitation to have the container kept on his or her premises during detention.

(Sec. 201, Pub. L. 85-859, Stat. 1375, as amended (26 U.S.C. 5311))

Liability For Tax

§ 20.31 Applicable laws and regulations; persons liable for tax.

(a) All laws and regulations regarding alcohol or rum that is not denatured, including those requiring payment of the distilled spirits tax, apply to completely denatured alcohol, specially denatured alcohol, specially denatured rum, or articles produced, withdrawn, sold, transported, or used in violation of laws or regulations pertaining to those substances.

(b) Any person who produces, withdraws, sells, transports, or uses completely denatured alcohol, specially denatured alcohol, specially denatured rum, or articles in violation of laws or regulations shall be required to pay the distilled spirits tax on those substances.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

Marks and Brands

§ 20.33 Time of destruction of marks and brands.

(a) Any person who empties a package containing denatured alcohol, specially denatured rum, or articles made from denatured alcohol or specially denatured rum shall immediately destroy or obliterate the marks, brands, and labels required by this chapter to be placed on packages containing those materials.

(b) A person may not destroy or obliterate the marks, brands or labels until the package or drum has been emptied.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5206))

Document Requirements

§ 20.36 Execution under penalties of perjury.

(a) When any form or document prescribed by this part is required to be executed under penalties of perjury, the dealer or user or other authorized person shall:

(1) Insert the declaration "I declare under the penalties of perjury that I have examined this ———— (insert the type of document such as claim, application, statement, report, certificate), including all supporting documents, and to the best of my knowledge and belief, it is true, correct, and complete"; and

(2) Sign the document.

(b) When the required document already bears a perjury declaration, the dealer or user or other authorized person shall sign the document.

(Act of August 16, 1954, 68A Stat. 745 (26 U.S.C. 6065))

§ 20.37 Filing of qualifying documents.

All documents returned to a permittee or other person as evidence of compliance with requirements of this part, or as authorization, shall except as otherwise provided, be kept readily available for inspection by an ATF officer during business hours.

Subpart D—Qualification of Dealers and Users

Application For Permit, Form 5150.22

§ 20.41 Application for industrial alcohol user permit.

(a) *Dealers.* A person who desires to withdraw and deal in specially denatured spirits shall, before commencing business, file an application on Form 5150.22 for, and obtain a permit, Form 5150.9.

(b) *Users.* A person who desires to withdraw and use or recover specially denatured spirits shall, before commencing business, file an application of Form 5150.22 for, and obtain a permit, Form 5150.9. The provisions of this paragraph also apply to persons desiring to recover denatured spirits from articles.

(c) *Filing.* All applications and necessary supporting documents, as required by this subpart, shall be filed with the regional director (compliance). All data, written statements, certifications, affidavits, and other documents submitted in support of the application are considered a part of the application.

(1) Applications filed as provided in this section, shall be accompanied by evidence establishing the authority of the officer or other person to execute the application.

(2) A State, political subdivision thereof, or the District of Columbia, may specify in the application that it desires a single permit authorizing the withdrawal and use of specially denatured spirits in a number of institutions under it control. In this instance, the application, Form 5150.22, or an attachment, shall clearly show the method of distributing and accounting for the specially denatured spirits to be withdrawn.

(d) *Exceptions.* (1) The proprietor of a distilled spirits plant qualified under Part 19 of this chapter, who sells specially denatured spirits stored at the plant premises is not required to qualify as a dealer under this part.

(2) A permittee who was previously qualified on the effective date of this regulation shall not be required to requalify under this part.

§ 20.42 Data for application, Form 5150.22.

(a) Unless waived under § 20.43, each application on Form 5150.22 shall include as applicable, the following information:

(1) Serial number and purpose for which filed.

(2) Name and principal business address.

(3) Based on the bona fide requirements of the applicant, the estimated quantity of all formulations of specially denatured spirits, in gallons, which will be procured during a 12-month period.

(4) Location, or locations where specially denatured spirits will be sold or used if different from the business address.

(5) Statement that specially denatured spirits will be stored in accordance with the requirements of this part.

(6) For user applications, statement as to the intended use (*e.g.* cosmetics, external medicines, solvents, fuels, mouthwashes, laboratory uses, inks, etc.) to be made of the specially denatured spirits, and whether recovery, restoration, and redenaturation processes will be used.

(7) Statement as to the type of business organization and of the persons interested in the business, supported by the items of information listed in § 20.45.

(8) Listing of the principal equipment to be used in recovery processes, including processing tanks, storage tanks, and equipment for recovery.

restoration, and redenaturation of denatured spirits (including the serial number, kind, capacity, names and addresses of manufacturer and owner of distilling apparatus along with intended use).

(9) List of trade names under which the applicant will conduct operations, and the offices where these names are registered.

(10) Listing of the titles of offices, the incumbents of which are responsible for the specially denatured spirits activities of the business and are authorized by the articles of incorporation, the bylaws, or the board of directors to act and sign on behalf of the applicant.

(11) Other information and statements as the regional director (compliance) may require to establish that the applicant is entitled to the permit. In the case of a corporation or other legal entity, the regional director (compliance) may require information which establishes that the officers, directors and principal stockholders whose names are required to be furnished under § 20.45 (a)(2) and (c) have not violated or conspired to violate any law of the United States relating to intoxicating liquor or have been convicted of any offense under Title 26, U.S.C., punishable as a felony or of any conspiracy to commit such offense.

(b) If any of the information required by paragraphs (a)(4) through (a)(10) and any information which may be required under paragraph (a)(11) of this section is on file with any regional director (compliance), the applicant may incorporate this information by reference by stating that the information is made a part of the application.

§ 20.43 Exceptions to application requirements.

(a) The regional director (compliance) may waive detailed application and supporting data requirements, other than the requirements of paragraphs (a)(1) through (a)(6) and (a)(9) of § 20.42, and paragraph (a)(8) of that section as it relates to recovery, restoration and redistillation, in the case of—

(1) All applications, Form 5150.22, filed by States or political subdivisions thereof or the District of Columbia, and

(2) Applications, Form 5150.22, filed by applicants whose annual withdrawal and sale or use of specially denatured spirits does not exceed 5,000 gallons.

(b) The waiver, provided for in this section will terminate when the permittee, other than a State or a political subdivision thereof, or the District of Columbia, files an application to amend its permit, Form 5150.9, to increase the annual withdrawal and sale or use of specially denatured spirits to an amount in excess of 5,000 gallons. In this case, the permittee shall also furnish information required by § 20.56(a)(2).

§ 20.44 Disapproval of application.

The regional director (compliance) may, in accordance with Part 200 of this chapter, disapprove an application for a permit to withdraw and deal or use denatured spirits, if on examination of the application (or inquiry), the regional director (compliance) has reason to believe that:

(a) The applicant is not authorized by law and regulations to withdraw and deal in or use specially denatured spirits;

(b) The applicant (including, in the case of a corporation, any officer, director, or principal stockholder, or, in the case of a partnership, a partner) is, by reason of their business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. Chapter 51, or regulations issued under this part;

(c) The applicant has failed to disclose any material information required, or has made any false statement as to any material fact, in connection with the application; or

(d) The premises at which the applicant proposes to conduct the business are not adequate to protect the revenue.

§ 20.45 Organizational documents.

The supporting information required by § 20.42(a)(7) includes, as applicable:

(a) *Corporate documents.* (1) Certified true copy of the certificate of incorporation, or certified true copy of certificate authorizing the corporation to operate in the State where the premises are located (if other than that in which incorporated);

(2) Certified list of names and addresses of officers and directors, along with a statement designating which corporate offices, if applicable, are directly responsible for the specially denatured spirits portion of the business; and

(3) Statement showing the number of shares of each class of stock or other evidence of ownership, authorized and outstanding, the par value, and the voting rights of the respective owners or holders.

(b) *Articles of partnership.* True copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality.

(c) *Statement of interest.* (1) Names and addresses of persons owning 10% or more of each of the classes of stock in the corporation, or legal entity, and the nature and amount of the stockholding or other interest of each, whether such interest appears in the name of the interested party or in the name of another for him or her. If a corporation is wholly owned or controlled by another corporation, persons owning 10% or more of each of the classes of stock of the parent corporation are considered to be the persons interested in the business of the subsidiary, and the names and addresses of such persons shall be submitted to the regional director (compliance) if specifically requested.

(2) In the case of an individual owner or partnership, name and address of every person interested in the business, whether such interest appears in the name of the interested party or in the name of another for the interested person.

Industrial Alcohol User Permit, ATF F 5150.9

§ 20.48 Conditions of permits.

(a) Permits to withdraw and deal in or use specially denatured spirits will designate the acts which are permitted, and include any limitations imposed on the performance of these acts. All of the provisions of this part relating to the use, recovery, restoration or redistillation of denatured spirits or articles are considered to be included in the provisions and conditions of the permit, the same as if set out in the permit.

(b) An applicant need not have formulas and statements of processes, approved by the Director, prior to the issuance of a permit by the regional director (compliance).

(c) A permittee shall not use specially denatured spirits in the manufacture or production of any article unless the Director has approved the formula on Form 5150.19 or the article is covered by an approved general-use formula.

§ 20.49 Duration of permits.

Permits to withdraw and deal in or use specially denatured spirits are continuing unless automatically terminated by the terms thereof, suspended or revoked as provided in § 20.51, or voluntarily surrendered. The provisions of § 20.57 are considered part of the terms and conditions of all permits.

§ 20.50 Correction of permits.

If an error or a permit is discovered, the permittee shall immediately return the permit to the regional director (compliance) for correction.

§ 20.51 Suspension or revocation of permits.

The regional director (compliance) may institute proceedings under Part 200 of this chapter to suspend or revoke a permit whenever the regional director (compliance) has reason to believe that the permittee:

(a) Has not in good faith complied with the provisions of 26 U.S.C. Chapter 51, or regulations issued under that chapter;

(b) Has violated the conditions of that permit;

(c) Has made any false statements as to any material fact in the application for the permit;

(d) Has failed to disclose any material information required to be furnished;

(e) Has violated or conspired to violate any law of the United States relating to intoxicating liquor or has been convicted of an offense under Title 26, U.S.C., punishable as a felony or of any conspiracy to commit such offense;

(f) Is, by reason of its operations, no longer warranted in procuring and dealing in or using specially denatured spirits authorized by the permit; or

(g) Has not engaged in any of the operations authorized by the permit for a period of more than 2 years.

§ 20.52 Rules of practice in permit proceedings.

The regulations of Part 200 of this chapter apply to the procedure and practice in connection with the disapproval of any application for a permit and in connection with suspension or revocation of a permit.

§ 20.53 Powers of attorney.

An applicant or permittee shall execute and file with the regional director (compliance) a Form 1534, in accordance with the instructions on the form, for each person authorized to sign or to act on behalf of the applicant or permittee. Form 1534 is not required for a person whose authority is furnished in accordance with § 20.42(a)(10).

§ 20.54 Photocopying of permits.

A permittee may make photocopies of its permit exclusively for the purpose of furnishing proof of authorization to withdraw specially denatured spirits from a distilled spirits plant and other persons authorized under this part to deal in specially denatured spirits.

§ 20.55 Posting of permits.

Permits issued under this part shall be kept posted and available for inspection on the permit premises.

Changes After Original Qualification

§ 20.56 Changes affecting applications and permits.

(a) *General.*—(1) *Changes affecting application.* When there is a change relating to any of the information contained in, or considered a part of the application on Form 5150.22 for a permit, the permittee shall, within 30 days (except as otherwise provided in this subpart) file a written notice with the regional director (compliance) to amend the application. However, a change in the information required by § 20.42(a)(6) caused by approval of a new formula or statement of process shall not require filing a new application unless the approval is the permittee's first statement of process covering recovery operations.

(2) *Changes affecting waivers.* When any waiver under § 20.43 is terminated by a change to the application, the permittee shall include the current information as to the item previously waived with the written notice required in paragraph (a)(1) of this section.

(3) *Changes affecting permit.* When the terms of a permit are affected by a change, the written notice required by paragraph (a)(1) of this section (except as otherwise provided in this subpart) will serve as an application to amend the permit.

(4) *Form of notice.* A written notice to amend an application on Form 5150.22 shall—

(i) Identify the permittee;

(ii) Contain the permit identification number;

(iii) Explain the nature of the change and contain any required supporting documents;

(iv) Identify the serial number of the applicable application, Form 5150.22; and

(v) Be consecutively numbered and signed by the permittee or any person authorized to sign on behalf of the permittee.

(b) *Amended application.* The regional director (compliance) may require a permittee to file an amended application on Form 5150.22 when the number of changes to the previous application are determined to be excessive, or when a permittee has not timely filed the written notice prescribed in paragraph (a)(1) of this section. If items on the amended application remain unchanged, they will be marked "No change since Form 5150.22, Serial No. ————."

(c) *Changes in officers, directors and stockholders*—(1) *Officers.* In the case of a change in the officers listed under the provisions of § 20.45(a)(2), the notice required by paragraph (a)(1) of this section shall only apply (unless otherwise required, in writing, by the regional director (compliance)) to those offices, the incumbents of which are responsible for the operations covered by this part.

(2) *Directors.* In the case of a change in the directors listed under the provisions of § 20.45(a)(2), the notice required by paragraph (a)(1) of this section shall reflect the changes.

(3) *Stockholders.* In lieu of reporting all changes, within 30 days, to the list of stockholders furnished under the provisions of § 20.45(c)(1), a permittee may, upon filing written notice to the regional director (compliance) and establishing a reporting date, file an annual notice of changes. The notice of changes in stockholders does not apply if the sale or transfer of capital stock results in a change in ownership or control which is required to be reported under § 20.57.

(Approved by the Office of Management and Budget under control number 1512–0336)

§ 20.57 Automatic termination of permits.

(a) *Permit not transferable.* (a) Permits issued under this part are not transferable. In the event of the lease, sale, or other transfer of such a permit, or of the operations authorized by the permit, the permit shall, except as provided for in this section, automatically terminate.

(b) *Corporations.* (1) If actual or legal control of any corporation holding a permit issued under this part changes, directly or indirectly, whether by reason of a change in stock ownership or control (in the permittee corporation or any other corporation), by operation of law, or in any other manner, the permittee shall, within 10 days of the change, give written notice to the regional director, (compliance). Within 30 days of the change, the successor shall file an application for a new permit, Form 5150.22 with supporting documents. If an application for a new permit is not filed on Form 5150.22 within 30 days of the change, the outstanding permit will automatically terminate.

(2) If an application for a new permit is filed on Form 5150.22 within the 30-day period prescribed in paragraph (b)(1) of this section, the outstanding permit may remain in effect until final action is taken on the application. When final action is taken, the outstanding permit will automatically terminate and shall be forwarded to the regional director (compliance). The successor corporation may adopt the formulas and statements of process of the predecessor.

(c) *Proprietorships.* In the event of a change in proprietorship of a business of a permittee (as for instance, by reasons of incorporation, the withdrawal or taking in of additional partners, or succession by any person who is not a fiduciary), the successor shall file written notice and make application on Form 5150.22 for a new permit, under the same conditions provided for in paragraph (b) of this section. The successor may adopt the formulas and statements of process of the predecessor.

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§ 20.58 Adoption of documents by a fiduciary.

If the business covered by a permit issued under this part, is to be operated by a fiduciary, the fiduciary may, in lieu of qualifying as a new proprietor, file a written notice, and any necessary supporting documents, to amend the predecessor's permit. The fiduciary shall furnish a consent of surety on Form 1533, extending the terms of the predecessor's bond, if any, and may adopt the formulas and statements of process of the predecessor. The effective date of the qualifying documents filed by a fiduciary shall coincide with the effective date of the court order or the date specified therein for the fiduciary to assume control. If the fiduciary was not appointed by the court, the date the fiduciary assumed control shall coincide with the effective date of the filing of the qualifying documents.

§ 20.59 Continuing partnerships.

(a) *General.* If, under the laws of a particular State, a partnership is not teminated on death or insolvency of a partner, but continues until final settlement of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, the surviving partner may continue to withdraw and use specially denatured spirits under the prior qualifications of the partnership.

(b) *Bonds.* If a bond was required under the previous partnership, the surviving partner shall furnish a consent of surety, in which the surety and surviving partner agree to remain liable.

(c) *Requalification.* If a surviving partner acquires the business on completion of the settlement of the partnership, that partner shall qualify as a new proprietor, from the date of acquisition, under the same conditions and limitations prescribed in § 20.56.

(d) *More than one partner.* The rule set forth in this section also applies if there is more than one surviving partner.

§ 20.60 Change in name of permittee.

(a) *Permit.* When the only change is a change in the individual, firm, or corporation name, a permittee may not conduct operations under the new name until a written notice, accompanied by necessary supporting documents, to amend the application and permit has been filed and an amended permit issued by the regional director (compliance).

(b) *Bond.* If required to file a bond, the permittee shall furnish a consent of surety on Form 1533 or a new bond to cover the change in name.

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§ 20.61 Change in trade name.

If there is to be a change in, or addition of, a trade name, the permittee may not conduct operations under the new trade name until a written notice has been filed and an amended permit has been issued by the regional director (compliance). A new bond or consent of surety is not required for changes in trade names.

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§ 20.62 Change in location.

(a) *Permit.* When there is to be a change in location within the same region, a permittee may not conduct operations at the new location until a written notice, accompanied by necessary supporting information to amend the application and permit has been filed and an amended permit issued by the regional director (compliance).

(b) *Bond.* If required to file a bond, the permittee shall furnish a consent of surety on Form 1533 or a new bond to cover the new location.

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§ 20.63 Adoption of formulas and statements of process.

(a) The adoption by a successor (corporation, proprietorship or fiduciary) of a predecessor's formulas and statements of process, as provided in § 20.57 (b) and (c), and § 20.58, will be in the form of a certificate to be made a part of the written notice or the application for a new permit submitted to the regional director (compliance).

(b) The certificate will contain, as applicable, (1) a list of all approved formulas or statements of process in which specially denatured spirits are used or recovered, (2) the formulas of specially denatured spirits used, (3) the ATF laboratory number of the sample (if any), (4) the date of approval of Form 1479-A or serial number of Form 5150.19, and (5) the applicable code number for the article or process. In addition, the certificate will contain the name of the successor followed by the phrase "Formula of ———— (Name of predecessor) is hereby adopted."

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§ 20.64 Return of permits.

Following the issuance of a new or amended permit, the permittee shall (a) obtain and destory all photocopies of the previous permit from its suppliers, and (b) return the original of the previous permit to the regional director (compliance).

Registry of Stills

§ 20.66 General.

Part 196 of this chapter applies to stills located on the premises of a permittee. The listing of a still on Form 5150.22 and the issuance of a permit constitute registration of that still in lieu of filing Form 26.

Permanent Discontinuance of Business

§ 20.68 Notice of permanent discontinuance.

(a) *Notice.* When a permittee permanently discontinues business, a written notice shall be filed with the regional director (compliance) to cover the discontinuance. The notice will be accompanied by the permit, and contain—

(a) A request to cancel the permit,

(2) A statement of the disposition made of all specially denatured spirits, as required in § 20.234, and

(3) The date of discontinuance.

(b) *Bonds.* The bond of a permittee may not be canceled until all specially denatured spirits have been properly disposed of as required by this part.

(c) *Final Reports.* The written notice required by this paragraph will also be accompanied by a report on Form 5150.18 covering the discontinuance and marked "Final Report."

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Subpart E—Bonds and Consents of Surety

§ 20.71 Bond.

(a) Except as provided in paragraph (d) of this section, each permittee who intends to withdraw more than 5000 gallons of specially denatured spirits per annum shall file a bond, Form 5150.25,

before issuance of the permit. The penal sum of the bond shall be as follows:

Maximum annual withdrawals	Bond penal sum
0 to 5,000 gallons	No bond required.
Over 5,000 but not over 500,000 gallons.	$2,000 plus $1,000 for each 5,000 gallons of withdrawals over 10,000 gallons.
Over 500,000 gallons	$100,000.

(b) The following method may be used to compute your penal sum:

(1) If the total of your estimated annual withdrawals is divisible by 5,000, divide it by 5. The result is your penal sum in dollars.

(2) If the total of your estimated annual withdrawals is not divisible by 5,000, increase it to the next highest number which is divisible by 5,000 and divide that number by 5. The result is your penal sum in dollars.

(c) The following are some examples:

If your annual withdrawals are	Your penal sum is
25,000 gallons	$5,000
84,500 gallons	17,000
335,000 gallons	67,000

(d) Any bond previously approved on Form 1475 or 1480 which fulfills the penal sum requirements of paragraph (b) of this section shall remain valid and will be regulated by the same provisions of this subpart as it refers to bonds on ATF F 5150.20.

§ 20.72 Evaluation of bond penal sum.

(a) *Permittee's evaluation.* Each permittee shall, for the period from July 1 through the following June 30, make an annual evaluation of the permittee's previous and future needs for specially denatured spirits. Based on the results of this evaluation:

(1) The permittee shall file a new bond in increased penal sum, if the existing bond no longer meets the penal sum requirements of § 20.71, or

(2) The permittee may file a new bond in decreased penal sum, if the existing bond exceeds the penal sum requirements of § 20.71.

(b) *Authority of regional director (compliance).* The regional director (compliance) may, at any time, require a permittee to file a new bond in a larger penal sum, or require a satisfactory explanation why a new bond should not be filed.

§ 20.73 Corporate surety.

(a) Surety bonds required by this part may be given only with corporate sureties holding certificates of authority from, and subject to the limitations prescribed by, the Secretary in the current revision of Treasury Department Circular No. 570.

(b) Treasury Department Circular No. 570 is published in the **Federal Register** annually as of the first workday in July. As they occur, interim revisions of the circular are published in the **Federal Register**. Copies may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, DC 20226.

§ 20.74 Filing of powers of attorney.

Each bond, and each consent to changes in the terms of a bond, must be accompanied by a power of attorney authorizing the agent or officer who executed the bond or consent to act on behalf of the surety. The regional director (compliance) who is authorized to approve the bond may require additional evidence of the authority of the agent or officer to execute the bond or consent.

§ 20.75 Execution of powers of attorney.

The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is not a manually signed original, it shall be accompanied by certification of its validity.

§ 20.76 Deposit of securities instead of corporate surety.

Instead of corporate surety, the principal may pledge and deposit as surety for the bond, securities which are transferable and which are guaranteed as to both interest and principal by the United States, under the provisions of 31 CFR Part 225.

§ 20.77 Consents of surety.

Consents of surety to changes in the terms of bonds shall be executed on Form 1533 by the principal and by the surety with the same formality and proof of authority as is required for the execution of bonds.

§ 20.78 Strengthening bonds.

(a) When the penal sum of any bond becomes insufficient, the principal shall either give a strengthening bond with the same surety to attain a sufficient penal sum, or give a new bond to cover the entire liability. A strengthening bond will not be approved if it bears any notation which is intended or which may be considered:

(1) To be a release of any former bond, or

(2) As limiting the amount of any bond to less than its full penal sum.

(b) Strengthening bonds shall show the date of execution and the effective date, and shall be marked "Strengthening Bond."

§ 20.79 Superseding bonds.

Superseding bonds are required when insolvency or removal of any surety occurs. Superseding bonds may also be required at the discretion of the regional director (compliance) when any other contingency affects the validity or impairs the sufficiency of the bond. If the principal intends to continue the transactions to which the bond relates after the surety, under § 20.80, has applied for relief of liability under the bond, the principal shall file a valid superseding bond to be effective on or before the date specified in the surety's application for relief of liability. Superseding bonds shall show the date of execution and the effective date, and shall be marked "Superseding Bond." If the principal does not file a superseding bond when required, the principal may not conduct any operation under the permit.

§ 20.80 Notice by surety of termination of bond.

A surety on any bond required by this part may at any time, in writing, notify the principal and regional director (compliance) with whom the bond is filed, that the surety desires (after a specified date) to be relieved of liability under the bond. The specified date may not be less than 90 days after the date the notice is received by the regional director (compliance). The surety shall also file with the regional director (compliance) an acknowledgment or other proof of service of the notice of termination on the principal.

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§ 20.81 Termination of rights and liability under a bond.

(a) If the notice of termination given by the surety is not withdrawn, in writing, the rights of the principal as supported by the bond terminate on the date named in the notice. The surety is relieved from liability under a bond as to any operations which are wholly subsequent to:

(1) The date named in a notice of termination (§ 20.80); or

(2) The effective date of a superseding bond (§ 20.79); or

(3) The date of approval of the discontinuance of operations by the principal.

(b) If the principal fails to file a valid superseding bond before the date on which the surety desires to be relieved from liability under the bond, the surety, notwithstanding the release from

liability as specified in paragraph (a)(1) of this section, shall remain liable under the bond for all specially denatured spirits or articles on hand or in transit to the principal on that date until the spirits or articles have been lawfully disposed of or a new bond has been filed by the principal.

§ 20.82 Release of pledged securities.

Securities of the United States, pledged and deposited as provided in § 20.76, will be released only under the provisions of 31 CFR Part 225. When the regional director (compliance) is satisfied that they may be released, the regional director (compliance) shall fix the date or dates on which a part or all of the securities may be released. At any time before the release of the securities, the regional director (compliance) may extend the date of release for any additional length of time considered necessary.

Subpart F—Formulas and Statements of Process

§ 20.91 Formula.

(a) Each article made with specially denatured spirits shall be made in accordance with (1) an approved formula, Form 5150.19, or (2) an approved general-use formula prescribed in this subpart, approved by the Director as an alternate method, or published as an ATF Ruling in the ATF Bulletin. The manufacturer shall file Form 5150.19, along with the sample(s) required by § 20.92, and obtain an approved formula before manufacturing the article.

(b) An article made in accordance with a formula on Form 1479–A approved under previous regulations in Part 211 of this chapter will be considered to comply with the requirements of this subpart.

(c) Any person who has approved formulas or statements of process, Form 1479–A or Form 5150.19, which have been discontinued or have become obsolete, may submit these formulas or statements of process to the Director for cancellation.

§ 20.92 Samples.

(a) For each formula submitted in accordance with § 20.91 covering a toilet preparation made with S.D.A. Formula No. 39–C and containing an essential oil, the manufacturer shall submit a 0.5-ounce sample of the essential oil used in the article. The Director may also require the manufacturer to submit a sample of any ingredient which is not adequately described in the formula.

(b) For each formula submitted in accordance with § 20.91, the Director may require the manufacturer to submit a 4-ounce sample of the finished article.

(c) The regional director (compliance) or the Director may, at any time, require submission of samples of (1) any ingredient used in the manufacture of an article, or (2) any article.

§ 20.93 Changes to formulas.

(a) *General.* Except as provided in paragraph (b) of this section, any change of ingredients or quantities of ingredients listed in an appoved formula shall constitute a different article for which a different approved formula is required by § 20.91.

(b) *Exceptions.* A different approved formula is not required for the following—

(1) A change from an ingredient identified in the formula by a brand name to the same quantity of a chemically identical ingredient acquired under a different brand name, or

(2) A change of an ingredient which is a coloring material.

§ 20.94 Statement of process.

(a) Manufacturers shall submit a statement of process on Form 5150.19, in accordance with paragraph (b) of this section, covering the following activities:

(1) If specially denatured spirits are used for laboratory or mechanical purposes, other than use of S.D.A. Formula No. 3–A, 3–C, or 30 for laboratory or mechanical purposes not in the development of a product;

(2) If specially denatured spirits are used in a manufacturing process in which none of the specially denatured spirits remains in the finished product;

(3) If specially denatured spirits, completely denatured alcohol, or articles are used in a manufacturing process and are to be recovered; or

(4) If recovered denatured spirits are to be redenatured.

(b) The manufacturer shall submit a separate Form 5150.19 for each activity described in paragraph (a) of this section describing the process completely.

(1) If specially denatured spirits are used for laboratory or mechanical purposes, other than use of S.D.A. Formula No. 3–A, 3–C, or 30 for laboratory or mechanical purposes not in the development of a product, the Form 5150.19 shall identify the formula number of specially denatured spirits, a description of the laboratory or mechanical use, and the approximate annual quantity to be used.

(2) If the Form 5150.19 is submitted covering activities described in paragraphs (a)(2), (a)(3), or (a)(4) of this section, the Form 5150.19 shall also contain the following information:

(i) Flow diagrams shall be submitted with the Form 5150.19 clearly depicting the equipment in its relative operating sequence, with essential connecting pipelines and valves. All major equipment shall be identified as to its use. The direction of flow through the pipelines shall be indicated in the flow diagram. The flow diagram, shall be accompanied by a written description of the flow of materials through the system.

(ii) The statement of process shall describe the chemical composition of the recovered spirits. The statement of process shall be accompanied by a statement of the intended use of the recovered spirits.

§ 20.95 Developmental samples of articles.

(a) A user may use limited quantities of specially denatured spirits in the manufacture of samples of articles for submission on request by the Director in accordance with § 20.92.

(b) A user may prepare developmental samples of articles, of limited sizes and quantities, for one-time shipment to prospective customers. The user shall maintain records showing—

(1) The types of product samples prepared,

(2) The size and number of samples sent, on a one-time basis, to each prospective customer, and

(3) The names and addresses of the prospective customers.

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Approval Policies

§ 20.100 General.

(a) In addiiton to the limitations in this part, and if necessary to protect the revenue or public safety, the Director, when approving Form 5150.19 may:

(1) Specify on the Form 5150.19 the size of containers in which any article may be sold;

(2) Specify the maximum quantity that may be sold to any person at one time; or

(3) Restrict the sale of an article to a specific class of vendee and for a specific use.

(b) Approval by the Director of formulas, samples, or statements of process means only that they meet the standards of the Bureau of Alcohol, Tobacco and Firearms. The approval does not require the regional director (compliance) to issue a permit under Subpart D of this part to withdraw and use specially denatured spirits in those formulas, articles, or statements of process.

§ 20.101 Drafting formulas.

(a) In preparing Form 5150.19, the manufacturer shall, for each ingredient containing ethyl alcohol, identify—

(1) The percent alcohol by volume of the ingredient, if known, and

(2) The supplier's name and serial number or approval date of the supplier's approved formula covering the manufacture of the ingredient.

(b) In preparing Form 5150.19, manufacturers may—

(1) Identify ingredients by generic names rather than brand names, and

(2) Identify quantities of ingredients used in ranges rather than in finite quantities.

(c) If ranges of ingredients are used, as authorized by paragraph (b)(2) of this section—

(1) The lower range shall not be zero for any ingredient, and

(2) The range for usage of specially denatured spirits shall not exceed ± 5%.

§ 20.102 Bay rum, alcoholado, or alcoholado-type toilet waters.

All bay rum, alcoholado, or alcoholado-type toilet waters made with specially denatured alcohol shall contain:

(a) 1.10 grains of benzyldiethyl (2:6-xylylcarbamoyl methyl) ammonium benzoate (Bitrex (THS–839)) in each gallon of finished product in addition to any of this material used as a denaturant in the specially denatured alcohol, or

(b) 32 grains of tartar emetic in each gallon of finished product, or

(c) 0.5 avoirdupois ounce of sucrose octaacetate in each gallon of finished product.

§ 20.103 Articles made with S.D.A. Formula No. 39–C.

Each article made with S.D.A. Formula No. 39–C shall contain in each gallon of finished product not less than 2 fluid ounces of perfume material (essential oils, isolates, aromatic chemicals, etc.) satisfactory to the Director.

§ 20.104 Residual alcohol in spirit vinegar.

Commercial strength (40 grain) vinegar made from specially denatured alcohol may contain trace amounts of residual alcohol, not to exceed 0.5 percent of alcohol by volume, in the finished product.

General-Use Formulas

§ 20.111 General.

(a) An approved formula on Form 5150.19 is not required for an article made in accordance with any approved general-use formula prescribed by §§ 20.112–20.119, approved by the Director as an alternate method, or published as an ATF Ruling in the ATF Bulletin.

(b) Any interested party may petition ATF for approval of a new general-use formula by submitting a letter describing the proposed general-use formula to the Director.

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§ 20.112 Special industrial solvents general-use formula.

(a) A special industrial solvent is any article made with any other ingredients combined with the ingredients in the minimum ratios prescribed in this section. A special industrial solvent shall be made with S.D.A. Formula No. 1, 3A, or 3C containing, for every 100 parts (by volume) of alcohol:

(1) No less than 1 part (by volume) of one or any combination of the following: methyl isobutyl ketone, methyl *n*-butyl ketone, nitropropane (mixed isomers), or ethylene glycol monoethyl ether, and

(2) No less than 5 parts (by volume) of one or any combination of the following: ethyl acetate (equivalent to 85% ester content, as defined in § 21.106 of this chapter), isopropyl alcohol, or methyl alcohol.

(b) Special industrial solvents are intended for use as ingredients or solvents in manufacturing processes and shall not be distributed through retail channels for sale as consumer commodities for personal or household use. When a special industrial solvent is used in the manufacture of an article for sale, sufficient ingredients shall be added to definitely change the composition and character of the special industrial solvent. A special industrial solvent shall not be reprocessed into another solvent intended for sale if the other solvent would contain more than 50% alcohol by volume.

(c) If this article contains more than 4% by weight of methyl alcohol, the label shall have a skull and crossed bones symbol and the following words: "danger," "poison," "vapor harmful," "May be fatal or cause blindness if swallowed," and "Cannot be made nonpoisonous."

§ 20.113 Proprietary solvents general-use formula.

(a) A proprietary solvent is any article made with any other ingredients combined with the ingredients in the minimum ratios prescribed in this section. A proprietary solvent shall be made with S.D.A. Formula No. 1 or 3–A containing, for every 100 parts (by volume) of alcohol:

(1) No less than 1 part (by volume) of one or any combination of the following: gasoline, unleaded gasoline, heptane, or rubber hydrocarbon solvent, and

(2) No less than 3 parts (by volume) of one or any combination of the following: ethyl acetate (equivalent to 85% ester content, as defined in § 21.106 of this chapter), methyl isobutyl ketone, methyl *n*-butyl ketone, *tert*-butyl alcohol, *sec*-butyl alcohol, nitropropane (mixed isomers), ethylene glycol monoethyl ether, or toluene.

(b) If this article contains more than 4% by weight of methyl alcohol, the label shall have a skull and crossed bones symbol and the following words: "danger," "poison," "vapor harmful," "May be fatal or cause blindness if swallowed," and "Cannot be made nonpoisonous."

§ 20.114 Tobacco flavor general-use formula.

Tobacco flavor general-use formula is any finished article made with S.D.A. Formula No. 4 or S.D.R. Formula No. 4 which—

(a) Contains sufficient flavors,

(b) May contain other ingredients, and

(c) Is packaged, labeled, and sold or used as a tobacco flavor only.

§ 20.115 Ink general-use formula.

Ink general-use formula is any finished article made with S.D.A. Formula No. 1, 3–A, 3–C, 13–A, 23–A, 30, 32, or 33 which—

(a) Contains sufficient pigments, dyes, or dyestuffs,

(b) May contain other ingredients, and

(c) Is packaged, labeled and sold or used as an ink.

§ 20.116 Low alcohol general-use formula.

Low alcohol general-use formula is a finished article containing not more than 5% alcohol by volume.

§ 20.117 Reagent alcohol general-use formula.

(a) Reagent alcohol is an article (1) made in accordance with paragraph (b) of this section, (2) packaged and labeled in accordance with paragraph (c) of this section, and (3) distributed in accordance with paragraph (d) of this section.

(b) Reagent alcohol shall be made with 95 parts (by volume) of S.D.A. Formula No. 3–A, and 5 part (by volume) of isopropyl alcohol. Water may be added at the time of manufacture. Reagent alcohol shall not contain any ingredient other than those named in this paragraph.

(c)(1) Except as provided in paragraph (d) of this section, reagent alcohol shall be packaged by the manufacturer in containers not exceeding four liters. Each container shall have affixed to it a

label with the following words, as conspicuously as any other words on the labels: "Reagent Alcohol, Specially Denatured Alcohol Formula 3–A–95 parts by vol., and Isopropyl Alcohol—5 parts by vol."

(2) Because this article contains more than 4% by weight of methyl alcohol, the label shall have a skull and crossbones symbol and the following words: "danger," "poison," "vapor harmful," "May be fatal or cause blindness if swallowed," and "Cannot be made nonpoisonous

(3) If water is added at the time of manufacture, the label shall reflect the composition of the diluted product. If the addition of water reduces the methyl alcohol concentration to less than 4% by weight, the requirements of paragraph (c)(2) of this section shall not apply.

(4) A back label shall be attached showing the word "ANTIDOTE", followed by suitable directions for an antidote.

(d)(1) Reagent alcohol may be distributed in containers not exceeding 4 liters exclusively to laboratories or persons who require reagent alcohol for scientific use.

(2) Reagent alcohol may be distributed in bulk containers to proprietors of bona fide laboratory supply houses for packaging and resale, and to any other person who was qualified to receive bulk shipments of reagent alcohol on the effective date of this part. Reagent alcohol may also be distributed in bulk containers to any person who has received approval of a letterhead application containing the following:

(i) The applicant's name, address, and permit number, if any;

(ii) A description of the security measures which will be taken to segregate reagent alcohol from denatured spirits or other alcohol which may be on the same premises;

(iii) A statement that labels required by paragraph (c) of this section will be affixed to containers of reagent alcohol filled by the applicant;

(iv) A statement that the applicant will allow ATF Officers to inspect the applicant's premises; and

(v) A statement that the applicant will comply with the requirements of § 20.133 which may be conditions of approval by the regional director (compliance).

(Approved by the Office of Management and Budget under control number 1512–0336)

§ 20.118 Rubbing alcohol general-use formula.

(a) Rubbing alcohol is an article made with S.D.A. Formula No. 23–H (1) containing 70% ethyl alcohol by volume (2) made in accordance with one of the two formulas prescribed in paragraph (b) of this section, and (3) labeled in accordance with § 20.134(e) of this part.

(b) Either of the following two formulas is approved for manufacturing rubbing alcohol:

Formula A

S.D.A. formula no. 23–H	103.3 fl. oz.
Sucrose octa-acetate	0.5 av.oz.
Water	q.s. 1 gallon.[12]

[If desired, odorous, medicinal and/or colorative ingredients may be added.]

Formula B

S.D.A. formula no. 23–H	103.3 fl. oz.
Benzyldiethyl (2: 6-xylylcarbamoyl methyl) ammonium benzoate (Bitrex (THS–839)).	0.88 grains.
Water	q.s. 1 gallon.

[If desired, odorous, medicinal and/or colorative ingredients may be added.]

§ 20.119 Toilet preparations containing 10% essential oils general-use formula.

This general-use formula shall consist of an article containing 10% essential oils by volume made with a formula of S.D.A. authorized for that article on the following list:

Article	Product code No.	Formula authorized
Bath preparations	142	1, 3–A, 3–B, 3–C, 23–A, 30, 36, 38–B, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Colognes	122	38–B, 39, 39–A, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Deodorants (body)	114	23–A, 38–B, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Hair and scalp preparations	111	3–B, 23–A, 23–F, 23–H, 37, 38–B, 39, 39–A, 39–B, 39–C, 39–D, 40, 40–A, 40–B, 40–C.
Lotions and creams (body, face, and hand)	113	23–A, 23–H, 31–A, 37, 38–B, 39, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Perfume materials (processing)	121	38–B, 39, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Perfumes and perfume tinctures	121	38–B, 39, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Shampoos	141	1, 3–A, 3–B, 3–C, 23–A, 27–B, 31–A, 36, 38–B, 39–A, 39–B, 40, 40–A, 40–B, 40–C.
Soaps, toilet	142	1, 3–A, 3–C, 23–A, 30, 36, 38–B, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Toilet waters	122	38–B, 39, 39–A, 39–B, 39–C, 40, 40–A, 40–B, 40–C.

Subpart G—Requirements Relating to Articles

§ 20.131 Scope of subpart.

This subpart prescribes requirements relating to articles which may affect persons who are not required to obtain a permit under this part. These requirements, described in general terms § 20.132, are imposed by law. Criminal penalties imposed for violating these requirements are described in § 20.137. In this subpart, the term "article" means any substance or preparation in the manufacture of which denatured spirits are used, including the product obtained by further manufacture or by combination with other materials, if the article subjected to further manufacture or combination contained denatured spirits.

§ 20.132 General requirements.

(a) *Internal medicinal preparations and flavoring extracts*—(1) *Manufacture.* No person shall use denatured spirits in the manufacture of medicinal preparations or flavoring extracts for internal human use where any of the spirits remain in the finished product.

(2) *Sale.* No person shall sell or offer for sale for internal human use any medicinal preparations or flavoring extracts manufactured from denatured distilled spirits where any of the spirits remain in the finished product.

(3) *Labeling and advertising.* Labeling and advertising of articles shall not imply that the article is intended for or suitable for internal human use.

(b) *Beverage use.* No person shall sell or offer for sale any article containing denatured spirits for beverage purposes. Labeling and advertising of articles shall not imply that the article is intended for or suitable for use as a beverage.

(c) *Trafficking in articles.* The regional director (compliance) may impose the requirements of § 20.133 on any person who reprocesses, rebottles, or repackages articles, deals in articles, or receives articles in containers exceeding one gallon.

§ 20.133 Registration of persons trafficking in articles.

(a) Upon written notice from the regional director (compliance), any person who reprocesses, rebottles, or

repackages articles, deals in articles, or receives articles in containers exceeding one gallon may be required to submit any of the following:

(1) Nature of activities to be conducted;

(2) Name and address of supplier;

(3) Size and type of containers in which articles will be received and, if applicable, rebottled or repackaged;

(4) Maximum quantity of each article to be obtained during any calendar month;

(5) Description of the reprocessing operation;

(6) Samples of the reprocessed article;

(7) Labels and advertising materials; and,

(8) Names and addresses of recipients of articles and quantities received;

(b) The regional director (compliance) shall prohibit any of the activities described in paragraph (a) of this section if the activities pose a jeopardy to the revenue, or a burden in administering this part.

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§ 20.134 Labeling.

(a) *General.* Except as provided in paragraph (b) or (c) of this section, each article shall, before removal from the manufacturer's premises, have a label affixed to its immediate container identifying (1) the name, trade name or brand name of the article, and (2) the name and address (city and State) of the manufacturer or distributor of the article.

(b) *Articles for external human use.* Except as provided in paragraph (c) of this section, an article intended for external human use shall, before removal from the manufacturer's premises, have a label affixed to its immediate container identifying the name, trade name or brand name of the article. If the volume of the article in the container exceeds 8-fluid ounces, the label shall also show the information required by paragraph (b) (1) or (2) of this section.

(1) If the article was packaged or bottled by the person who manufactured it, the label shall identify—

(i) The manufacturer's name and the address (city and State) of the actual place or places where article was manufactured, or

(ii) The name and principal office address (city and State) of the manufacturer, and the permit number or numbers of the place or places of manufacture, or

(iii) The manufacturer's permit number and the name and address (city and State), of the person for whom the article was packaged and bottled.

(2) If the article was packaged or bottled by a person other than the manufacturer of the article, the label shall identify—

(i) The name and address (city and State) of the person by whom or for whom the article was packaged or bottled, and

(ii) The permit number of the manufacturer or distributor.

(3) If a permit number is required to be shown on the label, it may be shown utilizing a State code number, in accordance with § 20.135.

(c) *Shipment of unlabeled articles.* A manufacturer may, subject to the approval of the regional director (compliance) and compliance with § 20.133, remove an unlabeled article from the manufacturer's premises, if the outer containers of the article are labeled with the name, trade name or brand name of the article and the names and addresses (city and State) of the manufacturer and the consignee.

(d) *Use of the words "denatured alcohol."* If the words "denatured alcohol" appear on the label of an article, the label shall also have a name, trade name or brand name which appears as conspicuously as the words "denatured alcohol."

(e) *Use of the words "rubbing alcohol."* If the words "rubbing alcohol" appear on the label of an article, (1) the article shall be made in accordance with § 20.118 of this part, and (2) the label (i) shall have the words "rubbing alcohol" in letters of the same color and size, (ii) shall identify the name and address (city and State) of the manufacturer or bottler, (iii) shall state the alcohol content as 70% by volume with no reference to the proof strength, and (iv) shall have the warning "For external use only. If taken internally, will cause serious gastric disturbances." An alcohol rub made from any other material, such as isopropyl alcohol, shall not be labeled "Rubbing Alcohol" unless the label informs the consumer that the preparation was not made with specially denatured alcohol.

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§ 20.135 State code numbers.

In showing the permit number on labels as provided in § 20.134(b)(2)(ii), the permittee who distributes the article may substitute the appropriate number shown below for the State abbreviation. For example, permit number SDA-CONN-1234 may be shown on the labels as SDA-07-1234. The code numbers for the respective State are as follows:

01—Alabama	03—Arizona
02—Alaska	04—Arkansas
05—California	29—Nevada
06—Colorado	30—New Hampshire
07—Connecticut	31—New Jersey
08—Delaware	32—New Mexico
09—D.C.	33—New York
10—Florida	34—North Carolina
11—Georgia	35—North Dakota
12—Hawaii	36—Ohio
13—Idaho	37—Oklahoma
14—Illinois	38—Oregon
15—Indiana	39—Pennsylvania
16—Iowa	40—Rhode Island
17—Kansas	41—South Carolina
18—Kentucky	42—South Dakota
19—Louisiana	43—Tennessee
20—Maine	44—Texas
21—Maryland	45—Utah
22—Massachusetts	46—Vermont
23—Michigan	47—Virginia
24—Minnesota	48—Washington
25—Mississippi	49—West Virginia
26—Missouri	51—Wisconsin
27—Montana	51—Wyoming
28—Nebraska	

§ 20.136 Labeling regulations of other agencies.

(a) *General.* Other Federal agencies have promulgated regulations which may affect labeling of articles, as described in this section.

(b) *Consumer Product Safety Commission.* The Consumer Product Safety Commission has promulgated regulations to administer the Federal Hazardous Substances Act. The regulations in 16 CFR Chapter II require warning labels for products containing certain specified substances. For example, S.D.A. Formula Nos. 3-A and 30 require warning labels because they contain methyl alcohol, a hazardous substance at levels of 4% or more by weight. Manufacturers, reprocessors, rebottlers, and repackagers who convey articles containing strong chemicals should refer to 16 CFR Chapter II for warning label requirements.

(c) *Federal Trade Commission.* The Federal Trade Commission (F.T.C.) has promulgated regulations to administer the Fair Packaging and Labeling Act. The regulations in 16 CFR Chapter I affect packaging and labeling of "consumer commodities." The term "consumer commodities" generally means products intended for retail sale to an individual for personal or household use. The F.T.C. regulations do not apply to drugs, medical devices, or cosmetics for which the Food and Drug Administration enforces the Fair Packaging and Labeling Act (see paragraph (d) of this section). Manufacturers, reprocessors, rebottlers, and repackagers who convey articles which are "consumer commodities" should refer to 16 CFR Chapter I for packaging and lebeling requirements.

(d) *Food and Drug Administration, Department of Health and Human Services.* The Food and Drug Administration has promulgated

regualtions in 21 CFR Chapter I to administer the Fair Packaging and Labeling Act (as it applies to drugs, medical devices, or cosmetics) and the Federal Food, Drug and Cosmetic Act. Manufacturers, reprocessors, rebottlers, and repackagers who convey articles which are drugs, medical devices, or cosmetics should refer to 21 CFR Chapter I for packaging and labeling requirements.

§ 20.137 Penalties.

Violation of the requirements prescribed in § 20.132 is punishable by a fine of not more than $10,000 and/or imprisonment for not more than 5 years for each offense. In addition, persons who manufacture (including reprocess), sell, or transport articles in violation of this part are liable for payment of a tax on the articles at the rate imposed by law on distilled spirits.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended, 1402 (26 U.S.C. 5001, 5607))

Subpart H—Sale and Use of Completely Denatured Alcohol

§ 201.41 General.

(a) Each formula of completely denatured alcohol may be sold and used for any purpose, subject to the limitations in the formula prescribed in Part 21 of this chapter. For example, C.D.A. Formula No. 18 or 19 may be used:

(1) In the manufacture of definite chemical substances where the alcohol is changed into some other chemical substance and does not appear in the finished product;

(2) In the arts and industries, including but not limited to the manufacture of cleaning fluids, detergents, proprietary antifreeze solutions, thinners, lacquers, and brake fluids; and

(3) For fuel, light, and power.

(b) Completely denatured alcohol may not be used in the manufacture of preparations or products for internal human use or consumption where any of the alcohol or the denaturants used in that alcohol remain in the finished product.

(c) Persons distributing and using (but not recovering for reuse) completely denatured alcohol are not required to obtain a permit or file a bond under this part.

(d) Any person recovering completely denatured alcohol for reuse shall obtain a permit under Subpart D of this part if the recovered alcohol does not contain all of the original denaturants of the completely denatured alcohol.

(e) Containers of products manufactured with completely denatured alcohol (such as proprietary antifreeze solutions, solvents, thinners, and lacquers) may not be branded as completely denatured alcohol. These products may not be advertised, shipped, sold, or offered for sale as completely denatured alcohol.

§ 20.142 Records of bulk conveyances.

If completely denatured alcohol is to be shipped in a bulk conveyance, the shipment shall be accompanied by a record which identifies each car, truck, or compartment, the name and location (city or town and State) of both the consignor and consignee, the quantity in gallons, and the formula number of the completely denatured alcohol.

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§ 20.143 Receipt.

Unless completely denatured alcohol received in bulk conveyances or by pipeline is to be used immediately, it shall be deposited in storage tanks, stored in the tank cars or tank trucks in which received, or drawn into packages which shall be marked or labeled as required by this subpart.

§ 20.144 Packages of completely denatured alcohol.

Packages containing more than 5 gallons of completely denatured alcohol shall be of metal or other equally suitable material approved by the Director. The openings of these packages shall be sealed with appropriate seals furnished by the person filling the packages.

§ 20.145 Encased containers.

Completely denatured alcohol may be packaged by distributors in unlabeled containers which are completely encased in wood, fiberboard, or similar material so that the surface (including the opening) of the actual container is not exposed. When completely denatured spirits are packaged in unlabeled containers, the distributor shall apply the required marks or label to an exposed surface of the case. The case shall be so constructed that the portion containing the marks will be securely attached to the encased container until all of the contents have been removed. A statement reading "Do Not Remove Inner Container Until Emptied," or words of similar meaning, shall be placed on the portion of the case bearing the marks.

§ 20.146 Labels on bulk containers.

(a) Completely denatured alcohol in bulk containers with a capacity exceeding 1 gallon shall be labeled on the head or side of the container or on the side of the casing, with the following:

(1) The name and address of the person filling the containers;

(2) The contents in gallons;

(3) The words "Completely Denatured Alcohol"; and

(4) The formula number.

(b) Packages of 5 gallons or less shall bear labels required by § 20.147, in lieu of the labels required by this section.

(c) The letters and figures used for marking packages shall be large enough to be easily read and, when printed, labeled, or stenciled, shall be in permanent ink and shall contrast distinctly with the background to which applied.

(d) Packages may also be marked with the brand name and a statement to the type of merchandise contained in the package if these markings do not obscure or detract from the required markings. The person filling the packages shall maintain the record required by § 20.261.

§ 20.147 Labels on consumer-size containers.

(a) Each consumer-size container with a capacity of 5 gallons or less of completely denatured alcohol sold or offered for sale by a distributor shall bear a label showing, in plain, legible letters, the following:

(1) The words "Completely Denatured Alcohol";

(2) The statement "Caution—contains poisonous ingredients"; and

(3) The name and address of the distributor filling the packages, unless shown elsewhere on the package.

(b) No other information (except that required by State or Federal law) may be shown on the label without the Director's approval. The word "pure", qualifying denatured alcohol may not appear on the label or the container.

(c) The requirements of paragraphs (a) and (b) of this section apply to any person who sells completely denatured alcohol at wholesale or retail.

§ 20.148 Manufacture of articles with completely denatured alcohol.

Articles may be made with completely denatured alcohol for sale under brand names. If ingredients are added in sufficient quantities to materially change the composition and character of the completely denatured alcohol, the article is not classified as completely denatured alcohol and may not be marked, branded, or sold as completely denatured alcohol.

§ 20.149 Records.

Records of transactions in completely denatured alcohol and articles made with completely denatured alcohol shall be maintained as prescribed in § 20.261.

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Subpart I—Operations by Dealers and Users of Specially Denatured Spirits

Obtaining Specially Denatured Spirits

§ 20.161 Withdrawals under permit.

(a) *General.* The permit, Form 5150.9, issued under Subpart D of this part, authorizes a person to withdraw specially denatured spirits from the bonded premises of a distilled spirits plant or a dealer.

(b) *Photocopying of permit, Form 5150.9.* (1) As provided in § 20.54, a permittee may make photocopies of its permit, or amended permit, for the exclusive purpose of furnishing proof of authorization to withdraw specially denatured spirits.

(2) A permittee need only furnish the photocopy of its permit, or amended permit, to a distilled spirits plant or dealer for the "initial order" from that distilled spirits plant or dealer.

(3) When a permittee makes photocopies of its permit, Form 5150.9, each copy must be signed, dated, and contain the word "COPY" across the face.

(4) A permittee is responsible for obtaining and, as applicable, destroying all photocopies of its permit from distilled spirits plants and dealers when: (i) An amended or corrected permit is issued which supersedes the copy on file, (ii) the permit is canceled by reason of requalification as a new permittee, (iii) the permit is revoked or suspended, or (iv) upon permanent discontinuance of dealing in or using specially denatured spirits.

(c) *Withdrawals.* (1) When a permittee places an initial order for specially denatured spirits the permittee will forward a signed copy of its permit, for retention by the distilled spirits plant or dealer, along with the purchase request.

(2) When the permittee places a subsequent order for specially denatured spirits, the purchase request, in addition to any other information, will contain the permit identification number and date of issue along with a statement that the permittee possesses a valid permit to withdraw specially denatured spirits, a copy of which is on file with the supplier.

(3) Shipments will not be made by a proprietor of a distilled spirits plant or dealer until it is in possession of a signed copy of a valid permit, Form 5150.9, unless the regional director (compliance) authorizes the shipment.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1370, as amended, 1395, as amended (26 U.S.C. 5271, 5555))

§ 20.162 Regulation of withdrawals.

(a) Each permittee shall regulate its withdrawals of specially denatured spirits to ensure that (1) the quantity on hand and unaccounted for does not exceed the capacity of the storage facilities, and (2) the cumulative quantity withdrawn or received in any calendar year does not exceed the quantity authorzied by the permit, Form 5150.9. Recovered alcohol will be taken into account in determining the total quantity of alcohol on hand.

(b) For the purpose of this section, specially denatured spirits and recovered alcohol will be considered as unaccounted for if lost under circumstances where a claim for allowance is required by this part and the claim has not been allowed, or if used or disposed of in any manner not provided for in this part.

§ 20.163 Receipt and storage of specially denatured spirits.

(a) *Receipt of bulk conveyances or by pipeline.* A permittee who receives specially denatured spirits in bulk conveyances or by pipeline shall: (1) Deposit the specially denatured spirits into storage tanks as provided by § 20.165; (2) draw the specially denatured spirits into packages marked and labeled as required by paragraph (b) of this section; (3) store the specially denatured spirits in the tank truck or tank car in which received if the conveyance is effectively immobilized within an enclosure secured to prevent unauthorized access; or (4) use the specially denatured spirits immediately in accordance with an approved formula or statement of process.

(b) *Marks on portable containers.* (1) A user who receives specially denatured spirits in bulk conveyances or by pipeline and who transfers the spirits to drums shall plainly label them to show (i) the words "Specially Denatured Alcohol" or "Specially Denatured Rum", and (ii) the formaula number.

(2) A dealer who fills packages of specially denatured spirits shall label them in accordance with § 20.178.

(c) *Receipt of portable containers.* A permittee who receives specially denatured spirits in portable containers such as drums or barrels shall transfer the specially denatured spirits to storage tanks or deposit the specially denatured spirits in a storeroom as provided in § 20.165, or use the spirits in accordance with an approved formula or statement of process. A user may not transfer the spirits to other portable containers for storage except in the following circumstances:

(1) Contents of damaged packages may be transferred to new packages to prevent loss or waste; or

(2) Contents of portable containers may be transferred to "safety" containers to comply with city or State fire code regulations, or on filing notice with the regional director (compliance) to comply with the safety practices of the user. The user shall label the new containers with the information marked on the original containers and shall also identify the new containers as "repackaged."

(d) *Record of receipt.* Records of receipt will consist of the consignor's invoice of bill or lading which identifies the quantities, formula number(s), and serial numbers of containers of specially denatured spirits, and which has been annotated by the consignee with the date of receipt of the shipment.

(e) *Losses.* On receipt of specially denatured spirits, the user shall determine and account for any losses in transit in accordance with Subpart J of this part.

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Premises and Equipment

§ 20.164 Premises.

(a) A permittee shall have premises suitable for the business being conducted and adequate for protecting the revenue.

(b) Storage facilities shall be provided on the premises for specially denatured spirits received or recovered. Except as provided in paragraph (c) of this section, storage facilities shall consist of storerooms, compartments, or stationary storage tanks (not necessarily in a room or building).

(c) A permittee receiving and storing specially denatured spirits in tank cars or tank trucks, as provided in § 20.163, need not provide stationary storage tanks.

(d) If specially denatured spirits are received at or removed from a permittee's premises in bulk conveyances, suitable facilities for those operations shall be provided.

(e) The regional director (compliance) may require the storage facilities or distilling equipment to be secured with Government locks or seals, or both.

§ 20.165 Storage facilities.

(a) Storerooms shall be constructed and secured to prevent unauthorized access and the entrance doors shall be equipped for locking.

(b) Each stationary tank used for the storage of specially denatured spirits shall be equipped for locking to control

access to the denatured spirits. An accurate means of measuring its contents shall be provided for each tank.

(c) Storerooms and storage tanks shall be kept locked when unattended. A storage cabinet or locker kept inside a room which is locked when unattended is considered to be adequately secured.

§ 20.166 Stills and other equipment.

If recovered denatured spirits or articles are to be restored on the permittee's premises, all equipment to be used in the restoration process shall be located on the permit premises. Distilling apparatus or other equipment, including pipelines, for restoration or for recovery, shall be constructed and secured in such a manner as to prevent unauthorized access to the denatured spirits and so arranged as to be readily inspected by ATF officers.

§ 20.167 Recovered and restored denatured spirits tanks.

Suitable storage tanks shall be provided for recovered and restored denatured spirits. Each storage tank for recovered and restored denatured spirits shall be—

(a) Durably marked to show its capacity and use,

(b) Equipped for locking to control access to the contents, and

(c) Provided with an accurate means of measuring its contents.

Inventory and Records

§ 20.170 Physical inventory.

Once in each calendar year and when requested by an ATF officer, each permittee shall perform and record a physical inventory of each formula of new and recovered specially denatured spirits.

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§ 20.171 Record of shipment.

(a) *Dealer.* When a dealer transfers new or recovered specially denatured spirits to a distilled spirits plant or permittee in the normal course of business or in accordance with § 20.216 or § 20.231 of this part, the dealer shall prepare a record of shipment in accordance with paragraph (c) of this section. Dealers shall consistently use the same record series for the record of shipment. A dealer's record of shipment shall show a serial number or other unique number.

(b) *User.* When a user transfers new or recovered specially denatured spirits to a distilled spirits plant or permittee in accordance with § 20.216, 20.231, or 20.235 of this part, the user shall prepare a record of shipment in accordance with paragraph (c) of this section.

(c) *Record.* The record of shipment shall consist of an invoice, bill of lading or similar document which shows the following information:

(1) Date of shipment;

(2) Consignor's name and address;

(3) Consignee's name, address, and permit number or distilled spirits plant registry number;

(4) For each formula of specially denatured spirits—

(i) The formula number,

(ii) The number and sizes of containers, and

(iii) The total quantity; and,

(5) If the specially denatured spirits are recovered, the word "recovered" shall appear on the record.

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§ 20.172 Records.

In addition to the records required by this subpart, permittees shall maintain records required in Subpart P of this part.

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Operations by Dealers

§ 20.175 Shipment for account of another dealer.

(a) A dealer may order specially denatured spirits shipped directly from a denaturer or another dealer to a customer (dealer or user).

(b) The dealer who ordered the shipment of specially denatured spirits shall forward a copy of his or her permit, Form 5150.9, and the consignee's permit, Form 5150.9, to the person actually shipping the specially denatured spirits.

(c) The bond of the dealer who ordered the shipment shall be liable for the tax while the specially denatured spirits are in transit and the bond of the person actually shipping the specially denatured spirits shall not be liable.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 20.176 Packaging by a dealer.

A dealer may package specially denatured spirits in containers of any size necessary for the conduct of business. After filling packages, the dealer shall accurately determine the contents of each package. After filling drums, the dealer shall seal all the drum openings with the dealer's own seals. Packages of specially denatured spirits shall be marked or labeled in accordance with § 20.178.

§ 20.177 Encased containers.

(a) A dealer may package specially denatured spirits in unlabeled containers which are completely encased in wood, fiberboard, or similar material. The total surface (including the opening) of the actual container of the spirits must be enclosed.

(b) When specially denatured spirits are packaged in unlabeled containers, the bonded dealer shall apply the required marks to an exposed surface of the case. The case shall be constructed so that the portion bearing the marks will remain securely attached to the encased container until all the spirits have been removed. A statement reading "Do not remove inner container until emptied," or of similar meaning, shall be placed on the portion of the case bearing the marks.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 20.178 Marks and brands on containers of specially denatured spirits.

(a) *Required marks.* Each dealer who fills packages of specially denatured spirits shall mark or label each package with the following imformation:

(1) Quantity, in gallons, or in liters and gallons;

(2) Package identification number or serial number (see § 20.179);

(3) Name and permit number of the dealer;

(4) The words "Specially Denatured Alcohol" or "Specially Denatured Rum," or an appropriate abbreviation;

(5) Formula number;

(6) Proof, if the spirits were denatured at other than 190° proof;

(7) Denaturants used, if alcohol was denatured under an approved formula authorizing a choice of denaturants; and

(8) Quantity of denaturants used, if the approved formula authorizes a choice of quantities of denaturants.

(b) *Location of marks.* The dealer shall place the required marks on the head of the package or on the side of the case.

(c) *Other marks.* Other marks authorized by this paragraph may not interfere with or detract from the marks required by this subpart. The dealer may place marks other than the required marks on the Government head or Government side of the package if the other marks—

(1) Are authorized by the Director, or

(2) Consist of a brand name, or consist of caution notices, or consist of other material required by Federal or State law or regulations.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 20.179 Package identification number or serial number.

(a) *Requirement.* A dealer who fills packages with specially denatured spirits shall mark each package with a package identification number, in accordance with paragraph (b) of this section, or a serial number, in accordance with paragraph (c) of this section.

(b) *Package identification number.* A package identification number shall apply to all of the packages filled at the same time on which all of the marks required by § 20.178 (a)(1) and (a)(3) through (a)(8) are identical. All of the packages in one lot shall be the same type, have the same rated capacity, and be uniformly filled with the same quantity. A package identification number shall be derived from the date on which the package is filled, and shall consist of the following elements, in the order shown—

(1) The last two digits of the calendar year;

(2) An alphabetical designation from "A" through "L," representing January through December, in that order;

(3) The digits corresponding to the day of the month; and

(4) A letter suffix when more than one identical lot is filled into packages during the same day. For successive lots after the first lot, a letter suffix shall be added in alphabetical order, with "A" representing the second lot of the day, "B" representing the third lot of the day, etc. (*e.g.* the first three lots filled into packages on November 19, 1983, would be identified as "83K19," "83K19A," and "83K19B").

(c) *Serial number.* A consecutive serial number shall be marked on each package, beginning with the number "1" and continuing in regular sequence. The dealer shall use a separate but similar number series for packages containing specially denatured rum. When any numbering series reaches "1,000,000", the dealer may recommence the series by providing an alphabetical prefix or suffix for each number in the new series.

(d) *Continuation of numbering series.* If a change in proprietorship, name, or trade name occurs, the numbering system in use at the time of the change may be continued. If serial numbers are used at the time of a change, the numbering series in use at the time of the change may be continued.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 20.180 Record of packages filled.

(a) *Requirement to keep record.* A dealer shall keep a record when filling packages with specially denatured spirits. The dealer shall keep a separate record of packages for each formula of specially denatured alcohol and specially denatured rum.

(b) *Information to be shown.* The dealer shall show the following information on the record of packages filled—

(1) Date packages filled;

(2) Package identification number and number of packages in each identical lot filled, or the serial numbers;

(3) Kinds of packages;

(4) Wine gallons or liters;

(5) Kind of specially denatured spirits and formula number; and

(6) Proof, if the spirits were denatured at other than 190° proof.

(c) *Filing.* The dealer shall retain the record at the premises and shall file it according to the serial numbers or package identification numbers of the packages.

(Approved by the Office of Management and Budget under control number 1512-0337)

§ 20.181 Limitations on shipments.

(a) *Shipments made under permit.* A dealer may ship specially denatured spirits to users and other dealers under the consignee's permit, Form 5150.9. The dealer may not ship specially denatured spirits before receiving the consignee's permit, Form 5150.9, unless the shipment has been authorized by the regional director (compliance).

(b) *Shipments of samples.* A dealer may ship samples of specially denatured spirits to the persons authorized to receive them, and in the quantities permitted by Subpart O of this part.

§ 20.182 Bulk shipments.

(a) *Use.* Dealers may ship specially denatured spirits in bulk conveyances. The dealer shall seal the bulk conveyances at the time of filling with railroad or other appropriate serially numbered seals dissimilar in marking from cap seals used by the Bureau of Alcohol, Tobacco and Firearms. Specially denatured alcohol or specially denatured rum from only one consignor may be placed in any one compartment of a bulk conveyance. Not less than the entire contents of any one compartment may be delivered to any one consignee at any one premises.

(b) *Construction of bulk conveyances.* Bulk conveyances shall be constructed to conform to the following requirements:

(1) All openings (including valves) shall be constructed so that they may be sealed to prevent unauthorized access to the contents of the conveyance. Outlets, valves or other openings to or from tank cars may be constructed in such a manner that they may be closed and securely fastened on the inside.

(2) If the conveyance has two or more compartments, the outlets of each shall be so equipped that delivery of any compartment will not afford access to the contents of any other compartment.

(3) Each compartment shall be arranged so that it can be completely drained.

(4) Each tank car or tank truck shall be permanently and legibly marked with its number, capacity in gallons or liters, and the name or symbol of its owner. If the tank car or truck consists of two or more compartments, each compartment shall be identified and the capacity of each shall be marked thereon.

(5) Permanent facilities must be provided on tank trucks to permit ready examination of manholes or other openings.

(6) Calibrated charts, prepared or certified by recognized authorities or engineers, showing the capacity of each compartment in gallons or liters for each inch of depth, must accompany each tank truck, tank ship, or tank barge.

Operations by Users

§ 20.189 Use of specially denatured spirits.

(a) Specially denatured spirits shall not be used for any purpose not authorized in this section.

(b) Specially denatured spirits shall be used (1) in the manufacture of articles in accordance with the formula requirements of Subpart F of this part, (2) for other purposes in accordance with approved statements of process (§ 20.94), or (3) in the case of S.D.A. Formula No. 3-A, 3-C, or 30, for mechanical or laboratory purposes not involving the development of a product.

(c) Each formula of specially denatured spirits may be used only for the purposes authorized under Part 21 of this chapter.

(d) By the use of essential oils and chemicals used in the manufacture of each liquid article, the user shall ensure that the finished article cannot be reclaimed or diverted to beverage use or internal human use.

(e) Each finished article shall conform to the sample, if any, and formula for that article approved by the Director.

§ 20.190 Diversion of articles for internal human use or beverage use.

A regional director (compliance) who has reason to believe that the spirits in any article are being reclaimed or diverted to beverage or internal human use may direct the permittee to modify an approved formula to prevent the reclamation or diversion. The regional director (compliance) may require the permittee to discontinue the use of the

formula until it has been modified and again approved.

§ 20.191 Bulk articles.

Users who convey articles in containers exceeding one gallon may provide the recipient with a photocopy of Subpart G of this part to ensure compliance with requirements relating to articles. Copies of Subpart G are printed as ATF Publication 5150.5 and are available from the ATF Distribution Center, 3800 South Four Mile Run Drive, Arlington, Virginia 22206.

§ 20.192 Manufacturing record.

For each manufacturing process in which specially denatured spirits are used, the user shall record:

(a) Quantity and formula number of new or recovered specially denatured spirits used;

(b) Names and quantities of ingredients used; and

(c) Name, trade name or brand name and alcoholic content of each article or intermediate product manufactured, as applicable.

(Approved by the Office of Management and Budget under control number 1512-0337)

Subpart J—Losses

§ 20.201 Liability and responsibility of carrier.

(a) A person or carrier transporting specially denatured spirits to a consignee or returning it to the consignor is responsible for the safe delivery and is accountable for any specially denatured spirits not delivered.

(b) A person or carrier transporting specially denatured spirits in violation of any law or regulation pertaining thereto, is subject to all provisions of law relating to alcohol and the payment of tax thereon, and shall be required to pay the tax.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

§ 20.202 Losses in transit.

(a) *Reporting losses.* Upon discovering any loss of specially denatured spirits while in transit, the carrier shall immediately inform the consignee, in writing, of the facts and circumstances relating to the loss. In the case of theft, the carrier shall also immediately notify the consignee's regional director (compliance) of the facts and circumstances relating to the loss.

(b) *Recording losses.* At the time the shipment or report of loss is received, the consignee shall determine the quantity of specially denatured spirits lost. The consignee shall note the quantity lost on the receiving document and attach all relevant information to the record of receipt, prescribed in § 20.163. For the purpose of maintaining the records prescribed in Subpart P of this part, receipts of specially denatured spirits will only include the quantity actually received.

(c) *Claims.* A claim for allowances of losses of specially denatured spirits will, as prescribed in § 20.205, be filed:

(1) If the quantity lost in transit exceeds one percent of the total quantity shipped and is more than 10 gallons, the consignee shall file a claim for allowance of the entire quantity lost; or

(2) If the loss was due to theft or other unlawful removal, the consignee shall file a claim for allowance of the entire quantity lost, regardless of the quantity or percentage involved.

(Reporting approved by the Office of Management and Budget under control number 1512-0336; recordkeeping approved by the Office of Management and Budget under control number 1512-0337)

§ 20.203 Losses on premises.

(a) *Recording of losses.* A permittee shall determine and record, in the records prescribed by Subpart P of this part, the quantity of specially denatured spirits or recovered alcohol lost on premises:

(1) When an inventory is taken,

(2) At the time a container is emptied, or

(3) Immediately upon the discovery of any loss due to casualty, theft or other unusual causes.

(b) *Claims.* A claim for allowance of specially denatured spirits will be filed as prescribed in § 20.205, in the following circumstances:

(1) If the quantity lost during the annual accounting period (§ 20.263(c)) exceeds one percent of the quantity to be accounted for during that period, and is more than 50 gallons; or,

(2) If the loss was due to theft or unlawful use or removal, the permittee shall file a claim for allowance of losses regardless of the quantity involved.

(Approved by the Office of Management and Budget under control number 1512-0337)

§ 20.204 Incomplete shipments.

(a) Subject to the provisions of this part (and Part 19 of this chapter for shipments made by a distilled spirits plant), when containers of specially denatured spirits have sustained losses in transit other than by theft, and the shipment will not be delivered to the consignee, the carrier may return the shipment to the shipper.

(b) When specially denatured spirits are returned to the shipper in accordance with this section, the carrier shall inform the shipper, in writing, of the facts and circumstances relating to the loss. In the case of theft, the carrier shall also immediately notify the shipper's regional director (compliance) of the facts and circumstances relating to the loss.

(c) Subject to the limitations for loss prescribed in § 20.202, the dealer or proprietor shall file a claim for allowance of the entire quantity lost, in the same manner provided in that section. The claim shall include the applicable data required by § 20.205.

§ 20.205 Claims.

Claims for allowance of losses of specially denatured spirits or recovered alcohol will be filed, on Form 2635 (5620.8), with the regional director (compliance) within 30 days from the date the loss is ascertained, and will contain the following information:

(a) Name, address, and permit number of claimant;

(b) Identification and location of the container(s) from which the specially denatured spirits or recovered alcohol was lost, and the quantity lost from each container;

(c) Total quantity of specially denatured spirits or recovered alcohol covered by the claim and the aggregate quantity involved;

(d) Date of loss or discovery, the cause or nature of loss, and all relevant facts, including facts establishing whether the loss occurred as a result of negligence, connivance, collusion, or fraud on the part of any person, employee or agent participating in or responsible for the loss;

(e) Name of carrier where a loss in transit is involved. The carrier's statement regarding the loss, prescribed by § 20.202 or § 20.204, will accompany the claim; and,

(f) Any additional evidence which the regional director (compliance) may require to be submitted in support of the claim.

Subpart K—Recovery of Denatured Alcohol, Specially Denatured Rum, or Articles

§ 20.211 General.

(a) Upon filing the appropriate qualifying documents under the applicable provisions of Subparts D and F of this part and receiving approval, a manufacturer using denatured alcohol, specially denatured rum, or articles in an approved process may recover the denatured alcohol, specially denatured rum, or articles. However, a person who recovers (1) completely denatured alcohol with all its original ingredients, (2) an article made with specially

denatured spirits with all its original ingredients (or practically so, to the extent that the presence of the original denaturants and other ingredients in the recovered article make it as nonpotable as the original article), or (3) an article made with completely denatured alcohol with all the denaturants of the completely denatured alcohol, shall not be required to obtain a permit under this part.

(b) For a determination as to whether obtaining a permit under this part is necessary, each person who intends to conduct the recovery operations outlined in paragraph (a) of this section shall forward Form 5150.19 with a sample of the recovered article, to the Director, in accordance with Subpart F of this part.

(c) Restoration and redenaturation may be done by a permittee or by the proprietor of a distilled spirits plant.

§ 20.212 Deposit in receiving tanks.

All recovered denatured alcohol, specially denatured rum, or articles shall be accumulated (after recovery or restoration is completed) in a receiving tank equipped for locking. If the recovered product is to be shipped under § 20.214, it may be accumulated in appropriately marked packages. All denatured alcohol or specially denatured rum recovered shall be measured and a record of the measurement shall be made before being redenatured or reused. Recovered denatured alcohol or specially denatured rum and new denatured alcohol or specially denatured rum shall be kept in separate storage containers properly marked for identification.

(Approved by the Office of Management and Budget under control number 1512-0337)

§ 20.213 Reuse of recovered spirits.

(a) If the denatured alcohol or specially denatured rum is recovered in its original denatured state, or practically so, or contains substantial quantities of the original denaturants and other ingredients which make it unfit for beverage or other internal human medicinal use, it may be reused in any approved process without further redenaturation. In these cases, the regional director (compliance) will require samples of the recovered product to be taken from time to time to determine if the product requires redenaturation.

(b) If the denatured alcohol or specially denatured rum is not recovered in its original denatured state, or practically so, it shall be redenatured at the premises of the manufacturer or a denaturer before being used. The regional director (compliance) may require supervision of the redenaturation of the recovered spirits by an ATF officer.

§ 20.214 Shipment for restoration or redenaturation.

Recovered denatured alcohol, recovered specially denatured rum, or recovered articles requiring restoration or redenaturation (or both, unless the restoration or redenaturation is to be done on the manufacturer's premises) shall be shipped to a distilled spirits plant or to a permittee. Packages shall be numbered with a package identification number or serial number in accordance with § 20.179 (b) or (c). Packages shall be labeled with the name, address, and permit number of the manufacturer, the quantity (in gallons) of spirits contained in the package, and the applicable words "Recovered denatured alcohol formula No. ____" or "Recovered specially denatured rum formula No. ____." If the restoration or redenaturation is performed by a user or dealer permittee (not a distilled spirits plant), the permittee shall return the same materials to the same manufacturer and shall not intermingle them with materials received from other sources.

§ 20.215 Shipment of articles and spirits residues for redistillation.

(a) The proprietor of a distilled spirits plant authorized to produce distilled spirits may receive for redistillation (1) articles manufactured under this part which contain denatured spirits, and (2) spirits residues of manufacturing processes related to the manufacture of these articles.

(b) Any person shipping these articles or spirits residues to a distilled spirits plant for redistillation shall—

(1) Identify each package or articles or spirits residues as to contents, and

(2) Mark and serially number each package as provided in § 20.214.

§ 20.216 Record of shipment.

A consignor shipping recovered denatured alcohol, recovered specifically denatured rum, or recovered articles to a distilled spirits plant or a permittee shall prepare and forward a record of shipment to the consignee, in accordance with § 20.171.

(Approved by the Office of Management and Budget under control number 1512-0337)

Subpart L—Destruction

§ 20.221 General.

A permittee may terminate liability for payment of tax, prescribed by law, when specifically denatured spirits or recovered alcohol are destroyed in accordance with this subpart.

§ 20.222 Destruction.

(a) A permittee who destroys specifically denatured spirits or recovered alcohol shall prepare a record which identifies—

(1) The reason for destruction,

(2) The date, time, location and manner of destruction,

(3) The quantity involved and, if applicable, identification of containers, and

(4) The name of the individual who accomplished or supervised the destruction.

(b) This record of destruction shall be maintained with the records required by Subpart P of this part.

(Approved by the Office of Management and Budget under control number 1512-0337)

Subpart M—Return, Reconsignment and Disposition of Specifically Denatured Spirits

§ 20.231 Return.

A permittee may, following the receipt of specifically denatured spirits and for any legitimate reason, return the specifically denatured spirits to any distilled spirits plant or dealer if the consignee consents to the shipment. The consignor shall prepare a record of shipment in accordance with § 20.171.

(Approved by the Office of Management and Budget under control number 1512-0337)

§ 20.232 Reconsignment in transit.

(a) *Reconsignment.* Specifically denatured spirits may be reconsigned to another permittee or returned to the consignor if, prior to or on arrival at the premises of the consignee, the alcohol is determined to be unsuitable for the intended purpose, was shipped in error, or, for any bona fide reason, is not accepted by the consignee or carrier.

(b) *Bond coverage.* In the case of reconsignment, the bond, if required, of the permittee to whom the specifically denatured spirits were reconsigned will cover the specifically denatured spirits while in transit. In the case of the return of a shipment, the bond, if required, of the consignor will cover the specifically denatured spirits while in transit.

(c) *Records of reconsignment.* In the case of reconsignment, the consignor shall cancel the initial record of shipment and prepare a new record of shipment, if the shipment is to another permittee. The new record of shipment will be annotated "Reconsignment."

(Approved by the Office of Management and Budget under control number 1512-0337)

§ 20.233 Disposition after revocation of permit.

When any permit issued on Form 5150.9 is revoked, all specifically denatured spirits in transit and all specifically denatured spirits on the former permit premises, may be lawfully possessed by the former permittee for the exclusive purpose of disposing of the specially denatured spirits, for a period of 60 days following the date of revocation. Any specifically denatured spirits or recovered alcohol not disposed of within the specific 60-day period, is subject to seizure and forfeiture.

§ 20.234 Disposition on permanent discontinuance of use.

(a) *Specially denatured spirits.* Specially denatured spirits on hand at the time of discontinuance of use, may be disposed of by (1) returning the specially denatured spirits to a distilled spirits plant or dealer, as provided in § 20.231, (2) destruction, as provided in § 20.222, or (3) shipped to another user, as provided in § 20.235.

(b) *Recovered denatured alcohol, recovered specially denatured rum, or recovered articles.* Upon permanent discontinuance of use, a permittee may dispose of recovered denatured alcohol, recovered specially denatured rum, or recovered articles by (1) shipment to a distilled spirits plant, as provided in § 20.215 for articles and spirits residues, (2) destruction, as provided in § 20.222, or (3) upon the filing of an application with the regional director (compliance), any other approved method.

(Approved by the Office of Management and Budget under control number 1512-0336)

§ 20.235 Disposition to another user.

(a) A user may dispose of specially denatured spirits to another permittee or Government agency.

(b) The user shall prepare a record of shipment in accordance with § 20.171. The user's copy of the record of shipment shall include an explanation of the reason for the disposition.

(c) The regional director (compliance) may require a user to apply for and obtain a dealer's permit, if shipments under this section are excessive.

(Approved by the Office of Management and Budget under control number 1512-0337)

Subpart N—Use of Specially Denatured Spirits by the United States or Government Agency

§ 20.241 General.

The United States or any of its Government agencies may withdraw specially denatured spirits from a distilled spirits plant or dealer under this part, as authorized by 26 U.S.C. 5214(a)(2) and 5271. Before any specially denatured spirits may be withdrawn, a permit to procure the spirits shall be obtained from the Director. A bond is not required for any Government agency of the United States to procure specially denatured spirits.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 20.242 Application and permit, Form 5150.33.

(a) All permits previously issued to the United States or any of its Government agencies on Form 1444 shall remain valid and will be regulated by the same provisions of this subpart as it refers to permits on Form 5150.33.

(b) A Government agency shall apply for a permit to obtain specially denatured spirits on Form 5150.33, to the Director. Upon approval, Form 5150.33 will be returned to the Government agency, and will serve as authority to procure specially denatured spirits.

(c) A Government agency may specify on its application for a permit to procure specially denatured spirits, Form 5150.33, that it desires a single permit authorizing all sub-agencies under its control to procure specially denatured spirits; or each Government location (agency, department, bureau, etc.) desiring to procure specially denatured spirits may individually submit an application for a permit on Form 5150.33.

(d) An application for a permit shall be signed by the head of the agency or sub-agency or the incumbent of an office which is authorized by the head of the agency or sub-agency, to sign. Evidence of authorization to sign for the head of the agency or sub-agency shall be furnished with the application.

(e) Specially denatured spirits obtained by Government agencies may not be used for non-Government purposes.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 20.243 Procurement of specially denatured spirits.

Government agencies shall retain the original permit, Form 5150.33, on file. When placing an initial order with a vendor, the agency shall forward a photocopy of its permit with the purchase order for specially denatured spirits. In the case of an agency holding a single permit for use of other sub-agencies, the photocopy of the permit will contain an attachment listing all other locations authorized to procure specially denatured spirits. Any subsequent purchases from the same vendor need only contain the permit number on the purchase order.

§ 20.244 Receipt of shipment.

On receipt of a shipment of specially denatured spirits, a representative of the Government agency shall inspect the shipment for any loss or deficiency. In the case of loss or deficiency, the agency shall annotate the receiving document and forward a copy to the regional director (compliance) of the region from which the shipment was consigned.

§ 20.245 Discontinuance of use.

When a Government agency, holding a permit issued under this subpart, no longer intends to procure and use specially denatured spirits, the permit shall be returned to the Director for cancellation. All photocopies of the permit furnished to vendors shall be returned to the agency for destruction.

§ 20.246 Disposition of specially denatured spirits on discontinuance of use.

At the time of discontinuance of use of specially denatured spirits, a Government agency may dispose of any excess specially denatured spirits (a) to another Government agency holding a permit, (b) by returning the specially denatured spirits to a vendor, or (c) in any manner authorized by the Director. Specially denatured spirits may not be disposed of to the general public.

Subpart O—Samples of Specially Denatured Spirits

§ 20.251 General.

(a) Applicants and prospective applicants for permits to use specially denatured spirits may obtain samples of specially denatured spirits for experimental purposes or for preparing samples of finished articles for submission on request by the Director. Samples of specially denatured spirits may only be obtained from distilled spirits plants or dealers.

(b) Samples not larger than five gallons per calendar year may be obtained without a permit. Dealers shall maintain records to ensure that samples of specially denatured spirits dispensed to nonpermittees do not exceed five gallons per calendar year.

(c) Samples larger than five gallons per calendar year may be obtained without a permit as described in § 20.252.

(d) Samples of specially denatured spirits shall not be used to manufacture articles for commercial sale.

(Approved by the Office of Management and Budget under control number 1512-0337)

§ 20.252 Samples larger than five gallons.

(a) *General.* The regional director (compliance) may waive the requirement to obtain a permit under

Subpart D of this part if a nonpermittee can demonstrate that more than five gallons is necessary to determine if an Industrial Use Permit is desired.

(b) *Application.* A nonpermittee who wishes to obtain more than five gallons of specially denatured spirits to determine if an Industrial Use Permit is desired, shall file a letterhead application with the regional director (compliance) of the region in which the nonpermittee's premises are located. The letter shall describe why the requested quantity is necessary.

(c) *Approval.* If the letterhead application is approved, the nonpermittee shall submit it to the proprietor of a distilled spirits plant or a dealer with the order for the sample of specially denatured spirits.

(Approved by the Office of Management and Budget under control number 1512-0336)

§ 20.253 Labels for samples.

When a sample of specially denatured spirits is withdrawn from a dealer's premises, that dealer shall attach a label to the sample which shows the following information:

(a) The word "Sample";

(b) The dealer's name, address, and permit number;

(c) The words "Specially Denatured Alcohol" or "Specially Denatured Rum";

(d) The quantity; and

(e) The formula number.

Subpart P—Records and Reports

§ 20.261 Records of completely denatured alcohol.

When requested by the regional director (compliance), any person who receives, packages, stores, disposes of, or uses completely denatured alcohol shall keep records of all transactions in completely denatured alcohol which will enable ATF officers to verify and trace receipt, packaging, storage, usage, and disposal of the spirits, and to determine whether there has been compliance with law and regulations. However, on sales in quantities of less than 5 gallons, only the total quantity disposed of daily need be recorded.

(Approved by the Office of Management and Budget under control number 1512-0337)

§ 20.262 Dealer's records of specially denatured spirits.

(a) Each dealer shall maintain separate records of each formula of new specially denatured spirits—

(1) received, as required by § 20.163,

(2) packaged, as required by § 20.180,

(3) destroyed, as required by § 20.222,

(4) lost, as required by §§ 20.202-20.204, and

(5) transferred to another permittee or a distilled spirits plant, as required by §§ 20.171, 20.216, and 20.231.

(b) Each dealer shall maintain separate records of each formula of recovered specially denatured spirits for each of the transactions listed in paragraphs (a)(1) through (a)(5) of this section.

(c) Once in each calendar year, and when requested by an ATF officer, each dealer shall perform and record a balanced accounting of each formula of new and recovered specially denatured spirits using the records required by § 20.170 and this section.

(d) When requested, the dealer shall submit the accounting required by paragraph (c) of this section to the regional director (compliance).

(Approved by the Office of Management and Budget under control number 1512-0337)

§ 20.263 User's records of specially denatured spirits.

(a) Each user shall maintain separate records of each formula of new specially denatured spirits—

(1) Received, as required by §20.163,

(2) Recovered, as required by § 20.212,

(3) Used, as required by § 20.192,

(4) Destroyed, as required by § 20.222,

(5) Lost, as required by §§ 20.202-20.203, and

(6) Transferred to another permittee or a distilled spirits plant, as required by §§ 20.216, 20.231, and 20.235.

(b) Each user shall maintain separate records of each formula of recovered specially denatured spirits for each of the transactions listed in paragraphs (a)(1) through (a)(6) of this section.

(c) Once in each calendar year, and when requested by an ATF officer, each user shall perform and record a balanced accounting of each formula of new and recovered specially denatured spirits using the records required by § 20.170 and this section.

(d) When requested, the user shall submit the accounting required by paragraph (c) of this section to the regional director (compliance).

(Approved by the Office of Management and Budget under control number 1512-0337)

§ 20.264 User's records and report of products and processes.

(a) *Records.* (1) Each user shall maintain separate accountings of—

(i) The number of gallons of each formula of new specially denatured spirits used for each product or process, recorded by the code number prescribed by § 21.141 of this chapter.

(ii) The number of gallons of each formula of recovered specially denatured spirits used for each product or process, recorded by the code number prescribed by § 21.141 of this chapter.

(2) Each user who recovers specially denatured spirits shall maintain separate accountings of the number of gallons of each formula of specially denatured spirits recovered from each product or process, recorded by the code number prescribed by § 21.141 of this chapter.

(3) Product or process code numbers are shown on approved formula and statement of process forms. For an article made in accordance with a general-use formula, the user will refer to § 21.141 of this chapter and record the applicable product or process code number.

(b) *Report.* Each user shall submit an annual report, Form 5150.18, for the period from July 1 through June 30, summarized from the records required by this section. The report shall be filed no later than July 15 following the end of the accounting period.

(Approved by the Office of Management and Budget under control number 1512-0337)

§ 20.265 Retention of invoices.

(a) Any person required to keep records under this part shall retain copies of invoices which will enable ATF officers to readily obtain the details regarding:

(1) Purchases of all essential oils, chemicals, and other materials used in manufacturing articles, including the name and address of the vendor, and the quantity;

(2) Purchases of articles containing specially denatured spirits for reprocessing, or purchases of those articles for bottling, repackaging, and/or resale, including the name and address of the vendor and the quantity; and

(3) Dispositions of all articles manufactured or received, including in each case the name and address of the person to whom sold or otherwise disposed of.

(b) The regional director (compliance) may, on application filed by the permittee, waive the requirements for retaining invoices if the quantity sold to any person during a calendar month does not exceed 25 gallons, and if a waiver will not hinder the effective administration of this part and will not pose a jeopardy to the revenue.

(Approved by the Office of Management and Budget under control number 1512-0336)

§ 20.266 Time for making entries in records.

Any person who conducts an operation which is required to be recorded under this part, shall enter that operation in the records on the same

day on which the operation occurred. However, the daily posting of records may be deferred to conform to the permittee's normal accounting cycle if (a) supporting or supplemental records are prepared at the time of the operation, and these supporting or supplemental records are to be used to post the daily record, and (b) the deferral of posting does not pose a jeopardy to the revenue.

§ 20.267 Filing and retaining records.

Any person who is required to maintain records of operations under this part shall file and retain records and copies of reports in the following manner:

(a) Keep on file for a period of not less than 3 years after the date of the report covering the operation, in such a way as to allow inspection by ATF officers, all those records of operations, all supporting or supplemental records, and copies of all reports submitted to the regional director (compliance). However, the regional director (compliance) may require that the records and copies of reports be kept for an additional period, not to exceed 3 years.

(b) File all records and copies of reports at the premises where the operations are conducted.

(c) Make the files of records and copies of reports available to ATF officers during regular business hours for examination.

§ 20.268 Photographic copies of records.

(a) *General.* Permittees may record, copy, or reproduce required records. Any process may be used which accurately reproduces the original record, and which forms a durable medium for reproducing and preserving the original record.

(b) *Copies of records treated as original records.* Whenever records are reproduced under this section, the reproduced records will be preserved in conveniently accessible files, and provisions will be made for examining, viewing, and using the reproduced records the same as if they were the original record, and they will be treated and considered for all purposes as though they were the original record. All provisions of law and regulations applicable to the original are applicable to the reproduced record. As used in this section, "original record" means the record required by this part to be maintained or preserved by the permittee, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

PART 21—FORMULAS FOR DENATURED ALCOHOL AND RUM

Section C. Part 21 is amended as follows:

§ 21.4 [Amended]

Paragraph 1. Section 21.4 is amended by replacing "Part 211" with "Part 20".

Par. 2. Section 21.11 is amended to revise the definition of *Manufacturer or user* to read as follows:

§ 21.11 Meaning of terms.

* * * * *

Manufacturer or user. A person who holds a permit, issued under Part 20 of this chapter, to withdraw and use specially denatured alcohol or specially denatured rum, or to recover completely or specially denatured alcohol, or specially denatured rum, or articles manufactured with denatured spirits, or a distilled spirits plant proprietor qualified under Part 19 of this chapter as a processor.

* * * * *

§ 21.31 [Amended]

Par. 3. The second sentence of paragraph (c) of § 21.31 is amended by replacing "Part 211" with "Part 20".

Par. 4. Paragraph (b) of § 21.32 is amended to change the name of product code 041 to read "041. Proprietary solvents" (deleting the words "(standard formulations)") and to change the name of product code 043 to read "043. Solvents, special (restricted sale)" (deleting the word "industrial").

§ 21.32 Formula No. 1.

* * * * *

(b) * * *

* * * * *

041. Proprietary solvents.

* * * * *

043. Solvents, special (restricted sale)

* * * * *

Par. 5. Paragraph (b) of § 21.35 is amended to add a listing for "041. Proprietary solvents" as an authorized use for Formula No. 3-A and to change the name of product code 043 to read "043. Solvents, special (restricted sale)" (deleting the word "industrial").

§ 21.35 Formula No. 3-A.

* * * * *

(b) * * *

* * * * *

041. Proprietary solvents.

043. Solvents, special (restricted sale)

* * * * *

Par. 6. Section 21.37 is amended to change the name of product code 043 to read "043. Solvents, special (restricted sale)" (deleting the word "industrial") and to revise paragraph (c) on conditions governing the use of Formula No. 3-C.

§ 21.37 Formula No. 3-C.

* * * * *

(b) * * *

* * * * *

043. Solvents, special (restricted sale)

* * * * *

(c) *Conditions governing use.* This formula shall not be used in manufacturing Reagent alcohol general-use formula under § 20.117 of this chapter.

Par. 7. In § 21.141, the table entitled "USES OF SPECIALLY DENATURED ALCOHOL" is amended to change the names of the entries for "Proprietary solvents" (deleting the words "(standard formulations)") and "Solvents, special (restricted sale)" (deleting the word "industrial").

§ 21.141 List of products and processes using specially denatured alcohol and rum, and formulas authorized therefor.

* * * * *

Uses of Specially Denatured Alcohol

Product or process	Code No.	Formulas authorized
* * *	*	*
Proprietary solvents	041	1, 3-A
* * *	*	*
Solvents, special (restricted sale)	043	1, 3-A, 3-C

* * * * *

PART 213—[REVISED AND REDESIGNATED AS PART 22]

Section D. Part 213 is revised and redesignated as Part 22 as follows:

1. The regulations in this part supersede 27 CFR Part 213 in its entirety.

2. These regulations do not affect any act done or any liability or right accruing, or accrued, or any suit or proceeding had or commenced before the effective date of these regulations.

3. The regulations in this part are effective on June 4, 1985.

PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

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Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805); Sec. 201, Pub. L. 85-859, 72 Stat. 1370-1373, as amended (26 U.S.C. 5271-5275), unless otherwise noted.

Subpart A—Scope

§ 22.1 General.

The regulations in this part relate to tax-free alcohol and cover the procurement, storage, use, and recovery of tax-free alcohol.

§ 22.2 Territorial extent.

This part applies to the several States of the United States and the District of Columbia.

§ 22.3 Related regulations.

Regulations related to this part are listed below:

27 CFR Part 19—Distilled Spirits Plants.
27 CFR Part 30—Gauging Manual.
27 CFR Part 196—Stills.
27 CFR Part 200—Rules of Practice in Permit Proceedings.
27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer.
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

Subpart B—Definitions

§ 22.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms have the meanings given in this section. Words in the plural form include the singular, and vice versa, and words importing the masculine gender include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

Alcohol. Spirits having a proof of 190° or more when withdrawn from bond, including all subsequent dilutions and mixtures thereof, from whatever source or by whatever process produced.

Area supervisor. The supervisory officer of the Bureau of Alcohol, Tobacco and Firearms area office.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

CFR. The Code of Federal Regulations.

Clinic. When used in this part the term includes veterinary clinics.

Delegate. Any officer, employee, or agency of the Department of the Treasury authorized by the Secretary of the Treasury directly, or indirectly by one of more redelegations of authority, to perform the function mentioned or described in the context.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the claim, form, or other document or, where no form of declaration is prescribed, with the declaration "I declare under the penalties of perjury that this _____ (insert type of document, such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete."

Fiduciary. A guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

Gallon or wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

Hospital. When used in this part the term includes veterinary hospitals.

Initial order. The first order of tax-free alcohol placed by a permittee or Governmental agency with a distilled spirits plant or vendor, and, the first order placed following the issuance of an amended or corrected permit.

Liter or litre. A metric unit of capacity equal to 1,000 cubic centimeters of alcohol, and equivalent to 33.814 fluid ounces. A liter is divided into 1,000 milliliters (ml). The symbol for milliliter or milliliters is "ml".

Permit. The document issued under 26 U.S.C. 5271(a), authorizing a person to withdraw tax-free alcohol from the premises of a distilled spirits plant and use such alcohol under specified conditions.

Permittee. Any person holding a permit, on Form 5150.9, issued under this part to withdraw and use tax-free alcohol.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Proof. The ethyl alcohol content of a liquid at 60° Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof gallon. A gallon at 60° Fahrenheit which contains 50 percent of volume of ethyl alcohol having a specific gravity of 0.7939 at 60° Fahrenheit referred to water at 60° Fahrenheit as unity, or the alcoholic equivalent thereof.

Region. A Bureau of Alcohol, Tobacco and Firearms Region.

Regional director (compliance). The principal ATF regional official responsible for administering regulations in this part.

Restoration. Restoring to the original state of recovered tax-free alcohol, including redistillation of the recovered alcohol to 190° or more of proof and the removal of foreign materials by redistillation, filtration, or other suitable means.

Secretary. The Secretary of the Treasury or his delegate.

Spirits or distilled spirits. The substance known as ethyl alcohol, ethanol, or spirits of wine, having a proof of 190° or more when withdrawn from bond, including all subsequent dilutions and mixtures thereof, from whatever source or by whatever process produced.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

U.S.C. The United States Code.

Subpart C—Administrative Provisions

Authorities

§ 22.21 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part, including bonds, applications, notices, claims, reports, and records. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) ATF Publication 1322.1, Public Use Forms, is a numerical listing of forms issued by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) Requests for forms should be mailed to the ATF Distribution Center, 3800 South Four Mile Run Drive, Arlington, Virginia 22206.

§ 22.22 Alternate methods or procedures; and emergency variations from requirements.

(a) *Alternate methods or procedures.*—(1) *Application.* A permittee, after receiving approval from the Director, may use an alternate method or procedure (including alternate construction or equipment) in lieu of a method or procedure prescribed by this part. A permittee wishing to use an alternate method or procedure may apply to the regional director (compliance). The permittee shall describe the proposed alternate method or procedure and shall set forth the reasons for its use.

(2) *Approval by Director.* The Director may approve the use of an alternate method or procedure if:

(i) The applicant shows good cause for its use;

(ii) It is consistent with the purpose and effect of the procedure prescribed by this part, and provides equal security to the revenue;

(iii) It is not contrary to law; and

(iv) It will not cause an increase in cost to the Government and will not hinder the effective administration of this part.

(3) *Exceptions.* The Director will not authorize an alternate method or procedure relating to the giving of a bond.

(4) *Conditions of approval.* A permittee may not employ an alternate method or procedure until the Director has approved its use. The permittee shall, during the terms of the authorization of an alternate method or procedure, comply with the terms of the approved application.

(b) *Emergency variations from requirements*—(1) *Application.* When an emergency exists, a permittee may apply to the regional director (compliance) for a variation from the requirements of this part relating to construction, equipment, and methods of operation. The permittee shall describe the proposed variation and set forth the reasons for using it.

(2) *Approval by regional director (compliance).* The regional director (compliance) may approve an emergency variation from requirements if:

(i) An emergency exists;

(ii) The variation from the requirements is necessary;

(iii) It will afford the same security and protection to the revenue as intended by the specific regulations;

(iv) It will not hinder the effective administration of this part; and

(v) It is not contrary to law.

(3) *Conditions of approval.* A permittee may not employ an emergency variation from the requirements until the regional director (compliance) has approved its use. Approval of variations from requirements are conditioned upon compliance with the conditions and limitations set forth in the approval.

(4) *Automatic termination of approval.* If the permittee fails to comply in good faith with the procedures, conditions or limitations set forth in the approval, authority for the variation from requirements is automatically terminated and the permittee is required to comply with prescribed requirements of regulations from which those variations were authorized.

(c) *Withdrawal of approval.* The Director may withdraw approval for an alternate method or procedure, or the regional director (compliance) may withdraw approval for an emergency variation from requirements, approved under paragraph (a) or (b) of this section, if the Director or the regional director (compliance) finds that the revenue is jeopardized or the effective administration of this part is hindered by the approval.

(Approved by the Office of Management and Budget under control number 1512-0335)

(Act of August 16, 1954, Chapter 736, 68A Stat. 917 (26 U.S.C. 7805); (Sec. 201, Pub. L. 85-859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

§ 22.23 Allowance of claims.

The regional director (compliance) is authorized to allow claims for losses of tax-free alcohol.

§ 22.24 Permits.

(a) The Director shall issue permits on Form 5150.33 covering the withdrawal of tax-free alcohol by the United States or a Governmental agency as provided in § 22.172.

(b) The regional director (compliance) shall issue the permit to withdraw and use tax-free alcohol, Form 5150.9 required under this part.

§ 22.25 Bonds and consents of surety.

The regional director (compliance) is authorized to approve all bonds and consents of surety required by this part.

§ 22.26 Right of entry and examination.

An ATF officer may enter, during business hours or at any time operations are being conducted, any premises on which operations governed by this part are conducted to inspect the records required by this part to be kept on those premises. An ATF officer may also inspect and take samples of tax-free alcohol to which those records relate.

§ 22.27 Detention of containers.

(a) *Summary detention.* An ATF officer may detain any container containing, or supposed to contain, alcohol when the ATF officer believes the alcohol was withdrawn, sold, transported, or used in violation of law of this part. The ATF officer shall hold the container at a safe place until it is determined if the detained property is liable by law to forfeiture.

(b) *Limitations.* Summary detention may not exceed 72 hours without process of law or intervention of the regional director (compliance). The person possessing the container immediately before its detention may prepare a waiver of the 72 hours limitation to have the container kept on its premises during detention.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1375, as amended (26 U.S.C. 5311))

Liability for Tax

§ 22.31 Persons liable for tax.

All tax-free alcohol removed, sold, transported, or used in violation of law or regulations in this part, is subject to all provisions of law relating to taxable alcohol, including the requirement for payment of tax on the alcohol. The person removing, selling, transporting, or using tax-free alcohol in violation of law or regulations pertaining to tax-free alcohol shall be required to pay the distilled spirits tax on the alcohol.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

Destruction of Marks and Brands

§ 22.33 Time of destruction of marks and brands.

(a) Any person who empties a package containing tax-free alcohol shall immediately destroy or obliterate the marks, brand, and labels required by this chapter to be placed on packages of tax-free alcohol.

(b) A person may not destroy or obliterate the marks, brands or labels until the package or drum has been emptied.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5206))

Document Requirements

§ 22.35 Execution under penalties of perjury.

(a) When any form or document prescribed by this part is required to be executed under penalties of perjury, the permittee or other authorized person shall:

(1) Insert the declaration "I declare under the penalties of perjury that I have examined this _____ (insert the type of document such as claim, application, statement, report, certificate), including all supporting documents, and to the best of my knowledge and belief, it is true, correct, and complete"; and

(2) Sign the document.

(b) When the required document already bears a perjury declaration, the permittee or other authorized person shall sign the document.

(Act of August 16, 1954, 68A Stat. 745 (26 U.S.C. 6056))

§ 22.36 Filing of qualifying documents.

All documents returned to a permittee or other person as evidence of compliance with requirements of this part, or as authorization, shall except as otherwise provided, be kept readily available for inspection by an ATF officer during business hours.

Subpart D—Qualification

Application for Permit, Form 5150.22

§ 22.41 Application for industrial alcohol user permit.

(a) *Users.* Each person desiring to withdraw and use tax-free alcohol shall, before commencing business, file an application on Form 5150.22 for, and obtain a permit, Form 5150.9, except permittees who were previously qualified to withdraw and use tax-free alcohol on the effective date of this regulation.

(b) *Filing.* All applications and necessary supporting documents, as required by this subpart, shall be filed with the regional director (compliance). All data, written statements, affidavits, and other documents submitted in support of the application are considered a part of the application.

(1) Applications filed as provided in this section, shall be accompanied by evidence establishing the authority of the officer or other person to execute the application.

(2) A State, political subdivision thereof, or the District of Columbia, may specify in the application that it desires a single permit authorizing the withdrawal and use of tax-free alcohol in a number of institutions under its control. In this instance, the application, Form 5150.22, or an attachment, shall clearly show the method of distributing and accounting for the tax-free alcohol to be withdrawn.

§ 22.42 Data for application, Form 5150.22.

(a) Unless waived under § 22.43, each application on Form 5150.22 shall include as applicable, the following information:

(1) Serial number and purpose for which filed.

(2) Name and principal business address.

(3) Based on the bona fide requirements of the applicant, the estimated quantity of tax-free alcohol in proof gallons, which will be procured during a 12-month period (one calendar year).

(4) Location, or locations where tax-free alcohol is to be used, if different from the business address.

(5) Statement showing the specific manner in which, or purposes for which, tax-free alcohol will be withdrawn and used.

(6) Statement that tax-free alcohol will be stored in accordance with the requirements of this part.

(7) Statement as to the type of business organization and of the persons interested in the business, supported by the items of information listed in § 22.45.

(8) Listing of the principal equipment for the recovery and restoration of alcohol (including the serial number, kind, capacity, name and address of manufacturer, and name and address of owner if different from applicant).

(9) List of any trade name(s) under which the applicant will conduct operations, and the offices where these names are registered.

(10) Listing of the titles of offices, the incumbents of which are responsible for the tax-free alcohol activities of the business and are authorized by the articles of incorporation, the bylaws, or the board of directors to act and sign on behalf of the applicant.

(11) Other information and statements as the regional director (compliance) may require to establish that the applicant is entitled to the permit. In the case of a corporation or other legal entity the regional director (compliance) may require information which establishes that the officers, directors and principal stockholders whose names are required to be furnished under § 22.45 (a)(2) and (c) have not violated or conspired to violate any law of the United States relating to intoxicating liquor or have been convicted of any offense under Title 26, U.S.C., punishable as a felony or of any conspiracy to commit such offense.

(b) If any of the information required by paragraphs (a)(4) through (a)(10) of this section is on file with any regional director (compliance), the applicant may incorporate this information by reference by stating that the information is made a part of the application.

§ 22.43 Exceptions to application requirements.

(a) The regional director (compliance) may waive detailed application and supporting data requirements, other than the requirements of paragraphs (a)(1) through (a)(6) of § 22.42, and of paragraph (a)(8) of that section as it relates to recovery, in the case of—

(1) All applications, Form 5150.22 filed by States or political subdivisions thereof or the District of Columbia, and

(2) Applications, Form 5150.22, filed by applicants, if their annual withdrawal and usage of tax-free alcohol does not exceed 1,500 proof gallons.

(b) The waiver provided for in this section will terminate when the permittee, other than States or political subdivisions thereof or the District of Columbia, files an application to amend their permit, Form 5150.9, to increase the annual withdrawal and usage of tax-free alcohol in excess of 1,500 proof gallons. In this case the permittee will furnish information in respect to the previously waived items, as provided in § 22.57(a)(2).

§ 22.44 Disapproval of application.

The regional director (compliance) may, in accordance with Part 200 of this chapter, disapprove an application for a permit to withdraw and use tax-free alcohol, if on examination of the application (or inquiry), the regional director (compliance) has reason to believe that:

(a) The applicant is not authorized by law and regulations to withdraw and use alcohol free of tax;

(b) The applicant (including, in the case of a corporation, any officer, director, or principal stockholder, and, in the case of a partnership, a partner) is, by reason of their business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. Chapter 51, or regulations issued under this part;

(c) The applicant has failed to disclose any material information required, or has made any false statement as to any material fact, in connection with their application; or

(d) The premises at which the applicant proposes to conduct the business are not adequate to protect the revenue.

§ 22.45 Organizational documents.

The supporting information required by § 22.42(a)(7) includes, as applicable:

(a) *Corporate documents.* (1) Certified true copy of the certificate of incorporation, or certified true copy of certificate authorizing the corporation to operate in the State where the premises are located (if other than that in which incorporated).

(2) Certified list of names and addresses of officers and directors, along with a statement designating which corporate officers, if applicable, are directly responsible for the tax-free alcohol activities of the business.

(3) Statement showing the number of shares of each class of stock or other evidence of ownership, authorized and outstanding, the par value thereof, and the voting rights of the respective owners or holders.

(b) *Articles of partnership.* True copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality.

(c) *Statement of interest.* (1) Names and addresses of persons owning 10% or more of each of the classes of stock in the corporation, or legal entity, and the nature and amount of the stockholding or other interest of each, whether such interest appears in the name of the interested party or in the name of another for him or her. If a corporation is wholly owned or controlled by another corporation, persons owning 10% or more of each of the classes of stock of the parent corporation are considered to be the persons interested in the business of the subsidiary, and the names and addresses of such persons shall be submitted to the regional director (compliance) if specifically requested.

(2) In the case of an individual owner or partnership, name and address of every person interested in the business, whether such interest appears in the name of the interested party or in the name of another for the interested person.

Industrial Alcohol User Permit, ATF F 5150.9

§ 22.48 Conditions of permits.

Permits to withdraw and use tax-free alcohol will designate the acts which are permitted, and include any limitations imposed on the performance of these acts. All of the provisions of this part relating to the use or recovery of tax-free alcohol are considered to be included in the provisions and conditions of the permit, the same as if set out in the permit.

§ 22.49 Duration of permits.

Permits to withdraw and use tax-free alcohol are continuing unless automatically terminated by the terms thereof, suspended or revoked as provided in § 22.51, or voluntarily surrendered. The provisions of § 22.58 are considered part of the terms and conditions of all permits.

§ 22.50 Correction of permits.

If an error on a permit is discovered, the permittee shall immediately return the permit to the regional director (compliance) for correction.

§ 22.51 Suspension or revocation of permits.

The regional director (compliance) may institute proceedings under Part 200 of this chapter to suspend or revoke a permit whenever there is reason to believe that the permittee—

(a) Has not in good faith complied with the provisions of 26 U.S.C. Chapter 51, or regulations issued under that chapter;

(b) Has violated the conditions of that permit;

(c) Has made any false statements as to any material fact in the application for the permit;

(d) Has failed to disclose any material information required to be furnished;

(e) Has violated or conspired to violate any law of the United States relating to intoxicating liquor or has been convicted of an offense under Title 26, U.S.C., punishable as a felony or of any conspiracy to commit such offense;

(f) Is, by reason of its operations, no longer warranted in procuring and using tax-free alcohol authorized by the permit; or

(g) Has not engaged in any of the operations authorized by the permit for a period exceeding two years.

§ 22.52 Rules of practice in permit proceedings.

The regulations of Part 200 of this chapter apply to the procedure and practice in connection with the disapproval of any application for a permit and in connection with suspension or revocation of a permit.

§ 22.53 Powers of attorney.

An applicant or permittee shall execute and file with the regional director (compliance) a Form 1534, in accordance with the instructions on the form, for each person authorized to sign or to act in its behalf. Form 1534 is not required for persons whose authority is furnished in accordance with § 22.42(a)(10).

§ 22.54 Photocopying of permits.

A permittee may make photocopies of its permit exclusively for the purpose of furnishing proof of authorization to withdraw tax-free alcohol from a distilled spirits plant.

§ 22.55 Posting of permits.

Permits issued under this part will be kept posted and available for inspection on the permit premises.

Changes After Original Qualification

§ 22.57 Changes affecting applications and permits.

(a) *General.*—(1) *Changes affecting application.* When there is a change relating to any of the information contained in, or considered a part of the application on Form 5150.22 for a permit, the permittee shall, within 30 days (except as otherwise provided in this subpart) file a written notice with the regional director (compliance) to amend the application.

(2) *Changes affecting waivers.* When any waiver under § 22.43 is terminated by a change to the application, the permittee shall include the current information as to the item previously waived with the written notice required in paragraph (a)(1) of this section.

(3) *Changes affecting permit.* When the terms of a permit are affected by a change, the written notice required by paragraph (a)(1) of this section (except as otherwise provided in this subpart) will serve as an application to amend the permit.

(4) *Form of notice.* All written notices to amend an application on Form 5150.22 with—

(i) Identify the permittee;

(ii) Contain the permit identification number;

(iii) Explain the nature of the change and contain any required supporting documents;

(iv) Identify the serial number of the applicable application, Form 5150.22; and

(v) Be consecutively numbered and signed by the permittee or any person authorized to sign on behalf of the permittee.

(b) *Amended application.* The regional director (compliance) may require a permittee to file an amended application on Form 5150.22 when the number of changes to the previous application are determined to be excessive, or when a permittee has not timely filed the written notice prescribed in paragraph (a)(1) of this section. If items on the amended application remain unchanged, they will be marked "No change since Form 5150.22, Serial No. _____."

(c) *Changes in officers, directors and stockholders*—(1) *Officers.* In the case of a change in the officers listed under the provisions of § 22.45(a)(2), the notice required by paragraph (a)(1) of this section shall only apply (unless otherwise required, in writing, by the regional director (compliance)) to those offices, the incumbents of which are responsible for the operations covered by the permit.

(2) *Directors.* In the case of a change in the directors listed under the provisions of § 22.45(a)(2), the notice required by paragraph (a)(1) of this section shall reflect the changes.

(3) *Stockholders.* In lieu of reporting all changes, within 30 days, to the list of stockholders furnished under the provisions of § 22.45(c)(1), a permittee may, upon filing written notice to the regional director (compliance) and establishing a reporting date, file an annual notice of changes. The notice of changes in stockholders does not apply if the sale or transfer of capital stock results in a change in ownership or control which is required to be reported under § 22.58.

(Approved by the Office of Management and Budget under control number 1512-0335)

§ 22.58 Automatic termination of permits.

(a) *Permit not transferable.* Permits issued under this part are not transferable. In the event of the lease, sale, or other transfer of such a permit, or of the operations authorized by the permit, the permit shall, except as provided for in this section, automatically terminate.

(b) *Corporations.* (1) If actual or legal control of any corporation holding a permit issued under this part changes, directly or indirectly, whether by reason of a change in stock ownership or control (in the permittee corporation or any other corporation), by operation of law, or in any other manner, the permittee shall within 10 days of the change, give written notice to the regional director (compliance). The written notice shall be accompanied by (or within 30 days of the change) an application and supporting documents on Form 5150.22 for a new permit. If an application on Form 5150.22 for a new permit is not filed within 30 days of the change, the outstanding permit will automatically terminate.

(2) If an application on Form 5150.22 for a new permit is filed within the 30-day period prescribed in paragraph (b)(1) of this section, the outstanding permit will remain in effect until final action is taken on the application. When final action is taken, the outstanding permit will automatically terminate and the permittee shall forward it to the regional director (compliance) for cancellation.

(c) *Proprietorships.* In the event of a change in proprietorship of a business of a permittee (as for instance, by reason of incorporation, the withdrawal or taking in of additional partners, or succession by any person who is not a fiduciary), the successor shall file written notice and make application on Form 5150.22 for a new permit under the same conditions provided for in paragraph (b) of this section.

(Approved by the Office of Management and Budget under control number 1512-0335)

§ 22.59 Adoption of documents by a fiduciary.

If the business covered by a permit issued under this part, is to be operated by a fiduciary, the fiduciary may, in lieu of qualifying as a new proprietor, file a written notice, and any necessary supporting documents, to amend the predecessor's permit. The fiduciary shall furnish a consent of surety on Form 1533, extending the terms of the predecessor's bond, if any. The effective date of the qualifying documents filed by a fiduciary shall coincide with the effective date of the court order or the

date specified therein for the fiduciary to assume control. If the fiduciary was not appointed by the court, the date the fiduciary assumed control shall coincide with the effective date of the filing of the qualifying documents.

§ 22.60 Continuing partnerships.

(a) *Continuing partnerships.* If, under the laws of a particular State, a partnership is not terminated on death or insolvency of a partner, but continues until final settlement of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, the surviving partner may continue to withdraw and use tax-free alcohol under the prior qualifications of the partnership.

(b) *Bonds.* If a bond was required under the previous partnership, the surviving partner shall furnish a consent of surety, in which the surety and surviving partner agree to remain liable.

(c) *Requalification.* If a surviving partner acquires the business on completion of the settlement of the partnership, that partner shall qualify as a new proprietor, from the date of acquisition, under the same conditions and limitations prescribed in § 22.58(b).

(d) *More than one partner.* The rule set forth in this section also applies if there is more than one surviving partner.

§ 22.61 Change in name of permittee.

(a) *Permit.* When the only change is a change in the individual, firm, or corporation name, a permittee may not conduct operations under the new name until a written notice, accompanied by necessary supporting documents, to amend the application and permit has been filed and an amended permit has been issued by the regional director (compliance).

(b) *Bond.* If required to file a bond, the permittee shall furnish a consent of surety on Form 1533 or a new bond to cover the change in name.

(Approved by the Office of Management and Budget under control number 1512-0335)

§ 22.62 Change in trade name.

Where there is to be a change in, or addition of, a trade name, the permittee may not conduct operations under the new trade name until a written notice has been filed and an amended permit has been issued by the regional director (compliance). A new bond or consent of surety is not required for changes in trade names.

(Approved by the Office of Management and Budget under control number 1512-0335)

§ 22.63 Change in location.

(a) *Permit.* When there is to be a change in location within the same region, a permittee may not conduct operations at the new location until a written notice, accompanied by necessary supporting information, to amend the application and permit has been filed and an amended permit has been issued by the regional director (compliance).

(b) *Bond.* If required to file a bond, the permittee shall furnish a consent of surety on Form 1533 or a new bond to cover the new location.

(Approved by the Office of Management and Budget under control number 1512-0335)

§ 22.64 Return of permits.

Following the termination, surrender or revocation of a permit, or the issuance of a new or amended permit, caused by a change, the permittee shall (a) obtain and destroy all photocopies of the previous permit from its suppliers, and (b) return the original of the permit or obsolete permit to the regional director (compliance) for cancellation.

Registry of Stills

§ 22.66 Registry of stills.

Part 196 of this chapter applies to stills located on the premises of a permittee. The listing of a still on Form 5150.22 and the issuance of a permit constitute registration of that still in lieu of filing Form 26.

Permanent Discontinuance of Use of Tax-Free Alcohol

§ 22.68 Notice of permanent discontinuance.

(a) *Notice.* A permittee who permanently discontinues the use of tax-free alcohol shall file a written notice with the regional director (compliance) to cover the discontinuance. The notice will be accompanied by the permit, and contain—

(1) A request to cancel the permit,

(2) A statement of the disposition made, as provided in § 22.154, of all tax-free and recovered alcohol, and

(3) The date of discontinuance.

(b) *Bonds.* The bond of a permittee may not be canceled until all tax-free and recovered alcohol has been properly disposed of in accordance with the provisions of this part.

(Approved by the Office of Management and Budget under control number 1512-0335)

Subpart E—Bonds and Consents of Surety

§ 22.71 Bond.

(a) Any bond previously approved, under this chapter, on Form 1448 (5150.25) which fulfills the penal sum requirements of paragraph (b) of this section shall remain valid and will be regulated by the same provisions of this subpart as it refers to bonds on Form 5150.25.

(b) Each person who intends to withdraw more than 1,500 proof gallons of tax-free alcohol per annum shall file a bond, Form 5150.25, before issuance of the permit. The penal sum of the bond will be as follows:

Maximum annual withdrawals	Bond penal sum
0 to 1,500 proof gallons	No bond required.
Over 1,500 but not over 3,000 proof gallons	$2,000 plus $100 for each additional 100 proof gallons up to a maximum of $3,000 (2,500 proof gallons).
Over 3,000 but not over 6,000 proof gallons	$3,000 plus $200 for each additional 100 proof gallons up to a maximum of $7,500 (5,250 proof gallons).
Over 6,000 proof gallons	$7,500 plus $250 for each additional 100 proof gallons up to a maximum penal sum of $15,000 (9,000 proof gallons).

(c) The following are some examples:

If your annual withdrawals are	Your penal sum is
1,250 proof gallons	No bond required.
2,800 proof gallons	$3,000 ($2,000 plus $1,000 ($100 × 10 units), last 300 proof gallons does not require additional bond coverage).
8,250 proof gallons	$13,000 ($7,500 plus $5,500 ($250 × 22 units), the remaining 50 proof gallons does not increase the bond since it is not an "additional" 100 proof gallon unit).

§ 22.72 Evaluation of bond penal sum.

(a) *Permittee's evaluation.* Each permittee shall, for the period from January 1 through the following December 31, make an annual evaluation of its previous and future needs for tax-free alcohol. Based on the results of this evaluation:

(1) The permittee shall file a new bond in increased penal sum, if the existing bond no longer meets the penal sum requirements of § 22.71, or

(2) The permittee may file a new bond in decreased penal sum, if the existing bond exceeds the penal sum requirements of § 22.71.

(b) *Authority of regional director (compliance).* The regional director (compliance) may, at any time, require a permittee to file a new bond in a larger penal sum, or require a satisfactory explanation why a new bond should not be filed.

§ 22.73 Corporate surety.

(a) Surety bonds required by this part may be given only with corporate sureties holding certificates of authority

from, and subject to the limitations prescribed by, the Secretary in the current revision of Treasury Department Circular No. 570.

(b) Treasury Department Circular No. 570 is published in the **Federal Register** annually as of the first workday in July. As they occur, interim revisions of the circular are published in the **Federal Register**. Copies may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, DC 20226.

(Chapter 390, Pub. L. 80-280, 61 Stat. 648 (6 U.S.C. 6, 7))

§ 22.74 Filing of powers of attorney.

Each bond, and each consent to changes in the terms of a bond, shall be accompanied by a power of attorney authorizing the agent or officer who executed the bond or consent to act on behalf of the surety. The regional director (compliance) may require additional evidence of the authority of the agent or officer to execute the bond or consent.

(Chapter 390, Pub. L. 80-280, 61 Stat. 648 (6 U.S.C. 6, 7))

§ 22.75 Execution of powers of attorney.

The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is not a manually signed original, it shall be accompanied by certification of its validity.

(Chapter 390, Pub. L. 80-280, 61 Stat. 648 (6 U.S.C. 6, 7))

§ 22.76 Deposit of securities instead of corporate surety.

Instead of corporate surety, the principal may pledge and deposit as surety for the bond, securities which are transferable and which are guaranteed as to both interest and principal by the United States, under the provisions of 31 CFR Part 225.

(Chapter 390, Pub. L. 80-280, 61 Stat. 648 (6 U.S.C. 6, 7))

§ 22.77 Consents of surety.

Consents of surety to changes in the terms of bonds shall be executed on Form 1533 by the principal and by the surety with the same formality and proof of authority as is required for the execution of bonds.

§ 22.78 Strengthening bonds.

(a) When the penal sum of any bond becomes insufficient based on projected annual withdrawals, the principal shall either give a strengthening bond with the same surety to attain a sufficient penal sum, or give a new bond to cover the entire liability. A strengthening bond will not be approved if it bears any notation which is intended or which may be considered—

(1) To be a release of any former bond, or

(2) As limiting the amount of any bond to less than its full sum.

(b) Strengthening bonds will show the date of execution and the effective date, and will be marked "Strengthening Bond."

§ 22.79 Superseding bonds.

Superseding bonds are required when insolvency or removal of any surety occurs. Superseding bonds may also be required at the discretion of the regional director (compliance) when any other contingency affects the validity or impairs the sufficiency of the bond. If the principal intends to continue the transactions to which the bond relates after the surety, under § 22.80, has applied for relief of liability under the bond, the principal shall file a valid superseding bond to be effective on or before the date specified in the surety's application for relief of liability. Superseding bonds will show the date of execution and the effective date, and will be marked "Superseding Bond." If the principal does not file a superseding bond when required, the principal may not conduct any operation under the permit.

§ 22.80 Notice by surety of termination of bond.

A surety on any bond required by this part may at any time, in writing, notify the principal and regional director (compliance) with whom the bond is filed, that the surety desires (after a specified date) to be relieved of liability under the bond. The specified date may not be less than 90 days after the date the notice is received by the regional director (compliance). The surety shall also file with the regional director (compliance) an acknowledgment or other proof of service of the notice of termination on the principal.

(Approved by the Office of Management and Budget under control number 1512-0335)

§ 22.81 Termination of rights and liability under a bond.

(a) If the notice of termination given by the surety is not withdrawn in writing, the rights of the principal as supported by the bond terminate on the date named in the notice. The surety is relieved from liability under a bond as to any operations which are wholly subsequent to—

(1) The date named in a notice of termination (§ 22.80); or

(2) The effective date of a superseding bond (§ 22.79); or

(3) The date of approval of the discontinuance of operations by the principal.

(b) If the principal fails to file a valid superseding bond before the date on which the surety desires to be relieved from liability under the bond, the surety, notwithstanding the release from liability as specified in paragraph (a)(1) of this section, shall remain liable under the bond for all tax-free alcohol and recovered alcohol on hand or in transit to the principal on that date until the spirits have been lawfully disposed of or a new bond has been filed by the principal.

§ 22.82 Release of pledged securities.

Securities of the United States, pledged and deposited as provided in § 22.76, will be released only under the provisions of 31 CFR Part 225. When the regional director (compliance) is satisfied that they may be released, the regional director (compliance) shall fix the date or dates on which a part or all of the securities may be released. At any time before the release of the securities, the regional director (compliance) may extend the date of release for any additional length of time considered necessary.

(Chapter 390, Pub. L. 80-280, 61 Stat. 648 (6 U.S.C. 6, 7))

Subpart F—Premises and Equipment

§ 22.91 Premises.

All persons qualified to withdraw and use tax-free alcohol shall have premises suitable for the business being conducted and adequate for the protection of the revenue. Storage facilities shall be provided on the premises for tax-free alcohol received or recovered. The storage facilities may consist of a combination of storerooms, compartments, or stationary storage tanks.

§ 22.92 Storage facilities.

(a) Storerooms or compartments shall be so constructed and secured as to prevent unauthorized access and will be equipped for locking. These storage facilities shall be of sufficient capacity to hold the maximum quantity of tax-free alcohol which will be on hand at one time.

(b) Each stationary storage tank used to hold tax-free alcohol shall be equipped for locking in such a manner as to control access to the spirits. All stationary storage tanks shall be equipped with an accurate means of measuring the spirits.

(c) Storerooms and storage tanks shall be kept locked when unattended. A storage cabinet or locker kept inside a room which is locked when unattended is considered to be adequately secured.

§ 22.93 Equipment for recovery and restoration of tax-free alcohol.

(a) *Location.* All equipment used to recover and restore tax-free alcohol for reuse shall be located on the permit premises.

(b) *Construction.* (1) Distilling apparatus, pipelines and other equipment used for recovery and restoration of tax-free alchohol shall be constructed and secured in such a manner as to prevent unauthorized access and so arranged as to be readily inspected.

(2) Storage tanks shall be provided for the collection of recovered tax-free alcohol. Each storage tank shall—

(i) Be durably marked as to use and capacity;

(ii) Be equipped with, or for, an accurate means of measuring the spirits; and

(iii) Be equipped for locking to control unauthorized access to the spirits.

Supart G—Use of Tax-Free Alcohol

§ 22.101 Authorized uses.

Alcohol may be withdrawn free of tax from the bonded premises of a distilled spirits plant for the use of any State or political subdivision of a State, or the District of Columbia, for nonbeverage purposes. Alcohol may also be withdrawn by persons eligible to use tax-free alcohol, for nonbeverage purposes and not for resale or use in the manufacture of any product for sale. Tax-free alcohol shall be withdrawn and used only as provided by law and this part, as follows:

(a) For the use of any educational organization described in 26 U.S.C. 170(b)(1)(A) which is exempt from income tax under 26 U.S.C. 501(a), or for the use of any scientific university or college of learning;

(b) For any laboratory for use exclusively in scientific research;

(c) For use at any hospital, blood bank, or sanitarium (including use in making any analysis or test at a hospital, blood bank, or sanitarium), or at any pathological laboratory exclusively engage in making analyses, or test, for hospitals or sanitariums; or

(d) For the use of any clinic operated for charity and not for profit (including use in the compounding of bona fide medicines for treatment of patients outside of the clinic).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, (26 U.S.C. 5214))

§ 22.102 Prohibited uses.

(a) *Usage.* Under no circumstances may tax-free alcohol withdrawn under this part be used for beverage purposes, food products, or in any preparation used in preparing beverage or food products.

(b) *Selling.* Persons qualified under this part are prohibited from selling tax-free alcohol, using tax-free alcohol in the manufacture of any product for sale, or selling any products resulting from the use of tax-free alcohol. A separate charge may be made by a hospital, sanitarium or clinic for medicines compounded with tax-free alcohol and dispensed to patients for use on the premises, as provided in §§ 22.105 and 22.106. Hospitals may not furnish tax-free alcohol for use of physicians in their private practice.

(c) *Removal from premises.* Persons qualified under this part may not remove tax-free alcohol or products resulting from the use of tax-free alcohol from the permit premises unless specifically authorized by the terms of their permit, or permission is obtained from the regional director (compliance), except that:

(1) Products made through the use of tax-free alcohol which contain no alcohol may be removed to other premises for the sole purpose of further research; or

(2) Under the provisions of §§ 22.105 and 22.106, clinics operated for charity and not for profit may compound bona fide medicines with tax-free alcohol, and dispense the medicine from the premises for use by its patients outside of the clinic, if the furnishing of the medicine is not conditioned upon payment.

(d) *Liability for tax.* Permittees who use tax-free alcohol in any manner prohibited by this section become liable for the tax on the alcohol. Any permittee who sells tax-free alcohol also becomes liable for special (occupational) tax as a liquor dealer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1343, as amended, 1362, as amended (26 U.S.C. 5001, 5121, 5214))

§ 22.103 States and the District of Columbia.

Except as otherwise provided in this section, tax-free alcohol withdrawn by a State or political subdivision of a State, or the District of Columbia shall be used solely for mechanical and scientific purposes, and except on approval of the regional director (compliance), the use of tax-free alcohol or the use of any resulting product will be confined to the premises under the control of the State or political subdivision of a State, or the District of Columbia. Tax-free alcohol withdrawn for use in hospitals, clinics, and other establishments specified in §§ 22.104 through 22.108, operated by a State, political subdivision of a State, or the District of Columbia, shall be used in the manner prescribed for those establishments.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 22.104 Educational organizations, colleges of learning, and scientific universities.

(a) *Educational organizations.* Educational organizations authorized to withdraw and use tax-free alcohol under § 22.101 are those organizations which normally maintain a regular faculty and curriculum and which normally have a regularly enrolled body of students in attendance at the place where their educational activities are regularly carried on and which are exempt from Federal income tax under 26 U.S.C. 501(a).

(b) *Colleges of learning.* Colleges of learning, for the purposes of this subpart, have a recognized curriculum and confer degrees after specified periods of attendance at classes or research work.

(c) *Scientific universities.* Scientific universities include any university incorporated or organized under any Federal or State law which provides training in the sciences.

(d) *Uses.* Tax-free alcohol withdrawn by educational organizations, scientific universities, and colleges of learning shall be used only for scientific, medicinal, and mechanical purposes. Use of tax-free alcohol and resulting products are limited by the provisions of § 22.102.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 22.105 Hospitals, blood banks, and sanitariums.

(a) Tax-free alcohol withdrawn for use by hospitals, blood banks, and sanitariums shall be used exclusively for medicinal, mechanical (analysis or test) and scientific purposes and in the treatment of patients. The use of tax-free alcohol and of products resulting from the use of tax-free alcohol shall be confined to the permit premises, except as provided in this section and § 22.102. Medicines compounded with tax-free alcohol on the premises of a hospital or sanitarium, for use of patients on the premises, may not be sold, but a separate charge may be made for the medicine.

(b) A hospital, operating a clinic on premises, may withdraw tax-free alcohol for use in the clinic, if the clinic

is operated for charity and not for profit. Medicines compounded with tax-free alcohol may be dispensed to patients at a clinic for use outside of the clinic, if the furnishing of the medicine is not conditioned upon payment.

(c) A hospital or sanitarium, operating a pathological or other laboratory on premises, may withdraw tax-free alcohol for authorized use in the laboratory.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 22.106 Clinics.

Tax-free alcohol withdrawn by clinics operated for charity and not for profit shall be used only for medicinal, scientific, and mechanical purposes and in the treatment of patients. Medicine compounded with tax-free alcohol may be dispensed to patients for use off the premises, if the furnishing of the medicine is not conditioned upon payment. A separate charge may be made for medicine coumpounded on the clinic premises with tax-free alcohol for use of patients on the premises. Except as provided in this section and in § 22.102, the use of tax-free alcohol shall be confined strictly to the premises of the clinic.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 22.107 Pathological laboratories.

(a) Pathological laboratories, not operated by a hospital or sanitarium, may withdraw and use tax-free alcohol if exclusively engaged in making analyses or tests for hospitals or sanitariums. If a pathological laboratory does not exclusively conduct analyses or tests for hospitals or sanitariums, it does not qualify for the permit issued under this part.

(b) A pathological laboratory which uses tax-free alcohol for any other purpose, except as provided in this section, shall become liable for the tax on the alcohol.

(c) Except as provided in § 22.102, the use of tax-free alcohol and of products resulting from the use of tax-free alcohol shall be confined strictly to the permit premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1362, as amended (26 U.S.C. 5001, 5214))

§ 22.108 Other laboratories.

Laboratories, other than pathological laboratories specified in § 22.107, may withdraw and use tax-free alcohol exclusively in scientific research. The use of tax-free alcohol or of products resulting from the use of tax-free alcohol shall be confined strictly to the laboratory premises, except as provided in § 22.102.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

Subpart H—Withdrawal and Receipt of Tax-Free Alcohol

§ 22.111 Withdrawals under permit.

(a) *General.* The permit, Form 5150.9, issued under Subpart D of this part, authorizes a person to withdraw tax-free alcohol from the bonded premises of a distilled spirits plant or, under the provisions of 26 U.S.C. 5688(a)(2)(B), receive alcohol from the General Services Administration.

(b) *Photocopying of permit, Form 5150.9.* (1) As provided in § 22.54, a permittee may make photocopies of its permit, or amended permit, for the exclusive purpose of furnishing proof of authorization to withdraw tax-free alcohol.

(2) A permittee need only furnish the photocopy of its permit, or amended permit, to a distilled spirits plant for the "initial order" from that distilled spirits plant.

(3) When a permittee makes photocopies of its permit, Form 5150.9, each copy shall be signed, dated, and contain the word "COPY" across the face.

(4) A permittee is responsible for obtaining and, as applicable, destroying all photocopies of its permit from distilled spirits plants when (i) an amended or corrected permit is issued which supersedes the copy on file, (ii) the permit is canceled by reason of requalification as a new permittee, (iii) the permit is revoked or suspended, or (iv) upon permanent discontinuance of use of tax-free alcohol.

(c) *Withdrawals under permit.* (1) When a permittee places an initial order for tax-free alcohol it shall forward a signed copy of the permit, for retention by the distilled spirits plant, along with the purchase request.

(2) When the permittee places a subsequent order for tax-free alcohol, the purchase request, in addition to any other information, shall contain the permit identification number and date of issue along with a statement that the permittee possesses a valid permit to withdraw tax-free alcohol, a copy of which is on file.

(3) Shipments shall not be made by a proprietor of a distilled spirits plant until it is in possession of a signed copy of a valid permit, Form 5150.9.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

§ 22.112 Regulation of withdrawals.

(a) Each permittee shall regulate its withdrawals of tax-free alcohol to ensure that (1) the quantity on hand and unaccounted for does not exceed the capacity of the storage facilities, and (2) the cumulative quantity withdrawn or received in any calendar year does not exceed the quantity authorized by the permit, Form 5150.9. Recovered alcohol and alcohol received from the General Services Administration shall be taken into account in determining the total quantity of alcohol on hand.

(b) For the purpose of this section, tax-free alcohol and recovered alcohol shall be considered as unaccounted for if lost under circumstances where a claim for allowance is required by this part and the claim has not been allowed, or if used or disposed of in any manner not provided for in this part.

§ 22.113 Receipt of tax-free alcohol.

(a) When tax-free alcohol is received, it shall be placed in the storage facilities prescribed by § 22.91 and kept there under lock until withdrawn for use. Unless required by city or State fire code regulations or authorized by the regional director (compliance) or the terms of the permit, the permittee may not remove tax-free alcohol from the original packages or containers in which received until the alcohol is withdrawn for use. If the tax-free alcohol is transferred to "safety" containers in accordance with fire code regulations, the containers to which they are transferred shall be appropriately marked to identify the package from which transferred, the quantity transferred, the date of transfer, and the name and address of the vendor.

(b) When tax-free alcohol is received, the permittee shall ascertain and account for any losses in transit in accordance with Subpart I of this part. The permittee shall note any loss or deficiency in the shipment on the record of receipt.

(c) Records of receipt shall consist of the consignors invoice or bill. Records of receipt may be filed in accordance with the permittee's own filing system as long as it does not cause inconvenience to ATF officers desiring to examine the records. The filing system shall systematically and accurately account for the receipt of all tax-free alcohol.

§ 22.114 Alcohol received from the General Services Administration.

Any nonprofit charitable institution holding a permit on Form 5150.9, and receiving alcohol from the General Services Administration under the provisions of 26 U.S.C. 5688(a)(2)(B),

shall include any quantity of alcohol received in computing the quantity of tax-free alcohol that may be procured under its permit during the calendar year. The alcohol, on receipt, shall be placed in the storage facilities prescribed in § 22.91 and kept there under lock until withdrawn for use.

Subpart I—Losses

§ 22.121 Liability and responsibility of carriers.

(a) A person or carrier transporting tax-free alcohol to a consignee or returning the alcohol to the consignor is responsible for the safe delivery and is accountable for any tax-free alcohol not delivered.

(b) A person or carrier transporting tax-free alcohol in violation of any law or regulation pertaining thereto, is subject to all provisions of law relating to alcohol subject to and the payment of tax thereon, and shall be required to pay the tax.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended (26 U.S.C 5001))

§ 22.122 Losses in transit.

(a) *Reporting losses.* Upon discovering any loss of tax-free alcohol while in transit, the carrier shall immediately inform the consignee, in writing, of the facts and circumstances relating to the loss. In the case of theft, the carrier shall also immediately notify the consignee's regional director (compliance) of the facts and circumstances relating to the loss.

(b) *Recording losses.* At the time the shipment or report of loss is received, the consignee shall determine the quantity of tax-free alcohol lost. The consignee shall note the quantity lost on the receiving document and attach all relevant information to the record of receipt, prescribed in § 22.113. For the purpose of maintaining the records prescribed in Subpart M of this part, receipts of tax-free alcohol shall only include the quantity actually received.

(c) *Claims.* A claim for allowances of losses of tax-free alcohol shall, as prescribed in § 22.125, be filed:

(1) If the quantity lost in transit exceeds 1 percent of the total quantity shipped and is more than 5 proof gallons, the consignee shall file a claim for allowance of the entire quantity lost; or

(2) If the loss was due to theft or other unlawful removal, the consignee shall file a claim for allowances of the entire quantity lost, regardless of the quantity or percentage involved.

(Reporting approved by the Office of Management and Budget under control number 1512-0335; recordkeeping approved by the Office of Management and Budget under control number 1512-0334)

§ 22.123 Losses on premises.

(a) *Recording of losses.* A permittee shall determine and record, in the records prescribed by Subpart M of this part, the quantity of tax-free or recovered alcohol lost on premises—

(1) At the end of each semi-annual period when the inventory required by § 22.162 is taken, or

(2) Immediately upon the discovery of any loss due to casualty, theft or other unusual causes.

(b) *Claims.* A claim for allowances of losses of tax-free alcohol shall be filed as prescribed in § 22.125, in the following circumstances—

(1) if the quantity lost during any semi-annual inventory period exceeds 1 percent of the quantity to be accounted for during that period, and is more than 10 proof gallons, or

(2) if the loss was due to theft or unlawful use or removal, the permittee shall file a claim for allowances of losses regardless of the quantity involved.

(Approved by the Office of Management and Budget under control number 1512-0334)

§ 22.124 Incomplete shipments.

(a) Subject to the provisions of this part and Part 19 of this chapter, when containers of tax-free alcohol have sustained losses in transit other than by theft, and the shipment will not be delivered to the consignee, the carrier may return the shipment to the distilled spirits plant.

(b) When tax-free alcohol is returned to the distilled spirits plant, in accordance with this section, the carrier shall inform the proprietor, in writing, of the facts and circumstances relating to the loss. In the case of theft, the carrier shall also immediately notify the shipper's regional director (compliance) of the facts and circumstances relating to the loss.

(c) Subject to the limitations for loss prescribed in § 22.122, the proprietor of the distilled spirits plant shall file a claim for allowance of the entire quantity lost, in the same manner provided in that section. The claim shall include the applicable date required by § 22.125.

§ 22.125 Claims.

(a) Claims for allowances of losses of tax-free or recovered alcohol shall be filed, on Form 2635 (5620.8), with the regional director (compliance) within 30 days from the date the loss is ascertained, and shall contain the following information:

(1) Name, address, and permit number of claimant;

(2) Identification and location of the container(s) from which the tax-free or recovered alcohol was lost, and the quantity lost from each container;

(3) Total quantity of tax-free or recovered alcohol covered by the claim and the aggregate quantity involved;

(4) Date of loss or discovery, the cause or nature of loss, and all relevant facts, including facts establishing whether the loss occurred as a result of negligence, connivance, collusion, or fraud on the part of any person, employee or agent participating in or responsible for the loss; and

(5) Name of carrier where a loss in transit is involved.

(b) The carriers statement regarding a loss in transit, prescribed by § 22.122 or 22.124, shall accompany the claim.

(c) The regional director (compliance) may require additional evidence to be submitted in support of the claim.

Subpart J—Recovery of Tax-Free Alcohol

§ 22.131 General.

Any person or permittee conducting recovery operations of tax-free alcohol shall be qualified by the terms of their permit to do so, under the provision of Subpart D of this part. Restoration of recovered tax-free alcohol may only be accomplished on the permit premises or by the proprietor of a distilled spirits plant.

§ 22.132 Deposit in storage tanks.

(a) Recovered alcohol shall be accumulated and kept in separate storage tanks conforming to § 22.93. Recovered alcohol shall be measured before being redistilled or reused.

(b) Recovered alcohol may be removed from storage tanks for packaging and shipment to a distilled spirits plant for redistillation.

§ 22.133 Shipment for redistillation.

(a) Unless a permittee intends to redistill recovered alcohol to its original state, the recovered alcohol shall be shipped in containers to a distilled spirits plant for restoration.

(b) Containers shall be labeled with—

(1) The name, address, and permit number of permittee,

(2) The quantity of recovered alcohol in gallons,

(3) The words "Recovered tax-free alcohol", and

(4) A package identification number or serial number in accordance with paragraph (c)(1) or (c)(2) of this section.

(c)(1) A package identification number shall apply to all of the packages filled

at the same time. All of the packages in one lot shall be the same type, have the same rated capacity, and be uniformly filled with the same quantity. A package identification number shall be derived from the date on which the package is filled, and shall consist of the following elements, in the order shown—

(i) The last two digits of the calendar year;

(ii) An alphabetical designation from "A" through "L", representing January through December, in that order;

(iii) The digits corresponding to the day of the month; and

(iv) A letter suffix when more than one identical lot is filled into packages during the same day. For successive lots after the first lot, a letter suffix shall be added in alphabetical order, with "A" representing the second lot of the day, "B" representing the third lot of the day, etc. (*e.g.* the first three lots filled into packages on November 19, 1983, would be identified as "83K19," '83K19A," and "83K19B."

(2) A consecutive serial number shall be marked on each package, beginning with the number "1" and continuing in regular sequence. When any numbering series reaches "1,000,000," the user may recommence the series by providing an alphabetical prefix or suffix for each number in the new series.

§ 22.134 Records of shipment.

A consignor shipping recovered alcohol or tax-free alcohol to a distilled spirits plant shall prepare and forward a record of shipment to the consignee. The record of shipment may consist of a shipping invoice, bill, or bill of lading, or another document intended for the same purpose. The record of shipment shall accurately identify and account for the tax-free or recovered alcohol being shipped. A permittee shall file one copy of the record of shipment with the records required by § 22.161.

(Approved by the Office of Management and Budget under control number 1512-0334)

Subpart K—Destruction

§ 22.141 General.

A permittee may terminate liability for payment of tax, prescribed by law, when tax-free or recovered alcohol is destroyed in accordance with this subpart.

§ 22.142 Destruction.

(a) A permittee may destroy tax-free or recovered alcohol upon (1) the filing of a notice of intention to destroy with the area supervisor at least 7 days prior to the proposed date of destruction, or (2) furnishing the notice to an ATF officer at the premises who may supervise the destruction or transmit the notice to the area supervisor.

(b) The notice of intention to destroy shall contain—

(1) The reason for destruction,

(2) The date, time, location and manner of destruction, and

(3) The quantity involved and, if applicable, the package identification numbers of containers.

(c) If, by the date and time specified in the notice, an ATF officer has not supervised the destruction, or the area supervisor has not advised the permittee to the contrary, the spirits may be destroyed in the manner stated in the notice.

(d) Following the destruction, if unsupervised by an ATF officer, the permittee shall annotate a copy of the notice with the name of the individual who accomplished or supervised the destruction. This notice shall serve as a record of destruction and shall be maintained with the records required by § 22.161.

(Approved by the Office of Management and Budget under control number 1512-0335)

Subpart L—Return, Reconsignment and Disposition of Tax-Free or Recovered Alcohol

§ 22.151 Return.

A permittee may, following the receipt of tax-free alcohol and for any legitimate reason, return the spirits to any distilled spirits plant if the consignee consents to the shipment. The consignor shall prepare a record of shipment in the same manner prescribed in § 22.134 for shipment of recovered alcohol.

(Approved by the Office of Management and Budget under control number 1512-0334)

§ 22.152 Reconsignment in transit.

(a) *Reconsignment.* Tax-free alcohol may be reconsigned to another permittee or returned to the consignor if, prior to, or on arrival at the premises of the consignee, the alcohol is determined to be unsuitable for the intended purpose, was shipped in error, or, for any bona fide reason, is not accepted by the consignee or carrier.

(b) *Bond coverage.* In the case of reconsignment, the bond, if required, of the permittee to whom the tax-free alcohol was reconsigned or the bond of the consignor, if for return, shall cover the spirits while in transit.

(c) *Records of reconsignment.* In the case of reconsignment, the consignor shall cancel the initial record of shipment and prepare a new record of shipment, if the shipment is to another permittee. The new record of shipment shall be annotated "Reconsignment."

(Approved by the Office of Management and Budget under control number 1512-0334)

§ 22.153 Disposition after revocation of permit.

When any permit issued on Form 5150.9 is revoked, all tax-free alcohol in transit and all alcohol on the former permit premises, may be lawfully possessed by the former permittee for the exclusive purpose of disposing of the alcohol, for a period of 60 days following the date of revocation. Any tax-free or recovered alcohol not disposed of within the specified 60-day period, is subject to seizure and forfeiture.

§ 22.154 Disposition on permanent discontinuance of use.

(a) *Tax-free alcohol.* Tax-free alcohol on hand at the time of discontinuance of use, may be disposed of by (1) returning the spirits to a distilled spirits plant, as provided in § 22.151, (2) destruction, as provided in § 22.142, or (3) shipping to another permittee, in accordance with § 22.155.

(b) *Recovered tax-free alcohol.* Upon permanent discontinuance of use, a permittee may dispose of recovered tax-free alcohol by (1) shipment to a distilled spirits plant, as provided in § 22.133, (2) destruction, as provided in § 22.142, or (3) upon the filing of an application with the regional director (compliance), any other approved method.

(Approved by the Office of Management and Budget under control number 1512-0335)

§ 22.155 Emergency disposition to another permittee.

(a) In the case of an emergency, a permittee may, upon the filing of a notice with the area supervisor, dispose of tax-free alcohol to another permittee, when the quantity involved does not exceed 10 proof gallons. In the case of a medical emergency or disaster, the area supervisor is authorized to verbally approve, with the required notice to follow, disposals of tax-free alcohol to another permittee or Government agency in excess of 10 proof gallons. The tax-free alcohol disposed of shall be in original unopened containers. The consignor shall prepare a record of shipment in the same manner prescribed in § 22.134.

(b) The notice required by this section shall (1) explain the nature of the emergency, (2) identify the consignee by name, address and permit number, and (3) list the quantity of alcohol and package identification number of the container(s) involved.

(c) The consignor permittee may not receive remuneration for tax-free alcohol given to another permittee in

case of an emergency, as authorized by this section.

(Notice approved by the Office of Management and Budget under control number 1512-0335; recordkeeping approved by the Office of Management and Budget under control number 1512-0334)

Subpart M—Records of Transactions

§ 22.161 Records.

(a) *General.* All persons qualified under this part shall keep accurate records of all receipts, shipments, usage, destructions and claims pertaining to the withdrawal and use of tax-free alcohol. These records shall be in sufficient detail to enable the permittee to reconcile any losses or gains for the semi-annual inventory, and to enable ATF officers to verify all transactions and to ascertain whether there has been compliance with law and regulations. All records required by this section shall identify tax-free alcohol by proof, date of transaction, and quantity involved, and shall include alcohol received from the General Services Administration and the recovery of alcohol and its disposition. Records shall be kept current at all times.

(b) *Records of receipt and shipment.* Records of receipt and shipment shall consist of the consignor's or consignee's (as the case may be) invoice, bill or bill of lading, or another document used for the intended purpose. Records of receipt shall record only the quantity of tax-free alcohol actually received. Losses in transit shall not be considered as received, but may be the subject of a claim for allowances of losses, as prescribed in Subpart I of this part.

(c) *Records of usage.* For the purpose of this subpart, tax-free or recovered alcohol shall be considered as "used" when permanently removed from a permittee's supply storeroom, compartment, or tank for any authorized use. Records of usage shall identify the tax-free alcohol by quantity, proof, and purpose of removal (office, department or location to which dispensed). This record shall list separately, the usage of tax-free alcohol from recovered alcohol or alcohol received from the General Services Administration.

(d) *Records of destruction.* Records of destruction shall consist of a copy of the notice of intention to destroy, prescribed in § 22.141, signed by an ATF officer or employee witnessing the destruction.

(e) *Claims.* Claims for allowance of losses of tax-free alcohol, required to be filed under Subpart I of this part, shall consist of Forms 2635 (5620.8) and supporting data.

(Approved by the Office of Management and Budget under control number 1512-0334)

§ 22.162 Inventories.

Each permittee shall take a physical inventory of the tax-free and recovered alcohol in its possession semi-annually for the periods ending June 30 and December 31 of each year; or other inventory periods which are approximately 6 months apart, upon filing written notice with the regional director (compliance) establishing other inventory periods. These inventories may be recorded separately or as an entry in the record of usage with any necessary adjustments (losses or gains). If an inventory results in a loss in excess of the quantities prescribed by Subpart I of this part, the permittee shall file a claim for allowance of loss.

(Notice approved by the Office of Management and Budget under control number 1512-0335; recordkeeping approved by the Office of Management and Budget under control number 1512-0334)

§ 22.163 Time for making entries.

Any person who conducts an operation which is required to be recorded under this part, shall enter that operation in the records on the same day the operation occurred. However, the daily posting of records may be deferred to conform to the permittee's normal accounting cycle if (a) supporting or supplemental records are prepared at the time of the operation, and these supporting or supplemental records are to be used to post the daily record, and (b) the deferral of posting does not pose a jeopardy to the revenue.

§ 22.164 Filing and retention of records.

Each person required to maintain records of operations and transactions under this part shall:

(a) Keep on file all records and copies of claims for a period of not less than 3 years following the date of transaction or, at the discretion of the regional director (compliance), an additional 3-year period; and

(b) Maintain all records at the permit premises, except that the records may be kept at a central location by a State or political subdivision of a State, or the District of Columbia which distributes tax-free alcohol to multiple dependent agencies, institutions, or departments.

§ 22.165 Photographic copies of records.

(a) *General.* Permittees may record, copy, or reproduce required records. Any process may be used which accurately reproduces the original record, and which forms a durable medium for reproducing and preserving the original record.

(b) *Copies of records treated as original records.* Whenever records are reproduced under this section, the reproduced records shall be preserved in conveniently accessible files, and provisions shall be made for examining, viewing, and using the reproduced records the same as if they were the original record, and they shall be treated and considered for all purposes as though they were the original record. All provisions of law and regulations applicable to the original are applicable to the reproduced record. As used in this section, "original record" means the record required by this part to be maintained or preserved by the permittee, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

Subpart N—Use of Tax-Free Spirits by the United States or Government Agency

§ 22.171 General.

(a) The United States or any of its Government agencies may withdraw tax-free spirits for nonbeverage purposes from a distilled spirits plant under this part, as authorized by 26 U.S.C. 5214(a)(2). Before any tax-free spirits may be withdrawn, a permit to procure the spirits shall be obtained from the Director. A bond is not required for any Government agency of the United States to procure tax-free spirits.

(b) The provisions of Subpart M of 27 CFR Part 251 cover the withdrawal of imported spirits, free of tax, for use of the United States or any of its Government agencies.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended) (26 U.S.C. 5214))

§ 22.172 Application and Permit, Form 5150.33.

(a) All permits previously issued to the United States or any of its Government agencies on Form 1444 shall remain valid and shall be regulated by the same provisions of this subpart as it refers to permits on Forms 5150.33.

(b) A Government agency shall apply for a permit to obtain tax-free spirits on Form 5150.33, to the Director. Upon approval, Form 5150.33 will be returned to the Government agency, and shall serve as authority to procure spirits free of tax.

(c) A Government agency may specify on its application for a permit to procure tax-free spirits, Form 5150.33, that it desires a single permit authorization all sub-agencies under its control to procure tax-free spirits; or each Government location (agency, department, bureau, and etc.) desiring to procure tax-free

spirits for nonbeverage purposes may individually submit an application for a permit on Form 5150.33.

(d) An application for a permit shall be signed by the head of the agency or sub-agency, or the incumbent of an office which is authorized by the head of the agency or sub-agency, to sign. Evidence of authorization to sign for the head of the agency or sub-agency shall be furnished with the application.

(e) Tax-free spirits obtained by Government agencies may not be used for non-Government purposes.

§ 22.173 Procurement of tax-free spirits.

Each Government agency shall retain the original of its permit, Form 5150.33, on file. When placing an initial order with a vendor, the agency shall forward a photocopy of its permit with the purchase order for tax-free spirits. In the case of an agency holding a single permit for use of other sub-agencies, the photocopy of the permit shall contain an attachment listing all other locations authorized to procure tax-free spirits. Any subsequent purchases from the same vendor need only contain the permit number on the purchase order.

§ 22.174 Receipt of shipment.

On receipt of a shipment of tax-free spirits, a representative of the Government agency shall inspect the shipment for any loss or deficiency. In the case of loss or deficiency, the agency shall annotate the receiving document and forward a copy to the regional director (compliance) of the region from which the shipment was consigned.

§ 22.175 Discontinuance of use.

When a Government agency, holding a permit issued under this subpart, no longer intends to procure and use tax-free spirits, the permit shall be returned to the Director for cancellation. All photocopies of the permit furnished to vendors shall be returned to the agency for destruction.

§ 22.176 Disposition of excess spirits.

At the time of discontinuance of use of tax-free spirits, a Government agency may dispose of any excess tax-free spirits (a) by transferring the spirits to another Government agency holding a permit, (b) by returning the spirits to a vendor, or (c) in any manner authorized by the Director. Tax-free spirits may not be disposed of to the general public.

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

Section E. Part 170 is amended as follows:

§ 170.23 [Amended]

The definition of *Denatured spirits* in § 170.23 is amended by replacing "Part 212" with "Part 21".

PART 200—RULES OF PRACTICE IN PERMIT PROCEEDINGS

Section F. Part 200 is amended to remove references to withdrawal permits, including references to expiration or renewal of withdrawal permits, and to eliminate the distinction between initial applications and renewal applications as follows:

Paragraph 1. The table of sections for Part 200 is amended to reflect amended headings of §§ 200.48, 200.49a, 200.62, 200.67, 200.78, 200.79, 200.80, 200.81, 200.107, and 200.108, and to reflect the removal of §§ 200.50, 200.63, and 200.68.

Sec.

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200.48 Operating permits and industrial use permits.
200.49 * * *
200.49a Applications for operating permits and industrial use permits.
200.49b * * *

Subpart F * * *

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200.62 Application.

Answers

200.64 * * *

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200.67 Applications.
200.69 * * *

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200.78 Applications.
200.79 Suspension, revocation, or annulment.

Burden of Proof

200.80 Applications.
200.81 Suspension, revocation, or annulment.

* * * * *

200.107 Application.
200.108 Suspension, revocation, or annulment proceedings.

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Par. 2. The definitions of *Application, Citation, Initial decision, Permit,* and *Respondent* in § 200.5 are amended to read as follows:

§ 200.5 Meaning of terms.

* * * * *

Application. Any application for a permit under the Federal Alcohol Administration Act or the Internal Revenue Code (26 U.S.C.) for operations not covered by an existing permit.

* * * * *

Citation. Includes any notice contemplating the disapproval of an application or any order to show cause why a permit should not be suspended, revoked or annulled.

* * * * *

Initial decision. The decision (order) of the regional director (compliance) in any proceeding on an application for a permit, and the decision of the administrative law judge in any proceeding on the suspension, revocation, or annulment of a permit.

* * * * *

Permit—(a) *Alcohol fuel permit.* The document issued under 26 U.S.C. 5181, authorizing the person named therein to engage in the business described therein.

(b) *Basic permit.* The document authorizing the person named therein to engage in a designated business or activity under the Federal Alcohol Administration Act.

(c) *Industrial use permit.* The document issued under 26 U.S.C. 5271(a), authorizing the person named therein to withdraw and use distilled spirits free of tax in accordance with Part 22 of this chapter, or withdraw and deal in or use specially denatured spirits in accordance with Part 20 of this chapter, as described therein.

(d) *Operating permit.* The document issued under 26 U.S.C. 5171, authorizing the person named therein to engage in the business described therein.

(e) *Tobacco permit.* The document issued under 26 U.S.C. 5713(a), authorizing the person named therein to engage in the business described therein.

* * * * *

Respondent. Any person holding a permit against which an order has been issued to show cause why such permit should not be suspended, revoked or annulled.

* * * * *

§ 200.35 [Amended]

Par. 3. Section 200.35 is amended by deleting "or application for renewal disapproved," and "or applicant for renewal," from the first sentence and by deleting "or disapproval of the renewal application," from the last sentence.

§ 200.36 [Amended]

Par. 4. Section 200.36 is amended by deleting "or his application for renewal disapproved," from the first sentence.

§ 200.37 [Amended]

Par. 5. Section 200.37 is amended by deleting "or his application for renewal thereof be disapproved," from the first sentence.

§ 200.38 [Amended]

Par. 6. Section 200.38 is amended by deleting "or disapproval of renewal application," from the first sentence.

Par. 7. The introductory text of § 200.48 is revised to delete references to withdrawal permits. As revised, the introductory text of § 200.48 reads as follows:

§ 200.48 Operating permits and industrial use permits.

Whenever the regional director (compliance) has reason to believe that any person who has an operating permit or an industrial use permit:

* * * * *

Par. 8. The introductory text of § 200.49a is revised to delete references to withdrawal permits and renewal applications. As revised, the introductory text of § 200.49a reads as follows:

§ 200.49a Applications for operating permits and industrial use permits.

If, on examination of an application for an operating permit or an industrial use permit, the regional director (compliance) has reason to believe:

* * * * *

§ 200.50 [Removed]

Par. 9. Section 200.50 is removed because it relates to expiration of withdrawal permits.

§ 200.55 [Amended]

Par. 10. Section 200.55 is amended by replacing "an initial or renewal permit" with "a permit".

§ 200.56 [Amended]

Par. 11. Paragraph (b) of § 200.56 is amended by deleting ", whether initial or renewal".

§ 200.59 [Amended]

Par. 12. Section 200.59 is amended by replacing "an initial or renewal permit" with "a permit".

§ 200.62 [Amended]

Par. 13. The heading of § 200.62 is amended by replacing "Initial application" with "Application", and the first sentence of § 200.62 is amended by deleting "initial".

§ 200.63 [Removed]

Par. 14. Section 200.63 is removed because it relates to renewal applications.

§ 200.67 [Amended]

Par. 15. The heading of § 200.67 is amended by replacing "Initial applications" with "Applications", and the first sentence of § 200.67 is amended by deleting "initial".

§ 200.68 [Removed]

Par. 16. Section 200.68 is removed because it relates to renewal applications.

§ 200.70 [Amended]

Par. 17. Section 200.70 is amended by replacing "an initial or renewal permit" with "a permit" in the second sentence.

§ 200.78 [Amended]

Par. 18. The heading of § 200.78 is amended by replacing "Initial applications" with "Applications". The first and third sentences of § 200.78 are amended by replacing "initial applications" with "applications".

Par. 19. Section 200.79 is revised to remove reference to renewal permits. As revised, § 200.79 reads as follows:

§ 200.79 Suspension, revocation, or annulment.

The administrative law judge who presides at the hearing in proceedings for the suspension, revocation, or annulment of a permit shall make the initial decision.

§ 200.80 [Amended]

Par. 20. The heading of § 200.80 is amended by replacing "Initial applications" with "Applications", and the first sentence of § 200.80 is amended by deleting "initial".

Par. 21. Section 200.81 is revised to remove reference to renewal applications. As revised, § 200.81 reads as follows:

§ 200.81 Suspension, revocation, or annulment.

In hearings on the suspension, revocation, or annulment of a permit, the burden of proof is on the Government.

Par. 22. Paragraph (h) of § 200.97 is revised to eliminate the distinction between initial and renewal applications. As revised, paragraph (h) of § 200.97 reads as follows:

§ 200.97 Powers.

* * * * *

(h) Render recommended decisions in proceedings on applications for permits, and in suspension, revocation, or annulment proceedings against permits;

* * * * *

§ 200.106 [Amended]

Par. 23. Paragraph (a) of § 200.106 is amended by replacing "initial application" with "an application". Paragraph (b) of § 200.106 is amended by deleting "proceedings on renewal applications and".

§ 200.107 [Amended]

Par. 24. The heading of § 200.107 is amended by replacing "Initial applications" with "Application", and the fourth sentence of § 200.107 is amended by deleting "initial".

Par. 25. The first clause of 200.108 is revised to remove references to renewal applications. As amended, the first clause of § 200.108 reads as follows:

§ 200.108 Suspension, revocation, or annulment proceedings.

Upon receipt of the complete certified record of the hearing the regional director (compliance) shall enter an order suspending, revoking, or annulling the permit (Form 1430-B) or dismissing the proceedings in accordance with the administrative law judge's findings and decision, * * *

§ 200.109 [Amended]

Par. 26. Section 200.109 is amended by deleting "or disapproving a renewal application" from the first sentence.

§ 200.115 [Amended]

Par. 27. Section 200.115 is amended by deleting "disapproving a renewal application and" and "initial" from the second sentence.

§ 200.116 [Amended]

Par. 28. Section 200.116 is amended by deleting "initial" from the second sentence.

§ 200.117 [Amended]

Par. 29. Section 200.117 is amended by replacing "annulment, or renewal application" with "or annulment" in the first sentence, and by deleting the last sentence.

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Section G. Part 250 is amended as follows:

Paragraph 1. The table of sections for Part 250 is amended to reflect the removal of §§ 250.36a, 250.36b, and 250.201b, and to reflect the revision of Subparts Ia and O.

Sec.

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250.36 * * *

250.36c * * *

* * * * *

Subpart Ia—Shipment of Denatured Spirits and Products Made With Denatured Spirits to the United States From Puerto Rico

250.191 Notice of shipment.

250.192 Samples and analysis.

250.193 Notification of tax liability.

250.194 Detention of articles.

Subpart Ib * * *

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250.201a * * *
250.201c * * *

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Subpart O—Tax-Free Shipments to the United States From the Virgin Islands

250.291 General.

Shipment of Industrial Spirits and Specially Denatured Spirits

250.292 Copy of consignee's permit under Part 20 or 22.
250.293 Marks on containers.
250.294 Record of shipment.

Shipment of Completely Denatured Alcohol and Products Made with Denatured Spirits

250.295 Marks on containers.
250.296 Record of shipment.

Arrival in the United States

250.297 General.

* * * * *

Par. 2. The authority citation for Part 250 is revised to read as follows:

Authority: August 16, 1954, Ch. 736, 68A Stat. 906–907, as amended, 917, as amended (26 U.S.C. 7651–7652, 7805); Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5314), unless otherwise noted.

Par. 3. Section 250.36 is revised to provide for bringing industrial spirits, denatured spirits, and products made with denatured spirits into the United States from Puerto Rico with equal tax treatment for similar products made in the United States. As revised, § 250.36 reads as follows:

§ 250.36 Products exempt from tax.

(a) *General.* Industrial spirits, denatured spirits, and products made with denatured spirits in Puerto Rico may be brought into the United States without incurring tax liability imposed by 26 U.S.C. 5001 or 7652.

(b) *Industrial spirits.* A distiller of industrial spirits who registers and files a bond as a distilled spirits plant in accordance with Part 19 of this chapter may ship industrial spirits to a tax-free alcohol user in the United States who holds a permit under Part 22 of this chapter. These shipments shall be made in accordance with the requirements of Parts 19 and 22 of this chapter.

(c) *Denatured spirits.* A distiller who registers and files a bond as a distilled spirits plant in accordance with Part 19 of this chapter and who denatures spirits in accordance with Parts 19 and 21 of this chapter may ship (1) completely denatured alcohol to anyone in the United States, and/or (2) specially denatured spirits to a dealer or user of specially denatured spirits in the United States or Puerto Rico who holds a permit under Part 20 of this chapter. These shipments shall be made in accordance with the requirements of Parts 19 and 20 of this chapter, and Subpart Ia of this part.

(d) *Products made with denatured spirits.* (1) A person in Puerto Rico who manufactures products with completely denatured alcohol in accordance with the requirements of Part 20 of this chapter may ship those products to the United States in accordance with the requirements of Part 20 of this chapter, and Subpart Ia of this part.

(2) A person in Puerto Rico who manufacturers products with specially denatured spirits may ship those products to the United States if that person (i) obtains a permit to use specially denatured spirits under Part 20 of this chapter, and (ii) complies with the requirements of Part 20 of this chapter and Subpart Ia of this part relating to the manufacture and shipment of those products.

§ 250.36a and 250.36b [Removed]

Par. 4. Sections 250.36a and 250.36b are removed because they are made obsolete by the above revision of § 250.36.

Par. 5. Paragraphs (b) and (c) of § 250.51 are revised to reflect new regulations in Part 20 and the new form number of a Government form. As revised, § 250.51 (b) and (c) read as follows:

§ 250.51 Formulas for articles and products manufactured with denatured spirits.

* * * * *

(b) *Formulas for products manufactured with denatured spirits.* Products manufactured with denatured spirits shall be manufactured in accordance with the formula requirements of Part 20 of this chapter for similar products made in the United States.

(1) Products may be made with completely denatured alcohol for sale under brand names under Part 20 of this chapter without obtaining an approved formula. If ingredients are added in sufficient quantities to materially change the composition and character of the completely denatured alcohol, the product is not classified as completely denatured alcohol and may not be marked, branded, or sold as completely denatured alcohol.

(2) Products made with specially denatured spirits shall be made in accordance with (i) a general-use formula approved as provided in Part 20 of this chapter, or (ii) an approved formula on Form 5150.19, or previously approved on ATF Form 1479–A or 27–B Supplemental.

(c) *Form 5150.19.* Formulas required by this section shall be submitted on Form 5150.19 in accordance with § 250.54.

Par. 6. Subpart Ia is revised to provide for equal tax treatment by eliminating procedural requirements which exceed the requirements of Parts 19, 20, and 21 relating to manufacture and shipment of denatured spirits and products made with denatured spirits. However, oversight by the chemist of the Secretary of the Treasury of Puerto Rico is retained so that the Treasury of Puerto Rico can ensure that products shipped tax-exempt are qualified for tax-exempt status. As revised, Subpart Ia reads as follows:

Subpart Ia—Shipment of Denatured Spirits and Products Made With Denatured Spirits to the United States From Puerto Rico

Sec.
250.191 Notice of shipment.
250.192 Samples and analysis.
250.193 Notification of Tax liability.
250.194 Detention of articles.

Subpart Ia—Shipment of Denatured Spirits and Products Made With Denatured Spirits to the United States From Puerto Rico

§ 250.191 Notice of shipment.

At least 5 business days before shipment, each proprietor of a distilled spirits plant in Puerto Rico who intends to ship denatured spirits to the United States in containers larger than 5 gallons, and each permittee in Puerto Rico who intends to ship products made with denatured spirits to the United States in containers larger than 5 gallons shall notify the chemist of the Treasury of Puerto Rico of the intent to ship.

(Approved by the Office of Management and Budget under control number 1512–0330)

§ 250.192 Samples and analysis.

The chemist of the Treasury of Puerto Rico may take samples of the product to be shipped in order to determine that it is eligible for tax-free status.

§ 250.193 Notification of tax liability.

(a) If the chemist of the Treasury of Puerto Rico finds that denatured spirits or products made with denatured spirits are not eligible for tax-free shipment, before the shipment is made, the chemist will immediately notify the shipper that the article is subject to tax, payable in accordance with §§ 250.107 through 250.110.

(b) If the chemist of the Treasury of Puerto Rico finds that denatured spirits or products made with denatured spirits are not eligible for fax-free shipment, after the shipment is made, the chemist

will immediately notify the shipper that the tax shall be paid immediately in accordance with § 250.113. The chemist will also notify the regional director (compliance) of the consignee's region.

§ 250.194 Detention of articles.

(a) Upon receiving a notification in accordance with § 250.193(b), the regional director (compliance) will detain the article in accordance with Part 20 of this chapter or seize the article in accordance with Part 72 of this chapter.

(b) After the shipper furnishes proof that the tax was paid in accordance with § 250.113, the regional director (compliance) will release the article to the consignee.

Par. 7. Section 250.201 is revised to provide for bringing industrial spirits, denatured spirits, and products made with denature spirits into the United States from the Virgin Islands with equal tax treatment for similar products made in the United States. As revised, § 250.201 reads as follows:

§ 250.201 Products exempt from tax.

(a) *General.* Industrial spirits, denatured spirits, and products made with denatured spirits in the Virgin Islands may be brought into the United States without incurring tax liability imposed by 26 U.S.C. 5001 or 7652.

(b) *Industrial spirits.* A distiller of industrial spirits who qualifies under regulations issued by the Governor of the Virgin Islands may ship industrial spirits to a tax-free alcohol user in the United States who holds a permit under Part 22 of this chapter. Shipments shall be made in accordance with the requirements of Subpart O of this part.

(c) *Denatured spirits.* A distiller who qualifies under the regulations issued by the Governor of the Virgin Islands and who denatures spirits in accordance with Part 21 of this chapter may ship (1) completely denatured alcohol to anyone in the United States, and/or (2) specially denatured spirits to a dealer or user of specially denatured spirits in the United States or Puerto Rico who holds a permit under Part 20 of this chapter. Shipments shall be made in accordance with the requirements of Subpart O of this part.

(d) *Products made with denatured spirits.* A person in the Virgin Islands who manufactures products with completely denatured alcohol or specially denatured spirits in accordance with the requirements of Part 20 of this chapter and regulations issued by the Governor of the Virgin Islands may ship those products to the United States in accordance with the requirements of Subpart O of this part.

§ 250.201b [Removed]

Par. 8. Section 250.201b is removed because it is made obsolete by the above revision of § 250.201.

Par. 9. Paragraphs (b) and (c) of 250.221 are revised to reflect new regulations in Part 20 and the new form number of a Government form. As revised, § 250.221 (b) and (c) read as follows:

§ 250.221 Formulas for articles and products manufactured with denatured spirits.

* * * * *

(b) *Formulas for products manufactured with denatured spirits.* Products manufactured with denatured spirits shall be manufactured in accordance with the formula requirements of Part 20 of this chapter for similar products made in the United States.

(1) Products may be made with completely denatured alcohol for sale under brand names under Part 20 of this chapter without obtaining an approved formula. If ingredients are added in sufficient quantities to materially change the composition and character of the completely denatured alcohol, the product is not classified as completely denatured alcohol and may not be marked, branded, or sold as completely denatured alcohol.

(2) Products made with specially denatured spirits shall be made in accordance with (i) a general-use formula approved as provided in Part 20 of this chapter, or (ii) an approved formula on Form 5150.19, or previously approved on ATF Form 1479–A or 27–B Supplemental.

(c) *Form 5150.19.* Formulas required by this section shall be submitted on Form 5150.19 in accordance with § 250.224.

Par. 10. Subpart O is revised to provide equal tax treatment by adding procedural requirements prescribed in Parts 19, 20, 21 and 22 relating to manufacture and shipment of industrial spirits, denatured spirits and products made with denatured spirits in the United States, and by eliminating procedural requirements which exceed the requirements for those products made in the United States. As revised, Subpart O reads as follows:

Subpart O—Tax-Free Shipments to the United States From the Virgin Islands

Sec.

250.291 General.

Shipment of Industrial Spirits and Specifially Denatured Spirits

250.292 Copy of consignee's permit under Part 20 or 22.
250.293 Marks on containers.
250.294 Record of shipment.

Shipment of Completely Denatured Alcohol and Products Made With Denatured Spirits

250.295 Marks on containers.
250.296 Record of shipment.

Arrival in the United States

250.297 General.

Subpart O—Tax-Free Shipments to the United States From the Virgin Islands

§ 250.291 General.

(a) Industrial spirits may be shipped into the United States to the holder of a permit under Part 22 of this chapter, in accordance with § 250.292 through 250.294 and regulations issued by the Governor of the Virgin Islands.

(b)(1) Specially denatured spirits may be shipped into the United States to the holder of a permit under Part 20 of this chapter, in accordance with §§ 250.292 through 250.294 and regulations issued by the Governor of the Virgin Islands.

(2) Completely denatured alcohol may be shipped to anyone in the United States in accordance with §§ 250.295 through 250.296 and regulations issued by the Governor of the Virgin Islands.

(3) Denatured spirits shall be denatured in accordance with Part 21 of this chapter and regulations issued by the Governor of the Virgin Islands.

(c) Products made with denatured spirits may be shipped to anyone in the United States in accordance with §§ 250.295 through 250.296 and regulations issued by the Governor of the Virgin Islands. These products are also subject to the requirements of § 250.221 of this part.

Shipment of Industrial Spirits and Specially Denatured Spirits

§ 22.292 Copy of consignee's permit under Part 20 or 22.

The consignor or consignee shall file a copy of the consignee's permit issued under Part 20 of this chapter (for shipments of specially denatured spirits) or Part 22 of this chapter (for shipments of industrial spirits) with the district director of customs of the port of entry. The copy of the permit shall be adequate evidence that the consignee is authorized to enter industrial spirits or specially denatured spirits free of tax.

§ 250.293 Marks on containers.

(a) *Industrial spirits.* The shipper shall mark or label each immediate container of industrial spirits with the following information:

(1) The name or trade name of the distiller or shipper;

(2) The words "Virgin Islands Industrial Spirits";

(3) A package identification number as required by Subpart R of Part 19 of this chapter;

(4) The date filled;

(5) Proof; and

(6) Quantity in proof gallons.

(b) *Specially denatured spirits.* The shipper shall mark or label each immediate container of specially denatured spirits with the following information:

(1) Quantity, in gallons, or in liters and gallons;

(2) A serial number or package identification number;

(3) Name and address of shipper;

(4) The words "Virgin Islands Specially Denatured Alcohol" or "Virgin Islands Specially Denatured Rum," as appropriate;

(5) Formula number prescribed by Part 21 of this chapter;

(6) Proof, if the spirits were denatured at other than 190 proof;

(7) Denaturants used, if spirits were denatured under an approved formula authorizing a choice of denaturants; and

(8) Quantity of denaturant used, if the approved formula authorizes a choice of quantities of denaturants.

§ 250.294 Record of shipment.

(a) Each shipment of industrial spirits or specially denatured spirits from the Virgin Islands to the United States shall be accompanied by a record of shipment. The record of shipment shall consist of an invoice, bill of lading or similar document which shows the following information:

(1) Consignor's name and address;

(2) Consignee's name, address, and permit number;

(3) For each formula of specially denatured spirits—

(i) The formula number prescribed by Part 21 of this chapter,

(ii) The serial numbers or package identification numbers of containers, and

(iii) The total quantity in wine gallons;

(4) For industrial spirits—

(i) The package identification numbers of containers, and

(ii) The total quantity in proof gallons.

(b) The record of shipment shall be made available to custom officers inspecting the shipment.

(Records relating to industrial spirits approved by the Office of Management and Budget under control number 1512-0334; records relating to specially denatured spirits approved by the Office of Management and Budget under control number 1512-0337)

Shipment of Completely Denatured Alcohol and Products Made With Denatured Spirits

§ 250.295 Marks on containers.

(a) *Completely denatured alcohol.* (1) For each immediate container of completely denatured alcohol with a capacity exceeding 1 gallon, the shipper shall mark or label on the head or side of the package or on the side of the casing, the following:

(i) The name and address of the person filling the container;

(ii) The contents in gallons;

(iii) The words "Virgin Islands Completely Denatured Alcohol"; and

(iv) The formula number prescribed by Part 21 of this chapter.

(2) In addition, if the container has a capacity of 5 gallons or less, the words "Completely Denatured Alcohol" shall be in red letters on white background, and the label shall also have the words "Caution—contains poisonous ingredients" in red letters on white background.

(b) *Products made with denatured spirits.* The shipper shall mark or label each immediate container of a product made with denatured spirits with the name, trade name or brand name of the product and the name and address of the shipper.

§ 250.296 Record of shipment.

(a) Each shipment of completely denatured alcohol or products made with denatured spirits shall be accompanied by a record of shipment. The record of shipment shall consist of an invoice, bill of lading or similar document which shows the following information:

(1) Consignor's name and address;

(2) Consignee's name and address;

(3) Capacity and number of containers;

(4) Total quantity shipped; and

(5)(i) For completely denatured alcohol, the words "Virgin Islands Completely Denatured Alcohol" and the formula number prescribed by Part 21 of this chapter, or

(ii) For products made with denatured spirits, the name, trade name or brand name of the product.

(b) The record of shipment shall be made available to customs officers inspecting the shipment.

(Approved by the Office of Management and Budget under control number 1512-0337)

Arrival in the United States

§ 250.297 General.

The district director of customs shall inspect each shipment of industrial spirits, specially denatured spirits, completely denatured alcohol, and products made with denatured spirits coming into the United States from the Virgin Islands. If the shipment complies with the requirements of this part, the products may be released free of tax.

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES AND BEER

Section H. Part 251 is amended as follows:

Paragraph 1. The table of sections for Part 251 is amended to reflect the revision of Subpart M.

Sec.

* * * * *

Subpart M—Withdrawal of Imported Distilled Spirits From Customs Custody Free of Tax For Use of the United States

251.181 General.
251.182 Application and Permit, Form 5150.33.
251.183 Use of permit, Form 5150.33.
251.184 Entry documents.
251.185 Customs release.

Subpart N * * *

* * * * *

Par. 2. Subpart M of Part 251 is revised to read as follows:

Subpart M—Withdrawal of Imported Distilled Spirits From Customs Custody Free of Tax For Use of the United States

§ 251.181 General.

(a) The United States or any of its Government agencies may, upon filing proper customs entry, withdraw imported distilled spirits free of tax from customs custody, as authorized by 26 U.S.C. 5313 and under the provisions of this subpart. Before any distilled spirits may be withdrawn, a permit to procure the spirits shall be obtained from the Director. A bond is not required for any Government agency to procure and withdraw spirits free of tax under this subpart.

(b) The provisions of Subpart N of Part 22 of this chapter cover the withdrawal of domestically produced tax-free spirits for use of the United States or any of its Government agencies.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1372, as amended, 1375, as amended (26 U.S.C. 5273, 5313))

§ 251.182 Application and Permit, Form 5150.33.

(a) *General.* All permits previously issued to the United States or any of its Government agencies on Form 1444 shall remain valid and will be regulated by the same provisions of this subpart as it refers to permits on Form 5150.33.

(b) *Application.* (1) A Government agency of the United States shall apply to the Director for a permit to procure and withdraw spirits free of tax on Form 5150.33. Upon approval by the Director, Form 5150.33 will be returned to the agency.

(2) If a Government agency intends to withdraw spirits free of tax under this part and Part 22 of this chapter, Form 5150.33 may be annotated to cover both types of withdrawals.

(3) A separate permit is not required for each port of entry. The application, Form 5150.33, may be completed to indicate the applicable ports of entry in which spirits will be withdrawn from customs custody.

(4) A Government agency may specify on its application that it desires a single permit authorizing all sub-agencies under its control to procure and withdraw spirits free of tax under this subpart and Subpart N of Part 22 of this chapter; or, each Government location may individually file an application for a permit, Form 5150.33.

(5) Each application for a permit shall be signed by the head of the agency or sub-agency, or the incumbent of an office which is authorized by the head of the agency or sub-agency, to sign. Evidence of authorization to sign on behalf of the head of an agency or sub-agency shall be furnished with the application.

(c) *Use of spirits.* Spirits withdrawn under this subpart may not be used for non-Government purposes.

(d) *Cancellation of permit.* All permits on Form 5150.33 and previous editions on Form 1444 shall remain in force until surrendered or canceled. Upon surrender or cancellation, the Government agency shall obtain and destroy all photocopies of the permit furnished to district directors of customs, and forward the original to the Director for cancellation.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

§ 251.183 Use of permit, Form 5150.33.

Each Government agency shall retain the original of its permit, Form 5150.33, on file. When filing an initial customs entry to withdraw spirits free of tax from a port of entry, the agency shall furnish a photocopy of its permit to the district director of customs for retention. In the case of an agency holding a single permit for use of its sub-agencies, an attachment to the permit shall list all locations authorized to withdraw spirits free of tax from customs custody. Any subsequent requests for customs entry from the same port shall refer to the permit number.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

§ 251.184 Entry documents.

Entry documents for importation of tax-free spirits under this subpart shall record the serial numbers or other identifying numbers of the containers and the total quantity in proof gallons of the spirits to be entered.

§ 251.185 Customs release.

(a) Upon receipt of appropriate customs entry and a photocopy of a permit, Form 5150.33 or previous editions on Form 1444 (5150.33), the district director of customs shall, following an inspection of the shipment, release spirits free of tax to the Government agency named on the permit, or an attachment thereto.

(b) Customs officers shall not release spirits for shipment until the shipment has been inspected for losses in transit. If it appears that a container or containers have sustained losses in transit, the customs officers shall gauge the damaged container and prepare a package gauge record for the entire shipment, according to § 251.139. A copy of the package gauge record will be retained for the customs files and the original forwarded to the consignee agency.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

PART 252—EXPORTATION OF LIQUORS

Section I. Part 252 is amended as follows:

Paragraph 1. The table of sections for Part 252, Subpart C, is amended to reflect the addition of § 252.20.

Sec.

* * * * *

Subpart C—Miscellaneous Provisions

252.20 Alternate methods or procedures; and emergency variations from requirements.

* * * * *

Par. 2. Section 252.3 is revised by removing "27 CFR Part 211—Distribution and Use of Denatured Alcohol and Rum" because it is not related to Part 252. As revised, § 252.3 reads as follows:

§ 252.3 Related regulations.

Regulations related to this part are listed below:

19 CFR Chapter I—Customs Regulations.
27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.
27 CFR Part 4—Wine Labeling and Advertising.
27 CFR Part 19—Distilled Spirits Plants.
27 CFR Part 21—Formulas for Denatured Alcohol and Rum.
27 CFR Part 30—Gauging Manual.
27 CFR Part 194—Liquor Dealers.
27 CFR Part 231—Taxpaid Wine Bottling Houses.
27 CFR Part 240—Wine.
27 CFR Part 245—Beer.
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

§ 252.11 [Amended]

Par. 3. The definition of *Specially denatured spirits* in § 252.11 is amended by replacing "Part 212" with "Part 21".

Par. 4. Subpart C is amended by adding § 252.20 immediately preceding the undesignated center head "Withdrawal or Lading for Use on Certa in Vessels and Aircrafts." As added, § 252.20 reads as follows:

Subpart C—Miscellaneous Provisions

§ 252.20 Alternate methods or procedures; and emergency variations from requirements.

(a) *Alternate methods or procedures.*—(1) *Application.* An exporter, after receiving approval from the Director, may use an alternate method or procedure (including alternate construction or equipment) in lieu of a method or procedure prescribed by this part. An exporter wishing to use an alternate method or procedure may apply to the regional director (compliance). The exporter shall describe the proposed alternate method or procedure and shall set forth the reasons for its use.

(2) *Approval by Director.* The Director may approve the use of an alternate method or procedure if:

(i) The applicant shows good cause for its use;

(ii) It is consistent with the purpose and effect of the procedure prescribed by this part, and provides equal security to the revenue;

(iii) It is not contrary to law; and

(iv) It will not cause an increase in cost to the Government and will not hinder the effective administration of this part.

(3) *Exceptions.* The Director will not authorize an alternate method or procedure relating to the giving of a bond or the payment of tax.

(4) *Conditions of approval.* An exporter may not employ an alternate method or procedure until the Director has approved its use. The exporter shall, during the terms of the authorization of an alternate method or procedure, comply with the terms of the approved application.

(b) *Emergency variations from requirements.*—(1) *Application.* When an emergency exists, an exporter may apply to the regional director (compliance) for a variation from the requirements of this part relating to construction, equipment, and methods of operation. The exporter shall describe the proposed variation and set forth the reasons for using it.

(2) *Approval by regional director (compliance).* The regional director (compliance) may approve an emergency variation from requirements if:

(i) An emergency exists;

(ii) The variation from the requirements is necessary;

(iii) It will afford the same security and protection to the revenue as intended by the specific regulations;

(iv) It will not hinder the effective administration of this part; and

(v) It is not contrary to law.

(3) *Conditions of approval.* An exporter may not employ an emergency variation from the requirements until the regional director (compliance) has approved its use. Approval of variations from requirements are conditioned upon compliance with the conditions and limitations set forth in the approval.

(4) *Automatic termination of approval.* If the exporter fails to comply in good faith with the procedures, conditions or limitations set forth in the approval, authority for the variation from requirements is automatically terminated and the exporter is required to comply with prescribed requirements of regulations from which those variations were authorized.

(c) *Withdrawal of approval.* The Director may withdraw approval for an alternate method or procedure, or the regional director (compliance) may withdraw approval for an emergency variation from requirements, approved under paragraph (a) or (b) of this section, if the Director or the regional director (compliance) finds the revenue is jeopardized or the effective administration of this part is hindered by the approval.

(Act of August 16, 1954, Ch. 736, 68A Stat. 917 (26 U.S.C. 7805); Sec. 201, Pub. L. 85-859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

Signed,

Stephen E. Higgins,

Director.

Approved,

November 26, 1984.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-5136 Filed 3-5-85; 8:45 am]

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federal register

Wednesday
March 6, 1985

Part III

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks; Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-2760-4]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is proposing the generic aspects of a nonconformance penalty (NCP) rule. The NCP would allow a manufacturer of heavy-duty engines (HDEs) or heavy-duty vehicles (HDVs) whose engines or vehicles fail to conform with certain applicable emission standards, but which do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty. An "upper limit" is an emission level, established by regulation and appropriate to a specific pollutant, above which an HDE or HDV could not be issued a certificate.

This rule proposes the criteria for the availability of NCPs, the method of establishing upper limits, a testing program called Production Compliance Auditing (PCA), a penalty formula to determine the dollar amount of the NCP and other general aspects of an NCP rule. Specific upper limits and penalty rates to be used in the proposed penalty formula will be proposed in a separate rulemaking following completion of the generic NCP rulemaking.

This proposal is the result of an experimental rulemaking process called Regulatory Negotiation, the concept of which is to allow the parties interested in or affected by the outcome of the proposed rule an opportunity to participate in its development through face-to-face negotiations. This proposal is based upon the consensus that was reached during the Regulatory Negotiation process. This is EPA's first proposal under this new regulatory process.

Regulations affected by this rulemaking are condified in Subparts A, K and L of 40 CFR Part 86.

DATES: *Public Hearing:* EPA will hold a public hearing on this Notice on March 25, 1985 beginning at 9:00 a.m., provided that it is requested. Any person desiring to request the hearing must notify the Agency by March 18, 1985. If the hearing is not requested, it will be cancelled by a separate notice in the **Federal Register**. To request the hearing or to verify whether it is being held or not, contact the EPA contact listed below. Any person desiring to participate in the hearing should, to the extent possible, notify the EPA contact listed below of his or her intention, along with an outline of the points to be discussed and the time needed to discuss these points prior to the hearing. Pursuant to section 307 of the Clean Air Act, the record of the hearing, if held, will be kept open for 30 days following its conclusion to provide an opportunity for submission of rebuttal and other information.

Public Comments: All comments should be received on or before April 5, 1985 or within 30 days following the conclusion of the public hearing, if held, whichever is later. If the hearing is not requested, it will be cancelled by a separate notice in the **Federal Register** and all comments should be received on or before April 5, 1985.

ADDRESSES: The hearing will take place in the conference room at the EPA Motor Vehicle Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI, 48105.

Send written comments to: Public Docket EN-85-02, Central Docket Section [A-130], Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. If possible, a copy of the written comments should be submitted to the EPA contact listed below.

Public Docket: Copies of materials relevant to this rulemaking proceeding are contained in Public Docket EN-85-02 at the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby/Gallery 1, 401 M Street, SW., Washington, D.C., 20460, and are available for review between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Montgomery or Mr. Claude Magnuson, Manufacturers Operations Division (En-340F), Environmental Protection Agency, 401 M Street SW., Washington, D.C., 20460, Telephone: (202) 382-2500 or (202) 382-2547.

SUPPLEMENTARY INFORMATION

A. Statutory Authority

Section 206(g) of the Clean Air Act requires EPA to issue certificates of conformity to any class or category of heavy-duty vehicles or engines which exceeds a section 202(a) emissions standard, but does not exceed an upper limit associated with that standard, if the manufacturer pays a nonconformance penalty (NCP) established by rulemaking. In placing section 206(g) in the Clean Air Act amendments of 1977, Congress intended NCPs as a response to perceived problems with technology-forcing heavy-duty emissions standards.[1] Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause. If strict standards were maintained, then some manufacturers (technological laggards) might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem; the laggards would have a temporary alternative to permit them to sell their engines or vehicles through payment of a penalty, yet leaders would not suffer an economic disadvantage compared to nonconforming manufacturers, because the NCP would be based on the amount of money the laggard and his customer saved from the nonconforming engine or vehicle.

Under section 206b(g)(1), NCPs may be offered for heavy-duty vehicles (HDVs) and heavy-duty engines (HDEs), which are engines to be installed in heavy-duty vehicles. HDVs are defined by section 202(b)(3)(C) as vehicles in excess of 6000 pounds gross vehicle weight (GVW). They include the part of the light-duty truck (LDT) class between 6001 and 8500 pounds GVW—the heavy light-duty trucks. The penalty may vary by pollutant and by class or category of vehicle or engine.

Section 206(g)(3) requires NCPs to be designed so as to:

- Increase with the degree of emission nonconformity;
- Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards;
- Remove any competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level on which the penalty is based. This emission level, the "compliance level," becomes the benchmark for warranty and recall liability; the manufacturer who elects the NCP may be responsible for warranty or recall liability if its vehicle or engine exceeds the compliance level in-use. It would not have in-use warranty or recall liability for emissions

[1] The existence of NCPs, however, will not change the criteria under which the standards have been and will be set under section 202.

levels above the standard but below the compliance level.

However, when the emission level of a vehicle or engine exceeds the upper limit of nonconformity, the vehicle or engine would not qualify for an NCP under section 206(g) and no certificate of conformity could be issued to the manufacturer.

B. Previous EPA Rulemakings Regarding Heavy-Duty Engine and Light-Duty Truck NCPs

NCPs were previously proposed by EPA in two separate rulemakings. An NCP system was originally proposed in the Gaseous Emission Regulations for 1983 and Later Model Year Heavy-Duty Engines Notice of Proposed Rulemaking (44 FR 9464, February 13, 1979). A generic NCP formula was proposed, based on the marginal cost of bringing a "typical" HDE into compliance when its emissions are in the allowable range of nonconformity (not in excess of the upper limit). Also proposed was a system of Production Compliance Auditing (PCA) to measure the compliance levels of vehicles and engines which may qualify for NCPs. The notice stated that the proposed hydrocarbon (HC) and carbon monoxide (CO) emission standards for HDEs could probably be achieved by all manufacturers, so that upper limits would be set equal to the proposed standards, and NCPs would not be offered for those standards. A similar NCP/PCA system was outlined in the Gaseous Emission Regulations for 1983 and Later Model Year Light-Duty Trucks NPRM (44 FR 40784, July 12, 1979), but again, specific NCPs were not proposed.

The final rules for the HC and CO standards for both HDEs and LDTs stated that NCPs would be offered as part of a separate rulemaking to provide for isolated instances where compliance was not achieved. However, in April, 1981, the Administration announced a number of regulatory relief initiatives aimed at reducing the impact of government regulations on the automotive industry. One element of this program included the proposed revision of HC and CO emission standards so that catalysts would not be required for heavy-duty gasoline engines. Thus, NCPs were not offered for the final standards, as revised in 1983 (48 FR 1413, 1424, January 12, 1983), since the Agency believed manufacturers could generally comply with the revised standards. However, NCPs may be necessary for some future emissions standards, such as the oxides of nitrogen (NO_x) and particulate standards which have been proposed for 1987 (49 FR 40258, October 15, 1984), or for previously promulgated standards if future standards for other pollutants makes compliance with existing standards more difficult.

C. Generic Rule

This notice of proposed rulemaking (NPRM) is the beginning of the generic phase (Phase I) of the current NCP rulemaking. During this generic phase, EPA will publish regulations concerning when NCPs will be made available for emissions standards, how upper limits will be chosen, the general formula for calculating the penalties, and procedures for testing the degree of emissions nonconformity. During the second phase of the NCP rulemaking (Phase II), EPA will apply the Phase I concepts to determine particular emissions standards for which NCPs will be available, specific upper limits, and numerical values for the variables in the penalty rate formula for particular subclasses of engines.

The U.S. District Court for the District of Columbia in *Natural Resources Defense Council* v. *Ruckelshaus*, No. 84-758 (D.D.C. Sept. 14, 1984), ordered EPA to publish the proposed rule for Phase I by March 15, 1985, and the final regulations by August 31, 1985, the same date by which the Agency must publish the NPRM for Phase II of the rulemaking proceeding. EPA must publish the final rule for Phase II by December 31, 1985.

D. Regulatory Negotiation

This proposal is a result of an experimental rulemaking process called Regulatory Negotiation, which allows the parties interested in or affected by the outcome of the proposed rule an opportunity to participate in the rule's development through face-to-face negotiations. This proposal is based upon the consensus that was reached during the Regulatory Negotiation process. This is EPA's first proposal under this new regulatory process.

The negotiations were conducted under a Federal Advisory Committee charter. The first meeting of the Committee was on June 14, 1984 and the final meeting was on October 12, 1984. Committee meetings were open to the public and were noticed in the **Federal Register.**

Participants in the negotiations included heavy-duty vehicle and engine manufacturers, representatives of state air pollution control programs, an environmental organization, industry trade associations, an emission control equipment manufacturer association and the Environmental Protection Agency. (Following this preamble is a list of organizations that participated.)

E. Availability Criteria

NCPs need not necessarily be made available every time EPA promulgates or revises an emissions standard for HDVs or HDEs. This generic rule proposes three conditions that must be met before NCPs become available: An emission standard must become more difficult to meet; EPA must find that substantial work is necessary to meet the standard; and EPA must determine that there is likely to be a technological laggard.

Congress intended that EPA limit the availability of NCPs to situations where technological laggards are likely to develop In section 202(a)(3)(A) of the 1977 amendments to the Clean Air Act, Congress required that substantial reductions be made from uncontrolled emissions levels of HC, CO, and NO_x, because it was concerned that heavy-duty emission standards had been too lenient. Congress did allow EPA to revise these statutory standards under certain circumstances, so long as they were set on the basis of the emissions control capability of the technological leaders. One purpose of section 206(g) was to avoid, at least temporarily, the problem of technological laggards being driven out of the market because of their inability to meet technology-forcing emissions standards. Thus, the existence of NCPs presupposes the existence of a potential laggard.

This interpretation is consistent with both the language of the statute and its legislative history. Section 206(g)(1) says that NCPs shall be available "in the case of any . . . heavy duty vehicles or engines to which a standard promulgated under section 202(a) applies. "Availability of NCPs is limited by section 206(g)(2), however, to situations where the vehicle or engine's emissions do not exceed "the percentage determined . . . to be practicable," i.e., an upper limit. Congress expected that most laggards would meet the upper limit, according to the 1977 House Report discussing section 206(g). H.R. Rep. No. 95-294, 95th Cong. 1st Sess. 275 (1977). The Senate concurred in the House Report's explanation of NCPs. Conference Report, H.R. Rep. No. 95-564, 95 Cong., 1st Sess. 163 (1977). It follows that the upper limit should be set at a level achievable by most laggards. Conversely, if laggards are not anticipated, then an upper limit may be set equal to the standard and NCPs need not be offered. Therefore, NCPs should be available only when there is a likelihood that a new or revised standard might cause a technological laggard to exist.

The three conditions that must be met before EPA will make an NCP available are consistent with Congress' intention. The first condition is that an emissions standard becomes more difficult to meet. This condition creates the possibility for a technological laggard to exist. There may be some cases where a standard will become more difficult to meet even though it has not changed, because another standard has become more stringent. For instance, under certain circumstances, compliance with a more stringent NO_x standard might adversely affect the capability of a diesel engine to meet an existing HC standard. Therefore, the subclass subject to the HC standard might be eligible for an NCP.

The second condition is that substantial work be required in order to comply. Substantial work may be defined as the application of technology not previously used in that engine class or subclass or the significant modification of existing technology or design parameters needed to bring the vehicle or engine into compliance. When manufacturers must perform substantial work, it is possible that at least one will be unsuccessful and will become a laggard.

Third, EPA must find that there is likely to be a technological laggard. Even when a standard becomes more stringent (or there is an adverse effect on a previously attainable standard), and even when manufacturers must perform substantial work, all manufacturers may still be able to meet the more stringent standard. For instance, compliance with a standard may involve merely the transference of technology from a similar application. Thus, EPA must make a determination whether the circumstances will likely give rise to a laggard.

In Phase II, EPA will determine those emissions standards and those subclasses of HDEs and HDVs for which NCPs should be available. EPA will make these decisions for the two light-duty truck subclasses, heavy light-duty gas trucks (6,001–8,500 pounds gross vehicle weight) and heavy light-duty diesel trucks (6,100–8,500 GVW); the two heavy-duty gas engine subclasses, light heavy-duty gas engines (8,501–14,000 GVW) and heavy heavy-duty gas engines (over 14,000 GVW); and the three heavy-duty diesel engine subclasses, light heavy-duty diesel engines (e.g. pickups, delivery, and recreational vehicles), medium heavy-duty diesel engines (e.g. short haul intra-city vehicles); and heavy heavy-duty diesel engines (e.g. long haul inter-city vehicles). [The diesel HDE subclasses are more fully defined at 40 CFR 86.085–2.] EPA may further divide these classifications. This specification of eligible subclasses, which is adapted from the NCP negotiated consensus document, lists only engine subclasses above 8,500 GVW. Although evaporative emissions standards apply only to vehicle, not engine, subclasses, *see* 40 CFR 86.085–10(b), the Agency intends to offer evaporative NCPs for vehicles in excess of 8,500 GVW, and believes that that would be consistent with the consensus document. EPA requests interested parties to comment on this issue. EPA is considering whether to make NCPs available for those vehicles which certify as HDVs on the basis of vehicle frontal area and which have a gross vehicle weight rating of 6,000 pounds or less, or those engines which are classified as HDEs because they are expected to be used for motive power in such an HDV. Under EPA's regulations (40 CFR 86.082–2), vehicles can qualify as HDVs if they have a vehicle frontal area in excess of 45 square feet, but to the extent that such vehicles do not exceed a gross vehicle weight rating of 6,000 pounds, they would not seem to qualify as HDVs under the Act (section 202(b)(3)(C)), and thus may not be eligible for NCPs. EPA requests comments on this issue.

Once EPA makes NCPs available for any subclass or other group, they may be used by any manufacturer for its vehicles or engines in that category, with the exception of vehicles or engines imported under 40 CFR Part 85, Subpart P. When a manufacturer decides to pay an NCP, no judgments will be made about whether the manufacturer is motivated by economic rather than technological reasons. The penalty formula, as discussed below, has been designed to remove the economic advantage for nonconformance and, by doing so, obviates the need for making difficult determinations of subjective intent.

If NCPs are appropriate, they will generally be made available concurrent with a promulgation or revision of emission standards. However, when this is not feasible or appropriate, the NCPs will be published subsequent to the promulgation of the standards.

F. Upper Limits

An upper limit is an emission level, established by regulation, appropriate to a specific HDE or HDV pollutant above which an HDE or HDV configuration cannot be certified or introduced into commerce. This provision prevents the introduction into commerce of grossly polluting engines or vehicles. Section 206(g)(2) of the Clean Air Act refers to the upper limit as a percentage above the emission standard, set by regulation, that corresponds to an emission level EPA determines to be "practicable."

EPA intends to set each upper limit at an emission level that should be achievable by all manufacturers, including technological laggards. When an emission standard is changed and becomes more stringent than the prior emission standard, EPA proposes that the upper limit for the new emission standard be the prior emission standard. EPA requests comments on whether the upper limit should always be the prior emission standard. For example, when an NCP is made available for a previously attainable emission standard that has become more difficult to meet because another emission standard has become more stringent, should the upper limit for the previously attainable emission standard be the prior emission standard for that pollutant, as proposed, or should the upper limit be more stringent than the prior emission standard? Also, the averaging concepts proposed in 49 FR 40258, October 15, 1984, for HDEs were not considered when the NCP Regulatory Negotiation Committee addressed the selection of upper limits. Due to the potential linkage between the proposed averaging program (which also has an upper bound on allowable emission levels), if promulgated, and the NCP upper limit selection, would the prior emission standard always be appropriate for the NCP upper limit? For example, if an emission standard is reduced by a very small amount, should the emission standard prior to the reduction become the upper limit (allowing for only a small range on non-conformity), as proposed, or should the upper limit be less stringent?

When an emission standard is promulgated for a pollutant that had no prior emission standard, the upper limit will be determined by EPA during the specific NCP rulemaking.

G. Implementation Scheme

1. Production Compliance Auditing

Before a manufacturer could pay an NCP for the introduction into commerce of nonconforming engines or vehicles, it would have to perform a Production Compliance Audit (PCA) to determine the emission levels that are being emitted by those production engines or vehicles. A manufacturer could elect to conduct a PCA following the failure of engines or vehicles to conform with emission requirements during certification testing or Selective Enforcement Audit (SEA) testing or

following a production running change, provided that certain conditions, discussed below, are met. NCPs are not available to a manufacturer in lieu of recalling engines or vehicles due to in-use failures.

Compliance levels are established in a PCA for the pollutants for which the NCPs have been elected. The compliance level is somewhat analogous to the Acceptable Quality Level in EPA's existing production line SEA testing program (40 CFR Part 86, Subpart K). The compliance level represents an emission level at which 40 percent of the HDEs or HDVs have emission levels greater than that value; that is, the compliance level marks the 60th percentile of the emissions distribution of these HDEs or HDVs.[2]

As discussed previously, the PCA compliance level would be used to determine the size of an NCP penalty and, if the vehicles are introduced into commerce and the penalty is paid, the compliance level would become the level at which the manufacturer may incur warranty and recall liability for engines and vehicles which are subsequently found to exceed that level during their useful lives.[3] The compliance level would be rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29-67.

The PCA would also be used to determine whether the emission levels for the pollutants for which the PCA was initiated are in excess of the associated upper limit. If a compliance level is determined to be in excess of the upper limit for the applicable emission standard, NCPs would not be available.

EPA is proposing three different sampling plans that would establish the compliance level(s) during PCA testing: the primary sampling plan and two optional reduced sampling plans.

The primary sampling plan would be a non-parametric test (i.e., not dependent on emission distribution) which would require the testing of at least 24 engines or vehicles. The emission test results from the PCA would be ranked in order from the lowest to the highest values and the test result of the sequence number determined from Table 1 of Appendix XII would become the compliance level. This test result corresponds to the 60th percentile point. This is a variation of the testing plan EPA proposed in 44 FR 9490, February 13, 1979, and 44 FR 40826, July 12, 1979.

EPA is also proposing two optional sampling plans: The fixed reduced sampling plan and the sequential reduced sampling plan. These reduced sampling plans, which would require fewer tests, are being proposed to accommodate small volume manufacturers or manufacturers with high testing costs, although any manufacturer could use either of these optional sampling plans. Each reduced sampling plan would be a parametric test (i.e., assuming a normal emission distribution) with a sample size of less than 24 engines or vehicles. In both cases, the compliance level would be equal to the value of $X+Ks$, where X is the mean of a sample of emission test results, s is the sample standard deviation, and K is a factor that provides for the additional protection against underestimation required by EPA for a test sample size less than 24. The value of K would depend upon the sample size and would decrease, approaching a constant, as the sample size increases. Due to the smaller test sample and the assumption of a normal emission distribution, the reduced sampling plans would likely result in a higher compliance level than the primary sampling plan. Thus, the reduced sampling plans would give the manufacturer the option of a reduced testing burden at the expense of a penalty per engine that is likely to be higher than that determined using the primary sampling plan.

A manufacturer that elects to use the fixed reduced sampling plan would have the option to choose a sample size between 3 and 23 engines or vehicles. However, that specific sample size would have to be selected prior to the start of testing. For values of K that correspond to a specific sample size using this sampling plan, see Table 2 of Appendix XII of the proposed regulations.

A manufacturer the elects to use the sequential reduced sampling plan would have the option to choose a sample size between 4 and 20 engines or vehicles, provided that the sample size is a multiple of 4 (i.e., 4, 8, 12, 16 or 20). After the manufacturer tests the engines or vehicles of the selected sample size and determines the compliance level, it would have the option to continue testing, in multiples of 4 engines or vehicles up to the maximum sample size of 20, to revise the initially determined compliance level. For values of K that correspond to the five possible sample sizes using this sampling plan, see Table 3 of Appendix XII of the proposed regulations.

A manufacturer would have the option to choose either of the three sampling plans. Once PCA testing begins, however, the manufacturer would not be able to change sampling plans under this proposal. EPA requests comments on whether a manufacturer should be allowed the option of changing to the primary (non-parametric) sampling plan during the course of testing under either optional (parametric) sampling plan.

Following selection of the sampling plan, and of the specific sample size if a reduced sampling plan is elected, an appropriate sample of engines or vehicles would then be drawn at random from the production line and tested. The sample could be all drawn at one time, in groups, or as needed for testing provided that the testing requirements, as specified in these regulations, are satisfied.

A support document entitled "An Analytical Development of Sampling Plans for Production Compliance Auditing of Heavy-Duty Engines and Heavy-Duty Vehicles" is available in the Public Docket for this rulemaking. Section H provides an example of how a compliance level would be determined during a PCA for each of the above sampling plans.

2. Certification Failure

If an HDE of HDV manufacturer's certification test results exceed the emission standard for a particular pollutant, but do not exceed the upper limit associated with the pollutant, the manufacturer would have the following alternatives: remedy the nonconformity and seek certification, elect to pay an NCP, or not certify. If the manufacturer's certification test results are in excess of the upper limit, of course, no certificate would be offered and no NCP would be made available.

If the manufacturer elected to pay an NCP and otherwise complied with the certification requirements, a qualified certificate would be offered to enable the manufacturer to introduce engines or vehicles into commerce while the manufacturer is expenditiously conducting PCA testing of those engines or vehicles. The qualified certificate would require payment of the NCP based on the result of PCA testing. It would also require an agreement by the

[2] Of course any individual HDEs or HDVs whose emissions during the PCA testing exceeds the ultimate compliance level (the 60th percentile) would not be covered by a certificate and could not be sold until they are brought into conformity with the compliance level.

[3] In essence, the compliance level contained in the certificate under which such in-use engines or vehicles were sold is equivalent to an emission standard for those engines or vehicles that will remain in effect during their entire useful lives and be applicable for warranty and recall purposes, even though (as discussed below) another compliance level may be set subsequently for engines or vehicles of the same family which are still in production.

holder of the certificate to recall all engines or vehicles that have been introduced into commerce under that certificate, without invoking the requirements of section 207(c) of the Clean Air Act, if the compliance level established during the PCA exceeds the upper limit. Failure of the manufacturer to implement the required recall or to pay the NCP in a timely manner (as discussed below), assuming the compliance level is below the upper limit, would result in voiding of the certificate for those specific engines or vehicles subject to nonpayment or to the recall.

The engine or vehicle configuration tested in the PCA would be the one which was unable to conform with the emission standard during certification testing. The PCA would be promptly initiated following the start of assembly line production of those engines or vehicles. Failure of a manufacturer to initiate the PCA as soon as practical could result in a suspension of the qualified certificate of conformity.

If, as a result of the PCA, the compliance level is determined to be at or below the standard, the NCP conditions contained in any qualified certificate would be inapplicable and no NCP would be paid.

3. SEA Failure

A manufacturer whose HDEs or HDVs fail an SEA with respect to a pollutant standard for which an upper limit has been provided, but do not fail with respect to that upper limit, would have the following alternatives: Remedy the nonconformity, elect to pay an NCP commensurate with the degree of the failure, or cease the introduction into commerce of the applicable engines or vehicles. EPA requests comments on whether a manufacturer that elects to pay an NCP should be required to continue SEA testing after a fail decision is reached with respect to the standard, if necessary, until enough data is available to determine whether a fail decision is made with respect to the upper limit. A manufacturer could also be issued an SEA Test order for a configuration for which an NCP has previously been assessed. If the SEA should result in a fail decision with respect to the compliance level but not the associated upper limit, the manufacturer would be required to initiate a PCA to establish a new compliance level and NCP in order for the configuration to continue to be introduced into commerce. If the SEA resulted in a pass decision with respect to the emission standards, the manufacturer then could elect to perform a PCA to attempt to reduce or eliminate the penalty being paid. If the SEA results in a fail decision with respect to the upper limit for that pollutant, no NCP would be available and the certificate for that configuration would be suspended not earlier than ten days from the date of the SEA failure, in accordance with 40 CFR 86.1012–84 of the SEA regulations.

A manufacturer that elects to pay an NCP would be required to submit a written report to the Administrator within five days after completion of the SEA indicating the following: the reason for the nonconformance with pollutant standards(s) or applicable compliance level(s) and the date the manufacturer intends to begin the PCA testing. Failure to submit the report in the specified time period could result in the forfeiture of the NCP option. In accordance with the SEA regulations, this could result in the suspension of the certificate not earlier than ten days after the completion of the SEA. The NCP Regulatory Negotiation consensus document indicates that EPA would offer a qualified certificate of conformity for engines or vehicles which have failed an SEA with respect to an applicable emission standard or compliance level but not to the upper limit. This would enable the manufacturer to introduce those engines or vehicles into commerce while it is expeditiously conducting a PCA to establish a compliance level. Since EPA would not suspend the certificate of conformity following such an SEA failure, a qualified certificate would not be necessary; however, the manufacturer would still be subject to the same conditions as contained in a qualified certificate.

The configuration tested in the PCA would be the same configuration specified on the SEA test order. Failure to begin the PCA testing promptly after the manufacturer elects to pay an NCP could result in suspension of the certificate for the failed configuration. EPA could grant additional time to initiate the PCA if the production line that produces the NCP configuration were not operating.

EPA proposes that all the SEA test results for the failed pollutants be used as part of the PCA test sample. If a manufacturer elects the primary PCA sampling plan and there are 24 or more SEA test results, then no additional tests would be required to establish a compliance level during the PCA. A manufacturer that elects a reduced PCA sampling plan could not choose a sample size smaller than the number of engines or vehicles tested during the SEA, as all of the SEA test results would be used to establish the compliance level.

EPA proposes that a manufacturer could not pay an NCP for an individual nonconforming HDE or HDV discovered during SEA or PCA testing in lieu of bringing that engine or vehicle into conformance with the emission standard or compliance level, if applicable. The certificate or conformity for an individual HDE or HDV whose final SEA or PCA test results, when adjusted by the emissions deterioration factor, exceed the specified emission standard, or compliance level ultimately established for that configuration, would be suspended from the time that SEA or PCA testing is completed. Such a vehicle or engine would have to be brought into conformity with the emission standard, or applicable compliance level, before it could be distributed into commerce.

4. Production Running Change

EPA proposes that a manufacturer of HDEs or HDVs that elects to implement a running change on the assembly line, which it expects will cause emission levels to exceed a standard for which an NCP is available (but not the upper limit), be required to conduct a PCA. Before implementing the running change, the manufacturer would have to submit a written report to EPA indicating the reason for the running change, the testing data and the date the manufacturer intends to begin the PCA testing.

EPA would offer the manufacturer a qualified certificate to enable it to introduce engines or vehicles into commerce while the manufacturer is expeditiously conducting PCA testing of those engines or vehicles. The conditions in the certificate would be the same as those discussed earlier in the case of a certification failure. If the compliance level determined during the PCA is below the applicable standard, and NCP would not be established, or an existing NCP would be terminated, and all qualifications would be removed from the certificate.

5. Assessment and Payment of Penalty

In the case of a certification failure, the NCP would be assessed against all HDEs or HDVs of the failed engine configuration(s) that are introduced into commerce since the beginning of the model year. After an SEA failure, the NCP would be assessed against all those HDEs or HDVs of the nonconforming configuration introduced into commerce beginning 10 days after the completion of the SEA. This date was selected to coincide with the date in the SEA regulations for which a certificate of

conformity may be suspended after failure to pass the SEA. Engines or vehicles already introduced into commerce at that time would not be, by virtue of the SEA failure, subject to either a suspension or revocation of its certificate or payment of NCPs. Of course, for those engines or vehicles, the manufacturer would still be subject to recall and warranty liability with respect to the emission standard. Following a production running change that results in emission levels above the emission standard, or compliance level if applicable, the NCP would be assessed against all HDEs or HDVs of the new configuration introduced into commerce after the approved change is implemented.

Once an NCP is applied, it would continue to be assessed against each engine or vehicle produced for the rest of the model year unless the configuration or engine family is brought into conformance with applicable emission standards due to a production running change. If the NCP configuration is carried over during certification to a future model year, the amount of the penalty would increase according to the annual adjustment factor (see Section I).

The proposed regulations provide a payment schedule for the penalty, once assessed, based on calendar quarters. A manufacturer could request the establishment of a payment schedule based on other three-month periods or shorter intervals if approved by the Administrator. Failure to pay the penalty within the time limits established could result in a voiding of the certificate of conformity for those engines or vehicles for which the assessed penalty has not been paid.

The payee would be the United States Treasury and the payment would be sent to EPA's Manufacturers Operations Division along with a report from the manufacturer. The manufacturer's report and payment for all engines or vehicles produced during a calendar quarter would be due to EPA within 30 days after that calender quarter ends. The manufacturer's report would contain corporate identification, NCP engine or vehicle identification, certificate identification (number and date), NCP engine or vehicle quantities, and NCP payment calculations. The report would have to also contain an endorsement by a company representative acknowledging the penalties associated with violations of the requirements of the Clean Air Act and the regulations thereunder.

6. Request for Public Hearing

A manufacturer could request a public hearing to challenge the NCP which the Agency has determined applies to its vehicles or engines. The only issues which could be determined at a hearing include whether the compliance level was determined in accordance with § 86.1112–87(a) of the proposed regulations or whether the penalty was properly calculated in accordance with § 86.1113–87(a) of the proposed regulations. The manufacturer must file its request for a public hearing within 15 days of receiving notice of its penalty amount, unless otherwise specified by the Administrator. Even if a manufacturer reequests a hearing, it would still be obligated to pay the penalty within the established time limits. EPA requests comments on whether it should create an escrow fund to hold challenged penalty payments pending the outcome of the public hearing.

The manufacturer could not, however, challenge the initial determination of nonconformity under these hearing procedures. If it believes the results of the failed certification test or Selective Enforcement Audit are incorrect, the manufacturer must challenge these results under Subpart A or Subpart K, as appropriate. Nor may the manufacturer raise issues with regard to the penalty formula itself or the factors or variables associated with the formula, since these must be raised within the review period permitted by section 307 of the Clean Air Act after publication of the rule in which they are promulgated.

The hearing would be a full adjudicatory hearing, conducted by a presiding officer, with discovery and examination of witnesses. Upon completion of the hearing, the manufacturer could appeal the decision of the presiding officer to the Administrator, or the Administrator could review the decision on his own motion. After the Administrator issued his decision, the manufacturer could seek reconsideration based only on new questions raised by the final order, unless otherwise specified by the Administrator.

7. EPA Information

EPA will make available in years that NCPs are used by manufacturers the following information for subclasses of engines of vehicles for which NCPs have been used: a. Estimated total emissions of the engines or vehicles as produced.

b. Estimated total emissions of the engines or vehicles assuming that all met the standards.

c. Estimated total emissions of the engines or vehicles assuming the old standard had been met.

d. Total funds collected from NCPs. EPA may separate the above information by state.

8. Other Implementation Aspects

Several provisions contained in the proposed Subpart L regulations are being proposed to make the NCP regulations consistent with the SEA regulations (Subparts G and K) for production line testing. These provisions would be essentially identical and would include:

Testing by the Administrator (§ 86.1107–87)
Maintenance of records (§ 86.1108–87)
Entry and access (§ 86.1109–87)
Sample selection (§ 86.1110–87)
Test procedures for PCA testing (§ 86.1111–87)

In addition, EPA is proposing minor technical amendments to Subpart A (§ 86.085–22(e) and § 86.087–30(e)) to reference the proposed Subpart L regulations. EPA is also proposing minor technical amendments to Subpart K to allow SEAs to be conducted for engines or vehicles that have SEA liability with respect to a compliance level, as opposed to an emission standard, determined pursuant to the proposed Subpart L.

H. Compliance Level Determination Examples

Following is an example of how a compliance level would be determined during a PCA for each of the three PCA sampling plans for nonconforming HDEs. The same procedures would apply to HDVs. The emission standard for the pollutant in these examples is 10.0 grams/BHP-hr and the upper limit is 20.0 grams/BHP-hr. All deteriorated test results have been rounded to whole numbers for simplicity in these examples only.

Example 1

A manufacturer that elects to conduct a PCA using the primary PCA sampling plan would test 24 engines in accordance with the proposed regulations. The deteriorated test results for the pollutant for which the PCA was initiated in this example, in the order in which all tests were conducted, are as follows:

Engine No.	Deteriorated test result (grams/BHP-hr)
1	9
2	12
3	15
4	11
5	10
6	13
7	11
8	9
9	12

Engine No.	Deteriorated test result (grams/BHP-hr)
10	10
11	11
12	13
13	14
14	12
15	11
16	12
17	7
18	16
19	8
20	13
21	15
22	10
23	14
24	13

The test results would be ranked in order from the lowest to the highest value, as follows:

Rank	Engine No.	Deteriorated test result (grams/BHP-hr)
1st	17	7
2nd	19	8
3rd	1	9
4th	6	9
5th	5	10
6th	10	10
7th	22	10
8th	4	11
9th	7	11
10th	11	11
11th	15	11
12th	2	12
13th	9	12
14th	14	12
15th	16	12
16th	6	13
17th	12	13
18th	20	13
19th	24	13
20th	13	14
21th	23	14
22th	3	15
23th	21	15
24th	18	16

From Table 1 of Appendix XII of the proposed regulations, for this test sample size, the compliance level would be the fifteenth ranked test result, which corresponds to the 60th percentile point. In this example, the compliance level would be 12 grams/BHP-hr. This level would become the new "standard" for this pollutant for the applicable configuration or engine family for SEA, recall and warranty purposes. For example, engine numbers 3, 6, 12, 13, 18, 20, 21, 23 and 24 which had emissions of greater than 12 grams/BHP-hr would have to be remedied to conform with the compliance level before they could be introduced into commerce. Other engines with emissions greater than 10 grams/BHP-hr and less than 12 grams/BHP-hr would not need to be remedied as long as the NCP is paid.

Example 2

A manufacturer that elects to conduct a PCA using the fixed reduced sampling plan would select a sample size between 3 and 23 engines. For this example, a manufacturer selects a sample size of 5 engines. The deteriorated test results of the 5 engines for the pollutant for which the PCA was initiated, tested in accordance with the proposed regulations, are as follows:

Engine No.	Deteriorated test result (grams/BHP-hr)
1	10
2	9
3	12
4	11
5	13

The compliance level would be equal to the value of:

$X+Ks$

where:

X = the mean of the above data = 11 grams/BHP-hr

K = the value from Table 2 of Appendix XII of the proposed regulations for a sample size of 5 = 0.895

s = the standard deviation of above data = 1.581 grams/BHP-hr

Using the above values for $\overline{X}$, K and s, the compliance level would equal (11 grams/BHP-hr + (0.895)(1.581 grams/BHP-hr)) 12.4 grams/BHP-hr. The compliance level would be rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67. Engine number 5 would have to be remedied to conform with the compliance level of 12.4 grams/BHP-hr before it could be introduced into commerce. Engine numbers 3 and 4 would not need to be remedied as long as the NCP is paid.

Example 3

A manufacturer that elects to conduct a PCA using the sequential reduced sampling plan would select a sample size of 4, 8, 12, 16 or 20 engines. For this example, a manufacturer initially selects a sample size of 4 engines. The deteriorated test results of the 4 engines for the pollutant for which the PCA was initiated, tested in accordance with the proposed regulations, are as follows:

Engine No.	Deteriorated test result (grams/BHP-hr)
1	11
2	13
3	10
4	12

The compliance level would be equal to the value of:

$\bar{X}+Ks$

where:

$\bar{X}$ = the mean of the above data = 11.5 grams/BHP-hr

K = the value from Table 3 of Appendix XII of the proposed regulations for a sample size of 4 = 1.671

s = the standard deviation of above data = 1.291 grams/BHP-hr

Using the above values for $\bar{X}$, K and s, the initial compliance level would equal (11.5 grams/BHP-hr + (1.671)(1.291 grams/BHP-hr)) 13.7 grams/BHP-hr.

Under this PCA sampling plan, the manufacturer would have the option to continue testing engines and establish a new compliance level using the initial test data combined with the additional test results. A manufacturer that elects to continue testing would increase the test sample size to 8, 12, 16 or 20 engines. For this example, a manufacturer selects a sample size of 8 engines and tests 4 additional engines in accordance with the proposed regulations. The deteriorated tests results, combined with the initial test results, are as follows:

Engine No.	Deteriorated test result (grams/BHP-hr)
1	11
2	13
3	10
4	12
5	12
6	14
7	13
8	11

The new compliance level would be equal to the value of:

$\bar{X}+Ks$

where:

$\bar{X}$ = the mean of the above data = 12 grams/BHP-hr

K = the value from Table 3 of Appendix XII of the proposed regulations for a sample size of 8 = 0.912

s = the standard deviation of above data = 1.309 grams/BHP-hr

Using the above values for $\bar{X}$, K and s, the new compliance level would equal (12 grams/BHP-hr + (0.912)(1.309 grams/BHP-hr)) 13.2 grams/BHP-hr. This new compliance level would replace the initially determined compliance level. Engine number 6 would have to be remedied to conform with the compliance level of 13.2 grams/BHP-hr before it could be introduced into commerce. Engine numbers 1, 2, 4, 5, 7 and 8 would not need to be remedied as long as the NCP is paid.

These three PCA examples assume that the PCA does not follow an SEA failure and, no test results are carried forwarded to the PCA. In the case of an SEA failure, the results in the SEA would become part of the PCA test sample.

I. NCP Penalty Formula

As discussed above, the Clean Air Act sets three requirements for determining the amount of NCPs. First, the NCP is to remove any competitive disadvantage to manufacturers whose engines or

vehicles conform to the relevant standard. Second, the penalty must take into account the extent to which actual emissions exceed a standard. Third, the NCP must be increased periodically to create incentives for conformance with the standards.

When EPA determines that NCPs will be available for a standard and specifies the HDE or HDV subclasses for which the NCP will be provided, EPA will also develop a formula for calculating the NCP for nonconforming engines or vehicles. As proposed, the basic form of the NCP formula would be the same for each HDE or HDV subclass and each pollutant, although the values of parameters in the formula may vary by engine and vehicle subclass and pollutant. EPA requests comments on the basic form of the proposed NCP formula and the proposed values and definitions of the parameters used in the formula.

The NCP formula would incorporate the following elements: (1) The compliance level determined in PCA testing, (2) penalty rates, expressed in dollars per unit of emissions, and (3) annual adjustment factors. Basing the penalty on the compliance level would insure that the NCP takes into account the extent to which actual emissions exceed the applicable standard. The penalty rate, because it is based on projected compliance costs, would remove the competitive advantage of not conforming by eliminating the cost savings associated with nonconformance. Annual adjustment factors would be used to increase the NCP from year to year to provide additional incentives for conformance and keep the penalty in current year dollars.

When a manufacturer elects to pay an NCP, the first step in determining the amount of the NCP would be to calculate the "initial penalty." The initial penalty is the penalty amount that would be paid if the nonconformity occurred in the first year that the penalty was available for a particular standard. To arrive at the penalty for the current year, the initial penalty would be multiplied by the annual adjustment factors for each year since the first year the penalty was available. When payment of an NCP is elected in the first year in which the NCP is available, no annual adjustment factor would be used in calculating the penalty amount for that year.

Penalty Rates

EPA initially considered three alternate general approaches to setting penalty rates. Using a "differential cost" approach, the penalty would be determined separately for each nonconforming engine or vehicle configuration. The penalty rate would be calculated from the difference between the estimated total cost of the engine or vehicle if it conformed with the standard and the estimated total cost of the engine or vehicle at the compliance level established in PCA testing. The underlying philosophy behind this approach is that the penalty should make a potential purchaser indifferent, in economic terms, to two alternatives: (1) Purchasing the nonconforming engine or vehicle with its price increased to reflect estimated compliance costs and (2) purchasing the same engine or vehicle if it has been produced in conformance with the applicable standard. In this way, the competitive advantage of nonconformity could be eliminated. As with the other approaches, a penalty based on differential cost would increase with the degree of nonconformance, since the total incremental cost of bringing a vehicle or enging into compliance generally increases as the compliance level increases above the standard.

The differential cost approach has two major disadvantages. The first is that the cost of compliance would be estimated individually for each nonconforming configuration based on the compliance level. This estimation process would require substantial resources. The second disadvantage is that the amount of the NCP would probably not be known by the manufacturer prior to the beginning of the model year, making product planning decisions more difficult.

The other approaches considered by EPA involve using a single penalty formula for all nonconforming configurations within a given category of HDEs or HDVs. For each standard, EPA would define one or more categories of HDEs or HDVs for which the NCP would be available. These categories may comprise HDE or HDV subclasses, groups of subclasses, or subdivisions of subclasses.

EPA considered using a "marginal cost" approach, in which the penalty rate for each engine and vehicle category and pollutant combination would be the slope of the steepest segment of an estimated emission control cost curve for the category. The cost curve would depict the relationship between emission control cost and emission levels ranging from the upper limit down to the new standard for each pollutant. Its slope, the marginal cost, would be expressed in terms of cost per unit of emission reduction. If the marginal cost increased continuously as the emission level fell (as might be assumed in a simplified analysis), the steepest slope (greatest marginal cost) would be the slope of the curve at the new standard. However, since the relationship between emission control costs and emission rates (i.e., the marginal cost) may be discontinuous and "lumpy," the greatest marginal cost may instead occur elsewhere. For example, it may be associated with the addition of a significant emission control hardware item such as a catalyst or particulate trap.

Under a marginal cost approach, the penalty rate could either be derived from a cost curve developed for a typical engine or vehicle within the engine or vehicle subclass or it could be based on an engine or vehicle having greater than average marginal cost. An advantage of the marginal cost penalty is that it provides economic incentives for manufacturers to increase emission control to the point where their marginal cost is as great as the penalty. A disadvantage of the marginal cost approach is that it would result in very high penalties for technological laggards whose emission levels were far above the new standard.

Finally, EPA considered using an "average cost" approach, where the penalty rate for each engine and vehicle category and pollutant combination would be based on an estimate for the category of the expected total incremental compliance cost per engine or vehicle for reducing emission levels from the upper limit to the new standard. The estimate used would be near the upper end of the range of the estimates of the cost of compliance among manufacturers. That total cost of compliance would then be divided by the emission reduction required to meet the new standard, resulting in a penalty rate equal to the average cost per unit of emissions reduction. The average cost approach results in more moderate penalties for vehicles or engines that remain close to the old standard than the marginal approach. However, this approach may not provide adequate economic incentives to conform with a standard for manufacturers having the technological capability to conform since a manufacturer's marginal cost near the standard may be significantly greater than an average cost penalty rate.

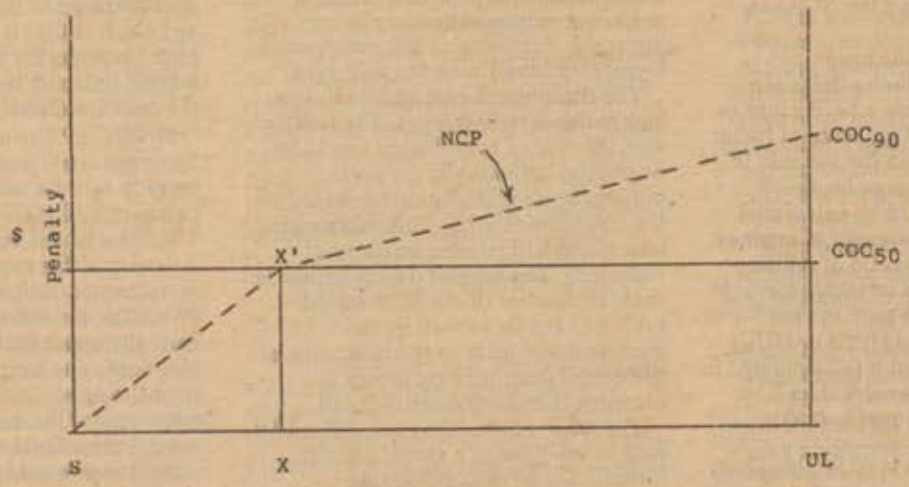
The proposed penalty formula combines the marginal and average cost approaches. The initial penalty can be represented graphically by two linear segments as shown by the dashed lines in Figure 1. This proposed form was chosen in order to satisfy two criteria simultaneously: (1) That the penalty rate

near the new standard be steep enough to discourage voluntary noncompliance by manufacturers who are technologically able to conform, and (2) that the initial penalty faced by a technological laggard whose compliance level is significantly above the standard would not be substantially higher than the estimated total incremental cost of compliance with the new standard. Thus, for compliance levels that exceed but remain near the new emission standard, the penalty would be based on an estimate of the 90th percentile marginal cost of compliance within the HDE or HDV category. EPA will first estimate the average marginal cost of compliance with the new standard for the category. EPA will then estimate the 90th percentile marginal cost by multiplying the average marginal cost by a factor, F. The value of F will be in the range of 1.1 to 1.3 and will be selected by EPA based on the best available cost data. The 90th percentile is used in an effort to ensure that few manufacturers will use NCPs out of purely economic considerations.

As the compliance level increases above the standard (S in figure 1), the penalty would increase at a constant rate up to the emission level (X) at which the penalty would equal the estimated average total incremental cost of compliance (COC_{50}) for the category. The initial penalty would then increase linearly at a lesser constant rate from that point (X') to an amount at the upper limit (UL) equal to EPA's estimate of the 90th percentile total incremental cost of compliance (COC_{90}).

Figure 1

Penalty vs. Compliance Level



In evaluating the total and marginal costs of compliance with a particular standard under this approach, EPA would need to assess both manufacturers' and users' cost impacts. Manufacturers' costs include the incremental production costs involved in bringing an engine or vehicle into conformance with a standard and the additional warranty costs of keeping it there. The nonconforming manufacturer is avoiding these costs. EPA requests comments on what should be included in manufacturer's incremental production costs.

Users' costs may include the present value of any fuel economy penalty, requirements for unleaded fuel, and changes in maintenance costs associated with operating a conforming engine or vehicle over its lifetime. To the extent that these cost impacts are known by potential buyers, a purchaser should be willing to pay more for an engine or vehicle with lower total user costs. Therefore, in order to remove a manufacturer's economic incentive for nonconformance and to prevent manufacturers of conforming engines or vehicles from being placed at a competitive disadvantage, the NCP must also reflect the user cost increase.

The data base used by EPA to establish the average cost of compliance and the penalty rate factors in a specific NCP rulemaking would be the cost data used by EPA in setting the emission standard. However, when the rulemaking to establish a specific NCP occurs after the rulemaking to establish the standard, EPA could augment the data base used to establish the standard by including the best cost and emission performance data available to EPA during the specific NCP rulemaking.

Annual Adjustments

Annual adjustment factors would be used to increase the amount of the nonconformance penalty from year to year, beginning with the second year that the NCP is available for a particular standard. The penalty per engine or vehicle in year n would be equal to the "inital penalty" multiplied by the cumulative product of the annual adjustment factors for years two through

n. The annual adjustment factor would take into account inflation, the number of years the NCP has been available for the particular standard, and the fraction of subclass production for which NCPs have been assessed. The formula for the annual adjustment factor for year i (i>2) would be as follows:

$$AAF_i = 1 + I_{i-1} + A_i \left[\frac{1}{1-(frac_{i-1})} \right] i$$

$A_i = 0.10$ for $i = 2$
$A_i = 0.08$ for $i > 3$

In the formula, I_{i-1} is the rate of increase in an appropriate index of inflation during year i–1. EPA requests comment on which inflation index would be appropriate. The increase is expressed as a decimal percentage (e.g., ten percent would be expressed as 0.10). The inflation rate would be included in the formula to insure that each year's penalty reflects estimated increases in compliance costs as a result of inflation during the period when the NCP has been available.

The variable A_i is the usage adjustment factor, which affects the impact of the prior year's NCP usage on the size of the annual adjustment factor. The variable "$frac_{i-1}$ in the formula is the fraction of NCP usage for the previous year. It would be calculated separately for each category of engines or vehicles and is the ratio of (1) the total number of HDEs or HDVs for which an NCP will be paid in year i–1 to (2) the total number of HDEs or HDVs that will be introduced into commerce in year i–1. If $frac_{i-1}$ is greater than 0.50, $frac_{i-1}$ would be set equal to 0.50 in calculating AAF_i.

The formula for AAF_i is structured so that the penalty increases as $frac_{i-1}$ increases and, for any given value of $frac_{i-1}$, the increase in the penalty would be greater in later years than in the initial years of availability. This structure was chosen in order to provide adequate incentives for eventual compliance. If the initial penalty were so low that many engines or vehicles were produced under the NCP, a relatively high value of $frac_{i-1}$ would protect the environment by increasing the penalty substantially in the next year and creating greater incentives for conformance. If, on the other hand, NCP usage is low, the HDE or HDV category is protected by a much smaller annual increase in the penalty.

The NCP usage fraction for calculating the next year's penalty would include actual NCP usage through March 31 of the current model year and EPA's estimate of additional usage for the remainder of the current model year. Each previous year's usage fraction would be corrected to reflect actual year-end usage of NCP's and this corrected AAF would be used in establishing the NCP for future years. The correction of the previous year's annual adjustment factor would not affect the previous year's penalty. Thus, when the running product of the annual adjustment factor is calculated to determine an NCP for year n, AAF_n would be based on the projected value of $frac_{n-1}$ and all other AAF_i (for $i<n$) would be calculated using the final corrected values of $frac_{i-1}$.

NCP Formula

The complete proposed NCP formula incorporates both the initial penalty and the annual adjustment factors. It is given below along with definitions for the variables. As discussed in the penalty rate section above, the initial penalty will be described by two linear segments (Figure 1). A separate formula is used for each segment. As described for Case 1 and Case 2 below, the formula used depends on the value of the compliance level, CL, determined in PCA testing. Figure 2 illustrates the relationship between an initial penalty, NCP_1, and a subsequent year's penalty, NCP_n.

Case (1): If the compliance level (CL) is greater than S and less than or equal to X (e.g., point CL_1 in figure 2), then:

$$NCP_n = (PR_1)\ (CL - S)\ \frac{\prod_{i=1}^{n} AAF_i}{}$$

where:
$PR_1 = (F)(MC_{50})$

Case (2): If the compliance level is greater than X and less than or equal to the upper limit (e.g., point CL_2 in figure 2), then:

$$NCP_n = (COC_{50} + (PR_2)\ (CL - X))\ \frac{\prod_{i=1}^{n} AAF_i}{}$$

where:

$$PR_2 = \frac{COC_{50} - COC_{50}}{UL - X}$$

In Case (1) or Case (2), AAF_i would have the following values:
If $frac_{i-1} = 0$, then $AAF_i = 1 + I_{i-1}$
If $frac_{i-1} > 0$, then:

$$AAF_i = 1 + I_{i-1} + A_i \left[\frac{1}{1 - frac_{i-1}} \right] i$$

If $frac_{i-1} > 0.50$, then $frac_{i-1}$ would be set equal to 0.50.
In the first year, $AAF_1 = 1$

$$X = \left[\frac{COC_{50}}{(F)(MC_{50})} \right] + S$$

The terms in the above formulas have the following meanings and values:

NCP_n = NCP for year n for each engine or vehicle
CL = Compliance level for year n for applicable engines or vehicles
S = Emission Standard
UL = Upper Limit
X = Compliance level above the standard at which NCP_1 equals COC_{50}
PR_1 = Penalty Rate for $CL < X$
PR_2 = Penalty rate for $X < CL < UL$
$\prod_{i+1}^{n} AAF_i$ = Running Product, i.e., $[AAF_1] \times [AAF_2] \times .. \times [AAF_n]$
i = Index representing a year
n = Index representing the number of model years for which the NCP has been

available for an engine or vehicle subclass, i.e., n=1 for the first year that the NCP is available; . . . n=n for the nth year that the NCP is available

COC_{50} = Estimate of the average total incremental cost to comply with the standard relative to complying with the upper limit[4]

COC_{90} = Estimate of the 90th percentile total incremental cost to comply with the standard relative to complying with the upper limit

MC_{50} = Estimate of the average marginal cost of compliance (dollars per emission unit) with the standard[4]

F = Factor used to estimate the 90th percentile marginal cost based on the average marginal cost (the minimum value of F is 1.1, the maximum value of F is 1.3)[4]

AAF_i = Annual adjustment factor in year i

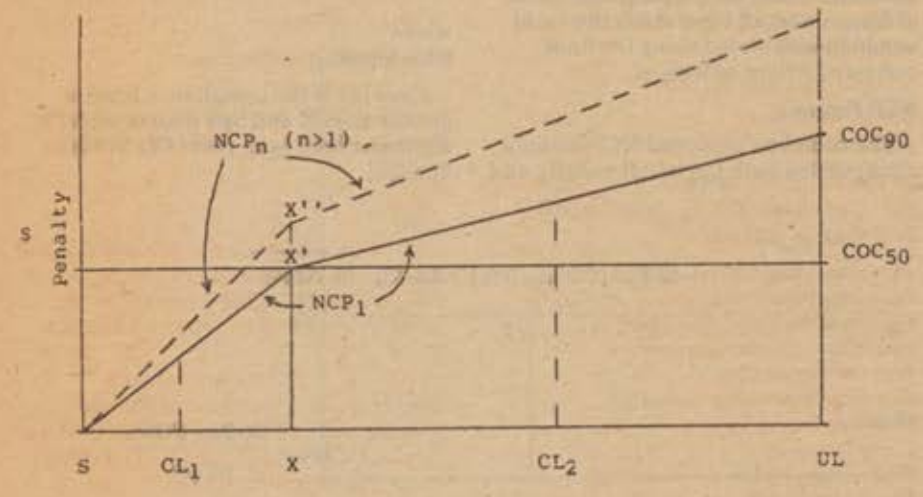
$frac_{i-1}$ = Fraction of engines or vehicles of a subclass using NCPs in previous year (i−1)

A_i = Usage adjustment factor in year i: $A_i = 0.10$ for i=2; $A_{i=0.05\ for\ i>2}$

I_i = Percentage increase in inflation index in year i

Figure 2

Penalty vs. Compliance Level



J. Administrative Designation

Under the criteria provided in Executive Order 12291, the Administrator has determined that this proposed regulation is "non-major" and therefore not subject to the requirement of a Regulatory Impact Analysis. This determination is based on the following:

(1) The proposed NCP program will not result in an annual adverse effect on the economy of $100 million or more. The NCP merely provides an economically reasonable option that may be utilized when a manufacturer is unable to comply with a standard. This concept is more fully discussed in the ECONOMIC IMPACT section.

(2) The NCP program will not result in adverse cost or price impacts (above those that would otherwise occur from compliance with the emission standards themselves).

(3) The NCP program provides manufacturers relief from the inability to market nonconforming HDEs or HDVs. Presently, a manufacturer experiencing difficulty in certifying or producing HDEs or HDVs in conformance with emission standards, has only two alternatives: Fix the nonconforming configuration or prevent its introduction into commerce. In some cases, a fix may not be readily available, and a manufacturer may have to prevent its introduction into commerce. NCPs provide relief from these disruptions. Therefore, NCPs will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As required by Executive Order 12291, this Notice of Proposed Rulemaking has been reviewed by the Office of Management and Budget (OMB) for compliance with regulatory development criteria and for general content. Any OMB comments and EPA's response to those comments are available for inspection in the public docket for this rulemaking.

K. Economic Impact

Because of the optional nature of the use of NCPs, manufacturers have flexibility and will likely choose whether or not to use NCPs based on their capability to comply with emission standards. If no HDE or HDV manufacturer elects to use NCPs, these manufacturers or the users of their products will not incur any additional costs related to NCPs.

The existence of an NCP program may provide some direct cost savings to HDE or HDV manufacturers that lack the technological capability to conform with emission standards immediately. In the absence of NCPs, a manufacturer which has difficulty certifying HDEs or HDVs in conformance with emission standards or which fails an SEA has only two alternatives: fix the nonconforming engines or vehicles, perhaps at prohibitive cost, or prevent their introduction into commerce. The availability of NCPs provides manufacturers with a third alternative with some potential cost savings: continue production and introduce into commerce a unit that exceeds the standard until an emission conformance technique is developed.

Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers increased flexibility. A decision to use NCPs may be the manufacturer's only course of action that would allow it to continue to introduce HDEs or HDVs into commerce. Hence, NCPs may be considered to have no adverse economic impact.

L. Environmental Impact

Because the use of NCPs is an option elected by affected manufacturers, EPA

[4] The definitions of COC_{50}, MC_{50} and F in the NCP Regulatory Negotiation consensus document refer to 50th percentile costs, as opposed to average costs. However, EPA believes that average costs were intended to be referenced. EPA requests comments on this matter.

cannot be sure to what extent NCPs will be used.

If no manufacturer elects to use NCPs, all HDEs and HDVs produced will need to be in conformance with the regulatory requirements. In this situation, the environmental benefits estimated during the rulemakings establishing the emission regulations will not be affected.

If some HDE and/or HDV manufacturers do elect to participate in the NCP program, some HDEs and/or HDVs will be introduced into commerce that will be emitting pollutants above applicable standards (as Congress contemplated when it mandated that EPA provide NCPs). The magnitude of this reduced environmental benefit is proportional to the number of HDEs and HDVs subject to NCPs and their degree of nonconformance. (Of course, the upper limits exclude gross emitters from being introduced into commerce.) EPA estimates that an NCP will not be used for more than ten percent of the HDE's and HDV's for which NCPs are provided in the first year that they are avaliable and that they will be used by less than one percent in the third year. The long term environmental impact from NCP usage is expected to be relatively very small, if any, due to the relatively high penalty rates and the annual adjustment factor that rapidly increases those penalty rates when NCP usage is significant. Of course, any reduction in environmental benefit refers not to an increase in emissions from current levels, but from levels that would otherwise occur from reduced emission standards without NCPs.

Because emission impacts are anticipated to be very small if any, compared to the total emissions of HDEs and HDVs which in fact comply with emission standards, and because the extent of NCP usage in any specific model year cannot be accurately predicted at this time, no specific air quality impact analysis will be made regarding this proposal.

M. Compliance with Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, EPA is required to determine whether this regulation will have a significant economic impact on a substantial number of small business entities. None of the affected entities could be classified as a small business. Moreover, as already discussed, the NCP program can be expected to have salutary effects on manufacturers. Thus, this rule will not have a significant adverse economic impact on a substantial number of small entities.

N. Information Collection Requirements

The proposed rule (Phase I) requires that manufacturers perform certain recordkeeping and submit certain reports to EPA, however, this requirement will not become effective until the Phase II NCP rulemaking. The Paperwork Reduction Act provides that reporting and recordkeeping requirements be approved by OMB before they can be imposed on the public. The information collection requirements in this proposed rule will be submitted to OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, during the proposal for the Phase II NCP rulemaking, at which time EPA will better be able to predict the extent of NCP usage.

List of Subjects in 40 CFR, Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: February 22, 1985.

Lee M. Thomas,

Administrator.

The following is a list of organizations that participated in the Regulatory Negotiation process:

American Trucking Association
Auto Importers of America
California Air Resources Board
Caterpillar Tractor Company
Chrysler Corporation
Colorado Department of Health
Cummins Engine Company
Deutz Corporation
Engine Manufacturers Association
Ford Motor Company
General Motors Corporation
International Harvester Company
Isuzu Motor America
Iveco Trucks of North America
Mack Truck Corporation
Manufacturers Emission Control Association
Mercedes-Benz Truck Company
Motor Vehicle Manufacturers Association
Natural Resources Defense Council
Onan Corporation
State and Territorial Air Pollution Program Administrators
U.S. Environmental Protection Agency
Volvo Truck Company

PART 86—[AMENDED]

For the reasons set forth in this preamble, Part 86, Subparts A, K and L, Chapter I of Title 40, Code of Federal Regulations is proposed to be amended as follows:

1. Paragraph (e)(3)(ii)(A) of § 86.085–22 of Subpart A is proposed to be revised to read as follows:

§ 86.085–22 Approval of application for certification; 1st fleet selections; determinations of parameters subject to adjustment for certification, Selective Enforcement Audit, and Production Compliance Audit, adequacy of limits, and physically adjustable ranges.

* * * * *

(e) * * *

(3) * * *

(ii)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator shall include within the physically adjustable range applicable to testing under Subpart G, K or L (Selective Enforcement Audit and Production Compliance Audit) only the actual setting to which the parameter is adjusted during production.

* * * * *

2. Paragraph (e) (1)(iii)–(vii), (e)(5), (e)(6)(i), and (e)(7) of § 86.087–30 of Subpart A is proposed to be revised to read as follows:

§ 86.087–30 Certification.

* * * * *

(e) For light-duty trucks, heavy-duty engines, and heavy-duty vehicles (1)

* * *

(i) * * *

(ii) * * *

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.1009 or § 86.1112–87; or

(iv) The manufacturer renders inaccurate any test data submitted pursuant to § 86.1009 or § 86.1112–87; or

(v) Any EPA Enforcement Officer is denied the opportunity to conduct activities related to entry and access as authorized in § 86.1006 or § 86.1109–87 and in a warrant or court order presented to the manufacturer or the party in charge of the facility in question; or

(vi) EPA Enforcement Officers are unable to conduct activities related to entry and access as authorized in § 86.1006 or § 86.1109–87 because a manufacturer has located a facility in a foreign jurisdiction where local law prohibits those activities; or

(vii) The manufacturer refuses to or in fact does not comply with the requirements of §§ 86.1004(a), 86.1005, 86.1007, 86.1008, 86.1010, 86.1011, 86.1013, 86.1107(a), 86.1108–87, 86.1110–87, 86.1111–87, 86.1112–87, or § 86.1113–87.

* * * * *

(5) In any case in which certification of a light-duty truck, heavy-duty engine, or heavy-duty vehicles is proposed to be suspended under paragraph (e)(1)(v) of this section and in which the

Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.1006 or § 86.1109–87 in fact occurred, if the manufacturer wishes to contend that, although the violation occurred, the vehicle or engine configuration or engine family in question was not involved in the violation to a degree that would warrant suspenion of certification under paragraph (e)(1)(v) of this section, he shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) * * *

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014 or § 86.1115–87, and

* * * * *

(7) Any voiding of a certificate of conformity under paragraph (e)(4) of this section shall be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014 or § 86.1115–87.

3. § 86.1002–84 of Subpart K is proposed to be amended by adding the following definition:

§ 86.1002–84 Definitions.

* * * * *

"Compliance level" means an emission level determined during a Production Compliance Audit pursuant to Subpart L of this part.

4. Paragraph (b)(2) of §86.1008–84 is proposed to be revised to read as follows:

§ 86.1008–84 Test procedures.

* * * * *

(b)(1) * * *

(2) For 1984 and later model years the Administrator may adjust or cause to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification, Selective Enforcement Audit, and Production Compliance Audit testing in accordance with § 86.084–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.084–22(e)(3)(ii), prior to the performance of any tests. However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to any setting which causes a lower engine idle speed then would have been possible within the physically adjustable range of the idle speed parameter if the manufacturer had accumulated 125 hours of service on the engine or 4,000 miles on the vehicle under paragraph (c) of this section, all other parameters being identically adjusted for the purpose of the comparison. The manufacturer may be requested to supply information to establish such an alternative minimum idle speed. The Administrator, in making or specifying these adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines or light-duty trucks. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine or vehicle performance characteristics and surveillance information from similar in-use engines or vehicles.

* * * * *

5. Paragraph (d)(2) of § 86.1009–84 is proposed to be revised to read as follows:

§ 86.1009–84 Calculation and reporting of test results.

* * * * *

(d) * * *

(2) The applicable standards or compliance levels against which the engines or vehicles were tested;

* * * * *

6. Paragraphs (b) and (c) of § 86.1010–84 are proposed to be revised to read as follows:

§ 86.1010–84 Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.

* * * * *

(b) A failed engine or vehicle is one whose final deteriorated test results pursuant to paragraph 86.1009–84(c), for one or more of the applicable exhaust pollutants, exceed the applicable emission standard or compliance level.

(c) The manufacturer shall test heavy-duty engines or light-duty trucks comprising the test sample until a pass decision is reached for all pullutants, or a fail decision is reached for one pollutant. A pass decision is reached when the cumulative number of failed engines or vehicles, as defined in paragraph (b) of this section, for each pollutant is less than or equal to the pass decision number appropriate to the cumulative number of engines or vehicles tested. A fail decision is reached when the cumulative number of failed engines or vehicles for one or more pollutants is greater than or equal to the fail decision number appropriate to the cumulative number of engines or vehicles tested. The pass and fail decision numbers associated with the cumulative number of engines or vehicles tested are determined by using the tables in Appendix X of this part appropriate to the projected sales as made by the heavy-duty engine manufacturer in its Application for Certification or as made by the light-duty truck manufacturer in its report submitted under paragraph (a)(2) of § 600.207–80 of the Automobile Fuel Economy Regulations. In the tables in Appendix X to this part, sampling plan "stage" refers to the cumulative number of engines or vehicles tested. Once a pass or fail decision has been made for a particular pollutant, the number of engines or vehicles whose final deteriorated test results exceed the emission standard or compliance level, if applicable, for that pollutant shall not be considered any further for the purposes of the audit.

* * * * *

7. Paragraphs (i)(l)(ii), (j)(2), (k)(2), and (m) of § 86.1012–84 are proposed to be revised to read as follows:

§ 86.1012–84 Suspension and revocation of certificates of conformity.

* * * * *

(i) * * *

(l) * * *

(ii) Demonstrate that the engine or vehicle conforms to applicable standards or compliance levels by retesting the engine or vehicle in accordance with these regulations; and

(2) * * *

(j) * * *

(2) Demonstrate that the engine or vehicle configuration for which the certificate of conformity has been suspended does in fact comply with these regulations by testing engines or vehicles selected from normal production runs of that engine or vehicle configuration, at the plant(s) or associated storage facilities specified by the Administrator, in accordance with the conditions specified in the initial test order. Except, that if the manufacturer elects to continue testing individual engines or vehicles after suspension of a certificate, the certificate is reinstated for any engine or vehicle actually determined to be in conformance with the applicable standards or compliance levels through testing in accordance with the applicable test procedures, provided that the Administrator has not revoked the certificate pursuant to paragraph (h) of this section.

(k) * * *

(l) * * *

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer shall demonstrate that the modified engine or

vehicle configuration does in fact conform with these regulations by testing engines or vehicles selected from normal production runs of that modified engine or vehicle configuration in accordance with the conditions specified in the initial test order. This testing will be considered by the Administrator to satisfy the testing requirements of § 86.078–32 or § 86.079–33 if the Administrator has so notified the manufacturer. If the subsequent audit results in passing of the audit at the level of the standards or compliance levels, if applicable, the Administrator shall reissue or amend the certificate, as the case may be, to include that configuration, provided that the manufacturer has satisfied the testing requirements of paragraph (k)(i) of this section. If the subsequent audit is failed, a revocation remains in effect. Any design change approvals under this subpart are limited to the configuration affected by the test order.

* * * * *

(m) After the Administrator suspends or revokes a certificate of conformity pursuant to this section or notifies a manufacturer of his intent to suspend, revoke or void a certificate of conformity under paragraph § 86.087–30(e), and prior to the commencement of a hearing under § 86.1014–84, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend, revoke or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

* * * * *

8. Paragraphs (a) and (d)(2) of § 86.1014–84 are proposed to be revised to read as follows:

§ 86.1014–84 Hearings on suspension, revocation and voiding of certificate of conformity.

(a) *Applicability.* The procedures prescribed by this section apply whenever a manufacturer requests a hearing pursuant to § 86.087–30(e)(6)(i), § 86.087–30(e)(7), or § 86.1012–84(1).

* * * * *

(d) *Summary decision.* (1) * * *

(2) In the case of a hearing requested under § 86.087–30(e)(6)(i), to challenge a proposed suspension of a certificate of conformity for the reasons specified in § 86.087–30(e)(1)(i) or (e)(1)(ii), when it clearly appears from the data and other information contained in the request for the hearing that there is no genuine and substantial question of fact with respect to the issue of whether the refusal to comply with the provisions of a test order or any other requirement of § 86.1003–84 was caused by conditions and circumstances outside the control of the manufacturer, the Administrator shall enter an order denying the request for a hearing and suspending the certificate of conformity.

* * * * *

9. The table of contents of Subpart L is proposed to be added as follows:

Subpart L—Nonconformance Penalties for Gasoline-Fueled and Diesel Heavy-Duty Engines and Heavy-Duty Vehicles

Sec.
86.1101–87 Applicability.
86.1102–87 Definitions.
86.1103–87 Criteria for availability of nonconformance penalties.
86.1104–87 Determination of upper limits.
86.1105–87 [Reserved]
86.1106–87 Production compliance auditing.
86.1107–87 Testing by the Administrator.
86.1108–87 Maintenance of records.
86.1109–87 Entry and access.
86.1110–87 Sample selection.
86.1111–87 Test procedures for PCA testing.
86.1112–87 Determining the compliance level and reporting of test results.
86.1113–87 Calculation and payment of penalty.
86.1114–87 Suspension and voiding of certificates of conformity.
86.1115–87 Hearing procedures for nonconformance determinations and penalties.

10. Subpart L is proposed to be added to read as follows:

Subpart L—Nonconformance Penalties for Gasoline-Fueled and Diesel Heavy-Duty Engines and Heavy-Duty Vehicles

§ 86.1101–87 Applicability.

The provisions of this subpart are applicable for 1987 and later model year gasoline-fueled and diesel heavy-duty engines and heavy-duty vehicles. These vehicles include light-duty trucks rated in excess of 6,000 pounds gross vehicle weight.

§ 86.1102–87 Definitions.

(a) The definitions in this section apply to this subpart.

(b) As used in this subpart, all terms not defined herein have the meaning given them in the Act.

(1) "Configuration" means a subdivision, if any, of a heavy-duty engine family for which a separate projected sales figure is listed in the manufacturer's Application for Certification and which can be described on the basis of emission control system, governed speed, injector size, engine calibration, or other parameters which may be designated by the Administrator, or a subclassification of light-duty truck engine family emission control system combination on the basis of engine code, inertia weight class, transmission type and gear ratios, rear axle ratio, or other parameters which may be designated by the Administrator.

(2) "Test Sample" means a group of heavy-duty engines or heavy-duty vehicles of the same configuration which have been selected to receive emission testing.

(3) "Upper limit" means the emission level for a specific pollutant beyond which a certificate of conformity may not be issued or may be suspended or revoked subpart. A compliance level can only be determined for a pollutant for which an upper limit has been established in this subpart.

(5) "Subclass" means a classification of heavy-duty engines or heavy-duty vehicles based on such factors as gross vehicle weight rating, fuel usage, vehicle usage, engine horsepower or additional criteria that the Administrator shall apply. Subclasses include, but are not limited to:

light-duty gasoline trucks (6,001–8,500 lb. GVW)
light-duty diesel trucks (6,001–8,500 lb. GVW)
light heavy-duty gasoline engines (8,501–14,000 lb. GVW)
heavy heavy-duty gasoline engines (14,001 lb. and above GVW)
light heavy-duty diesel engines (see § 86.085–2(a)(1))
medium heavy-duty diesel engines (see § 86.085–2(a)(2))
heavy heavy-duty diesel engines (see § 86.085–2(a)(3))

(6) "NCP" means a nonconformance penalty as described in section 206(g) of the Clean Air Act.

(7) "PCA" means a Production Compliance Audit as described in § 86.1106–87 of this subpart.

§ 86.1103–87 Criteria for availability of nonconformance penalties.

(a) EPA shall establish for each subclass of heavy-duty engines and heavy-duty vehicles (other than motorcycles), an NCP for a motor vehicle pollutant, when any new or revised emission standard is more stringent than the previous standard for the pollutant, or when an existing standard for that pollutant becomes more difficult to achieve because of a new or revised standard, provided that EPA finds:

(1) That for such subclass of engines or vehicles, substantial work will be required to meet the standard for which the NCP is offered, and

(2) That there is likely to be a technological laggard.

(b) Substantial work, as used in paragraph (a)(1) of this section, means the application of technology not

previously used in an engine or vehicle class or subclass, or the significant modification of existing technology or design parameters, needed to bring the vehicle or engine into compliance with either the more stringent new or revised standard or an existing standard which becomes more difficult to achieve because of a new or revised standard.

§ 86.1104-87 Determination of upper limits.

(a) The upper limit applicable to a pollutant standard for a subclass of heavy-duty engines or heavy-duty vehicles for which an NCP is established in accordance with § 86.1103-87, shall be the previous pollutant standard for that subclass.

(b) If no previous standard existed for the pollutant under paragraph (a) of this section, the upper limit will be developed by EPA during rulemaking.

§ 86.1105-87 [Reserved]

§ 86.1106-87 Production compliance auditing.

For a model year in which upper limits for heavy-duty engine or heavy-duty vehicle emission standards for one or more exhaust pollutants are specified in § 86.1105-87, a manufacturer may elect to conduct a Production Compliance Audit (PCA) for each engine or vehicle configuration satisfying the following conditions:

(a) Certification test results, pursuant to § 86.082-23, exceed the emission standard for a particular pollutant but do not exceed the upper limit established for that pollutant. In that event, the manufacturer will be offered a qualified certificate of conformity allowing for the introduction into commerce of the specified engine family, *provided that*:

(1) The manufacturer must agree to conduct a PCA of those engines or vehicles;

(2) PCA testing must be conducted on the same configuration tested in certification;

(3) The selection of engines or vehicles for PCA testing must be initiated no later than five (5) days after the start of assembly-line production of the specified engine or vehicle configuration, unless that period is extended by the Administration;

(4) The manufacturer must agree:

(i) To pay the NCP amount calculated as a result of PCA testing on each engine or vehicle, unless the manufacturer successfully challenges the Administrator's determination of the compliance level or penalty calculation or both under § 86.1115-87(c);

(ii) To recall any engines or vehicles introduced into commerce, without invoking the procedural requirements of section 207(c) of the Clean Air Act, if the compliance level for the engine or vehicle configuration of paragraph (a)(2) of this section exceeds the upper limit as determined by the PCA; and

(iii) To any other terms and conditions that the Administrator may require; and

(5) If the compliance level determined in the PCA is below the emission standard, no NCP will be offered, and all appropriate qualifications will be removed from the qualified certificate of conformity.

(b) An engine or vehicle configuration fails a Selective Enforcement Audit (SEA) under Subpart K of 40 CFR Part 86 with respect to the standard for a particular pollutant but does not fail with respect to the upper limit established for that pollutant, and no NCP has been previously assessed for that configuration, *provided that*:

(1) The manufacturer must submit a written report to the Administrator within five (5) days after failure to pass the audit containing the following:

(i) A statement which describes the reason for the failure;

(ii) A statement that the manufacturer does not intend, at that time, to make any engine and/or emission control system design changes that may remedy the nonconformity; and

(iii) A request from the manufacturer to conduct the PCA, including the date the testing will begin;

(2) Failure to submit the report within five (5) days after the SEA failure will result in the forfeiture of the NCP option, unless a satisfactory justification for the delay is provided to the Administrator;

(3) The selection of any required engines or vehicles for PCA testing must be initiated no later than ten (10) days after the SEA failures unless extended by the Administrator; otherwise, the manufacturer may forfeit the option to elect an NCP;

(4) PCA testing must be conducted on the same configuration that failed the SEA;

(5) Test results from the SEA, together with any additional test results required during the PCA, will be used in establishing a compliance level for the configuration pursuant to § 86.1112-87(a); and

(6) The manufacturer, upon approval by the Administrator to conduct a PCA on a failed SEA engine or vehicle configuration, must agree:

(i) To pay the NCP amount calculated as a result of PCA testing on each engine or vehicle introduced into commerce after the tenth day of the SEA failure, unless the manufacturer successfully challenges the Administrator's determination of compliance level or penalty calculation or both under §86.1115-87(c);

(ii) To recall any engines or vehicles introduced into commerce after the tenth day of the SEA failure, without invoking the procedural requirements of section 207(c) of the Clean Air Act, if the compliance level of the engine or vehicle exceeds the upper limit as determined by the PCA; and

(iii) To any other terms and conditions that the Administrator may require.

(c) An engine or vehicle configuration, for which an NCP has been previously assessed for a particular pollutant, either passes an SEA with respect to the particular pollutant standard, fails an SEA with respect to the particular pollutant standard but not the previous compliance level, or fails an SEA with respect to the previous compliance level but not the associated upper limit, *provided that:*

(1) The manufacturer must submit a written statement to the Administrator within five (5) days of the conclusion of the SEA requesting a PCA, including the date the PCA testing will begin; otherwise, the manufacturer forfeits the option to establish a new compliance level;

(2) The selection of any required engines or vehicles for PCA testing must be initiated no later than ten (10) days after the conclusion of the SEA unless the period is extended by the Administrator; otherwise, the manufacturer forfeits the option to establish a new compliance level;

(3) PCA testing must be conducted on the same configuration tested during the SEA, and all conditions in the SEA test order must apply to the PCA;

(4) Test results for the SEA, together with any additional test results required during the PCA, will be used in establishing a new compliance level for the configuration pursuant to § 86.1112-87(a);

(5) The manufacturer must agree:

(i) To pay the NCP amount calculated as a result of PCA testing on each engine or vehicle introduced into commerce after the tenth day of the conclusion of the SEA, unless the manufacturer successfully challenges the Administrator's determination of compliance level or penalty calculation or both under §86.1115-87(c);

(ii) To recall any engines or vehicles introduced into commerce after the tenth day of the conclusion of the SEA, without invoking the procedural requirements of section 207(c) of the Clean Air Act, if the engine or vehicle configuration exceeds the upper limit as determined by the PCA; and

(iii) To any other terms and conditions that the Administrator may require; and

(6) A previously assessed NCP will be terminated and no NCP will be established as a result of the PCA if the compliance level is determined to be below the applicable emission standards.

(d) The implementation of a production running change that causes the emission level for a particular pollutant to be either above the emission standard but below the associated upper limit for a engine or vehicle configuration configuration for which an NCP has not been previously assessed, or above the emission standard but below the associated upper limit for a engine or vehicle configuration for which an NCP has been previously assessed, regardless of the previous compliance level. In that event, the manufacturer will be offered a qualified certificate of conformity allowing for the introduction into commerce of the engine or vehicle configuration resulting from the running change, *provided that*:

(1) The manufacturer must submit a written report to the Administrator outlining the reason for the running change and the date the manufacturer will begin PCA testing;

(2) The manufacturer must agree:

(i) To pay the NCP amount calculated as a result of PCA testing on each engine or vehicle, unless the manufacturer successfully challenges the Administrator's determination of compliance level or penalty calculation or both under § 86.1115–87(c);

(ii) To recall any engines or vehicles introduced into commerce, without invoking the procedural requirements of section 207(c) of the Clean Air Act, if the engine or vehicle configuration exceeds the upper limit as determined by the PCA; and

(iii) To any other terms and conditions that the Administrator may require;

(3) The selection of engines or vehicles for PCA testing must be initiated no later than five (5) days after the start of assembly-line production of the engine or vehicle configuration resulting from the running change unless that period is extended by the Administrator; and

(4) If the compliance level is determined to be below the applicable emission standard, a previously assessed NCP will be terminated, an NCP will not be established as a result of the PCA testing, and all qualifications will be removed from the qualified certificate of conformity.

(e) The following requirements are applicable to each PCA under this subpart.

(1) The manufacturer shall make the following documents available to EPA Enforcement Officers upon request;

(i) A properly filed and current application for certification, following the format prescribed by the EPA for the appropriate model year; and

(ii) A copy of the shop manual and dealer service bulletins for the configurations being tested.

(2) Only one mechanic at a time per engine or vehicle shall make authorized checks, adjustments, or repairs, unless a particular check, adjustment, or repair requires a second mechanic as indicated in the shop manual or dealer service bulletins.

(3) A mechanic shall not perform any check, adjustment, or repair without an Enforcement Officer present unless otherwise authorized.

(4) The manufacturer shall utilize only those tools and test equipment utilized by its dealers or those dealers using its engines when performing authorized checks, adjustments, or repairs.

§ 86.1107–87 Testing by the administrator.

(a) The Administrator may require that engines or vehicles of a specified configuration be selected in a manner consistent with the requirements of § 86.1110–87 and submitted to him at such place as he may designate for the purpose of conducting emission tests in accordance with § 86.1111–87 to determine whether engines or vehicles manufactured by the manufacturer conform with the regulations of this subpart.

(b) (1) Whenever the Administrator conducts a test on a test engine or vehicle or the Administrator and manufacturer each conduct a test on the same test engine or vehicle, the results of the Administrator's test will comprise the official data for that engine or vehicle.

(2) Whenever the manufacturer conducts all tests on a test engine or vehicle, the manufacturer's test data will be accepted as the official data, provided that if the Administrator makes a determination based on testing under paragraph (a) of this section that there is a substantial lack of agreement between the manufacturer's test results and the Administrator's test results, no manufacturer's test data from the manufacturer's test facility will be accepted for purposes of this subpart.

(c) If the Administrator determines that testing conducted under paragraph (a) of this section demonstrates a lack of agreement under paragraph (b)(2) of this section, the Administrator shall:

(1) Notify the manufacturer in writing of his determination that the test facility is inappropriate for conducting the tests required by this subpart and the reasons therefore; and

(2) Reinstate any manufacturer's data upon a showing by the manufacturer that the data acquired under paragraph (a) of this section was erroneous and the manufacturer's data was correct.

(d) The manufacturer may request in writing that the Administrator reconsider his determination in paragraph (b)(2) of this section based on data or information which indicates that changes have been made to the test facility and that these changes have resolved the reasons for disqualification.

§ 86.1108–87 Maintenance of records.

(a) The manufacturer of any new gasoline-fueled or diesel heavy-duty engine or heavy-duty vehicle subject to any of the provisions of this subpart shall establish, maintain, and retain the following adequately organized and indexed records:

(1) *General records.* A description of all equipment used to test engines or vehicles in accordance with § 86.1111–87, pursuant to PCA testing under this subpart, specifically;

(i) If testing heavy-duty gasoline engines, the equipment requirements specified in §§ 86.1306–84 and 86.1506–84 of this part.

(ii) If testing heavy-duty diesel engines, the equipment requirements specified in §§ 86.1306–84, 86.1506–84, 86.879–6, 86.879–8 and 86.879–9 of this part;

(iii) If testing light-duty gasoline-fueled trucks, the equipment requirements specified in §§ 86.106 (excluding all references to particulate emission testing) and 86.1506–84 of this part; and

(iv) If testing light-duty diesel trucks, the equipment requirements specified in § 86.106 (excluding all references to evaporative emission testing) of this part.

(2) *Individual records.* These records pertain to each Production Compliance Audit conducted pursuant to this subpart.

(i) The date, time, and location of each test;

(ii) The number of hours of service accumulated on the engine or the number of miles on the vehicle when the test began and ended;

(iii) The names of all personnel, including supervisory personnel, involved in the conduct of the Production Compliance Audit;

(iv) A record and description of any repair performed, giving the date and time of the repair, the reason for it, the person authorizing it, and the names of

all personnel involved in the supervision and performance of the repair.

(v) The date when the engine or vehicle was shipped from the assembly plant or associated storage facility and when it was received at the testing facility;

(vi) A complete record of all emission tests performed pursuant to this subpart (except tests performed by EPA directly), including all individual worksheets and/or other documentation relating to each test, or exact copies thereof, specifically—

(A) If testing heavy-duty gasoline engines, the record requirements specified in §§ 86.1342–84 and 86.1542–84 of this part;

(B) If testing heavy-duty diesel engines, the record requirements specified in §§ 86.1342–84, 86.1542–84, and 86.879–10; (§ 86.337–79 for Subpart D testing only).

(C) If testing light-duty gasoline fueled trucks, the record requirements specified in §§ 86.142 (excluding all references to diesel vehicles) and 86.1542–84; and

(D) If the testing light-duty diesel trucks, the record requirements specified in § 86.142; and

(vii) A brief description of any significant Production Compliance Audit events commencing with the test engine or vehicle selection process, but not described by any paragraph under paragraph (a)(2) of this section, including such extraordinary events as engine damage during shipment or vehicle accident.

(3) The manufacturer shall record the test equipment description, pursuant to paragraph (a)(1) of this section, for each test cell that was used to perform emission testing under this subpart.

(b) The manufacturer shall retain all records required to be maintained under this subpart for a period of six (6) years after completion of all testing. Records may be retained as hard copy or reduced to microfilm, punch cards, etc., depending upon the manufacturer's record retention procedure, provided that in every case all the information contained in the hard copy is retained.

§ 86.1109.87 Entry and access.

(a) To allow the Administrator to determine whether a manufacturer is complying with the provisions of this subpart, EPA Enforcement Officers are authorized to enter any of the following (during operating hours and upon presentation of credentials):

(1) Any facility where any engine or vehicle to be introduced into commerce or any emission-related component is manufactured, assembled, or stored;

(2) Any facility where any tests conducted pursuant to a PCA request or any procedures or activities connected with these tests are or were performed;

(3) Any facility where any engine or vehicle which is being tested, was tested, or will be tested is present; and

(4) Any facility where any record or other document relating to any of the above is located.

(b) Upon admission to any facility referred to in paragraph (a) of this section, EPA Enforcement Officers are authorized to perform the following inspection-related activities:

(1) To inspect and monitor any aspects of engine or vehicle manufacture, assembly, storage, testing and other procedures, and the facilities in which these procedures are conducted;

(2) To inspect and monitor any aspect of engine or vehicle procedures or activities, including, but not limited to, monitoring engine or vehicle selection, preparation, service or mileage accumulation, preconditioning, repairs, emission test cycles, and maintenance; and to verify calibration of test equipment;

(3) To inspect and make copies of any records or documents related to the assembly, storage, selection and testing of an engine or vehicle; and

(4) To inspect and photograph any part or aspect of any engine or vehicle and any component used in the assembly thereof that is reasonably related to the purpose of the entry.

(c) EPA Enforcement Officers are authorized to obtain reasonable assistance without cost from those in charge of a facility to help them perform any function listed in this subpart and are authorized to request the manufacturer conducting the PCA to make arrangements with those in charge of a facility operated for its benefit to furnish reasonable assistance without cost to EPA, whether or not the manufacturer controls the facility.

(d) EPA Enforcement Officers are authorized to seek a warrant or court order authorizing the EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section, as appropriate, to execute the functions specified in this section. EPA Enforcement Officers may proceed ex parte to obtain a warrant whether or not the Enforcement Officers first attempted to seek permission of the manufacturer conducting the PCA or the party in charge of the facilities in question to conduct activities related to entry and access as authorized in this section.

(e) A manufacturer that conducts a PCA shall permit EPA Enforcement Officers who present a warrant or court order as described in paragraph (d) of this section to conduct activities related to entry and access as authorized in this section and as described in the warrant or court order. The manufacturer shall cause those in charge of its facility or a facility operated for its benefit to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section pursuant to a warrant or court order whether or not the manufacturer controls the facility. In the absence of such a warrant or court order, EPA Enforcement Officers may conduct activities related to entry and access as authorized in this section only upon the consent of the manufacturer or the party in charge of the facilities in question.

(f) It is not a violation of this part or the Clean Air Act for any person to refuse to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section without a warrant or court order.

(g) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions in which local foreign law does not prohibit EPA Enforcement Officers from conducting the entry and access activities specified in this section. EPA will not attempt to make any inspections which it has been informed that local foreign law prohibits.

(h) For purposes of this section, the following definitions are applicable:

(1) "Presentation of Credentials" means display of the document designating a person as an EPA Enforcement Officer.

(2) Where engine or vehicle storage areas of facilities are concerned, "operating hours" means all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (h)(2) of this section are concerned, "operating hours" means all times during which an assembly line is in operation, engine or vehicle assembly is taking place, testing, repair, service accumulation, preparation or compilation of records is taking place, or any other procedure or activity related to engine or vehicle manufacture, assembly or testing is being carried out in a facility.

(4) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpreting and translating services, and making personnel of the facility being inspected available during their working hours on an EPA Enforcement Officer's request to inform the EPA Enforcement Officer of how the facility operates and to answer his or her questions. Any employee whom an EPA

Enforcement Officer requests the manufacturer to cause to appear for questioning will be entitled to be accompanied, represented and advised by counsel.

§ 86.1110–87 Sample selection.

(a) Engines or vehicles comprising a test sample which are required to be tested pursuant to a PCA in accordance with this subpart will be selected at the location and in the manner specified by EPA. If a manufacturer determines that the test engines or vehicles cannot be selected in the manner specified by EPA, an alternative selection procedure may be employed, provided that the manufacturer requests approval of the alternative procedure in advance of the start of test sample selection and that the Administrator approves the procedure.

(b) The manufacturer shall have assembled the test engines or vehicles of the configuration selected for testing using its normal mass production processes for engines or vehicles to be distributed into commerce. In the case of heavy-duty engines, if the test engines are selected at a location where they do not have their operational and emission control systems installed, EPA will specify the manner and location for selection of components to complete assembly of the engines. The manufacturer shall assemble these components onto the test engines using normal assembly and quality control procedures as documented by the manufacturer.

(c) No quality control, testing, or assembly procedures will be used on the completed test engine or vehicle or any portion thereof, including parts and subassemblies, that will not be used during the production and assembly of all other engines or vehicles of that configuration.

(d) The EPA Enforcement Officers may specify that they, rather than the manufacturer, will select the test engines or vehicles.

(e) The order in which test engines or vehicles are selected determines the order in which test results are to be used in applying the PCA testing plan in accordance with § 86.1112–87.

(f) The manufacturer shall keep on hand all engines or vehicles comprising the test sample until such time as a compliance level is determined in accordance with § 86.1112–87 (a) except that the manufacturer may ship any tested engine or vehicle which has not failed in accordance with § 86.1112–87 (f)(1). However, once the manufacturer ships any test engine or vehicle, it relinquishes the prerogative to conduct retests as provided in § 86.1111–87(i).

§ 86.1111–87 Test procedures for PCA testing.

(a) (1) For heavy-duty engines, the prescribed test procedure for PCA testing is the Federal Test Procedure as described in Subparts M, N, I, and P of this part.

(2) For light-duty trucks, the prescribed test procedure for PCA testing is the Federal Test Procedure as described in Subparts B and P of this part.

(3) When testing light-duty trucks, the following exceptions to the test procedures in Subpart B are applicable:

(i) The manufacturer may use gasoline test fuel meeting the specifications of paragraph (a) of § 86.113 for mileage accumulation. Otherwise, the manufacturer may use fuels other than those specified in this section only with advance approval of the Administrator.

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate midvolume of the fuel tank, as specified in paragraph (a) of § 86.131, and may drain the test fuel from other than the lowest point of the fuel tank, as specified in paragraph (b) of § 86.131, with the advance approval of the Administrator.

(iii) The manufacturer may perform additional preconditioning on PCA test vehicles other than the preconditioning specified in § 86.132 only if the additional preconditioning had been performed on certification test vehicles of the same configuration.

(iv) The manufacturer shall perform the heat build procedure 11 to 34 hours following vehicle preconditioning rather than according to the time period specified in paragraph (a) of § 86.133.

(v) The manufacturer may substitute slave tires for the drive wheel tires on the vehicle as specified in paragraph (e) of § 86.135, provided that the slave tires are the same size as the drive wheel tires.

(vi) The cold start exhaust emission test described in § 86.137 shall follow the heat build procedure described in § 86.133 by not more than one hour.

(vii) In performing exhaust sample analysis under § 86.140:

(A) When testing diesel vehicles, the manufacturer shall allow a minimum of 20 minutes warm-up for the HC analyzer, and a minimum of 2 hours warm-up for the CO, CO_2 and NO_x analyzers. [Power is normally left on infrared and chemiluminescent analyzers. When not in use, the chopper motors of the infrared analyzers are turned off and the phototube high voltage supply to the chemiluminescent analyzers is placed in the standby position.]

(B) The manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(viii) The manufacturer need not comply with § 86.142, since the records required therein are provided under other provisions of this subpart.

(ix) In addition to the requirements of Subpart B of this part, the manufacturer shall prepare gasoline-fueled vehicles as follows prior to exhaust emission testing:

(A) The manufacturer shall inspect the fuel system to insure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5 ± 0.5 inches of water to the fuel system, allowing the pressure to stabilize, and isolating the fuel system from the pressure source. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water in 5 minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph (d) of this section.

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative emission control system by component addition, deletion, or substitution, except to comply with paragraph (a)(4)(ii) of this section if approved in advance by the Administrator.

(b) (1) The manufacturer shall not adjust, repair, prepare, or modify the engines or vehicles selected for testing and shall not perform any emission tests on engines or vehicles selected for testing pursuant to a PCA request unless the adjustment, repair, preparation, modification, or tests are documented in the manufacturer's engine or vehicle assembly and inspection procedures and are actually performed on all engines or vehicles produced or unless these adjustments or tests ar required or permitted under this subpart or are approved in advance by the Administrator.

(2) For 1984 and later model years the Administrator may adjust or cause to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification, Selective Enforcement Audit and Production Compliance Audit testing in accordance with § 86.084–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.084–22(e)(3)(ii), prior to the performance of any tests. However, if the idle speed parameter is

one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to any setting which causes a lower engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter if the manufacturer had accumulated 125 hours of service on the engine or 4,000 miles on the vehicle under paragraph (c) of this section, all other parameters being identically adjusted for the purpose of the comparison. The manufacturer may be requested to supply information to establish such an alternative minimum idle speed. The Administrator, in making or specifying these adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines or light-duty trucks. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine or vehicle performance characteristics and surveillance information from similar in-use engines or vehicles.

(c) Prior to performing emission testing on a PCA test engine, the manufacturer may accumulate on each engine a number of hours of service equal to the greater of 125 hours or the number of hours the manufacturer accumulated during certification on the emission-data engine corresponding to the configuration tested during PCA. Prior to performing emission testing on a PCA test vehicle, the manufacturer may accumulate a number of miles equal to the greater of 4,000 miles or the number of miles the manufacturer accumulated during certification on the emission-data vehicle corresponding to the configuration tested during PCA. Service or mileage accumulation may be performed in any manner the manufacturer desires.

(d) No maintenance shall be performed on test engines or vehicles after selection for testing nor will any test engine or vehicle substitution or replacement be allowed, unless requested of and approved by the Administrator in advance of the performance of any maintenance or engine or vehicle substitution.

(e) The manufacturer shall expeditiously ship test engines or vehicles from the point of selection to the test facility or other location to meet any other requirements of this subpart. If the test facility is not located at or in close proximity to the point of selection, the manufacturer shall assure that test engines or vehicles arrive at the test facility within 24 hours of selection, except that the Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) If an engine or vehicle cannot complete the service or mileage accumulation or emission tests because of engine or vehicle malfunction, the manufacturer may request that the Administrator authorize the repair of the engine or vehicle. If the engine or vehicle cannot be repaired expeditiously, EPA may delete it from the test sequence.

(g) (1) Heavy-duty engine manufacturers with projected sales bound for the United States market for that year of 30,000 or greater, as made in their respective Applications for Certification, shall complete emission testing at their testing facility on a minimum of two engines per 24-hour period, including voided tests.

(2) Heavy-duty engine manufacturers with projected sales bound for the United States market for that year of less than 30,000, as made in their respective Applications for Certification, shall complete emission testing at one engine per 24-hour period, including voided tests.

(3) Light-duty truck manufacturers shall complete emission testing on a minimum of four vehicles per 24-hour period, including voided tests.

(4) The Administrator may approve a longer period of time for conducting emission tests based upon a request by a manufacturer accompanied by a satisfactory justification.

(h) The manufacturer shall perform test engine or vehicle selection, shipping, preparation, service or mileage accumulation, and testing in such a manner as to insure that the audit is performed in an expeditious manner.

(i) The manufacturer may retest any engines or vehicles tested during a Production Compliance Audit once a compliance level has been established in accordance with § 86.1112–87 based on the first test on each engine or vehicle. The Administrator may approve retesting at other times based upon a request by the manufacturer accompanied by a satisfactory justification. The manufacturer may test each engine or vehicle a total of three times. The manufacturer shall test each engine or vehicle the same number of times. The manufacturer may accumulate additional service or mileage before conducting a retest, subject to the provisions of paragraph (c) of this section.

§ 86.1112–87 Determining the compliance level and reporting of test results

(a) A manufacturer that has elected to conduct a PCA in accordance with § 86.1106–87 may establish the compliance level for a pollutant for any engine or vehicle configuration by using the primary PCA sampling plan or either of two optional reduced PCA sampling plans (the fixed reduced sampling plan or the sequential reduced sampling plan) described below.

(1) A manufacturer that elects to conduct a PCA for a pollutant using the primary PCA sampling plan shall:

(i) Conduct emission tests on 24 engines or vehicles in accordance with § 86.1111–87 for the pollutants for which the PCA was initiated. If the PCA follows an SEA failure, the number of additional tests conducted shall be the difference between 24 and the number of engines or vehicles tested in the SEA. If 24 or more engines or vehicles were tested in the SEA, no additional tests shall be conducted; and

(ii) Rank the final deteriorated test results, as defined by paragraph (e) of this section, obtained for that pollutant in order from the lowest to the highest value. If the PCA follows an SEA failure, all SEA test results for the pollutant shall be included in this ranking.

(iii) The compliance levels for that pollutant is the final deteriorated test result in the sequence determined from Table 1 of Appendix XII of these regulations.

(2) A manufacturer that elects to conduct a PCA for a pollutant using the fixed reduced PCA sampling plan shall:

(i) Select a sample size between 3 and 23 engines or vehicles. If the PCA follows an SEA failure, the sample size selected cannot be less than the number of engines or vehicles tested during the SEA; and

(ii) Conduct emission tests on the selected sample in accordance with § 86.1111–87 for the pollutants for which the PCA was initiated.

(iii) The compliance level for the pollutant is the result of the following equation, using the test results obtained in (a)(2)(ii) and all SEA test results for that pollutant if the PCA follows an SEA failure:

$$CL = \bar{X} + Ks$$

where:

CL = The compliance level.

$\bar{X}$ = The mean of the final deteriorated test results, as defined by paragraph (e) of this section.

K = A value that depends on the size of the test sample. See Table 2 of Appendix XII of this part for the value of K that corresponds to the size of the test sample.

s = The sample standard deviation.

The compliance level is rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67.

(3) A manufacturer that elects to conduct a PCA for a pollutant using the sequential reduced PCA sampling plan shall perform the following:

(i) Select a sample size of 4, 8, 12, 16 or 20 engines or vehicles. If the PCA follows an SEA failure, the sample size selected cannot be less than the number of engines or vehicles tested during the SEA.

(ii) Conduct emission tests on the selected sample in accordance with § 86.1111–87 for the pollutants for which the PCA was initiated.

(iii) The compliance level for the pollutant is the result of the following equation, using the test results obtained in paragraph (a)(3)(ii) of this section and all SEA test results for that pollutant if the PCA follows an SEA failure:

$CL = \bar{X} + Ks$

where:

CL = The compliance level.

$\bar{X}$ = The mean of the final deteriorated test results, as defined by paragraph (e) of this section.

K = A value that depends on the size of the test sample. See Table 3 of Appendix XII of this part for the value of K that corresponds to the size of the test sample.

s = The sample standard deviation.

The compliance level is rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67.

(iv) After calculating a compliance level in accordance with paragraph (a)(3)(iii) of this section, a manufacturer may elect to increase the sample size by 4 engines or vehicles, or a multiple thereof, up to the maximum, including SEA engines or vehicles if any, of 20. Upon that election, the manufacturer shall add the additional engines or vehicles to the sample and perform paragraphs (a)(3)(ii) and (a)(3)(iii) of this section. This election may be repeated if appropriate. A compliance level determined under this election shall replace a previously determined compliance level.

(b) A fail decision is reached with respect to the upper limit when the compliance level determined in paragraph (a) of this section exceeds the applicable upper limit.

(c) Initial test results are calculated following the Federal Test Procedure specified in § 86.1111–87(a).

(d) Final test results are calculated by summing the initial test results derived in paragraph (c) of this section for each test engine or vehicle, dividing by the number of tests conducted on the engine or vehicle, and rounding in accordance with ASTM E29–67 to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

(e) *Final deteriorated test results.* (1) The final deteriorated test results for each heavy-duty engine or light duty truck tested according to Subparts B, I, N, or P of this part are calculated by applying the final test results by the appropriate deterioration factor, derived from the certification process for the engine family control system combination and model year for the selected configuration to which the test engine or vehicle belongs. If the deterioration factor computed during the certification process is multiplicative and it is less than one, that deterioration factor will be one. If the deterioration factor computed during the certification process is additive and it is less than zero, that deterioration factor will be zero.

(2) The final deteriorated test results are rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67.

(f) A failed engine or vehicle is one whose final deteriorated test results, for one or more of the applicable exhaust pollutants, exceed:

(1) The applicable emission standard, or

(2) The compliance level established in paragraph (b) of this section.

(g) Within five working days after completion of PCA testing of all engines or vehicles, the manufacturer shall submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's emission test facilities which were utilized to conduct testing reported pursuant to this section;

(2) The applicable standards against which the engines or vehicles were tested;

(3) Deterioration factors for the engine family to which the selected configuration belongs;

(4) A description of the engine or vehicle and any emission-related component selection method used;

(5) For each test conducted,

(i) Test engine or vehicle description, including:

(A) Configuration and engine family identification,

(B) Year, make and build date,

(C) Engine or vehicle identification number, and

(D) Number of hours of service accumulated on engine or number of miles on vehicle prior to testing;

(ii) Location where service or mileage accumulation was conducted and description of accumulation procedure and schedule;

(iii) Test number, date, initial test results before and after rounding, final test results and final deteriorated test results for all emission tests, whether valid or invalid, and the reason for invalidation, if applicable;

(iv) A complete description of any modification, repair, preparation, maintenance, and/or testing which was performed on the test engine or vehicle and has not been reported pursuant to any other paragraph of this subpart and will not be performed on all other production engines or vehicles; and

(v) Any other information the Administrator may request relevant to the determination as to whether the new heavy-duty engines or heavy-duty vehicles being manufactured by the manufacturer do in fact conform with the regulations of this subpart; and

(6) The following statement and endorsement: This report is submitted pursuant to section 206 of the Clean Air Act. This Production Compliance Audit was conducted in complete conformance with all applicable regulations under 40 CFR Part 86 *et seq.* All data and information reported herein is, to the best of

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(Company Name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

(Authorized Company Representative)

§ 86.1113–87 Calculation and payment of penalty.

(a) The NCP for each engine or vehicle for which a compliance level has been determined under § 86.1112–87 is calculated according to the formula in paragraph (a) (1) or (2) of this section depending on the value of the compliance level. Each formula contains an annual adjustment factor (AAF_i) which is defined in paragraph (a)(3) of this section. Other terms in the formulas are defined in paragraph (a)(4) of this section.

(1) If the compliance level (CL) is greater than the standard and less than or equal to X (e.g., point CL_1 in figure 1), then:

$$NCP_n = (PR_1)(CL - S)\left(\prod_{i=1}^{n} AAF_i\right)$$

where:

$PR_1 = (F)(MC_{50})$

(2) If the compliance level is greater than X and less than or equal to the upper limit (e.g., point CL_2 in figure 1), then:

$$NCP_n = (COC_{50} + (PR_2)(CL - X))\left(\prod_{i=1}^{n} AAF_i\right)$$

where:

$$PR_2 = \frac{COC_{90} - COC_{50}}{UL - X}$$

(3) AAF_i has the following values:

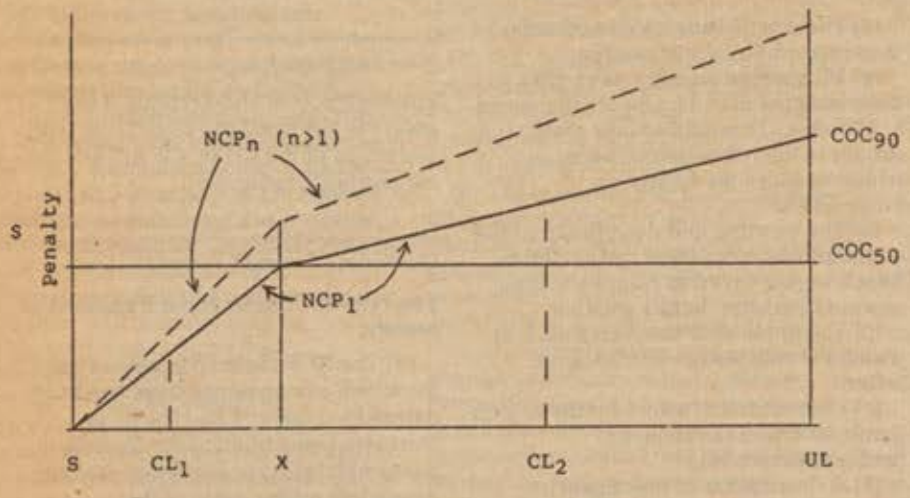
(i) If $frac_{i-1} = 0$, then $AAF_i = 1 + I_{i-1}$

(ii) If $frac_{i-1} > 0$, then:

$$AAF_i = 1 + I_{i-1} + A_i\left[\frac{1}{1 - frac_{i-1}}\right]$$

Figure 1

Penalty vs. Compliance Level



If $frac_{i-1} > 0.50$, then $frac_{i-1}$ will be set equal to 0.50.

(iii) $AAF_1 = 1$

(iv) In calculating the NCP for year n, the value of $frac_{i-1}$ for i—n will include actual NCP usage through March 31 of model year n—1 and EPA's estimate of additional usage for the remainder of model year n—1. The value of $frac_{i-1}$ will be corrected to reflect actual year end usage of NCPs and a corrected AAF_i will be used to establish NCPs in future years. The correction of the previous year's AAF will not affect the previous year's penalty.

(4) The terms in the above formulas have the following meanings and values which may be determined separately for each subclass and pollutant for which an NCP is offered:

NCP_n = NCP for year n for each applicable engine or vehicle

CL = Compliance level for year n for applicable engines or vehicles

S = Emission standard

UL = Upper limit

X = Compliance level above the standard at which NCP_1 equals COC_{50}

$$X = \left[\frac{COC_{50}}{(F)(MC_{50})}\right] + S$$

PR_1 = Penalty rate when CL<X

PR_2 = Penalty rate when X<CL<UL

$\prod_{i=1}^{n} AAF_i$ = Running product, i.e., $(AAF_1)x(AAF_2)x \ldots x(AAF_n)$

i = An index representing a year

n = Index representing the number of model years for which the NCP has been available for an engine or vehicle subclass, i.e., n=1 for the first year that the NCP is available; . . . n=n for the nth year that the NCP is available

COC_{50} = Estimate of the average total incremental cost to comply with the standard relative to complying with the upper limit

COC_{90} = Estimate of the 90th percentile total incremental cost to comply with the standard relative to complying with the upper limit

MC_{50} = Estimate of the average marginal cost of compliance (dollars per emission unit) with the standard

F = Factor used to estimate the 90th percentile marginal cost based on the average marginal cost (the minimum value of F is 1.1, the maximum value of F is 1.3)

AAF_i = Annual adjustment factor for year i

$frac_{i-1}$ = Fraction of engines or vehicles of a subclass using NCPs in previous year (year i-1)

A_i = Usage adjustment factor in year i: $A_i = 0.10$ for i=2; $A_i = 0.06$ for i>2

I_i = Percentage increase in inflation index in year i

(5) The values of COC_{50}, COC_{90}, MC_{50} and F will be determined for each applicable subclass by EPA based on the cost data used by EPA in setting the applicable emission standard. However, where the rulemaking to establish a specific NCP occurs after the rulemaking to establish the standard, EPA may augment the data base used to establish the standard by including the best cost and emission performance data available to EPA during the specific NCP rulemaking.

(6) Any NCP calculated under paragraph (a) of this section will be

rounded to the nearest dollar in accordance with ASTM E29–67.

(b) The NCP determined in paragraph (a) of this section is assessed against all those engines or vehicles of the nonconforming configuration or engine family produced at all assembly plants and distributed into commerce—

(1) Since the beginning of the model year in the case of a certification failure described by § 86.1106–87(a).

(2) Beginning ten days after an SEA failure described by § 86.1106–87 (b) or (c).

(3) Following implementation of a production running change described by § 86.1106–87(d).

(c) The NCP will continue to be assessed during the model year, until such time, if any, that the configuration or engine family is brought into conformance with applicable emission standards.

(d) A manufacturer may carry over an NCP from a model year to the next model year. There is no limit to the number of years that carryover can continue. The amount of the penalty will increase each year according to paragraph (a) of this section.

(e) The Administrator shall notify the manufacturer in writing of the nonconformance penalty established under paragraph (a) of this section after the completion of the PCA under § 86.1112–87.

(f) At any time subsequent to notification of the nonconformance penalty established under paragraph (a) of this section, but not later than fifteeen (15) days or such other period as may be allowed by the Administrator after such notification, a manufacturer may request a hearing under § 86.1115–87 as to whether the compliance level was determined in accordance with the procedures in § 86.1112–87(a) or whether the penalty was calculated in accordance with the procedures in § 86.1113–87(a).

(g) (1) The nonconformance penalty or penalties assessed under this subpart must be paid within 30 days of the end of each calendar quarter (March 31, June 30, September 30 and December 31), or according to such other payment schedule as the Administrator may approve pursuant to a manufacturer's request, for all nonconforming engines or vehicles produced by a manufacturer in accordance with paragraph (b) of this section and distributed into commerce for that quarter. Payment must be made to the United States Treasury and delivered to: Director, Manufacturers Operations Division (En–340F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

(2) The manufacturer shall provide the Administrator with the following information along with payment under paragraph (g)(1) of this section:

(i) Corporate identification, identification and quantity of engines or vehicles subject to the NCP, certificate identification (number and date), and NCP payment calculations.

(ii) The following statement and endorsement:

This information is submitted pursuant to section 206 of the Clean Air Act. All information reported herein is, to the best of

(Company name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

(Authorized Company Representative)

(3) The Administrator may verify the production figures or other documentation submitted under paragraph (g)(2) of this section.

§ 86.1114–87 Suspension and voiding of certificates of conformity.

(a) The certificate of conformity is suspended with respect to any engine or vehicle failing pursuant to paragraph (f) of § 86.1112–87 effective from the time that a fail decision is made for that engine or vehicle.

(b) Once a certificate has been suspended for a failed engine or vehicle as provided for in paragraph (a) of this section, the manufacturer shall take the following actions:

(1) Before the certificate is reinstated for that failed engine or vehicle,

(i) Remedy the nonconformity, and

(ii) Demonstrate that the engine or vehicle conforms to the applicable standards or compliance levels by retesting the engine or vehicle in accordance with these regulations; and

(2) Submit a written report to the Administrator within five working days after successful completion of testing on the failed engine or vehicle, which contains a description of the remedy and test results for each engine or vehicle in addition to other information that may be required by this regulation.

(c) The Administrator may suspend the certificate of conformity if the manufacturer, after electing to conduct a PCA, fails to adhere to the requirements stated in § 86.1106–87 (b)(3), (b)(6)(iii), (c)(2), (c)(5)(iii), or if the compliance level as determined in § 86.1112–87(a) is in excess of the upper limit.

(d) The Administrator may suspend the qualified certificate of conformity issued under the conditions specified in § 86.1106–87 if the manufacturer fails to adhere to the requirements stated in § 86.1106–87 (a)(3), (a)(4)(iii), (d)(2)(iii), (d)(3), or if the compliance level as determined in § 86.1112–87(a) is in excess of the upper limit.

(e) The Administrator may void the certificate of conformity if the compliance level as determined in § 86.1112–87(a) is in excess of the upper limit and the manufacturer fails to recall any engines or vehicles introduced into commerce pursuant to § 86.1106–87 (a)(4)(ii), (b)(6)(ii), (c)(5)(ii) or (d)(2)(ii).

(f) The Administrator may void the certificate of conformity for those engines or vehicles for which the manufacturer fails to meet the requirements of § 86.1106–87 (a)(4)(i), (b)(6)(i), (c)(5)(i), or (d)(2)(i).

(g) The Administrator shall notify the manufacturer in writing of any suspension or voiding of a certificate of conformity in whole or in part, except as provided for in paragraph (a) of this section.

(h) A certificate of conformity suspended or voided under paragraphs (c), (d), (e), or (f) of this section may be reinstated after a written request by the manufacturer and under such terms and conditions as the Administrator may require and after the manufacturer demonstrates compliance with applicable requirements.

(i) After the Administrator suspends or voids a certificate of conformity pursuant to this section or notifies a manufacturer of his intent to suspend or void a certificate of conformity under § 86.087–30(e), and prior to the commencement of a hearing under § 86.1115–87, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

§ 86.1115–87 Hearing procedures for nonconformance determinations and penalties.

(a) *Applicability.* The procedures prescribed by this section shall apply whenever a manufacturer requests a hearing pursuant to § 86.087–30(e)(6)(i), § 86.087–30(e)(7), or § 86.1113–87(f).

(b) *Definitions.* The following definitions shall be applicable to this section:

(1) "Hearing Clerk" shall mean the Hearing Clerk of the Environmental Protection Agency.

(2) "Manufacturer" means a manufacturer contesting a compliance level or penalty determination sent to the manufacturer.

(3) "Party" means the Agency and the manufacturer.

(4) "Presiding Officer" shall mean an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR Part 930 as amended).

(5) "Judicial Officer" shall mean an officer or employee of the Agency appointed as a Judicial Officer by the Administrator pursuant to this section who shall meet the qualifications and perform functions as follows:

(i) Officer—there may be designated for purposes of this section one or more Judicial Officers. As work requires, there may be a Judicial Officer designated to act for the purposes of a particular case.

(ii) Qualifications—A Judicial Officer may be a permanent or temporary employee of the Agency who performs other duties for the Agency. Such Judicial Officer shall not be employed by the Office of Air and Radiation or have any connection with the preparation or presentation of evidence for a hearing held pursuant to this subpart.

(iii) Functions—the Administrator may consult with a Judicial Officer or delegate all or part of his authority to act in a given case under this section to a Judicial Officer, *provided*, That this delegation shall not preclude the Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer determines such referral to be appropriate.

(c) *Request for public hearing.* (1) If the manufacturer disagrees with the Administrator's determination of compliance level or penalty calculation or both, he may request a public hearing as described in this section. Requests for such a hearing shall not be filed later than 15 days after receipt of the Administrator's notification of NCP unless otherwise specified by the Administrator. The manufacturer shall simultaneously serve two copies of this request upon the Director of the Manufacturers Operations Division and file two copies with the Hearing Clerk. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the Expiration of the period for requesting a hearing as of right, the Administrator may, in his discretion and for good cause shown, grant the manufacturer a hearing to contest the compliance level or penalty calculation.

(2) The request for a public hearing shall contain:

(i) A statement as to which vehicle or engine subclasses or configurations are to be the subject of the hearing;

(ii) A concise statement of the issues to be raised by the manufacturer at the hearing for each vehicle or engine subclass or configuration for which the manufacturer has requested the hearing, and shall be restricted to the following issues:

(A) The compliance level was not determined in accordance with the procedures in § 86.1112–87(a); or

(B) The penalty was not calculated in accordance with the procedures in § 86.1113–87(a).

(iii) A statement specifying reasons why the manufacturer believes it will prevail on the merits on each of the issues so raised; and

(iv) A summary of the evidence which supports the manufacturer's position on each of the issues so raised.

(3) A copy of all requests for public hearings shall be kept on file in the Office of the Hearing Clerk and shall be made available to the public during Agency business hours.

(d) *Summary decision.* (1) In the case of a hearing requested under § 86.1113–87(f) when it clearly appears from the data and other information contained in the request for a hearing that there is no genuine and substantial question of fact with respect to the issues specified in § 86.1115–87(c)(2)(ii), the Administrator will enter an order denying the request for a hearing, and reaffirming the original compliance level determination or penalty calculation.

(2) In the case of a hearing requested under § 86.087–30(e)(6)(i), to challenge a proposed suspension or voiding of a certificate of conformity for the reasons specified in § 86.087–30 (e)(1)(i) or (e)(1)(ii), when it clearly appears from the data and other information contained in the request for a hearing that there is no genuine and substantial question of fact with respect to the issue of whether the refusal to comply with the provisions of a Production Compliance Audit was caused by conditions and circumstances outside the control of the manufacturer, the Administrator shall enter an order denying the request for a hearing and suspending or voiding the certificate of conformity.

(3) Any order issued under paragraph (d) (1) or (2) of this section shall have the force and effect of a final decision of the Administrator, as issued pursuant to paragraph (v)(4) of this section.

(4) If the Administrator determine that a genuine and substantial question of fact does exist with respect to any of the issues referred to in paragraphs (d) (1) and (2) of this section, he shall grant the request for a hearing and publish a notice of public hearing in accordance with paragraph (h) of this section.

(e) *Filing and service.* (1) An original and two copies of all documents or papers required or permitted to be filed pursuant to this section shall be filed with the Hearing Clerk. Filing shall be deemed timely if mailed, as determined by the postmark to the Hearing Clerk within the time allowed by this section. If filing is to be accomplished by mailing, the documents shall be sent to the address set forth in the notice of public hearing as described in paragraph (h) of this section.

(2) To the maximum extent possible, testimony shall be presented in written form. Copies of written testimony shall be served upon all parties as soon as practicable prior to the start of the hearing. A certificate of service shall be provided on or accompany each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Manufacturers Operations Division shall be sent by registered mail to: Director, Manufacturers Operations Division, U.S. Environmental Protection Agency (EN–340F), 401 M Street, SW., Washington, D.C. 20460. Service by registered mail is complete upon mailing.

(f) *Time.* (1) In computing any period of time prescribed or allowed by this section, except as otherwise provided, the day of the act or event from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included in computing any such period allowed for the filing of any document or paper, except that when such a period expires on a Saturday, Sunday, or Federal legal holiday, such period shall be extended to include the next following business day.

(2) A prescribed period of time within which a party is required or permitted to do an act shall be computed from the time of service, except that when service is accomplished by mail, three days shall be added to the prescribed period.

(g)(1) *Consolidation.* The Administrator or the Presiding Officer in his discretion may consolidate two or more proceedings to be held under this section for the purpose of resolving one or more issues whenever it appears that such consolidation will expedite or simplify consideration of such issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(2) If a vehicle or engine is determined to be in nonconformity during certification testing under Subpart A of this part, then the manufacturer may wait to challenge the determination until after production compliance auditing

and calculation of his penalty and may consolidate challenges to the determination of nonconformity and the compliance level determination or the penalty calculation, without losing any rights he would otherwise have had.

(3) If a vehicle or engine is determined to be in nonconformity during selective enforcement auditing under Subpart K of this part, then the manufacturer must wait to challenge the determination until after the compliance level determination and the penalty calculation, and must consolidate challenges to the determination of nonconformity and the compliance level determination or the calculation of the penalty.

(h) *Notice of public hearings.* (1) Notice of public hearing under this section shall be given by publication in the **Federal Register** and by such other means as the Administrator finds appropriate to provide notice to the public. To the extent possible, hearings under this section shall be scheduled to commence within 14 days of receipt of the application in paragraph (c) of this section.

(i) *Amicus curiae.* Persons not parties to the proceeding wishing to file briefs may do so by leave of the Presiding Officer granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable.

(j) *Presiding Officer.* The Presiding Officer shall have the duty to conduct a fair and impartial hearing in accordance with 5 U.S.C. sections 554, 556 and 557 and to take all necessary action to avoid delay in the disposition of the proceedings and to maintain order. He shall have all power consistent with Agency rules and with the Administrative Procedure Act necessary to this end, including the following:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and exclude irrelevant or repetitious material;

(3) To regulate the course of the hearings and the conduct of the parties and their counsel therein;

(4) To hold conferences for simplification of the issues or any other proper purpose;

(5) To consider and rule upon all procedural and other motions appropriate in such proceedings;

(6) To require the submission of direct testimony in written form with or without affidavit whenever, in the opinion of the Presiding Officer, oral testimony is not necessary for full and true disclosure of the facts;

(7) To enforce agreements and orders requiring access as authorized by law;

(8) To require the filing of briefs on any matter on which he is required to rule;

(9) To require any party or any witness, during the course of the hearing, to state his position on any issue;

(10) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(11) To make decisions or recommend decisions to resolve the disputed issues on the record of the hearing;

(12) To issue, upon good cause shown, protective orders as described in paragraph (n) of this section.

(k) *Conferences.* (1) At the discretion of the Presiding Officer, conferences may be held prior to or during any hearing. The Presiding Officer shall direct the Hearing Clerk to notify all parties of the time and location of any such conference. At the discretion of the Presiding Officer, persons other than parties may attend. At a conference the Presiding Officer may:

(i) Obtain stipulations and admissions, receive requests and order depositions to be taken, identify disputed issues of fact and law, and require or allow the submission of written testimony from any witness or party;

(ii) Set a hearing schedule for as many of the following as are deemed necessary by the Presiding Officer:

(A) Oral and written statements;

(B) Submission of written direct testimony as required or authorized by the Presiding Officer;

(C) Oral direct and cross-examination of a witness where necessary as prescribed in paragraph (p) of this section; and

(D) Oral argument, if appropriate.

(iii) Identify matters of which official notice may be taken;

(iv) Consider limitation of the number of expert and other witnesses;

(v) Consider the procedure to be followed at the hearing; and

(vi) Consider any other matter that may expedite the hearing or aid in the disposition of the issue.

(2) The results of any conference including all stipulations shall, if not transcribed, be summarized in writing by the Presiding Officer and made part of the record.

(l) *Primary discovery (exchange of witness lists and documents).* (1) At a prehearing conference or within some reasonable time set by the Presiding Officer prior to the hearing, each party shall make available to the other parties the names of the expert and other witnesses the party expects to call, together with a brief summary of their expected testimony and list of all documents and exhibits which the party expects to introduce into evidence. Thereafter, witnesses, documents, or exhibits may be added and summaries of expected testimony amended upon motion by a party.

(2) The Presiding Officer, may upon motion by a party or other person, and for good cause shown, by order (i) restrict or defer disclosure by a party of the name of a witness or a narrative summary of the expected testimony of a witness, and (ii) prescribe other appropriate measures to protect a witness. Any party affected by any such action shall have an adequate opportunity, once he learns the name of a witness and obtains the narrative summary of his expected testimony, to prepare for the presentation of this case.

(m) *Other discovery.* (1) Except as provided by paragraph (m)(1) of this section, further discovery under this paragraph shall be permitted only upon determination by the Presiding Officer:

(i) That such discovery will not in any way unreasonably delay the proceeding;

(ii) That the information to be obtained is not obtainable voluntarily; and

(iii) That such information has significant probative value. The Presiding Officer shall be guided by the procedures set forth in the Federal Rules of Civil Procedure, where practicable, and the precedents thereunder, except that no discovery shall be undertaken except upon order of the Presiding Officer or upon agreement of the parties.

(2) The Presiding Office shall order depositions upon oral questions only upon a showing of good cause and upon a finding that:

(i) The information sought cannot be obtained by alternative methods; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) Any party to the proceeding desiring an order of discovery shall make a motion or motions therefor. Such a motion shall set forth:

(i) The circumstances warranting the taking of the discovery;

(ii) The nature of the information expected to be discovered; and

(iii) The proposed time and place where it will be taken. If the Presiding Officer determines the motion should be granted, he shall issue an order for the taking of such discovery together with the conditions and terms thereof.

(4) Failure to comply with an order issued pursant to this paragraph may lead to the inference that the information to be discovered would be

adverse to the person or party from whom the information was sought.

(n) *Protective orders, in camera proceedings.* (1) Upon motion by a party or by the person from whom discovery is sought, and upon a showing by the movant that the disclosure of the information to be discovered, or a particular part thereof, (other than emission data) would result in methods or processes entitled to protection as trade secrets of the person being divulged, the Presiding Officer may enter a protective order with respect to such material. Any protective order shall contain such terms governing the treatment of the information as may be appropriate under the circumstances to prevent disclosure outside the hearing, *provided,* That the order shall state that the material shall be filed separately from other evidence and exhibits in the hearing. Disclosure shall be limited to parties to the hearing, their counsel and relevant technical consultants, and authorized representatives of the United States concerned with carrying out the Act. Except in the case of the Government, disclosure may be limited to counsel for parties who shall not disclose such information to the parties themselves. Except in the case of the Government, disclosure to a party or his counsel shall be conditioned on execution of a sworn statement that no disclosure of the information will be made to persons not entitled to receive it under the terms of the protective order. (No such provision is necessary where Government employees are concerned because disclosure by them is subject to the terms of 18 U.S.C. 1905.)

(2)(i) A party or person seeking a protective order may be permitted to make all or part of the required showing in camera. A record shall be made of such in camera proceedings. If the Presiding Officer enters a protective order following a showing in camera, the record of such showing shall be sealed and preserved and made available to the Agency or court in the event of appeal.

(ii) Attendance at any in camera proceeding may be limited to the Presiding Officer, representatives of the Agency, and the person or party seeking the protective order.

(3) Any party, subject to the terms and conditions of any protective order issued pursuant to paragraph (n)(1) of this section, that desires to make use of any in camera documents or testimony in the presentation of his case shall apply to the Presiding Officer by motion for permission to do so, and shall state the justification for the motion. The Presiding Officer, in granting any such motion, shall enter an order protecting the rights of the affected persons and parties as far as is practicable, and preventing unnecessary disclosure of such information and testimony concerning such information.

(4) In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make a good faith attempt to refrain from disclosing the specific details of in camera documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony. This shall not preclude references in such proposed findings, briefs, or other papers marked "confidential," which shall become part of the in camera record.

(o) *Motions.* (1) All motions, except those made orally during the course of the hearing, shall be in writing and shall state with particularity the grounds therefore, shall set forth the relief or order sought, and shall be filed with the Hearing Clerk and served upon all parties.

(2) Within such time as may be fixed by the Administrator, the judicial officer, or the Presiding Officer, as appropriate, any party may serve and file an answer to the motion. The movant shall, if requested by the Administrator, the judicial officer, or the Presiding Officer, as appropriate, serve and file reply papers, within the time set by the request.

(3) The Presiding Officer shall rule upon all motions filed or made prior to the filing of his decision or accelerated decision, as appropriate. The Administrator or the judicial officer, as appropriate, shall rule upon all motions filed prior to the appointment of a Presiding Officer and all motions filed after the filing of the decision of the Presiding Officer or accelerated decision. Oral argument of motions will be permitted only if the Presiding Officer, the Administrator or the judicial officer, as appropriate, deems it necessary.

(p) *Evidence.* (1) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as practicable. Documents or parts thereof subject to a protective order under paragraph (n) of this section shall be segregated. Evidence may be received at the hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and protective value.

(2) The Presiding Officer shall allow the parties to examine and cross-examine a witness to the extent that such examination and cross-examination is necessary for a full and true disclosure of the facts.

(3) Rulings of the Presiding Officer on the admissibility of evidence, the propriety of examination and cross-examination and other procedural matters shall appear in the record.

(4) Parties shall automatically be presumed to have taken exception to an adverse ruling.

(q) *Record.* (1) Hearings shall be stenographically reported and transcribed and the original transcripts shall be part of the record. Copies of the records shall be filed with the Hearing Clerk and made available during Agency business hours for public inspection. Any person who wants a copy of the record of the hearing or any part thereof, except as provided in paragraph (n) of this section, shall be entitled to the same upon payment of the cost thereof.

(2) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record.

(r) *Proposed findings, conclusions.* (1) Within 4 days of the close of the reception of evidence, or within such longer time as may be fixed by the Presiding Officer, any party may submit for the consideration of the Presiding Officer proposed findings of fact, conclusions of law, and a proposed order, together with reasons therefore and briefs in support thereof. Such proposals shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied upon.

(2) The record shall show the Presiding Officer's ruling on the proposed findings and conclusions except when his order disposing of the proceeding otherwise informs the parties of the action taken by him.

(s) *Decisions of the Presiding Officer.* (1) Unless extended by the Administrator, the Presiding Officer shall issue and file with the Hearing Clerk his decision within 14 days after the period for filing proposed findings has expired; as provided for in paragraph (r) of this section.

(2) The Presiding Officer's decision shall become the decision of the Administrator (i) 10 days after issuance thereof, if no notice of intention to appeal as described in paragraph (t) of this section is filed, unless in the interim the Administrator shall have taken action to review or stay the effective date of the decision; or (ii) 5 days after expiration of the period allowed by paragraph (t)(1) of this section for

perfection of an appeal, if a notice of intention to appeal is filed but the appeal is not perfected, unless within that 5-day period the Administrator shall have taken action to review or stay the effective date of the decision;

(3) the Presiding Officer's decision shall include a statement of findings and conclusions, as well as the reasons or basis therefore, upon all the material issues of fact or law presented on the record and an appropriate rule or order. Such decision shall be supported by substantial evidence and based upon a consideration of the whole record.

(4) At any time prior to the issuance of his decision, the Presiding Officer may reopen the proceeding for the reception of further evidence. Except for the correction of clerical errors, the jurisdiction of the Presiding Officer is terminated upon the issuance of his decision.

(t) *Appeal from the decision of the Presiding Officer.* (1) Any party to a proceeding may appeal the Presiding Officer's decision to the Administrator, *provided,* That within 10 days after issuance of the Presiding Officer's decision such party files a notice of intention to appeal and no appeal brief within 20 days of such decision.

(2) When an appeal is taken from the decision of the Presiding Officer, any party may file a brief with respect to such appeal. The brief shall be filed within the same time limits as the appellant's brief.

(3) Any brief filed pursuant to this paragraph shall contain in the order indicated, the following:

(i) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(ii) A specification of the issues intended to be appealed;

(iii) The argument, presenting clearly the points of fact and law relied upon in support of the position taken on each issue, with specific page references to the record and legal or other material relied upon; and

(iv) A proposed order for the Administrator's consideration if different from the order contained in the Presiding Officer's decision.

(4) No brief in excess of 15 pages shall be filed without leave of the Administrator.

(5) Oral argument will be allowed only in the discretion of the Administrator.

(u) *Review of the Presiding Officer's decision in absence of appeal.* (1) If, after the expiration of the period for taking an appeal as provided for by paragraph (t) of this section, no notice of intention to appeal the decision of the Presiding Officer has been filed, or if filed, not perfected, the Hearing Clerk shall so notify the Administrator.

(2) The Administrator, upon receipt of notice from the Hearing Clerk that no notice of intention to appeal has been filed, or if filed, not perfected pursuant to paragraph (t) of this section, may, on his own motion, within 14 days after notice from the Hearing Clerk, review the decision of the Presiding Officer. Notice of the intention of the Administrator to review the decision of the Presiding Officer shall be given to all parties and shall set forth the scope of such review and the issues which shall be considered and shall make provision for filing of briefs.

(v) *Decision of appeal or review.* (1) Upon appeal from or review of the Presiding Officer's decision, the Administrator shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and in addition shall, to the extent necessary or desirable, exercise all the powers which he could have exercised if he had presided at the hearing.

(2) In rendering his decision, the Administrator shall adopt, modify or set aside the findings, conclusions, and order contained in the decision of the Presiding Officer and shall set forth in his decision a statement of the reasons or bases for this action.

(3) In those cases where the Administrator believes that he should have further information or additional views of the parties as to the form and content of the rule or order to be issued, the Administrator, in his discretion, may withhold final action pending the receipt of such additional information or views, or may remand the case to the Presiding Officer.

(4) Any decision rendered under this paragraph which completes disposition of a case shall be a final decision of the Administrator.

(w) *Reconsideration.* Any party may file with the Administrator a petition for reconsideration of such decision, setting forth the relief desired and the grounds in support thereof. This petition must be filed within 20 days of the issuance of the Administrator's decision, and must be confined to new questions raised by the decision or final order and which the petitioner had no opportunity to argue before the Presiding Officer or the Administrator, unless otherwise specified by the Administrator. Subsequent to the expiration of the period for petitioning for reconsideration, the Administrator may, in his discretion and for good cause shown, grant the manufacturer a hearing to contest the compliance level or the penalty calculation, even though such issues may have been raised in the previous proceeding. Any party desiring to oppose such a petition, shall file an answer thereto within 10 days after the filing of the petition. The filing of a petition for reconsideration shall not operate to stay the effective date of the decision or order or to toll the running of any statuory time period affecting such decision or order unless specifically so ordered by the Administrator.

(x) *Accelerated decision, dismissal.* (1) The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the Agency or the manufacturer as to all or any part of the proceeding, without further hearing or upon such limited additional evidence such as affidavits as he may require, or dismiss any party with prejudice, for any of the following reasons:

(i) Failure to state a claim upon which relief can be granted, or direct or collateral estoppel;

(ii) The lack of any genuine issue of material fact, causing a party to be entitled to judgment as a matter of law; or

(iii) Such other and further reasons as are just, including specifically, failure to obey a precedural order of the Presiding Officer.

(2) If under this paragraph an accelerated decision is issued as to all the issues and claims joined in the proceeding, the decision shall be treated for the purposes of these procedures as the decision of the Presiding Officer, as provided in paragraph (s) of this section.

(3) If under this paragraph, judgment is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. He shall thereupon issue an order specifying the facts which appear without substantial controversy, and the issues and claims upon which the hearing will proceed.

(y) *Conclusion of hearing.* (1) If, after the expiration of the period for taking an appeal as provided by paragraph (t) of this section, no appeal has been taken from the Presiding Officer's decision, and after the expiration of the period for review by the Administrator on his own motion as provided for by paragraph (u) of this section, the Administrator does not move to review such decision, the hearing will be deemed to have ended at the expiration of all periods allowed for such appeal and review.

(2) If an appeal of the Presiding Officer's decision is taken pursuant to paragraph (t) of this section, or if, in the absence of such appeal the Administrator moves to review the decision of the Presiding Officer pursuant to paragraph (u) of this section, the hearing will be deemed to have ended upon issuance of a final decision by the Administrator.

(z) *Judicial review.* (1) The Administrator hereby designates the General Counsel, Environmental Protection Agency as the officer upon whom copies of any petition for judicial review shall be served. Such officer shall be responsible for filing in the court the record on which the order of the Administrator is based.

11. The table of contents of Part 86 is proposed to be amended by adding the following appendix:

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

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Appendix XII—Tables for Production Compliance Auditing of Heavy-Duty Engines and Heavy-Duty Vehicles

12. Part 86 is proposed to be amended by adding Appendix XII as follows:

Appendix XII—Tables for Production Compliance Auditing of Heavy-Duty Engines and Heavy-Duty Vehicles

TABLE 1.—COMPLIANCE LEVEL DETERMINATION USING THE PRIMARY PCA SAMPLING PLAN

PCA test sample size (including the number of SEA tests if applicable)	Compliance level is the test result of the sequence number: (the lowest test result is sequence number 1)
24	15
25	15
26	16
27	17
28	17
29	18
30	18
31	19
32	20
33	20
34	21
35	21
36	22
37	23
38	23
39	24
40	24
41	25
42	26
43	26
44	27
45	27
46	28
47	29
48	29
49	30
50	30
51	31
52	32
53	32
54	33
55	33
56	34
57	35
58	35
59	36
60	36

TABLE 2—VALUES OF K FOR THE REDUCED FIXED PCA SAMPLING PLAN

Sample size	Value of K
3	1.602
4	1.114
5	0.895
6	0.764
7	0.674
8	0.606
9	0.555
10	0.513
11	0.478
12	0.448
13	0.422
14	0.399
15	0.379
16	0.360
17	0.343
18	0.328
19	0.314
20	0.301
21	0.289
22	0.277
23	0.266

TABLE 3.—VALUES OF K FOR THE REDUCED SEQUENTIAL PCA SAMPLING PLAN

Sample size	Value of K
4	1.671
8	0.912
12	0.672
16	0.540
20	0.451

(42 U.S.C. 7525)

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

Listing Endangered and Threatened Species and Designating Critical Habitat; Action on Petition to List the North Pacific Fur Seal; Notice of Determination

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 50219-5019]

Listing Endangered and Threatened Species and Designating Critical Habitat; Action on Petition to List the North Pacific Fur Seal

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of determination.

SUMMARY: On January 5, 1984, the Humane Society of the United States petitioned NMFS to add the North Pacific fur seal (*Callorhinus ursinus*) to the U.S. List of Endangered and Threatened Wildlife (50 CFR Part 17). The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that the petition presented substantial scientific information indicating that the proposed listing may be warranted. A status review was conducted to determine if the petitioned action is warranted. Based upon that review, current population estimates, and the implementation of various Federal and international measures to conserve the species, the NMFS has determined that a proposal to list the North Pacific fur seal as a threatened species is not warranted at this time.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Carter, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Washington, D.C. 20235 (202/634-7471).

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1984, the Assistant Administrator received a petition from the Humane Society of the United States, *et al.*, to list the North Pacific fur seal as a threatened species. The petitioners cited the following criteria, provided in section (4)(a)(1) of the Endangered Species Act of 1973 (ESA), as amended, as justification for the petitioned action: reduced and declining population due to overutilization of the species as a result of the commercial harvest of sub-adult male fur seals; other man-made factors, i.e. entanglement of fur seals in discarded netting and other floating debris; inadequacy of existing regulatory mechanisms; or a combination of these factors. The petition received extensive review by marine mammal biologists, wildlife managers and other personnel having knowledge and expertise concerning *C. ursinus*. Based on these reviews, the Assistant Administrator determined that the petition presented substantial evidence indicating that the petitioned listing of the North Pacific fur seal as a threatened species may be warranted. Pursuant to section 4 of the Act and regulation implementing section 4 (50 CFR 424.14(b)(3)) a status review must be conducted if a petition is determined to present substantial evidence in support of a proposed listing. To ensure a comprehensive review, a notice was published in the **Federal Register** on April 11, 1984 (49 FR 14416–14417), soliciting comments and information pertinent to this issue by June 11, 1984. The comment period was extended until August 17, 1984, in response to requests for extensions from several interested parties (49 FR 27808, July 6, 1984). After a thorough analysis of all information available, including information and comments received in response to the aforementioned notice, the NMFS has determined that a proposed rule to list *C. ursinus* as a threatened species is not warranted at this time.

Summary of Status Review

A detailed review of the population status of *C. ursinus* was undertaken by the NMFS in response to the subject petition. That review is provided as an appendix to this notice. A summary of the determinations made in the status review is presented below.

The total population of northern fur seals in the Pacific Ocean, as estimated for 1983, was between 1.19 and 1.23 million individuals. In the late 1970's the population size was estimated at 1.77 million animals. The decline follows trends observed in recent years on Robben Island in the Western Pacific, and especially on the Pribilof Islands.

The North Pacific fur seal population of the Pribilof Islands has been declining at a rate of about 6.5 per cent annually since 1978. Various factors potentially contributing to the decline have been examined.

The likely principal factor behind the decline is increased mortality at sea based on an increased estimate for mortality of young males. Various factors that could contribute to increased mortality have been examined. These include increased levels of toxic substances, lack of food, predation, changes in the physical environment, diseases, and entanglement in debris. Food resources appear not to be a cause since increased growth, body size and pup survival are inconsistent with such an hypothesis. Appraisals of the fishery resources also indicate that there should be sufficient food available. However, none of the other factors can be conclusively ruled out.

The hypothesis that entanglement is a major cause of mortality at sea is consistent with and supported by several sets of data. These data show significant correlations between observed entanglement rates and several changes within the population. If entanglement is a major cause of mortality, the population is likely to experience a continuing decline, since net debris, similar to other debris, may remain at sea for many years. Additional research will be conducted to address this hypothesis.

Listing Procedures

Section 4(a) of the ESA provides that the Secretary of the Interior or Commerce, depending on the species involved, shall by regulation, determine if any species is endangered or threatened for any of the following factors: (1) Present or threatened destruction, modification or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence.

Section 4(b) of the ESA requires that determinations concerning decisions on listings be made solely on the best scientific and commercial data available after conducting a review of the status of the species and taking into account any efforts being made by any State, foreign nations or subdivisions thereof, to protect the species under consideration. The NMFS considered these factors in determining whether to list *C. ursinus* as a threatened species. These factors and their relation to *C. ursinus* are discussed below.

1. *The Present or Threatened Destruction, Modification or Curtailment of Its Habitat or Range*

There is little evidence that modification or destruction of the North Pacific fur seal habitat has contributed significantly to the decline of the species, although actions that occur or have been proposed within the species range have the potential to adversely affect portions of its habitat. The Pribilof Islands have been suggested as possible development sites for offshores oil and gas operations in the Bering Sea. In addition, oil and gas development activities are increasing in central and southern California waters. As a result, there is a potential for fur seals to contact spilled oil. If encountered, spilled oil could affect individual fur

seals in their pelagic habitat or on haulout areas including those at San Miguel Island or the Pribilof Islands. As fur seals rely on their thick pelage for insulation from the cold marine environment, contact with oil either at sea or on a haulout area could adversely affect individual fur seals. However, the probability of an oil spill occurring in these areas is extremely low and such events do not represent a typical component of their habitat.

Questions have been raised concerning potential reduction of the carrying capacity of the North Pacific fur seal habitat as a factor contributing to the population decline. At the present time there is no evidence of such a reduction. Food resources probably are the principal determinant of the carrying capacity for large mammals. Reviews of commercial fisheries and estimates of the biomass of fishes taken in commercial fisheries do not indicate a decrease in food supply for fur seals. Fur seals are pelagic feeders and apparently are highly opportunistic, feeding on a wide variety of prey, some of which are targeted by commercial fisheries operating in the eastern Bering Sea. In the Bering Sea, the major prey items of the North Pacific fur seal are schooling fish and squid. Of their primary food sources, only pollock and herring are target species for fisheries.

It is possible that the food available to fur seals has increased through the influence of commercial fisheries. Pollock found in fur seal stomach samples generally were small, ranging in length from 10 to 35 cm, the majority being sub-commercial size and averaging about 19 to 21 cm. As reviewed by Swartzman and Harr (1983), fishing mortality on large, cannibalistic adult walleye pollock (*Theragra chalcogramma*) may have resulted in a greater availability of smaller pollock more commonly taken by North Pacific fur seals. Existing data fail to support the hypothesis that other environmental factors, such as changes in salinity or temperature within the fur seal's ecosystem, have contributed to the population decline; although there is a possibility that undetected detrimental changes have occurred or are occurring.

2. *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The Interim Convention on Conservation of North Pacific Fur Seals (Convention) provides for limited land harvests of subadult male seals on islands in the western North Pacific Ocean (Robben and Commander Islands) and on Alaska's Pribilof Islands. The total commercial harvest for this species is about 30,000 males per year, or 2.5% of the total species population of approximately 1.2 million. The North Pacific Fur Seal Commission's (NPFSC) regulation of the harvest, in terms of season, sex and length limits, ensures that only those seals not needed as replacements for the breeding stocks are taken. A sufficient number of young males are thought to escape the harvest to return to breed in later years. Because the fur seal is polygynous, many more females are needed for reproduction than males.

Since 1978 the number of fur seal pups born on the Pribilof Islands has been declining at an annual rate of about 6.5%; however, the decline is not thought to be related to the male harvest. The reasons for this conclusion are: (1) the North Pacific fur seal population experienced a major increase in size while a harvest was being conducted between the early 1900's and the 1950's; and (2) the rate of decline in the fur seal population on St. George Island, where the commercial harvest was terminated more than 10 years ago, is similar to that found on St. Paul Island, the site of the current commercial harvest.

Recent work by scientists in the Soviet Union, however, suggests the need for caution regarding the effects of the harvest. Although the details of their work are not yet available, Soviet scientists claim to have evidence that reproductive rates can be determined by the degree of comparability in the age structure of the male and female segments of the population and by the sex ratio. Their work indicates that departures from a sex ratio of 20 adult females to each breeding adult male may result in declining trends, especially when the age structure of the two sexes differ. On some Soviet islands, there may not be an adequate number of breeding age males to inseminate young females at the end of the regular breeding season each year.

There is some evidence to suggest that the problems identified by the Soviet scientists could be involved in the decline on the Pribilofs. This evidence concerns possible increased utilization rates, i.e., an increase in the portion of available animals taken in the harvest each year. Although harvested males are not yet of breeding age, an increase in utilization rates will result in reduced recruitment to the breeding aged population of males and, therefore, a reduced ratio of males to females of breeding age in this population.

With the possible exception of such an indirect effect of the male harvest, the limited data available are not consistent with reduced reproduction rates as a possible contributing factor in the Pribilof decline. Indeed, any effects of the harvest now would be inconsistent with historical increasing trends in the population while being harvested, and are inconsistent with the decline in the unharvested population on St. George Island.

Further evaluation is needed to determine the effects, if any, of the harvest on the decline in fur seal numbers. However, it is the consensus of those scientists participating each year in the Standing Scientific Committee of the NPFSC that the harvest probably is not contributing to the present decline. In addition, some researchers believe that termination of the harvest and the resultant increase in subadult males, might increase the mortality rates of fur seal pups on land.

3. *Disease or Predation*

Predation, diseases and exposure to toxic substances may be contributing to higher rates of mortality among fur seals; however, very little direct information is available on this subject. There is no evidence of increased predatory activity by killer whales (*Orcinus orca*) or Stellar sea lions (*Eumatopius jubatus*), the natural predators of the North Pacific fur seal. The effects of a documented increase in the incidence of Leptospirosis during the mid 1970's has not been fully evaluated although it has not been implicated as a significant contributor to the current decline. Likewise, there is no evidence that other diseases known to occur in North Pacific fur seals, such as hookworm and San Miguel sea lion virus have increased. Based on current information on the physiology and population dynamics of the North Pacific fur seal, the population is not behaving as though it were being affected by diseases. Diseases typically cause a rather precipitous decline in populations followed by a relatively slow regeneration. This has not happened in the Pribilof Islands population. Additional research is needed before a more definitive determination may be made regarding the effects of disease and predation on the North Pacific fur seal population.

4. *Inadequacy of Existing Regulatory Mechanisms*

The NMFS is responsible for management of North Pacific fur seals under the Fur Seal Act of 1966, as amended. The Act implements the Interim Convention on Conservation of North Pacific Fur Seals of 1957, a treaty with Canada, Japan, and the Soviet Union. This treaty and earlier

agreements dating back to 1912, established an international conservation and management regime for this migratory species. Under the provisions of the Convention, fur seals cannot be taken for purposes other than research, native subsistence or the commercial harvest. In all cases, the number of fur seals taken is closely controlled by the Convention.

A significant element of the treaty is a prohibition on pelagic sealing (the taking of seals at sea), a practice which nearly exterminated the herd in the early 1900's. During their spring migration, pregnant females take a direct route from the west coast to the Pribilofs, placing this portion of the population at the greatest risk from any possible resumption of pelagic sealing. Since all North Pacific fur seals spend some portion of their lives in waters outside the jurisdiction of the United States, treaty prohibitions on pelagic sealing are essential to the protection of the fur seal breeding stock. Although a resumption of commercial pelagic sealing on a scale similar to that at the beginning of this century is considered unlikely, the taking of fur seals by commercial fleets in the North Pacific Ocean for "predator control" purposes can be expected to increase without the protection provided by this treaty. The treaty also limits the land harvest of fur seals to levels consistent with wildlife management principles. The Standing Scientific Committee of the NPFSC annually reviews the results of cooperative research programs on this species and is responsible for recommending harvest methods and length of the harvest season as well as the number, size and sex of the seals to be taken. This ensures that only those seals not needed as replacements for the breeding stock are taken and that the harvest is conducted in the most humane manner possible.

The Interim Convention was to expire in October 1984; however, an agreement was reached among the Party Governments on a Protocol that extends the treaty until October 1988. The new Protocol will be forwarded to the U.S. Senate for ratification early this year. A statement attached to the Protocol addresses the concerns of all Parties regarding the recent decline in the fur seal population and other issues directly related to fur seal conservation and utilization. The statement underscores the party governments' determination to resolve the current problems facing the North Pacific fur seal by: (1) Addressing the need for additional research concerning current aspects of fur seal conservation including the problem of entanglement; (2) committing to take appropriate measures, in conformity with their national laws and the provisions of the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter of 1972, to prohibit the disposal of synthetic materials at sea in Convention areas; (3) establishing a mechanism for dealing with unforeseen circumstance, as noted by the countries of fur seal origin, in considering measures to be taken to enhance conservation and management of fur seal populations; and (4) providing for review of the operation of the Convention within two years to determine what further agreements would be appropriate in order to achieve the objectives of the Convention.

In addition to actions being undertaken through the NPFSC, the NMFS recently co-sponsored the Workshop on Fate and Impact of Marine Debris, a major international symposium on the entanglement problem. Based on the recommendations of these experts, and the results of current research, the NMFS will be taking additional measures designed to reduce mortality of fur seals associated with entanglement.

5. *Other Natural and Man-Made Factors Affecting Its Continued Existence*

The cause of the currently reduced and declining status of the North Pacific fur seal populations has not yet been conclusively determined; however, the results of recent analyses presented in the status review indicate that the decline may be attributed to an increase in accidental at-sea mortality. There is reason to believe that pelagic entanglement in lost or discarded netting, fishing gear or other floating debris may be a significant mortality factor. Preliminary estimates based on limited data suggest that the mortality rate associated with entanglement may be in excess of 5–10 per cent per year for younger age classes.

The magnitude of the entanglement problem has been difficult to determine since the number of fur seals observed in debris may represent only a small proportion of the actual number affected. It is believed that a number of entangled animals are not observed because they die before returning to the islands. At the Workshop on Fate and Impact of Marine Debris, held on November 27–29, 1984, it was noted that entanglement mainly involves animals younger than three years of age. In addition, these animals appear to be attracted to floating nets and other debris. Further research is needed to determine more conclusively the impact of entanglement related mortality on the fur seal population.

Discussion

Listing decision

An endangered species is any species that is in danger of extinction throughout all or a significant portion of its range; a threatened species is any species that is likely to become an endangered species within the foreseeable future. The ESA requires that a determination to list a species as endangered or threatened be made solely on the basis of the best available scientific and commercial information concerning that species, relative to the five factors reviewed above.

The NMFS recognizes that the petition addresses a serious problem affecting the well-being of the North Pacific fur seal population. However, based on existing data, we do not believe that the population is likely to become endangered within the forseeable future. Therefore, we have determined that listing the fur seal as threatened under the ESA is not warranted at this time. We base this decision on the following:

(1) Although the Pribilof fur seal population is declining at a rate of about 6.5 per cent annually, the herd is not at or near a critical population level at which it would be in danger of extinction. The total species population numbers approximately 1.2 million animals, which is at least three times greater than the estimated population in the early 1900's at the time the initial fur seal treaty was signed.

(2) The current decline is not a result of harvest, research or other management measures in the Convention. Under the Fur Seal Act Amendments of 1983, the Federal government continues its responsibility of oversight and management of the fur seal harvest and for stringent fur seal management, as required by the Convention.

((3) It is the consensus of the Standing Scientific Committee of the Convention, and other fur seal biologists, that the harvest of fur seals probably is not a factor contributing to the decline in the fur seal population.

((4) Since the cause of the current decline has not yet been conclusively determined, the underlying need is to intensify efforts to identify causal factors. The NMFS and Marine Mammal Commission are working with the scientific and environmental communities and the Parties to the Convention toward resolving this decline by redefining research goals; recommending stronger enforcement

policies regarding marine pollution and the discard of fishing gear, and by developing an action plan to further address the entanglement issue.

((5) Continuation of the current management regime in accordance with the provisions of the Convention provides the North Pacific fur seal with the greatest protection available since the species also occurs in waters outside the jurisdiction of the U.S. and could not otherwise be protected from pelagic taking by those not subject to U.S. jurisdiction.

Dated: February 25, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

Status Review—Northern Fur Seal (Callorhinus Ursinus) of the Pribilof Islands, Alaska

Introduction

Fur seals of the Eastern Pacific have been the subject of a long history of research and management. Research conducted prior to the mid-1960's is reviewed by Scheffer, Fiscus, and Todd (1984). Research and management since the 1960's are documented in Roppel (1984). Additional information is also found in Roppel and Davey (1965).

Most data and analyses which have been used for the evaluation of the northern fur seal population are contained in one of three series of reports. The first series is the annual report of U.S. scientific research, published in various formats since the late 1940's. It is presently produced in a Technical Memorandum series by the National Marine Fisheries Service. The second series is the North Pacific Fur Seal Commission's intermittent report on fur seal investigations. These reports summarize the research of Canada, the United States, the Soviet Union and Japan as a basis for decisions made by scientists, managers, and commissioners of all four nations. The third series of reports is the proceedings of the annual meetings of the North Pacific Fur Seal Commission. These contain the reports of the Standing Scientific Committee (including any workshops) and the meetings of the Commissioners, and are published by the Commission. The proceedings also list background papers which contain more detailed research results. These documents are submitted each year by the scientists participating in the Standing Scientific Committee of the Commission. Many of these documents will be referred to in the following discussion of the biology, distribution, and trends of the North Pacific fur seal population, with special reference to that of the Pribilof Islands.

Biological Background

The general biology of northern fur seals is described in U.S. Dept. of Comm. (1977), Fiscus (1978), and Lander (1979a). The northern fur seal belongs to the family Otariidae. At birth, females average 63 cm in length and weigh about 4.5 kg. Newborn males average 66 cm in length and 5.4 kg in weight. Adult females reach an average length of 1.42 m and weigh 43.50 kg while males reach an average length of 2.13 m and weigh 180–272 kg.

Northern fur seals are found only in the northern Pacific Ocean and Bering Sea. Their general distribution and the islands on which they congregate are shown in Fig. 1. In the eastern Pacific, the majority of the fur seal population breeds on the Pribilof Islands, located in the eastern Bering Sea. A smaller population is found on San Miguel Island in southern California and a very small colony was recently discovered on Bogoslof Island (about 54°N lat., 168°W long.) in the eastern Aleutian Islands. Further information concerning the general distribution of northern fur seals may be found in Kajimura (1984a), Fiscus (1978) and the draft environmental impact statement produced for consideration of the Interim Convention on the Conservation of North Pacific Fur Seals (October 1983).

Fur seals begin to return to the breeding islands from their pelagic winter foraging in the spring of each year. Adult males arrive first and establish territories on the breeding rookeries. On the Pribilof Islands they arrive in descending order by age, beginning in early May. The youngest males may not return to the breeding areas until mid-August or later. Some yearlings arrive as late as September or October, however most appear to remain at sea. The older pregnant females arrive beginning about mid-June; the peak of pupping occurs in early July.

Pups leave the islands in early November simultaneous with the departure to sea of the older animals. The early winter migration of seals takes them through the eastern Aleutian Islands into the north Pacific Ocean where they migrate to the western coasts of British Columbia, Washington, Oregon, and California. Older males appear to remain in the northern part of their range, while young males and females of all ages spend the winter feeding in the southern part. The northward migration begins in March. This migration brings the animals back to the breeding colonies on the Pribilof Islands where the cycle is repeated. Fur seals which breed on San Miguel Island, complete the reproductive cycle somewhat earlier and appear in coastal waters of California, Oregon and Washington during the non-breeding season.

Adult females usually give birth to their pups within the first 24 hours of arriving at their breeding rookery (fairly consistently the rookery of their birth). Within 5 to 6 days the onset of estrus occurs. Insemination by territorial males ensues, resulting in the fertilization of an egg; implantation in the uterus is delayed until about November. Following the birth of the pup, the female nurses for 4 to 6 days. At this point she departs on her first feeding excursion. Each feeding bout normally lasts about 4 or 5 days. The female's return to land initiates the second nursing phase of the feeding/nursing cycle. These cycles are repeated throughout the summer with the at-sea portion becoming slightly longer over time.

Females generally begin giving birth to pups about their 5th or 6th year of life but are capable of producing a pup at age 4. Peak reproductive activity occurs between the 7th and 14th years of life. The pregancy rate of adult females is between 60% and 80% depending on age. Males reach peak reproductive performance about the age of 9 or 10 and suffer greater mortality rates than do females throughout their lives. The life table thought to characterize northern fur seals is shown in Table 1 (compare the harvested populations on St. Paul with the unharvested population on St. George).

Fur seals from the Pribilof Islands feed in the vicinity of those islands during the breeding season and throughout their range during winter. Generally northern fur seals feed on fish and cephalopods of 20 to 30 cm in length. They are opportunistic feeders, and the composition of the diet appears to depend very heavily on the composition of the suitably sized forage species available (Kajimura, 1984a). The principal prey species are listed in Table 2.

Information concerning stock size, abundance and trends will be presented below. General accounts are published in the workshop report from the Standing Scientific Committee meeting in Moscow in 1984, in Lander (1979a), and Scheffer et al. (1984).

Distribution of Major Stocks

The number of northern fur seals in the major stocks are shown in Table 3. About 72% of the current estimated population are found on the Pribilof

Islands. About 17% occur on the Commander Islands with about 6% on Robben Island and the remainder from the Kurile Islands, San Miguel Island, and Bogoslof Island. The San Miguel Island population is still a small portion of the overall population but has been observed to be growing until the last two years. The reversal of this trend on San Miguel may have been a result of the 1982–83 El Nino event; the 1983 pup production for this stock was about 60% of that of the previous year.

The distribution of the various stocks of fur seals at sea is not well understood. It appears that the Pribilof Islands population is found predominantly in the eastern North Pacific along with those from San Miguel Island and Bogoslof Island. The remaining stocks appear to be found predominantly in the western Pacific. Intermixture among these stocks has been shown to occur, as based on tag recovery programs conducted by Soviet and U.S. scientists (North Pacific Fur Seal Commission, 1975). The rates of intermixture are generally low; ordinarily less than 5% of any particular stock move out of their typical feeding areas. Most of these involve young males that probably return to their original breeding colonies and feeding areas as adults.

During its migration to the south in the fall and early winter, the Pribilof Islands population passes through the eastern Aleutian Islands and stays relatively close to the edge of the continental shelf enroute to the waters off the coasts of Washington, Oregon, and California. In their northward migration, the females and young males follow a more direct course across the north Pacific Ocean from waters off the coasts of Oregon, Washington, and British Columbia directly to waters in the vicinity of Kodiak Island and the eastern Aleutian chain (Fiscus, 1978; Bigg 1982). Thus, at some point in their lives virtually every fur seal passes outside the 200-mile limit of the combined territorial waters of Canada and the U.S. In view of the Canadian territorial waters between Alaska and Washington, most seals pass outside of the territorial waters of the U.S. on numerous occasions.

Population Trends

The total population of northern fur seals in the Pacific Ocean, as estimated for 1983, was between 1.19 and 1.23 million individuals.[1] This is to be compared to the estimated 1.77 million animals of the late 1979's (Lander, 1979a). The decline follows trends observed in recent years, both on Robben Island in the western Pacific but especially on the Pribilof Islands.[2] Since approximately 72% of the total fur seal population breed on the Pribilof Islands, the decline there tends to overshadow the changes on other islands.

In the past, trends in northern fur seal populations have been associated with the harvesting of females (on land, at sea, or both). Currently there is no harvest of females. The first decline documented for seals at the Pribilof Islands was observed in the late 1700's when both sexes were harvested. Following an increase in which females were protected, a second decline, again caused by the harvest of both sexes, occurred in the late 1800's. During the early 1900's another increase was observed (Figs. 2, 3) during which only males were harvested. A third decline was caused by the land-based harvest of females between 1956 and 1968 (Figs. 2, 3). (See Scheffer et al., 1984, for a more complete historical account of population trends prior to 1950.)

The most useful index of population size is the number of pups born. Roughly, pups comprise about 20% to 30% of the total population depending on the age structure as determined by reproductive rates, and mortality (both natural and harvest-caused).[3] The pup population, as it reflects total population, is shown for the Pribilof Islands in Fig. 2. For St. Paul, which comprises the bulk of the Pribilof population, the numbers of pups born first increased from about 67,000 in 1912 to about 162,000 in 1924. Records do not exist for 1925 to 1939, but in 1940 there were an estimated 469,000 pups born on St. Paul. The level remained high until the mid-to-late 1950's. Thereafter, pup numbers declined from about 450,000 in the mid-1950's to about 170,000 in the early 1980's. On Robben Island in the western Pacific a decline occurred between the mid-1960's and the present during which time pup numbers dropped from about 50,000 to slightly over 20,000.

The reduction in fur seals on the Pribilof Islands since 1950 is the result of at least two phases of decline separated by a period of possible increase. The first decline, as mentioned above, occurred in the period between the mid-1950's and the late 1960's when a female harvest was permitted. A decline of about the magnitude shown for this period in Fig. 2 would be expected as a result of the effects of the female harvest. This is shown by models which duplicate the dynamics of the numbers of pups born (Eberhardt, 1981; York and Hartley, 1981; Trites, 1984). The decline for this period is seen as a true reduction in the population, therefore, rather than as a result of changes in estimation procedures or reliability of the procedures for estimating pup numbers. It is also directly attributable to the female harvest. The decline which resulted from this harvest can also be seen in the reduction of the numbers of adult males counted on the rookeries after accounting for the 7–10 yr. time lag required for maturation (Fig. 3). A commensurate decline in the harvest of subadult males was also observed over this period (Fig. 4).

Between the late 1960's and mid-1970's the number of pups born appears to have increased slightly. Increases in the numbers of adult males, as dependent on recruitment from pups born during this period, are also observed (Fig. 3). Any increase in population, however, occurred at rates substantially less than those observed for the growing population of the early 1900's. The increases in productivity that managers had expected following cessation of the female harvest did not occur.

The second declining phase in the fur seal population on the Pribilof Islands since 1950 started with a decrease in pup numbers in the mid- to late 1970's and continues to the present (1984). This phase, as distinguished from earlier declines, is not associated with a female harvest. As is seen in Fig. 3 this trend is reflected not only in the numbers of pups born but also, after a lag, in the numbers of adult males counted, in this case, for both islands. The current rate of decline is estimated to be about 6.5% per year as based on the numbers of pups born since 1978.[4] However, parallel declines in the numbers of males harvested during this time have not been observed. This may be due, in part, to the lag time from birth to when animals enter the harvestable age categories. It is also possible that a larger fraction of the available animals were being taken in recent harvests. Such a change was noted for 2-yr old animals by York

[1] Report of the North Pacific Fur Seal Commission, Workshop on population trends of northern fur seals: Causes and methodology, March 25–30, 1984, Moscow, U.S.S.R.

[2] Report of the North Pacific Fur Seal Commission, Workshop on population trends of northern fur seals: Causes and methodology, March 25–30, 1984, Moscow, U.S.S.R.

[3] The algorithm for estimating total population size is explained in the workshop report of the Proceedings of the 27th Annual Meeting of the North Pacific Fur Seal Commission, March 25–30, 1984, Moscow, U.S.S.R.

[4] Page 35, Workshop report on Population Trends of Northern Fur Seals, Proceedings, of the 27th meeting of the North Pacific Fur Seal Commission, Moscow, USSR, April 1984.

(1983b) through the estimation of utilization rates.

Factor of Potential Importance in the Current Decline

Reproductive Rates. There appears to have been no change in reproductive rates that would account for the current decline in the number of pups born. Goebel and Gentry (1984) found no evidence of any declining trend in reproductive rate of females as estimated by longitudinal records (records of individuals observed over time) of the suckling activity of females observed on St. George Island. These data also show no significant differences from the pregnancy rates observed among older females determined from pelagic sampling from the 1950's through the 1970's. A decrease in reproductive rates over this time would be inconsistent with the observed rates of increase in body weight for this species (Fowler, 1984a), since larger healthier animals tend to show greater reproductive success.

York (1983a) observed that seals born before 1955 shows a declining age of first reproduction. Another declining trend was observed for seals born between 1956 and 1966. This second decline followed a major discontinuity between the 1955 and 1956 year classes in which a major increase was observed. The discontinuity may have been a side effect of the female harvest.

Although existing data do not support reduced reproductive rates as a cause of the decline in the numbers of pups, their limited quantity and the inferential nature of the interpretation of some of the data emphasize the need for further study.

Mortality at Sea. Mortality of seals for the first 20–22 months at sea has been estimated (according to Lander, 1975) since 1950 (Fig. 5). In the 1950's at a time when the population was high these mortality rates varied between 54% and 82% with a mean of 66%. Between 1960 and 1970 mortality varied between 53% and 66% with a mean of 63% at a time when the population was declining. At the lower population levels observed for 1966–1969, the mean estimated mortality rate was 59%. Since 1970, however, estimated mortality rates have increased,[5] returning to levels comparable to some of the higher rates observed in the 1950's and statistically significantly higher than the mean of estimates from 1970 and earlier. Current rates are nearly 70%.

The extent of increased mortality of juvenile males in recent years is emphasized in work by Fowler (1982b) showing a correlation between estimated survival at sea and survival of pups on land for data collected between 1950 and 1965 (for St. Paul Island). Estimated survival for this period differs very little from the values expected from the correlation as shown in Fig. 6. Since 1965, however, the estimated survival differs markedly from that expected from the correlation, indicating a different survival pattern before and after 1965. Where survival of pups on land has continued to increase, survival at sea has declined. In all cases, the estimated survival at sea for year classes of recent years (since 1965) is below that which had been expected from the correlation and current levels of survival on land. Since 1972 this difference has been 15–20%.

The net survival of male seals from birth to age 2 involves both on-land and at sea survival. In view of the opposite trends the net effect could remain unchanged. This is not the case, however, given the fact that the mortality rate at sea is higher than that experienced on land and, therefore, dominates the total mortality. This is verified by population models which incorporate both survival rates and duplicate the dynamics of observed trends (Eberhardt 1981), Trites 1984).

It is possible to evaluate the survival of two- to five-year-old male fur seals through an examination of the age structure of the commercial harvest. An index of survival can be obtained by relating the numbers of animals of one cohort (animals born in the same year) to the number of animals found in the same cohort taken the previous year. Calculating such an index for all cohorts and normalizing so as to produce comparable values results in the index of survival shown in Fig. 7. There was an increasing trend in survival during the period over which the population declined in response to the female harvest (1956–1968). Since 1970, however, the survival of animals between the ages of 2 and 5 has declined again, returning to levels observed in the 1960's.

A similar increase in the mortality of females is suggested by data presented by Goebel and Gentry (1984). Estimates of mortality using their method are higher than estimates from Lander (1981) as based on a different technique.

In view of the results of the analyses summarized above, the most apparent reason for the decline in northern fur seals then, is a recent unexpected decline in the survival between the time animals leave land and return for reproduction. This conclusion is supported by the North Pacific Fur Seal Commission and its standing Scientific Committee.[6]

Possible causes of mortality at sea—Entanglement. An important cause of the unexpected increase in at-sea mortality may be entanglement in fishing debris and plastic packing bands.[6] This problem has been observed in northern fur seals since the mid 1960's, the same period when the mortality rate at sea began to depart from expected values. Although only about 0.4% of male seals taken in the harvest carry such debris, such entanglement involves only animals in pieces of trawl net fragments and plastic packing bands small enough to be able to swim back to the islands. Analyses of the size composition of such debris (Fowler, 1982b, 1984c) indicate that the smaller pieces of debris are only a small part of debris to which fur seals are exposed. Most debris on the beaches is much larger as are the few pieces observed at sea. Since fur seals probably encounter larger pieces for debris more often than smaller pieces of debris at sea, and since more than one animal can become entangled in larger debris, the actual entanglement in debris is probably higher than indicated by the entanglement rate observed in the harvest.

It is possible to show that high rates of entanglement caused mortality are feasible (Fowler, 1984b). Rates in excess of 5%–10% per year are indicated by the very limited data which can be used to produce preliminary estimates (Fowler, 1982a, b, 1984b). Simulation models indicate that these levels of mortality are sufficiently high to account for the observed decline in both the numbers of pups as well as the total population (Swartzman, 1984). In view of the limited nature of the data, and analyses, however, the estimated mortality rates provided by these approaches cannot, by themselves, be used to show that entanglement is causing the decline. It should be stressed that further refinement of direct estimates of such mortality are needed.

Other analyses provide further evidence of a problem, however. Recent work (Fowler, 1984d) involving entanglement of northern fur seals shows that there is a correlation between the rate of decrease of pup numbers and the observed entanglement

[5] Page 44, Proceedings of the 26th Annual Meeting of the North Pacific Fur Seal Commission, Washington, D.C., April 11–14, 1983.

[6] Page 26, North Pacific Fur Seal Commission, Report of the Standing Scientific Committee, Proceedings of the 25th Annual Meeting, April 13–16, 1982, Ottawa, Canada.

rate among harvested males (after accounting for appropriate time lags for maturation, Fig. 8). We can use this correlation to estimate the theoretical rate of population change if there were no mortality caused by entanglement. Assuming a linear relationship between the observed entanglement rate and the rate of population change, at an entanglement rate of zero, the pup population on the Pribilof Islands would be increasing by about 5% per year. (Compare this to the 7.4% increase observed during the arly 1900's and the present decrease of 6.5% per year.) The rates of change observed in bulls counted are also correlated with entanglement rates after accounting for the lag time necessary to achieve reproductive male maturity. Furthermore, the unexpected decline in survival shown in Fig. 6, which is suspected of causing the herd's decline, is correlated with entanglement rates observed in the male harvest (Fowler, 1984d). Thus, from at least a statistical assessment of the data, the current decline in fur seal abundance can be largely accounted for through correlations with the rate of entanglement.

At a recent workshop on the fate and impact of marine debris it was noted that entanglement does not involve random contact between fur seals and debris. As demonstrated by video recordings provided by Japanese scientists, fur seals appear to be attracted to such debris and purposefully insert their heads in the debris to result in their becoming entangled. Other information on the density of debris sighted at sea along with a preliminary analysis of encounter rates necessary to cause mortality consistent with the decline were also presented. In the 21 sightings of trawl gear reported through the combined efforts of U.S. and Japanese scientists there were 7 entangled seals. This is over three times more frequent than would be expected since only about 9% of the trawl gear on beaches is of the mesh size found on entangled seals taken in the harvest. It was also pointed out at this workshop that the problem appears to be restricted to young animals (younger than 3 years). Differences in the age structure of unentangled animals in the harvest as compared to that of entangled animals showed a significant difference for those between two and three years of age implicating entanglement as a problem for younger animals. The mortality increase seen for young animals (Fig. 5) is also consistent with this observation.

The factors discussed above can be summarized as follows:

1. Entanglement and the population decline coincide in time after accounting for lag effects.

2. Estimated mortality at sea (first two years) is correlated with observed entanglement rates.

3. The decline can be accounted for in models which apply the entanglement correlated mortality to females.

4. Changes in estimated pup numbers are correlated with observed entanglement rates with appropriate lags.

5. Changes in "harem bull" counts are correlated with observed entanglement rates, again, with appropriate lags.

6. Crude estimates of entanglement caused mortality based on the composition of net debris (on seals and on beaches) coincide with rates consistent with the decline.

7. Entanglement rates observed at sea are consistent with (possibly in excess of) rates as estimated on the basis of analyses of net debris and as consistent with the decline.

These factors tend to contribute to a coherent picture as follows. After cessation of the female harvest in the late 1960's, the pup population failed to increase as expected, during an increase in observed entanglement rates of subadult males. After what appears to be a slight increase from the late 1960's to mid-1970's, the pup population began a continuous decline. This trend coincides with observed increases in at-sea mortality rates for juvenile males, which are correlated with observed entanglement rates. The rates of change of both bull counts and estimated pup numbers are correlated with observed entanglement rates and can be simulated using estimated mortality rates. As pointed out at the recent workshop observed entanglement and overall (foreign plus domestic) fishing effort has not changed a great deal since 1970 in the vicinity of Alaska.

The various factors considered above indicate that entanglement is probably the major contribution to the decline, acting very much like the female harvests which were involved as causes of the three previous historically documented declines. It is unlikely that so many factors consistent with the hypothesis that entanglement is causing the decline would be observed if such were not the case. However, they do not constitute final proof that such is the case. Sufficient doubt surrounds the assumptions involved in estimating entanglement-caused mortality to promote caution and emphasize the need for further research. The same holds for the correlations in that actual causes and effects have not been studied in detail.

Change in Environmental Carrying Capacity. During the 1940's and early 1950's, the northern fur seal population was relatively stable (as indicated by available estimates of the numbers of pups born, Fig. 2), and this population level is therefore considered a measure of its carrying capacity (the average number of seals that would occur in the natural environment). Studies of density dependent factors in the biology of fur seals (Fowler, 1982a, 1984 b, d) show characteristics similar to those exhibited in the 1920's, when the population was last at its present level. Since these factors depend on the population's size in relation to the ability of the environment to sustain it, researchers have concluded that the population is probably as far below the carrying capacity now as it was in the 1920's.

Changes in the amount of food available have been suggested as a factor in the decline of the Pribilof fur seal herd. This would, however, constitute a change in carrying capacity; if food resources were limited, one would expect reduced mean body sizes and reduced growth rates (the extensive literature on this topic is reviewed by Heasley, 1977). Such is not the case. As reviewed in Fowler (1984a), the average body size of both males and females have increased, a response which is more consistent with an increased than a decreased level of food availability. Body lengths of several age classes of both sexes and tooth size (an indicator of body size) show similar responses (Fowler, 1981, 1984c).

Catastrophic changes in food availability result in changes in the length of the feeding cycle of fur seals at sea. Such may have been the case on San Miguel Island, California, during the unusually stormy El Nino of 1983 when feeding cycles increased in length by about 2 days during a time when food was thought to be in limited supply (NMFS unpubl. data). No significant differences have been observed in the length of these cycles on the Pribilof Islands in comparing current cycles with those of the 1960's (Gentry and Holt, in press).

Reviews of commercial fisheries and estimates of the biomass of fishes taken in commercial fisheries do not indicate a decrease in food supply for fur seals. The fur seal population on San Miguel Island in California has been increasing in an area where part of the Pribilof population spends its winter, indicating that food supplies in the winter habitat are sufficiently high to promote growth.

Current groundfish biomass estimates for the northern part of the range of fur seals are either equivalent to, or in some cases slightly above, levels observed before the commercial fisheries rose to current levels (Kajimura, 1984b). In the case of one abundant species, it is possible that the food available to fur seals has increased through the influence of commercial fisheries. As reviewed by Swartzman and Harr (1983), fishing mortality on the large cannibalistic adult walleye pollock *(Theragra chalcogramma)* may have resulted in a greater availability of smaller pollock more commonly taken by northern fur seals. Further information concerning the general availability of commercially important fishes is found in Kajimura (1984 a, b) where it is also shown that fur seals feed opportunistically. For this reason, they would be expected to adjust readily to changing composition of food resources created by commercial fishing. It would seem unlikely, therefore, that changes in the availability of food have contributed to the fur seal population decline.

Although food resources are probably the principle determinant of the carrying capacity for large mammals, as mediated through density dependent changes (Fowler et al., 1980), other factors are also important. These include factors such as diseases, parasites, and predation (considered below). Other factors include the abiotic environment. Any changes in temperature or salinity, for example, which are correlated with the population decline could serve as potential contributors to the decline. The Standing Scientific Committee of the North Pacific Fur Seal Commission examined such possibilities and noted an observed decline in the temperature of surface waters in the eastern Pacific Ocean. This decline (about .75 °C) from 1945 to 1970 occurred during a time when the population was declining as a result of the female harvest. Since the mid-1970's the temperature of both the eastern North Pacific and Bering Sea have returned to levels observed in the 1940's and 1950's (Niebauer, 1983; Chelton, 1984; and Xiong and Royer, 1984) when the population was at a high and relatively stable level. Likewise, salinity has not been correlated with the current decline; no trends have been observed in recent years (Royer, 1983; Xiong and Royer, 1984).

The results of the work presented above lend themselves to a rejection of the hypothesis that changes have occurred in the resources and measured abiotic components of the fur seal's ecosystem which would be detrimental to the population. As an integrator of what is happening in their ecosystem, fur seals show characteristics (e.g., increased body size, increased pup survival, etc.) that indicate the ecosystem can support a fur seal population as high as that observed in the 1940's and 1950's. However, such evidence does not rule out the possibility that undetected detrimental changes have or are occurring. This is perhaps demonstrated by changes which have been documented for other components of the ecosystem, such as the dramatic decline in king crab in the eastern Bering Sea from 1980 to 1984. More research is needed to be definitive.

Predation. Predation by species such as Steller sea lions *(Eumatopius jubatus)* and killer whales *(Orcinus orca)* may also be contributing to higher mortality rates among fur seals. However, very little direct information has been produced along these lines. There are no data on whether the abundance of killer whales has increased. Northern sea lions in the southeastern Bering Sea are thought to be experiencing a decline in population (Braham, et al., 1980), perhaps in parallel with that of the northern fur seal. There is no evidence of increased predatory activity in the form of injured animals. Further study will be required to be definitive in regard to any effects of predation.

Diseases and Toxic Substances. Diseases may also be viewed as potential contributors to increased mortality. There was an increase in the incidence of Leptospirosis during the mid 1970's. The incidence of mortality due to this disease, however, remains to be evaluated. Other diseases such as hookworm and San Miguel sea lion virus (which is known to occur in the Pribilof populations of northern fur seals) may also be implicated if there were eividence to indicate that the levels of these diseases had increased. Currently no such evidence has been produced. Hookworm does not seem to be implicated, as it affects animals on land, while the problem seems to occur at sea. Diseases usually cause precipitous declines in populations followed by grandual increases, a pattern very different from that observed for northern fur seals on the Pribilofs. More research involving the effects and incidence of diseases is needed to be conclusive, but, at this time, there appears to be no basis for identifying diseases as a principal cause of the decline.

Toxic substances in the form of heavy metals or organic pesticides might contribute to increased motality. A number of recent studies have evaluated these possibilities. So far, all of the results indicate that, for the most part, existing levels of contaminants in fur seal tissues occur at low or safe levels. Further evaluation is necessary, however, since the majority of these samples come from harvested males, although similar levels are found in the small sample of females.

Commercial Harvest. The harvest of subadult males is often suspected as contributing to the population decline. However, since the population underwent a major increase while a harvest was being conducted between the early 1900's and the 1950's, it is difficult to attribute the population decline to effects of the harvest. This is especially true when there has been no commercial harvest on St. George Island since 1973, but the population there is declining at about the same rate as the population on St. Paul Island where the fur seal harvest occurs.

Recent work by scientists of the Soviet Union, however, raises the need to be cautious in this regard. Although the details of their work are not yet available, Soviet scientists claim to have evidence that reproductive rates can be determined both by the degree to which there is comparability in the age structure of both the male and female segments of the population and by the sex ratio. Their work indicates that departures from a sex ratio of 20 adult females to each breeding adult male may result in declining trends, especially if the age structures of the two sexes differ by very much. It is possible that copulation involving the insemination of young females may require the presence of an adequate number of the younger breeding aged males at the end of the regular breeding season each year. (The males which are being harvested are not yet of breeding age.)

Some evidence exists suggesting that problems of the type Soviet scientists claim to have identified may be involved in the decline on the Pribilofs. It involves evidence of increased utilization rates (portion of available animals taken in the harvest) and, therefore, reduced ratio of males to females of breeding age due to reduced recruitment to the breeding aged population of males. As noted earlier, York (1983b) found evidence of this among 2-year-old animals. Further evidence is shown in Figure 7 in which a decline in survival for 2- to 5-year-old males is indicated since 1970. Although it may be associated with entanglement (in time) there is no clear correlation between this survival index and

observed entanglement rates. One possible contributor to the observed reduced survival as measured by this index is an increasd utilization rate. As mentioned earlier this would also explain the lack of decline in the harvest since the mid-1970's (Fig. 4). Declining pup numbers for this period, along with increased mortality and relatively consistent harvest levels imply an increased utilization rate.

The ratio of adult females to adult breeding males is currently at over 35:1 as indicated by the ratio of pups to harem bulls on St. Paul Island. Ratios in excess of this value are indicated for nearly all years since 1900 with the exception of 1916–1919 and 1959–1969 (years of the female harvest).

Further evaluation will be required in order to determine the effects of the harvest and its role, if any, on currently observed declines. It is the consensus of the scientists participating each year in the Standing Scientific Committee of the North Pacific Fur Seal Commission that the harvest probably is not contributing to the decline and that no adjustments in harvest levels are required. This view is shared by other scientists (e.g. Swartzman, 1984).

Current Levels in Relationship to MSY and OSP

Estimates indicate that the northern fur seal population is currently below 50% of its carrying capacity based on current population levels compared to those of the 1940's and early 1950's (Anon., 1983, Fig. 2). Pup mortality on land (Fig. 9), growth rates for various age and sex categories, and the amount of variance in mortality on land and at sea are all presently characteristic of a population reduced substantially below its carrying capacity. These are all density dependent factors insofar as they have been observed to be correlated with population size. However, the estimated mortality at sea of juvenile males (as opposed to its variance) has not been observed to be correlated with population size, and assuming this mortality affects females as well, this may well be an important factor in the population decline. Such mortality, as reviewed in Fowler (1982b), would be much like a harvest of both sexes imposed to bring about a decline in abundance to elicit the density dependent responses observed.

Based on empirical information for fur seals (Smith, 1973) and interspecific comparisons (Fowler, 1984e), the population at which maximum productivity would occur is about 60% of the carrying capacity. Furthermore, the maximum production of harvestable males requires a considerably higher population level than that which produces maximum net productivity, since in this species only a few males breed with many females and only males are harvested. This level of sustainable productivity is thought to be at or above 90% of the levels sustainable by the exosystem as based on interspecific comparisons reviewed in Fowler (1981). Since the current population is below 50% of the levels observed in the 1940's and early 1950's (Anon., 1983), the population is considered to be below levels which can maintain either maximum net productivity [7] or maximum sustainable producivity of sub-adult males.[8]

Summary

The North Pacific fur seal population of the Pribilof Islands is declining at the rate of about 6.5% per year and the current total population level is equivalent to that of the early 1920's at which time the population was increasing. Various factors potentially contributing to the decline have been examined. These factors fall into three major categories depending on whether they contribute to reduced reproductive rates, increased mortality rates or emigration. The latter is unlikely on the basis of low rates of exchange between populations and the balance of changes in worldwide population. With the possible exception of an indirect effect of the male harvest, the limited data available are not consistent with reduced reproductive rates. Even in this case, however, any effects of the harvest now would be inconsistent with historical increasing trends in the population while being harvested, and are inconsistent with the decline in the unharvested population on St. George Island. Instead, reproductive rates would be expected and have increased in parallel with other changes in the population (e.g., increased body size and pup survival).

The likely principal factor behind the decline is an increase in mortality at sea as based on increases observed for estimated mortality amoung young males. Various factors which could potentially contribute to increased mortality have been examined. These includee increased levels of toxic substances, lack of food, predation, changes in the physical environment, diseases, and entanglement in debris. Food resources appear not to be a cause since increased growth, body size and pup survival are inconsistent with such a hypothesis. Appraisals of the fishery resources also indicate that there should be sufficient food available. With the exception of entanglement, none of the other factors can be conclusively ruled out, mostly because of lack of information. However, the meager data available for fur seals and comparisons with other species do not indicate the existence of such problems.

The hypothesis of entanglement as a major cause of at sea mortality is consistent with and supported by several sets of data. These data show significant correlations between observed entanglement rates and several changes within the population, for example, declines in pup production and adult rates, along with the mortality rate among young males. If entanglement is a major cause of mortality, the population is likely to experience a continuing decline since net debris as with other debris will likely remain at sea for many years.

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TABLE 1—SUMMARY OF AGE SPECIFIC AND CUMULATIVE SURVIVAL RATES FOR ALASKAN FUR SEALS. (FROM LANDER, 1981)

Age	Males				Females	
	St. Paul Island		St. George Island and Sea Lion Rock		By age	From age 0
	By age	From age 0	By age	From age 0		
0		1.000		1.000		1.000
1	0.500	0.500	0.400	0.400	0.500	0.500
2	0.760	0.380	0.750	0.300	0.800	0.400
3	0.778	0.296	0.800	0.240	0.840	0.336
4	0.478	0.141	0.800	0.192	0.920	0.309
5	0.342	0.048	0.750	0.144	0.940	0.290
6	0.682	0.033	0.700	0.101	0.940	0.273
7	0.800	0.026	0.650	0.066	0.945	0.258
8	0.800	0.021	0.600	0.040	0.950	0.245
9	0.800	0.017	0.550	0.022	0.950	0.233
10	0.760	0.013	0.500	0.011	0.938	0.219
11	0.730	0.009	0.450	0.005	0.924	0.202
12	0.700	0.006	0.400	0.002	0.906	0.183
13	0.650	0.004	0.320	0.001	0.884	0.162
14	0.590	0.002	0.220	<0.001	0.858	0.139
15	0.540	0.001	0.100		0.876	0.122
16	0.430	<0.001	0.010		0.789	0.096
17			<0.010		0.743	0.071
18					0.892	0.044
19					0.630	0.031
20					0.564	0.017
21					0.490	0.008
22					0.411	0.003
23					0.330	0.001
24+					<0.330	<0.001

Table 2.—Principal Forage Species Utilized by Fur Seals in the Eastern North Pacific Ocean and the Eastern Bering Sea, 1958–74, by Area. (From Kajimura, 1984a)

Forage species	Location						
	California	Oregon	Washington	British Columbia	Gulf of Alaska	Western Alaska	Bering Sea
Fish:							
Clupea harengus pallasi	X			X	X	X	X
Engraulis mordax	X	X	X				
Oncorhynchus spp			X	X	X	X	
Mallotus villosus			X		X	X	X
Thaleichthys pacificus			X	X			
Cololabis saira	X	X		X			
Gadidae							X
Gadus macrocephalus				X			
Merluccius productus	X	X	X	X			
Theragra chalcogramma				X	X	X	X
Trachurus symmetricus	X						
Sebastes spp	X	X	X	X	X		
Anoplopoma fimbria	X		X	X		X	
Pleurogrammus monopterygius					X	X	X
Ammodytes hexapterus					X	X	X
Cephalopods:							
Loligo opalescens	X	X		X			
Onycholeuthis sp	X	X	X				
Onycholeuthis boreslijaponicus					X		
Gonatus sp					X		
Berryteuthis magister					X	X	X
Gonatopsis borealis							X
Unidentified squid					X		

Table 3.—Estimated Size of the Various Stocks of Northern Fur Seals for 1979 and 1984.[1]

Stock (by breeding island)	Estimated stock size late 1970's	Estimated stock size 1984
Pribilof Islands	1,300,000	871,000
Commander Islands	265,000	210,000
Robben Island	165,000	75,000
Kurile Islands	33,000	47,000
San Miguel Island	2,000	4,000
Total	1,765,000	1,207,000

[1] Report of the North Pacific Fur Seal Commission, Workshop on population trends of northern fur seals: Causes and methodology, March 25–30, 1984, Moscow, U.S.S.R.

Figure 1. The general ocean distribution and breeding islands of the northern fur seal (from Kajimura, 1984a).

Figure 2. Estimated numbers of pups born on St. Paul and St. George Islands, Alaska, 1912 to the present (1984, From Lander, 1980; Briggs and Fowler, 1984.)

Figure 3. Counts of territorial males with females (harem males) and idle males for the fur seal populations of both St. Paul and St. George Islands in Alaska from 1911 to the present (1984). (From Lander, 1980 and Briggs and Fowler, 1984).

Figure 4. Harvest of subadult male fur seals from St. Paul Island, Alaska, 1954–83 (revised and updated from Lander, 1980).

Figure 5. Mortality as estimated for males after leaving land but prior to age 2 as based on Lander's (1975) technique (updated from Fowler, 1982a).

Figure 6. The differences between observed (i.e. Lander's 1979b estimates) and expected survival for males between leaving land and 2 years of age as based on a correlation between on-land survival and survival at sea between 1950 and 1965 (updated from Fowler, 1982b).

Figure 7. A survival index calculated as the normalized ratios between animals of one age in the harvest and those at the next younger, ages 2 to 5 weighted by numbers taken in the harvest for the year at the end of which the survival would be expressed..

Figure 8. The correlation between the rate of change in pup numbers (smoothed by a running mean of 3 from the data shown in Fig. 2) and entanglement rate observed in the harvest 6 years earlier (to account for the maturation time of females). (From Fowler, 1984d).

Figure 9. Pup mortality on land for St. Paul Island 1950–1983 (updated from Fowler, 1982a).

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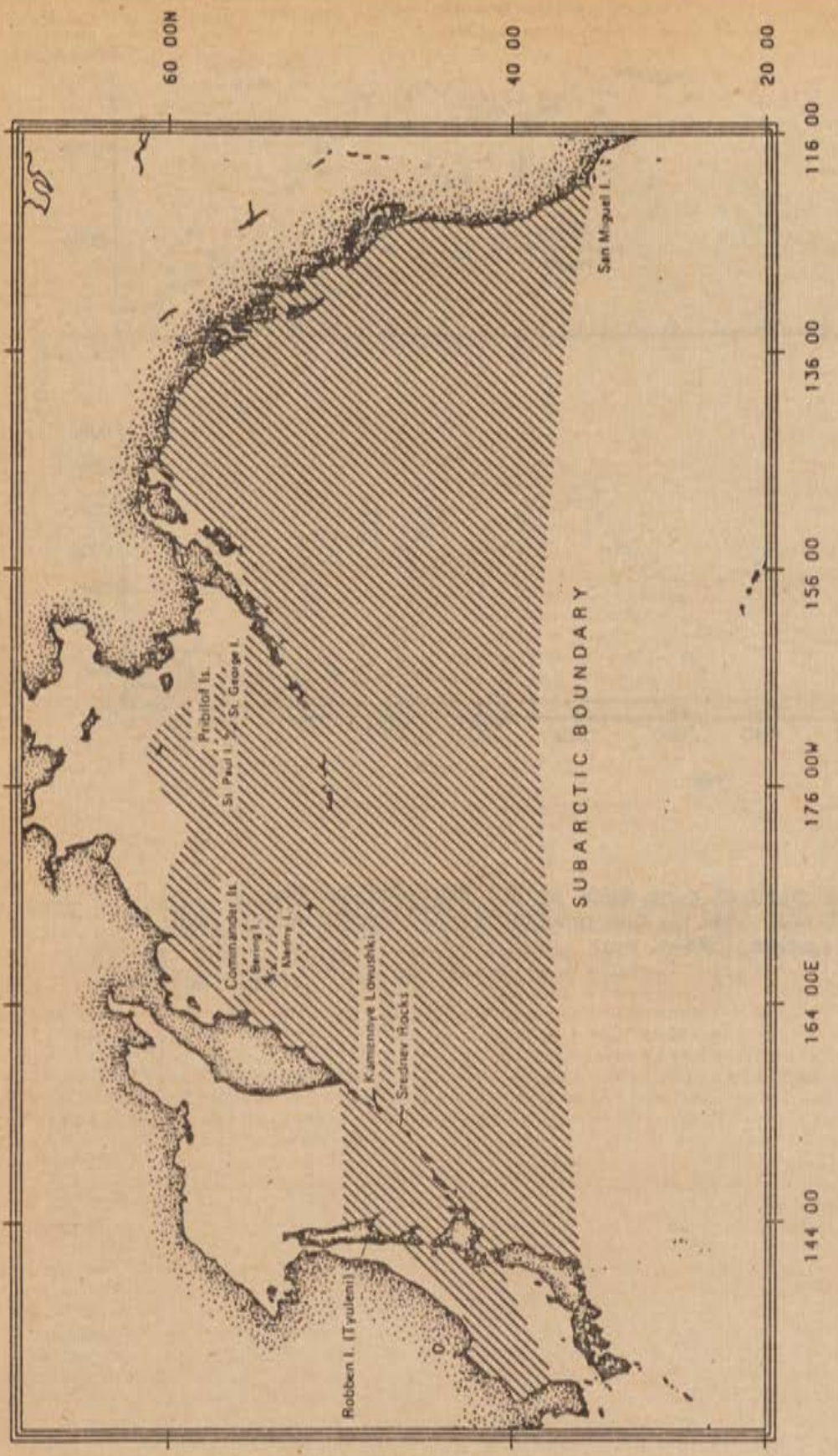


Figure 1. The general ocean distribution and breeding islands of the northern fur seal (from Kajimura, 1984a).

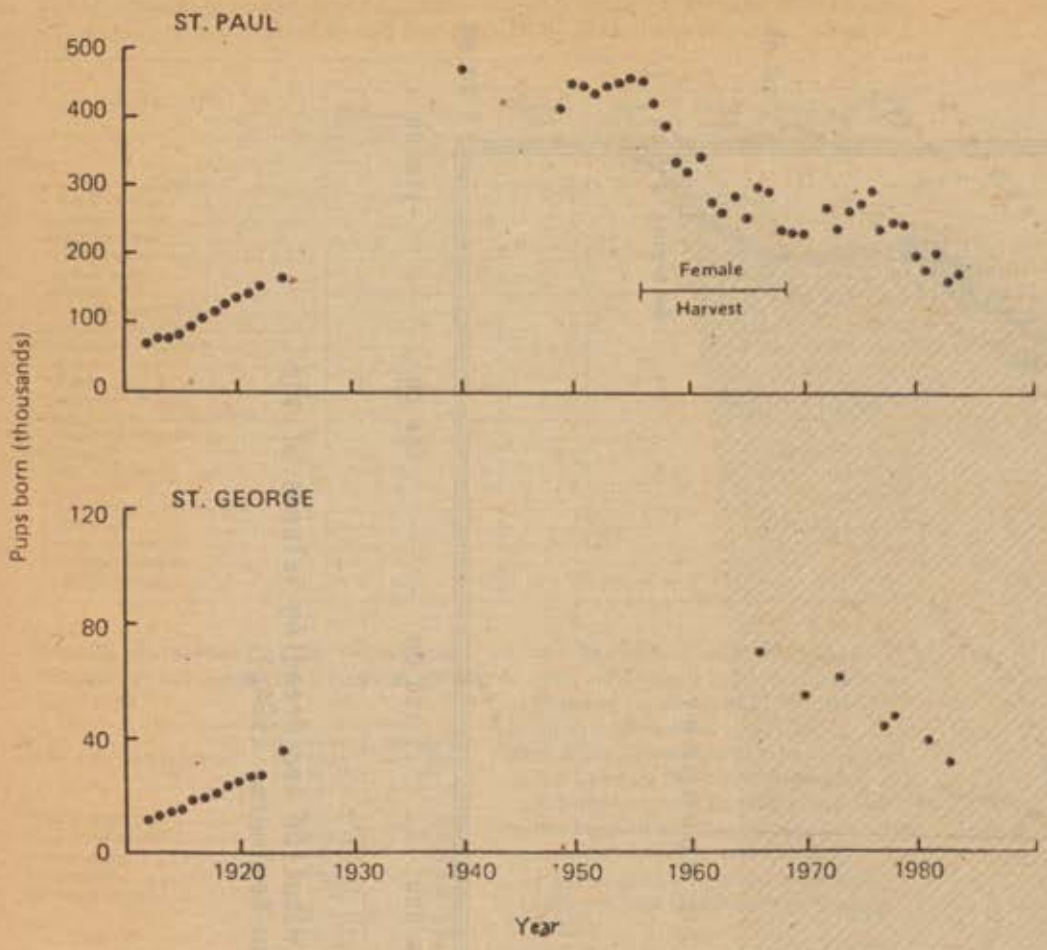


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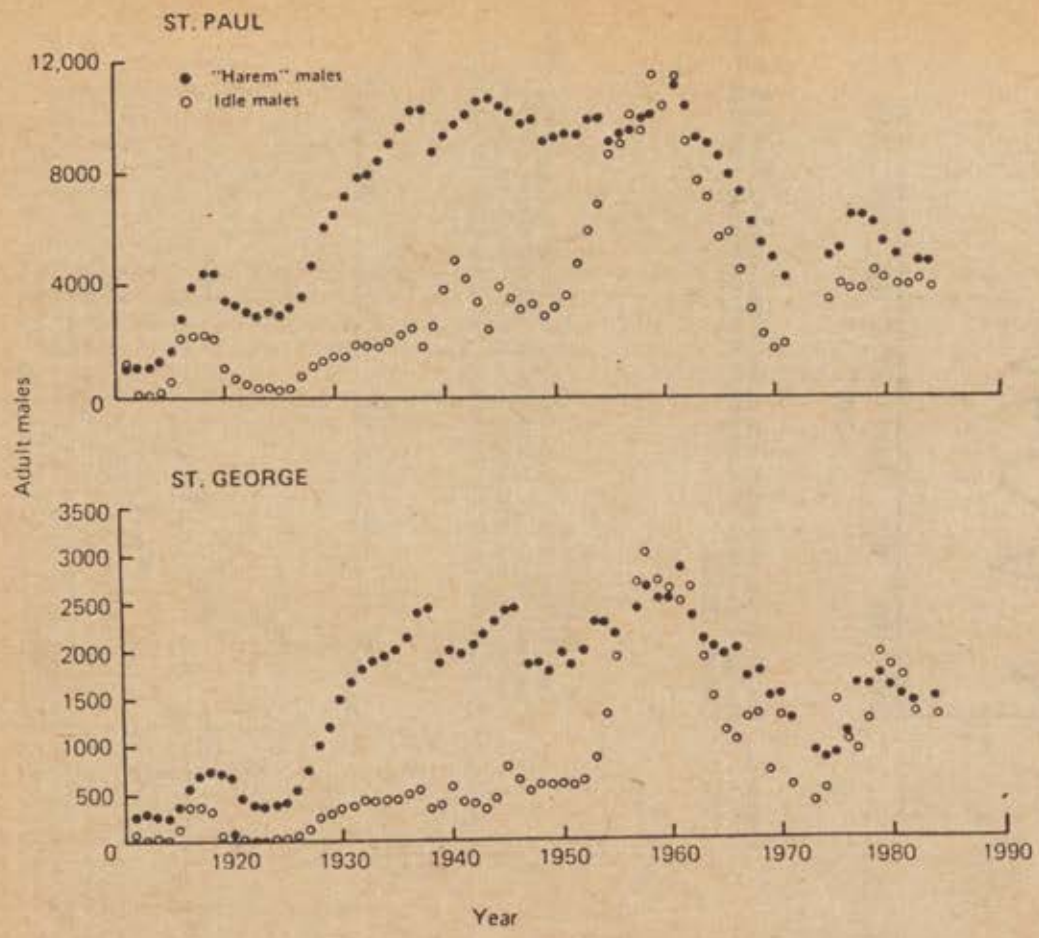


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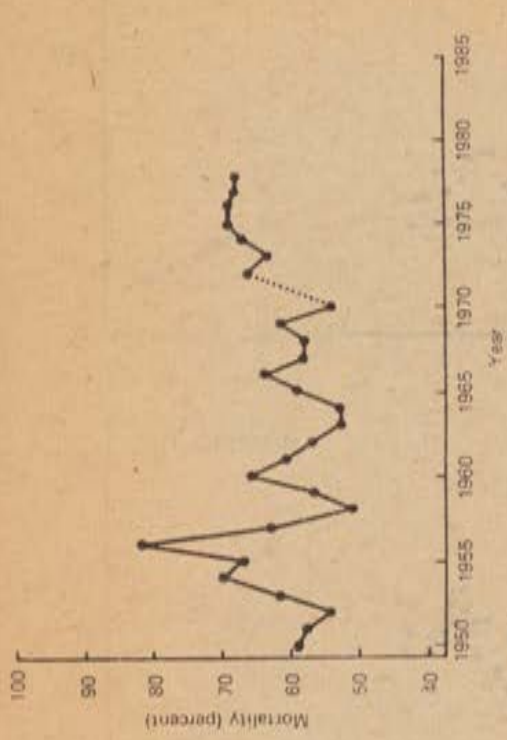


Figure 5. Mortality as estimated for males after leaving land but prior to age 2 as based on Lander's (1975) technique (updated from Fowler, 1982a).

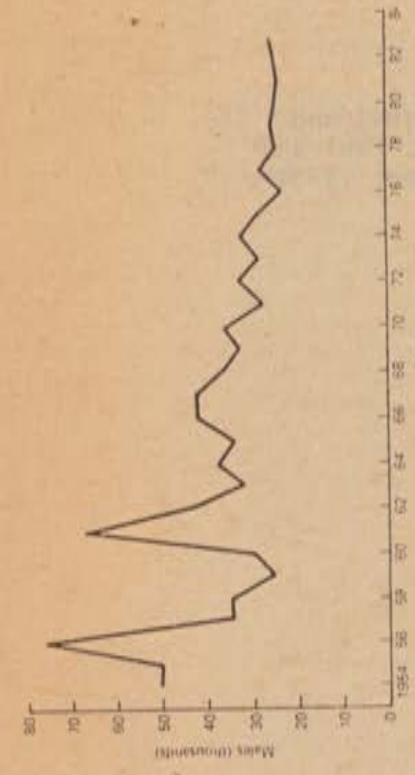


Figure 4. Harvest of subadult male fur seals from St. Paul Island, Alaska, 1954-83 (revised and updated from Lander, 1980).

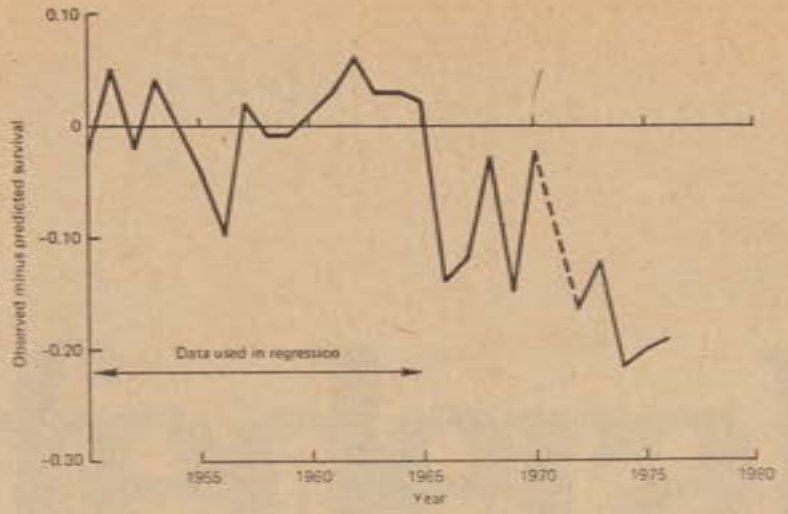


Figure 6. The differences between observed (i.e. Lander's, 1979b estimates) and expected survival for males between leaving land and 2 years of age as based on a correlation between on-land survival and survival at sea between 1950 and 1965 (updated from Fowler, 1982b).

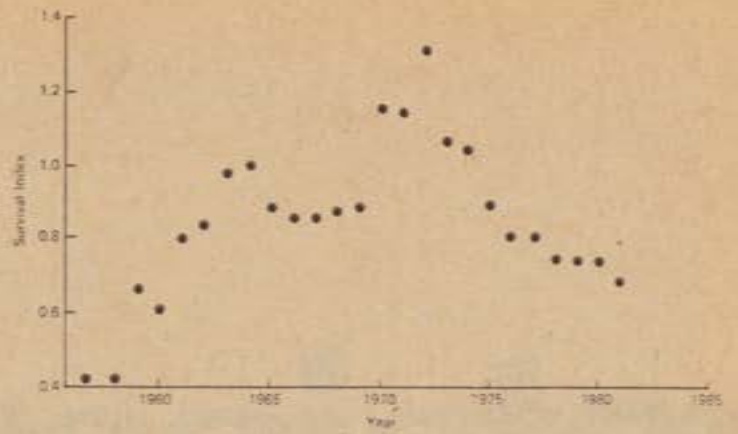


Figure 7. A survival index calculated as the normalized ratios between animals of one age in the harvest and those at the next younger, ages 2 to 5 weighted by numbers taken in the harvest for the year at the end of which the survival would be expressed.

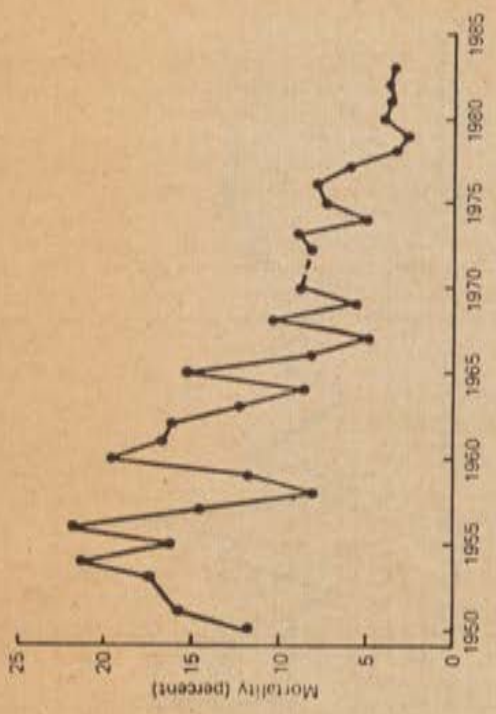


Figure 9. Pup mortality on land for St. Paul Island 1950-1983 (updated from Fowler, 1982a).

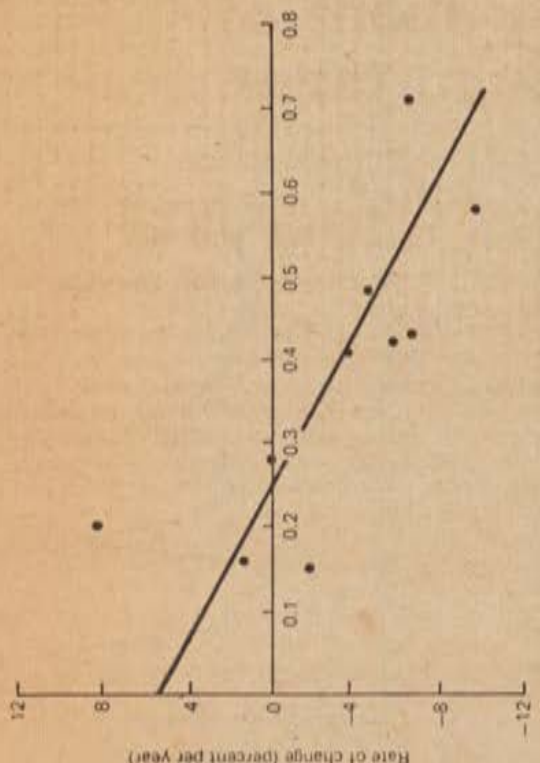


Figure 8. The correlation between the rate of change in pup numbers (smoothed by a running mean of 3 from the data shown in Fig. 2) and entanglement rate observed in the harvest 6 years earlier (to account for the maturation time of females). (From Fowler, 1984d).

[FR Doc. 85-5266 Filed 3-5-85; 8:45 am]
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Federal Register

Wednesday
March 6, 1985

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71, 91, 103, and 105
Establishment of Airport Radar Service Areas; Final Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AWA-31]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates an Airport Radar Service Area (ARSA) at Austin, TX, Columbus, OH, and Baltimore, MD, concurrently with a separate rulemaking action establishing operating rules for flight in such areas. In taking these actions, the FAA is adopting several National Airspace Review (NAR) Terminal Task Group 1–2.2 recommendations. This action supersedes the Special Federal Aviation Regulation (SFAR) which established a temporary ARSA at Austin, TX, and Columbus, OH.

EFFECTIVE DATE: 0901 GMT, March 14, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (ATO–230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompasses a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1–2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83–9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. These locations were designated ARSA's by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates of SFAR 45 of December 22, 1984, for Columbus and January 19, 1985, for Austin were extended to June 20, 1985 unless the rule is rescinded or superseded before that date (49 FR 47176; November 30, 1984).

On November 30, 1984, the FAA proposed amendments to Parts 71, 91, 103 and 105 to establish the general definition and operating rules for an ARSA (49 FR 47184). On the same date, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate an ARSA for the Robert Mueller Municipal Airport, Austin, TX; the Port Columbus International Airport, Columbus, OH; and the Baltimore/Washington International Airport, Baltimore, MD (49 FR 47178). The rules for designating an ARSA and for governing flight operations within an ARSA are also being adopted by separate rulemaking action published on this date. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Additionally, the FAA, on December 12, 1984, held an informal airspace meeting concerning the Baltimore ARSA at Baltimore. Similar meetings were not held for the ARSA's at Austin and Columbus because the FAA believed them unnecessary in that the ARSA's established at those locations under SFAR 45–1 were the subject of an extended comment period and several user meetings in their respective areas. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.501 of Part 71 of the Federal Aviation Regulations will be published in Handbook 7400.6 dated January 2, 1985.

Discussion of Comments

FAA received ten comments in response to the NPRM published on November 30, 1984, although some comments submitted in related Docket No. 23708 also contain information which relates to the specific airspace designations at Austin, Columbus and Baltimore. Fifteen comments were received earlier on Docket No. 23708 following the issuance of the SFAR which established temporary ARSA's at Austin and Columbus. Most of the earlier comments related to the ARSA program in general, although one commenter specifically supported establishment of an ARSA at Austin. Those persons who have an interest in the ARSA program generally or in the establishment of an ARSA at a specific location are encouraged to review the comments submitted in both dockets.

Two of the comments received in this docket requested a longer notice period for public comment and postponement of the informal airspace meeting held at Baltimore/Washington International Airport (BWI) on December 12, 1984. The airspace proposals for Austin and Columbus, and the proposed rules for flight in ARSA have been the subject of an operational confirmation for more than a year. The comment period associated with the operational confirmation extended over a period of six months. While the ARSA at BWI was not the subject of an operational confirmation or prior comment, FAA took additional measures to solicit comments on the BWI ARSA within the comment period. Approximately 170 announcements were mailed to individuals, fixed-base operators, and organizations in the Baltimore area. The announcement contained a notice of the informal airspace meeting on December 12. For the above reasons the FAA believes the period for notice and comment was sufficient to permit full public comment on the proposed rule.

To the extent the comments received in this docket contained remarks pertinent to ARSA rules or airspace generally, those comments were addressed in the final rule issued in Docket No. 23708. Comments relating specifically to the ARSA airspace designations at Austin, Columbus or Baltimore are discussed below.

Establishment of an ARSA at each of the three proposed locations was supported by the Air Line Pilots Association (ALPA), the Regional Airline Association (RAA), the Air Transport Association (ATA), and the Aircraft Owners and Pilots Association (AOPA), and was found acceptable by the Experimental Aircraft Association (EAA).

The establishment of an ARSA at BWI Airport was supported by one individual commenter and opposed by another commenter. The objecting commenter observed that he experiences difficulty in contacting approach control in the BWI area at the present time, due to congestion on the radio frequency, and that he expects this problem to become worse if participation is mandatory. The commenter also stated his opinion that the ARSA services would place an additional unnecessary and unwanted burden on air traffic controllers. FAA considers both comments to address issues of resources rather than the benefits or disadvantages of the ARSA concept. TRSA services are already provided for BWI Airport, and it has been the experience of the BWI tower facility that participation of pilots in the TRAS services exceeds 95% of those aircraft operating to or from the primary airport. Mandatory participation under an ARSA, therefore, is not expected to increase controller workload significantly. The operational confirmation conducted over the last year at Austin and Columbus supports

this conclusion. FAA's ATC experience has been that frequency congestion does occur at peak periods at most major airports. When such congestion occurs, resource adjustments are made on site. Such adjustments include resectoring and assigning selected personnel to the situation.

AOPA, in addition to comments directed at all proposed ARSA's, specifically requested that the proposed BWI ARSA be modified to have a uniform 1,700 foot MSL floor in the five to ten-mile ring, rather than the segmented floors of 1,300 and 1,700 feet MSL as proposed. FAA appreciates that the change requested by AOPA would simplify the representation of the ARSA on aeronautical charts and make it slightly easier for pilots to understand the airspace involved. However, in consideration of the instrument approach and departure paths for BWI, FAA believes that in this case the advantages of mandatory participation in the additional airspace outweigh the possible convenience of a uniform dimension. Accordingly, the final rule retains the segmented floor as proposed.

Two comments were received opposing the implementation of a permanent ARSA at Columbus, OH. Both commenters represented corporate flight departments which operate out of the Columbus Airport, and both commented on the basis of experience with the operational confirmation. Both commenters complained of unnecessary delays as a result of participating in the ARSA procedures, either from excessive or unnecessary spacing in VFR conditions or from excessive vectoring. FAA recognizes that mandatory participation in ARSA will result in some degree of delay, during peak traffic periods, for aircraft that otherwise would proceed VFR-and would not contact ATC. However, FAA believes that the safety benefits of mandatory participation outweigh the potential delays for some VFR operations. Also, the specific delays described by the commenters may be due to procedures which could be modified without altering the basic ARSA concept. In locations where ARSA's have been adopted, ATC will continue to consider user suggestions for any improvements in local ATC procedures consistent with the ARSA rules.

No comments specifically addressing the Austin, TX, ARSA were received.

Several comments which contained suggestions relating to nonregulatory matters, such as ATC procedures and the charting of ARSA's will be considered by FAA in the implementation of each ARSA but will not be discussed in this document.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates ARSA's at Baltimore/Washington International Airport (BWI), Baltimore, MD; Robert Mueller Municipal Airport, Austin, TX; and the Port Columbus International Airport, Columbus, OH. These airspace designations represent the initial implementation of the NAR recommendations which are designed to promote standardization and simplification of terminal airspace designations while enhancing safety by the mandatory two-way radio communications requirements within the ARSA airspace. The designations of ARSA's at Austin, TX, and Columbus, OH, supersede SFAR No. 45–1 effective 0901 GMT, March 14, 1985.

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 is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reason stated under the heading "Regulatory Flexibility Act Determination," I certify that this rule will not have a significant economic impact on a substantial number of small entities. The anticipated impact may be found in a copy of the draft regulatory evaluation contained in the public docket. A copy of that evaluation may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Economic Impact

A final regulatory evaluation for this rule has been placed in the docket. Because the rule, as it relates to the airports at Austin, TX, and Columbus, OH, makes the ARSA's permanent at these sites and the regulatory evaluations for these sites remain valid, this economic impact statement concerns only BWI.

The potential cost elements as a result of implementing the ARSA at BWI may be summarized as follows:

1. Additional costs for circumnavigating or flying over the ARSA.

2. The need for some operators to purchase avionics.

3. Delay costs as a result of operating within an ARSA rather than a TRSA.

4. Costs relating to preparation of charts, notifying the public and educating pilots.

5. Controller staffing costs.

The FAA has estimated that perhaps as many as 20 aircraft per day will choose to avoid the ARSA. This can be done by flying at 4,000 feet or higher above ground level and is estimated to cost about $7,000 per year.

There are 2 nontowered airports within 10 miles of BWI; however, neither are located in the surface area of the ARSA. Aircraft based at these airports will be able to land and takeoff without having to communicate with ATC; therefore, these users will not have to have communication avionics.

An analysis of the Columbus and Austin ARSA's indicated no delay because of ARSA implementation and the same is expected for BWI. Charts, education and training are expected to have an associated one-time cost of $21,000. There will be no need for additional controllers at BWI but there will be a one-time training cost of $20,000. The estimated annual cost including annualization of one-time costs is estimated to be $14,000 per year.

The primary benefit of an ARSA at BWI will be a reduction in the midair collision risk. This benefit is derived from the reduction in nonparticipating aircraft operating close to the primary airport and its associated approach and departure courses. At Columbus it was estimated that there is a 75 percent reduction in midair collision risk or a reduction of one midair collision every 105 years. Because the activity levels are similar at BWI and Columbus the FAA expects that benefits at BWI will be similar to those at Columbus. The FAA estimates that the averge midair collision between general aviation aircraft costs society $1,644,000 in 1983 dollars. Therefore, annual benefits are estimated to be $16,000 per year. Since the costs are estimated to be $14,000 per year the benefits exceed the costs.

The FAA conducted a survey of pilots, air traffic controllers and FAA supervisors who were users and operators of the ARSA at Columbus and Austin. The pilots, controllers and supervisors indicated strong approval of the two ARSA's. This strong approval rating does not lend itself to the calculation of its benefits, but, nevertheless, is highly significant and should be recognized as an index of value to the aviation community.

There were no public comments relating to the "Economic Impact" section in the NPRM.

Trade Impact Analysis

The rule only affects airspace within the United States. This action will not eliminate existing or create additional barriers to the sale of foreign aviation

products or services in the U.S. and will not impact sales of U.S. aviation products or service in foreign countries.

This rule is published less than 30 days prior to its effective date of March 14, 1985. March 14 is the next publication for en route low altitude navigation charts published by the National Ocean Survey. Pilots rely on these charts for flight information, and FAA considers it a matter of flight safety that the implementation date for each ARSA coincide with the publication date of the air navigation chart depicting that ARSA. If these ARSA's are not established on March 14, the next subsequent chart publication date—and the next date on which the three ARSA's could become effective—is in September, 1985. FAA considers the establishment of the ARSA at BWI Airport to be of immediate importance and cannot accept a six-month delay in implementation of this ARSA. Furthermore, controller training, revised coordination procedures among adjacent ATC facilities, and equipment display modifications have been undertaken at all these locations in preparation for the March 14, 1985, effective date. A six-month delay in implementation would have a disruptive effect on the ATC facilities involved. For these reasons, and in consideration that the need for users to adjust to the rule is minimized by the fact that ARSA or TRSA procedures now apply at each location, the FAA finds that good cause exists for making the rule effective less than 30 days after publication.

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to insure that small entities are not disproportionately affected by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The FAA criteria for a significant impact is $3,420/year in 1983 dollars and a substantial number must be at least 11 operators and at least one third of the small entities subject to the rule. The economic impact to all the users is estimated to be $14,000/year. Clearly, this rule does not have "a significant economic impact on a substantial number of small entities." There were no public comments relating to the Regulatory Flexibility Act Determination or the Trade Impact Analysis as published in the NPRM.

List of Subjects in 14 CFR Part 71

Airport Radar Service Areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Robert Mueller Municipal Airport, Austin, TX [New]

That airspace extending upward from the surface to and including 4,600 feet MSL within a 5-nautical-mile radius of the Robert Mueller Municipal Airport and that airspace extending upward from 2,000 feet MSL to 4,600 feet MSL within a 10-nautical-mile radius of Robert Mueller Municipal Airport from the 027° bearing from the airport clockwise to the 207° bearing from the airport and that airspace extending upward from 2,300 feet MSL to 4,600 feet MSL within a 10-nautical-mile radius of the airport from the 207° bearing from the airport clockwise to the 027° bearing of the airport.

Port Columbus International Airport, Columbus, OH [New]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-nautical-mile radius of the Port Columbus International Airport and that airspace extending upward from 2,500 feet MSL to 4,800 feet MSL within a 10-nautical-mile radius of the Port Columbus International Airport from the 008° bearing from the airport clockwise to the 127° bearing from the airport and that airspace extending upward from 2,200 feet MSL to 4,800 feet MSL within a 10-nautical-mile radius of the airport from the 127° bearing from the airport clockwise to the 008° bearing from the airport.

Baltimore/Washington International Airport, Baltimore, MD [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-nautical-mile radius of the Baltimore-Washington International Airport (lat. 39°10'30" N., long. 76°40'10" W.) and that airspace extending upward from 1,300 feet MSL to 4,200 feet MSL within a 10-nautical-mile radius of the Baltimore-Washington International Airport from the 012° bearing from the airport clockwise to the 192° bearing from the airport and that airspace extending upward from 1,700 feet MSL to 4,200 feet MSL within a 10-nautical-mile radius of the airport from the 192° bearing from the airport clockwise to the 012° bearing from the airport, excluding the airspace within and beneath the Washington, D.C., Terminal Control 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 Washington, D.C., on January 23, 1985.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-5392 Filed 3-1-85; 5:03 pm]

BILLING CODE 4910-13-M

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14 CFR Parts 71, 91, 103, 105

[Docket No. 23708; Amendment Nos. 71-10, 91-187, 103-2, 105-8]

Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action adopts certain National Airspace Review (NAR) recommendations concerning air traffic rules governing flight operations within airspace designated as "airport radar service area (ARSA)." Specifically, this action defines "airport radar service area" and establishes air traffic rules for operation within such an area. The initial airport radar service areas are established under separate rulemaking actions in Airspace Docket No. 84-AWA-31 for the Robert Mueller Municipal Airport, Austin, TX; the Port Columbus International Airport, Columbus, OH; and the Baltimore/Washington International Airport, Baltimore, MD. Future notices will propose airport radar service areas for other locations.

EFFECTIVE DATE: March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Davis, Airspace—Rules and Aeronautical Information Division, ATO-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Background

On April 22, 1982, the NAR plan was published in the **Federal Register** (47 FR 17448). The plan encompasses a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The three main objectives of the NAR are:

(1) To develop and incorporate into the air traffic system a more efficient relationship between traffic flows, airspace allocation, and system capacity. This will involve the use of improved air traffic flow management to maximize system capacity and improve airspace management.

(2) To review and eliminate, wherever possible, governmental restraints to system efficiency levied by Federal

Aviation Regulations (FAR) and FAA directive—reducing complexity and simplifying the ATC system.

(3) To revalidate ATC services within the National Airspace System with respect to state-of-the-art and future technological improvements. This will entail a complete review of separation criteria, terminal control area/terminal radar service area (TCA/TRSA) requirements, instrument flight rules/visual flight rules (IFR/VFR) services to the pilot, etc.

Organization participating in the NAR task group are:

Federal Aviation Administration
Department of Defense
Air Transport Association
National Business Aircraft Association
Regional Airline Association
Aircraft Owners and Pilots Association
Experimental Aircraft Association
Helicopter Association International
Air Line Pilots Association

NAR Recommendations Pertaining to the Proposal

The comprehensive plan contains an administrative structure and detailed task assignments which resulted in recommendations to the FAA, including the NAR Task Group 1–2.2 recommendations set forth below.

NAR 1–2.2.1 Replace TRSA's With Airport Radar Service Areas (ARSA's

"The Task Group recommends that the current Terminal Radar Service Area (TRSA) program—Airspace and Services—be discontinued. The Task Group further recommends that the concept identified herein as [airport radar service area (ARSA)] be implemented as replacement for the TRSA, program in accordance with the recommendations to follows."

(The task group recommendations referred to the ARSA concept as "Model B Airspace." References to "Model B Airspace" have been replaced with the term "ARSA" for consistency with the terminology used in the FAA rule.)

NAR 1–1.2.2 ARSA Size and Operating Requirements

"The Task Group recommends that the physical dimensions of [an ARSA shall be a 10 NM radius capped at 4,000 feet height above airport (HAA) from the primary airport. This airspace shall extend down to 1200 feet above the surface except that an inner core with a 5 nautical mile radius shall extend down to the surface. Except for aircraft departing from satellite airports/heliports within [an ARSA], all aircraft shall establish two-way radio communications with ATC prior to entering [an ARSA]. Aircraft departing satellite airports/heliports within the surface area of [an ARSA] shall establish two-way radio communications with ATC as soon as possible. Pilots must comply with approved FAA traffic patterns when departing these airports.

NAR 1–2.2.3 Outer Area Limits and Operating Requirements

"The Task Group recommends that the outer limit of [the area outside of the ARSA in which ARSA services are provided by an ARSA facility] be the same dimensions as the radar/radio coverage within each approach control's delegated airspace. While strongly encouraged, two-way radio communications is *not* a VFR requirement in [this airspace] and aircraft are not restricted from entering/transmitting this airspace."

NAR 1–2.2.4 ATC Services

"Services provided within [an ARSA] shall be as follows: Sequencing of arriving aircraft; IFR be provided standard IFR separation; IFR to VFR be provided traffic advisories and conflict resolution so that targets do not merge at the same altitude; and VFR to VFR be provided traffic advisories. Furthermore, aircraft operating outside [an ARSA but within the approach control's area of jurisdiction] will receive [ARSA] services upon establishing two-way radio communications and radar contact."

[NAR 1–2.2.5 Not applicable to this proposal]

NAR 1–2.2.6 Airspace Designation Criteria

"The Task Group recommends that, excluding TCA locations, all airports with an operational airport traffic control tower and currently contained within a TRSA serviced by Level III, IV, or V radar approach control facility shall have [an ARSA] designated; unless a study indicates that such designation is inappropriate for a particular location. Any other location serviced by a radar approach control facility may be considered as a candidate location for [an ARSA] on the basis of a thorough staff study considering, but *not limited to*, the following:

1. Traffic mix, flow, density, and volume.
2. Airport configuration, geographical features and adjacent airspace/facilities.
3. Collision risk assessment.
4. ATC capabilities to provide [ARSA] services to the users at maximum benefit and minimum cost.

All proposed [ARSA] actions shall be subject to regional and headquarters approval. Military operated facilities will process requests through appropriate military and FAA channels. Any [ARSA] location which fails to meet the establishing criteria for its respective location for more than 12 consecutive months, shall be subject to a regulatory review to terminate the [ARSA] designation."

NAR 1–2.2.7 Charting

"The Task Group recommends for further consideration by Task Group 1–6 that all [ARSA's] be charted, and that either a visual or narrative method of identifying the [area in which ARSA services are provided by an ARSA facility] be undertaken."

NAR 1–1.2.8 Education

"The Task Group recommends the aviation community be made aware of [the ARSA program] by educational programs to support ATC operational and procedural information, phraseology, practices, and the desirability of voluntary participation. Specifically, it is recommended:

1. All FAA pilot exams and appropriate textbooks must contain a significant amount of questions and information concerning radar operation in terminal areas. Specifically, operations and procedures be included in written and practical tests for pilot certification, ratings, and reviews.

2. Specific questions and answers must be required on all flight reviews and other appropriate occasions (air carrier initial and recurrent proficiency training, pilot proficiency exams, biennial flight review, etc.) to assure that users in every aviation community have shown a current understanding of radar terminal areas and their use of these areas.

3.The FAA develop and fund a traveling air traffic team to speak to pilot groups on operations within the National Airspace System; i.e., [ARSA]. Emphasis should be given to flight instructor contact.

4. An advisory circular dealing with [the ARSA program] be published to include well presented, up-to-date information on operations in terminal airspace and that this advisory circular be given the widest possible dissemination to aviation users and organizations.

5. The Airman's Information Manual (AIM) be distributed free of charge to all fixed-base operators (FBO's) at all public use airports.

6. FAA Public Affairs Office develop and promote through the general news media, aviation awareness of FAA

services and publications available to the pilot and general public.

7. Facts about terminal airspace in some form of questionnaire be developed and distributed by the FAA to appropriate agencies (licensed pilots, fixed-base operators, business organizations, etc.). This questionnaire could be a public relations effort, advisory circular, or included in the Airman's information Manual.

8. FAA continues to make available to interested pilot groups training or other audio-visual aids that deal with terminal radar operations."

A copy of the task group's report is in the public docket.

The ARSA Confirmation

In Notice 83-9 [July 28, 1983; 48 FR 34286], the FAA stated that it believed in the merits of the task group's recommendations, and set forth aspects of those recommendations which could be confirmed under a proposed Special Federal Aviation Regulation (SFAR) to Austin, TX, and Columbus, OH. After reviewing the proposal in the light of the comments received, the FAA issued SFAR No. 45 [October 28, 1983; 48 FR 50038] to accomplish the confirmation.

The FAA contracted with Engineering and Economic Research, Inc. (EER) to analyze user operational experience with the ARSA's at Columbus and Austin. A copy of the EER analysis is in the docket. The FAA, itself, conducted random informal evaluations of ATC procedures which were also being confirmed. Informal discussion between FAA management and air traffic controllers at Columbus and Austin concerning ARSA operations and air traffic procedures were conducted routinely. These activities revealed that a significantly majority of users approve of the ARSA concept in the NAR recommendations. The FAA also conducted a detailed analysis of comparative radar data gathered before and during the confirmation at Columbus, a copy of which is in the docket, and found that the ARSA produced a significant reduction in collision risk.

The FAA concluded that the confirmaion at Columbus and Austin indicated probable benefits of the ARSA program for users at other locations. The confirmation also revealed an ARSA to be a practical replacement for a TRSA from an ATC procedural standpoint. On November 30, 1984, the FAA published Notice No. 84-22 which proposed air traffic rules governing flight operations within designated ARSA's (49 FR 47184).

Analysis of Comments

The FAA received 17 comments on the Notice of Proposed Rulemaking (NPRM) published November 30, 1984, in Docket No. 23708, in addition to 15 comments received earlier in the same docket in response to SFAR 45, which included a request for comments. Also, several comments received in the related Airspace Docket No. 84-AWA-31 contained remarks pertinent to Docket No. 23708, and were considered in the development of this rule. Those persons who have an interest in either proposal are encouraged to review the comments submitted in both dockets.

Several commenters were critical of the comment period on the NPRM provided by the FAA, and requested an extension of the comment period. The FAA believes the period for notice and comment was sufficient to permit full public comment on the proposed rule. The flight rules adopted in this amendment have been the subject of extensive discussion and review by the aviation public as a result of the NAR process, by which the rulers were recommended. Moreover, the designation of any particular site for establishment of an ARAS will be the subject of additional rulemaking, with the opportunity for additional public comment.

The comments received on the SFAR between December 1983 and August 1984 were generally critical of the ARSA concept, although not on the basis of actual experience with the Austin, TX, or Columbus, OH, ARSA's. Common comments were that the standardized ARSA airspace will not serve the intended purpose in areas of mountainous terrrain, will discourage or preclude certain activities such as soaring near ARSA airports, and will inhibit free access to satellite airports within an ARSA. The FAA does not believe that any of the above criticisms constitutes an insurmountable problem with establishment of the ARSA program, or presents sufficient reasons to depart from the general policy of establishing ARSA's in a standardized configuration. However, the actual configuration of any particular ARSA will take into consideration any unusual terrain features. Also, there are means to accommodate the presence of satellite airports and, where consistent with ATC safety and efficiency, VFR activities such as soaring. These measures are discussed in more detailed below in connection with comments received in response to the most recent NPRM.

Comments received from organizations which participated in NAR Task Group 1-2.2 were generally supportive of the proposed ARSA rules. These groups included the Aircraft Owners and Pilots Association (AOPA), the Air Transport Associaltion (ATA), the Experimental Aircraft Association (EAA), the National Business Aircraft Association (NBAA), the Regional Airline Association (RAA), and the Air Line Pilots Association (ALPA). In each case the above groups offered additional comments or requests which, together with other comments received, are discussed below by subject.

Establishment Criteria

Several commenters addressed the need for specific criteria for establishment (and disestablishment) of ARSA airspace at individual sites, rather than considering each existing TRSA as an automatic candidate for an ARSA. Recommended criteria included aircraft operations and passenger enplanements, proximity of other airspace complexes and other airports, and geography. AOPA also suggested that in addition to TRSA's, those TCA's which currently do not meet the standards for establishment of a new TCA also be considered as candidates for replacement by an ARSA. One commenter also requested that any specific criteria developed by FAA for establishment of an ARSA first be proposed in an NPRM and published in the **Federal Register** for comment.

FAA consideration of most TRSA sites as candidates for ARSA's is adopted in response to NAR Recommendation 1-2.2.1. Initially, only those TRSA locations which are served by a Level III, IV, or V terminal radar facility will be considered for establishment. In each case, an ARSA would be established only after issuance of an NPRM and the opportunity for public comment on the merits of an ARSA at the proposed location. The impact on the proposed ARSA of local geography, adjacent airspace configurations, and nearby airports would receive full consideration by FAA only in determining appropriate adjustments to the configuration of the ARSA, but also in detemining whether it would be appropriate to establish an ARSA.

FAA is currently in the process of developing specific quantitative criteria, such as traffic and passenger enplanements, for example, for proposing the establishment of ARSA's for locations that are not TRSA's or that are not served by a Level III, IV, or V approach control facility. FAA will issue the criteria before proposing such additional ARSA locations. FAA does

not intend to develop the criteria through the formal rulemaking process, but will take into consideration all comments relating to establishment criteria received in this docket.

FAA has not proposed to consider any existing TCA's for potential replacement by ARSA's and does not adopt such a policy at this time.

Potential Impacts

Comments critical of the proposal generally involved concerns about increased delays, the exclusion of certain user groups, and potential safety impacts. Several commenters were concerned that establishment of an ARSA would increase traffic delays in that area as a result of unnecessary separation standards, extensive vectoring, and the difficulty in contacting ATC due to frequency congestion. Because participation in existing TRSA's is high, and separation standards in an ARSA are less than those in a TRSA (radar separation standards in an ARSA are less than the 1.5 mile lateral standard for participating aircraft in a TRSA), FAA does not believe that the implementation of mandatory separation in ARSA's will result in any significant traffic delays. For the same reasons, the FAA does not anticipate extensive or circuitous vectoring of aircraft in an ARSA. The NAR proposal was intended to minimize the vectoring or rerouting of VFR aircraft in affected terminal airspace, and this should be accomplished by the procedures implemented by FAA. Moreover, the only requirement to enter an ARSA is two-way radio communications with ATC. In the absence of subsequent ATC instructions, the pilot may proceed via his/her planned route. Finally, FAA does not believe that radio frequency congestion will result in delays or exclusion from an ARSA. When congestion is experienced, resource adjustments will be considered to resolve the problem.

A few commenters on the NPRM expressed concern that an ARSA would have the effect of excluding some VFR pilots, primarily recreational aircraft and sailplanes. The ARSA requirement for two-way radio communications does effectively preclude aircraft not having this basic communications capability from entering an ARSA, without special ATC authorization. FAA believes, however, in consideration of the safety benefits of the communications requirement, that the effects of the rule are limited and are fully justified. Moreover, as discussed below in connection with ARSA configuration, special procedures will be considered on a site-specific basis to permit access to nontower airports underlying an ARSA, without entering ARSA airspace. It may also be possible, at affected sites, to accommodate soaring and other recreational VFR flight activities in an ARSA through agreement with the controlling ATC facility. In the rulemaking which will precede the establishment of each individual ARSA, FAA will consider comments and suggestions on means for the safe and efficient accommodation of aviation activities which might otherwise be precluded by the proposed ARSA.

While none of the commenters on the NPRM claimed that an ARSA would reduce safety rather than enhance it, several safety-related issues were raised in comments on the NPRM and on the previous SFAR. One commenter suggested that controller workload would be substantially increased by the implementation of an ARSA. The FAA is confident that an increase in traffic will only result from the handling of aircraft not presently participating in the TRSA program and that any such increase would not cause a substantial increase in an individual controller's workload because of the present high level of participation in the TRSA program. However, if an ATC facility does experience a substantial increase in traffic handled, the FAA will take the necessary measures to ensure that adequate facilities and personnel are available to handle the increase.

Another comment was that the establishment of an ARSA, with its operating requirements, would lead many VFR pilots to avoid the ARSA, resulting in compression of traffic in adjacent areas. FAA does not believe that a significant number of pilots will choose to avoid ARSA airspace, given the minimum burden involved of contacting ATC. Also, the airspace taken by an ARSA is not extensive either laterally or vertically, and in most locations there is no reason to conclude that traffic circumventing the ARSA would be compressed into a confined area. A final safety-related comment received was the concern that provision of radar separation in an ARSA would generate a false sense of security in VFR pilots, and would undermine the duty to see-and-avoid other aircraft. See-and-avoid responsibility is not relieved or diminished in an ARSA, and FAA intends to make this responsibility clear in informational announcements and materials dealing with the ARSA program. However, FAA believes that any possible misperception of some pilots as to their see-and-avoid responsibilities in an ARSA environment is an issue of pilot education, and does not support the nonadoption of the ARSA concept itself.

ARSA Configuration and Dimensions

Many of the commenters suggested changes to the ARSA dimensions as proposed, while others urged that no consideration be given to expansion of the proposed dimensions. Commenters generally supported the FAA policy of standardizing the dimensions of ARSA's, and NBAA in particular expressed concern at FAA's announced intention to consider "customization" of areas in certain circumstances. FAA has adopted the dimensions as proposed, and, in the absence of special circumstances, individual ARSA's will be proposed in the standard configuration. However, the existence of other airports or controlled airspace adjacent to the primary airport may present a situation in which the standard configuration is not feasible.

AOPA and EAA both requested that access to satellite airports within a proposed ARSA be protected. AOPA specifically requested that the traffic pattern of a satellite airport be excluded from the ARSA and depicted as a cutout from the ARSA on aeronautical charts. AOPA argued that traffic to and from satellite airports should not be required to participate in the ARSA, and that exclusion of the satellite airport traffic pattern from the ARSA is the only way to avoid pilot confusion. EAA suggested that access to satellite airports within the 5-mile core of an ARSA, without participation in the ARSA, could be allowed by retaining the provisions of FAR 91.85(b). Section 91.85(b) permits operation to and from the satellite airports in an airport traffic area. FAA believes that establishment of an ARSA will not necessarily have an adverse effect on access to satellite airports within the ARSA, and that where there is a potential for such effect, it can be resolved. Satellite airports with control towers, whether in the 5-mile core or the 10-mile shelf area, will require no adjustment of the ARSA configuration. Local procedures established between the satellite tower and the ARSA controlling facility will ensure that pilots remain in contact with the appropriate facility, and that access to the airport through ARSA airspace is not impeded. For nontower airports located under the 5- to 10-mile shelf, no reconfiguration of the standard ARSA is required because aircraft may approach and depart the airport below 1200 feet above ground level (AGL), and thereby remain clear of ARSA airspace. Nontower airports within the 5-mile core area present a

more complex problem. It may be most practical to provide access to the airport by letter of agreement or other special arrangement with the ARSA controlling facility. However, in situations where safety, traffic flow, or pilot understanding would be enhanced, the FAA will consider permitting unrestricted access to the airport below 1200 feet AGL. In such situations, cutouts would be depicted on the representation of the ARSA's on aeronautical charts.

AOPA renewed its request, first made in the NAR task group, that the upper limit of the ARSA airspace be set at 3000 feet above airport elevation rather than 4000 feet as proposed. This issue was considered by the NAR task group, and has been reconsidered by FAA in light of the operational experience at Austin and Columbus. Based on the majority recommendation of NAR Task Group 1–2.2, the comments of other users, and the experience with the Austin, TX, and Columbus, OH, ARSA's, FAA has retained the 4000 foot cap. FAA considers it desirable to have mandatory participation up to 4000 feet above airport elevation for the type of airports that will be eligible for the ARSA airspace designation, and we do not believe it necessary or beneficial to make the cap compatible with the upper limit of the airport traffic area, as AOPA suggests.

AOPA requests that the lower limit of the ARSA shelf be set at 1200 feet above the highest terrain in the 10-mile radius, and that the floor not be segmented to follow variations in terrain. FAA agrees that any segmenting of the floor in the 5- to 10-mile area should be kept to a minimum, but we believe that some segmenting will be appropriate in certain terrain situations. Each proposal to incorporate a segmented base altitude will be subject to further comment in the airspace rulemaking for that location.

Representatives of the Soaring Society of America and several individual sailplane pilots requested that in areas where soaring is now conducted within the proposed ARSA, either the ARSA be modified or special procedures be developed to permit the sailplane operations to continue without complying with ARSA communication requirements. FAA does not believe that a national policy of modifying the standard ARSA configuration or procedures is warranted, given the relatively small number of locations at which soaring would be conducted within an ARSA. However, at some proposed ARSA locations it may well be the case that there is substantial sailplane activity conducted in the local area, and that those sailplane operations could be adversely affected by the establishment of an ARSA. In those cases, FAA is willing to consider special procedures to accommodate the soaring, including arrangement with the local ARSA controlling facility to operate without radio equipment at certain times and in certain prearranged areas, if control and separation of other aircraft is not adversely impacted. Procedures for any particular location would be developed during the proposal and comment process, and would be specific to that location.

Finally, several commenters addressed the nonregulatory 20-mile limit of the area in which ARSA services are provided by ATC, but in which user participation is not required. NBAA found the 20-mile perimeter acceptable, but suggested that the areas of two adjacent ARSA's be connected. This suggestion will be considered in the airspace rulemaking at appropriate locations. ALPA objected to the 20-mile limitation and requested that radar service be provided to the limits of the controlling facility's radar coverage, as implemented during the operational confirmation. For the reasons discussed in the NPRM, FAA continues to believe that the 20-mile perimeter provides a high level of service to participating aircraft consistent with the resources of the local ATC facility, and, because of its uniformity, minimizes pilots' confusion about the services available.

Required Equipment

ATA requested that altitude-encoding transponders be required in addition to two-way radios for operation in an ARSA. FAA does not believe that transponders are required to effect the purposes of the TRSA program, and does not intend to propose a requirement for transponders in ARSA airspace.

EAA and the Soaring Society of America both expressed concern that the use of 25 kilohertz (kHz) frequency spacing, made possible by 720-channel radios, would constitute a hardship for operators of small recreational aircraft having older 360-channel radio equipment. Because the rule requires two-way radio communications capability for operation in an ARSA, the use of the 25kHz spacing in ATC ARSA frequencies would effectively force these operators to upgrade their communications equipment. There is now a serious shortage of radio frequencies spaced at 100kHz intervals. The requirement for 720-channel radio capability for system users will likely increase independent of the ARSA airspace decision. At most of the locations for which ARSA's will be proposed, there is already a considerable demand for 720 channel radio capability, and FAA believes that the majority of aircraft using these airports already have this equipment. However, the extent that operators may need to install or upgrade aircraft radios at some potential ARSA sites will be assessed in the regulatory evaluation of a separate rulemaking proposing the designation of ARSA's at specific locations (see discussion in Economic Impact below).

Other Comments

A number of other comments were made concerning matters of operations under an ARSA, such as ATC procedures and the representation of ARSA's on aeronautical charts, which do not affect the substance or justification of the rule itself. FAA will take these comments into consideration in implementing designated ARSA's, but will not address them here.

Adoption of NAR Recommendations

The FAA's action with respect to each of the aforementioned NAR recommendations is set forth below.

NAR 1–2.2.1 Replace TRSA's With ARSA's

While the adoption of this recommendation would indicate that the FAA is adopting all aspects of the other NAR recommendations addressed herein, the FAA has only adopted the aspect dealing with the discontinuance of TRSA's. The remaining aspects of this recommendation are treated individually. In that regard, all current TRSA locations will remain as such until they are cancelled or converted to ARSA's. Additionally, ATC procedures dealing with TRSA's will remain in place and aeronautical charts will continue to depict each TRSA until it is cancelled or converted.

NAR 1–2.2.2 ARSA Size and Operating Requirements

The physical dimensions of the ARSA and the operating requirements recommended by the task group are adopted except that the floors of the airspace between 5 and 10 miles may be segmented and will be expressed in altitudes above mean sea level instead of AGL because of variations in terrain elevations. This deviation is in the spirit of the task group's recommendations and every effort will be made to ensure that the ARSA airspace between 5 and 10 miles of each ARSA is not segmented except as necessary.

Additionally, some customizing of ARSA's may be required due to proximity of satellite airports and other regulatory airspace designations. However, customizing will be held to the absolute mininum required and the FAA foresees no situation that would necessitate extension of the ARSA airspace beyond 10 nautical miles.

NAR 1-2.2.3 Outer Area Limits and Operating Requirements

While the limit that was operationally confirmed at Austin, TX, and Columbus, OH, coincided with the extent of the approach control facility's delegated airspace, the FAA may not always have the resources or capability to provide the ARSA service to those limits. Further, the FAA believes flexibility must be retained in establishing limits because of considerations which include: Proximity to TCA's; clustering of ARSA's; terrain; unusually high level of activity not related to the ARSA airport operation, and radio/radar coverage. Accordingly, the limits of the airspace outside each ARSA within which ARSA services are provided with be depicted narratively on sectional charts in a manner similar to the method used for the confirmation. The procedures for establishing the limits will be implemented under the FAA directive system; therefore, user organizations will have another opportunity to provide comments regarding this subject.

NAR 1-2.2.4 ATC Services

The ATC services that the task group recommended the FAA provide within the ARSA will be provided as recommended, and will be implemented under the FAA directives system. The services provided by ATC through mandatory participation in the ARSA will be available to pilots on a voluntary participation basis in other specified areas within the approach control's area of jurisdiction. These services will be in addition to the services and separation currently applied to aircraft operating under IFR. Specifically, ATC will: (1) Resolve potential conflictions between aircraft operating under IFR and aircraft operating under VFR by ensuring that 500 feet vertical separation exists between those aircraft or by ensuring that those aircraft's radar targets do not touch; and (2) provide traffic advisory service and arrival sequencing to aircraft.

Where there is a satellite airport with an operating control tower within the ARSA, the airport traffic area of the satellite airport will overlap the ARSA airspace. The requirements of the adopted rules apply in such airspace. Pilots approaching a satellite airport with an operating control tower will be provided ARSA services until they are in two-way communication with the tower. Pilots approaching a satellite airport without an operating control tower will receive ARSA services until they are instructed to change to the appropriate airport frequency; however, general traffic information concerning observed radar targets will be provided by ATC in such cases. Pilots departing a satellite airport will receive ARSA services upon establishing two-way radio communications with the ARSA facility.

The provision of ARSA services at any location is dependent upon operation of the local ATC facility. Hours of facility nonoperation, when ARSA requirements and services would not apply, may be specified in airspace rules for individual sites or by Notices to Airmen.

NAR 1-2.2.6 Airspace Designation Criteria

This recommendation is adopted. The following is a list of TRSA locations that are candidates for conversion to ARSA's. In some cases under this recommendation, more than one ARSA would be created from a single TRSA; for example, there are three airports within the Ontario, CA, TRSA—Ontario International, March Air Force Base (AFB), and Norton AFB airports—that would be candidates for individual ARSA's. However each specific ARSA airport will be addressed separately in an NPRM.

ARSA Candidate Locations:
Anchorage, AK; Mobile, AL; Little Rock, AR; Burbank, CA; Orlando, FL; Tampa, FL; Macon, GA; Cedar Rapids, IA; Ontario, CA; San Diego, CA; Windsor Locks, CT; Jacksonville, FL; Tallahassee, FL; Columbus, GA; Kahului, HI; Boise, ID; Peoria, IL; Evansville, IN; South Bend, IN; Lexington, KY; Lafayette, LA; Baltimore, MD; Grand Rapids, MI; Saginaw, MI; Billings, MT; Greensboro, NC; Omaha, NE; Reno, NV; Islip, NY; Syracuse, NY; Columbus, OH; Youngstown, OH; Portland, OR; Harrisburg, PA; Champaign, IL; Rockford, IL; Fort Wayne, IN; Wichita, KS; Louisville, KY; Lake Charles, LA; Portland, ME; Kalamazoo, MI; Gulfport, MS; Charlotte, NC; Raleigh, NC; Atlantic City, NJ; Albany, NY; Rochester, NY; White Plains, NY; Dayton, OH; Oklahoma City, OK; Allentown, PA; Toledo, OH; Charleston, SC; Bristol, TN; Memphis, TN; Austin, TX; El Paso, TX; San Antonio, TX; Norfolk, VA; Quonset Pt., RI; Greer, SC; Knoxville, TN; Amarillo, TX; Corpus Christi, TX; Midland, TX; Chantilly, VA; Roanoke, VA; Tacoma, WA; Milwaukee, WI; Birmingham, AL; Montgomery, AL; Phoenix, AZ; Monterey, CA; Palm Springs, CA; Santa Ana, CA; Daytona Beach, FL; Cincinnati, KY; Baton Rouge, LA; Shreveport, LA; Flint, MI; Lansing, MI; Jackson, MS; Fayetteville, NC; Lincoln, NE; Albuquerque, NM; Burlington, VT; Green Bay, WI; Charleston, WV; Huntsville, AL; Abilene, TX; Tucson, AZ; Oakland, CA; Sacramento, CA; Colorado Springs, CO; Ft. Lauderdale, FL; Pensacola, FL; W. Palm Beach, FL; Savannah, GA; Des Moines, IA; Moline, IL; Springfield, IL; Indianapolis, IN; Tulsa, OK; Erie, PA; San Juan, PR; Columbia, SC; Chattanooga, TN; Nashville, TN; Beaumont, TX; Lubbock, TX; Salt Lake City, UT; Buffalo, NY; Rome, NY; Akron Canton, OH; Richmond, VA; Spokane, WA; Madison, WI.

NAR 1-2.2.7 Charting

This recommendation is adopted. Each ARSA will be depicted on aeronautical charts in a manner similar to the way Austin, TX, and Columbus, OH, locations are depicted.

NAR 1-2.2.8 Education

This recommendation is adopted to the extent set forth in Notice 84-22.

The Amendment

After consideration of the comments received, the FAA is adopting, with the exception of two editorial changes, the amendments to Parts 71, 91, 103, and 105 as they were proposed in Notice 84-22. The definition of an ARSA in new § 71.14 has been revised for consistency with the definitions of other types of controlled airspace in Part 71. The revision has no effect on the operating rules for an ARSA or the extent of airspace involved. A second editorial revision was made to new § 91.88. The phrase "or heliport" was deleted from the proposed section as unnecessary, because the term "airport" as defined in FAR Part 1, Section 1.1, includes heliports.

These amendments establish a new type of airspace assignment and prescribe operating rules for aircraft, ultralight vehicles, and parachute jump operations in that airspace.

Specifically, aircraft arriving at any airport in an ARSA, and overflying aircraft, prior to entering the ARSA must: (1) Establish two-way radio communications with the ATC facility having jusidiction over the area; and, (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-

way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a statellite airport or heliport within the ARSA, as soon as practicable after takeoff, two-way radio communications must be established and thereafter maintained, while operating within the ARSA, with the ATC facility having jurisdiction over the area.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrivial or departure traffic patttern for the airport of intended operation. However, the proposed rule permits ATC to authorize appropriate deviations to any of the operating requirements of the proposed rules when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

Economic Impact

This action defines an ARSA and establishes air traffic rules for operation within the ARSA. Specific designations of individual ARSA's will be proposed in separate NPRM's. This amendment has no economic consequences. Rather, it is the airspace proposals which would implement this rule at specific sites that would have the economic impact, if any, at those sites. The FAA will provide a Regulatory Evaluation (an analysis of the economic impact), a Trade Impact Analysis (an analysis of the impact of the rule on foreign trade), and a Regulatory Flexibility Determination (whether a proposal has a significant economic impact on a substantial number of small entities) when an ARSA is proposed at specific sites.

Accordingly, the FAA has determined that: (1) The amendment does not involve a major rule under Executive Order 12291; (2) the amendment is not significant nor does it require a full Regulatory Evaluation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) it is certified that under the criteria of the Regulatory Flexibility Act that the amendment will not have a significant economic impact on a substantial number of small entities. In addition, this amendment, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the U.S.

This rule is published less than 30 days prior to its effective date of March 14. By separate rulemaking published this date, FAA has established ARSA's at Austin, TX; Columbus, OH; and Baltimore, MD, to take effect on March 14. March 14 is the next publication for enroute low altitude navigation charts published by the National Ocean Survey. Pilots rely on these charts for flight information, and FAA considers it a matter of flight safety that the implementation date for each ARSA coincide with the publication date of the air navigation chart depicting the ARSA. The permanent Austin and Columbus ARSA's and the Baltimore ARSA cannot be established unless this rule, which promulgates the definition and operating rules for ARSA's is in effect. If these ARSA's are not established on March 14, the next subsequent chart publication date, and the next date on which the three ARSA's could become effective, is in September. FAA considers the establishment of the ARSA at Baltimore Airport to be of immediate importance and cannot accept a 6-month delay in implementation of this ARSA. Furthermore, controller training, revised coordination procedures among adjacent ATC facilities, and equipment display modifications have been undertaken at all these locations in preparation for the March 14 effective date. A 6-month delay in implementation would have a disruptive effect on the ATC facilities involved. For these reasons, and in consideration of the fact that the final rule is substantially identical to the proposal, the FAA finds that good cause exists for making the rule effective less than 30 days after publication.

List of Subjects

14 CFR Part 71

Airspace, Navigation (air).

14 CFR Part 91

Air traffic control, Airport, Aviation safety, Flight rules, Terminal control areas.

14 CFR Part 103

Aircraft, Aviation safety, Recreation and recreation areas, Ultralight vehicles.

14 CFR Part 105

Aircraft, Aviation safety, Recreation and recreation areas, Parachute jumps.

The Rule

For the reasons set out in the preamble, Chapter I of Title 14 of the Code of Federal Regulations is amended as set forth below.

PART 71—[AMENDED]

1. In Part 71, by adding new § 71.1(e), new § 71.14, and new Subpart L, § 71.501, to read as follows:

§ 71.1 Applicability.

* * * * *

(e) The airspace assignments described in Subpart L of this part are designated as airport radar service areas.

§ 71.14 Airport Radar Service Areas.

The airport radar service areas listed in Subpart L of this part consist of controlled airspace extending upward from the surface or higher to specified altitudes, within which all aircraft are subject to operating rules and equipment requirements specified in Part 91 of this chapter. Each location listed includes at least one primary airport around which the airport radar service area is located.

Subpart L—Airport Radar Service Areas

§ 71.501 Designation.

The airspace descriptions listed below are designated as airport radar service areas. The primary airport for each airport radar service area is also designated. Except as otherwise specified, all mileages are nautical miles and all altitudes are above mean sea level.

PART 91—[AMENDED]

2. In Part 91, by revising § 91.1(b)(1) and adding new § 91.88 to read as follows:

§ 91.1 Applicability.

* * * * *

(b) * * *

(1) When over the high seas, comply with Annex 2 (Rules of the Air) to the Convention on International Civil Aviation and with §§ 91.70(c), 91.88, and 91.90 of Subpart B;

* * * * *

§ 91.88 Airport Radar Service Areas.

(a) *General.* For the purposes of this section, the primary airport is the airport designated in Part 71, Subpart L, for which the airport radar service area is designated. A satellite airport is any other airport within the airport radar service area.

(b) *Deviations.* An operator may deviate from any provision of this section under the provisions of an ATC authorization issued by the ATC facility having jurisdiction of the airport radar service area. ATC may authorize a deviation on a continuing basis or for an individual flight, as appropriate.

(c) *Arrivals and Overflights.* No person may operate an aircraft in an airport radar service area unless two-way radio communication is established with ATC prior to entering that area and is thereafter maintained with ATC while within that area.

(d) *Departures:* No person may operate an aircraft within an airport radar service area unless two-way radio communication is maintained with ATC while within that area, except that for aircraft departing a satellite airport, two-way radio communication is established as soon as practicable and thereafter maintained with ATC while within that area.

(e) *Traffic Patterns.* No person may take off or land an aircraft at a satellite airport within an airport radar service area except in compliance with FAA arrival and departure traffic patterns.

PART 103—[AMENDED]

3. In Part 103, by revising § 103.17 to read as follows:

§ 103.17 Operations in Certain Airspace.

No person may operate an ultralight vehicle within an airport traffic area, control zone, airport radar service area, terminal control area, or positive control area unless that person has prior authorization from the air traffic control facility having jurisdiction over that airspace.

PART 105—[AMENDED]

4. In Part 105, by adding new § 105.20 to read as follows:

§ 105.20 Jumps In or Into Airport Radar Service Areas.

(a) No person may make a parachute jump and no pilot in command may allow a parachute jump to be made from that aircraft in or into an airport radar service area without, or in violation of, the terms of an ATC authorization issued under this section.

(b) Each request for an authorization under this section must be submitted to the control tower at the airport for which the airport radar service area is designated.

(Secs. 307 and 313(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348, 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.45; and 14 CFR 11.65)

Issued in Washington, D.C., on February 27, 1985.

Richard H. Jones,

Deputy Administrator.

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