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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 87-046]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations in 7 CFR Part 354, which prescribe commuted traveltime allowances, by adding or removing commuted traveltime periods in Delaware, Kentucky, New Jersey, Ohio, Pennsylvania, Tennessee, and the Virgin Islands of the United States. Commuted traveltime periods reflect the time necessarily spent in reporting to, and returning from, the place at which an employee of Plant Protection and Quarantine performs Sunday, holiday, or unscheduled overtime duty.

EFFECTIVE DATE: April 20, 1987.

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

SUPPLEMENTARY INFORMATION:

Background

We are amending the regulations in 7 CFR Part 354, entitled "Overtime Services Relating to Imports and Exports" (referred to below as the regulations), which set forth provisions for obtaining inspection, laboratory testing, certification, or quarantine services pertaining to the importation and exportation of plants, plant products, animals, animal products, or other commodities during Sundays, holidays, or other times outside the regular tour of duty of Plant Protection and Quarantine (PPQ) employees who perform these services.

The regulations provide that, under certain circumstances, the charges for services of a PPQ employee shall include charges for a commuted traveltime period. Section 354.2 of the regulations contains administrative instructions prescribing commuted traveltime periods, which reflect, as nearly as is practicable, the time required for a PPQ employee to travel to, and return from, the place where he or she performs the Sunday, holiday, or unscheduled overtime duty.

We are amending § 354.2 of the regulations by adding or removing commuted traveltime periods in Delaware, Kentucky, New Jersey, Ohio, Pennsylvania, Tennessee, and the Virgin Islands of the United States. (The amendments are set forth in the rule portion of this document.) This action is necessary to inform the public where PPQ employees are available to perform Sunday, holiday, or unscheduled overtime duty and to inform the public of the commuted traveltime periods for this travel.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause 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.

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

The number of articles and commodities requiring inspection and other services of a PPQ employee on a Sunday, holiday, or unscheduled overtime basis at the affected locations represents an insignificant portion of the total number that requires these services at locations in the United States.

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

Effective Date

The Commuted traveltime periods appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions of 5 U.S.C. 553, we find for good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find for good cause that this rule be made effective less than 30 days after publication of this document in the **Federal Register.**

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V)

List of Subjects in 7 CFR Part 354

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

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Under the circumstances described above, 7 CFR Part 354 is amended as follows:

1. The authority citation for Part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by removing or adding in alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In Hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
Remove:			
* * * * *			
Tennessee:			
Memphis	Dyersburg		4
Millington	Dyersburg		3
* * * * *			
Add:			
* * * * *			
Delaware:			
Wilmington	Bridgeton		3
Wilmington	Trenton		3
* * * * *			
Kentucky:			
Fort Campbell	Jackson, TN		5
Louisville	Georgetown		3
Undesignated ports.			3
* * * * *			
New Jersey:			
Leonardo	Freehold		2
Leonardo	McGuire AFB		4
Leonardo	Trenton		4
Salem	Trenton		3
Trenton	McGuire AFB		3
* * * * *			
Ohio:			
Greater Cincinnati Airport	Georgetown, KY		3
* * * * *			
Pennsylvania:			
Philadelphia	Trenton		3
Philadelphia	Bridgeton		3
* * * * *			
Tennessee:			
Memphis	Jackson		4
Millington	Jackson		4
Nashville	Jackson		5
* * * * *			
Virgin Islands:			
Cruz Bay, St. John, USVI.	St. Thomas, USVI		3
Undesignated ports.			3
* * * * *			

Done at Washington, DC, this 15th day of April, 1987.

D. Husnik,

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

[FR Doc. 87-8772 Filed 4-17-87; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Parts 1200, 1205, 1207, and 1250

Research, Promotion, and Education Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action adds the Honey Research, Promotion, and Consumer Information Act and Watermelon Research and Promotion Act to the definition of the term "Act" in uniform rules of practice and procedure governing proceedings to formulate and amend orders under research, promotion, and education programs. This action also removes the Beef Research and Information Act from the definition of that term in the rules of practice and procedure, because that Act has been amended in such a manner as to render inapplicable these uniform rules of practice. When the uniform rules of practice and procedure were adopted, the corresponding subparts in the then applicable research, promotion and education programs were terminated. Those subparts, however, were not removed from the applicable CFR Parts. This action removes these duplicative subparts.

EFFECTIVE DATE: April 20, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, Room 2523-S, AMS, USDA, Washington, DC 20250; telephone: (202) 447-5698.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act, the Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This rule is a technical amendment to the existing rules of practice and would impose no additional costs on persons affected or regulated by the several research, promotion and education orders.

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this action is impracticable, unnecessary, and contrary to the public interest, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because this final rule makes technical revisions to the existing rules of practice, which are uniform for all applicable research and promotion programs; the rules are already applicable to those programs that are newly specified in the rules because of the existing definition of the term "Act"; and the final rule deletes duplicative language previously terminated but not removed from existing subparts in the Code of Federal Regulations.

On October 6, 1982, the Agricultural Marketing Service established 7 CFR Part 1200, Rules of Practice and Procedure Governing Proceedings Under Research, Promotion, and Education Programs; Rules of Practice and Procedure Governing Proceedings to Formulate and Amend an Order (47 FR 44684). Part 1200 applied uniformly to all applicable research, promotion, and education programs in operation at that time. Part 1200 was also intended to include any subsequent research, consumer information, promotion, and nutrition education acts established as Public Law by Congress and the definition of the term "Act" affects this intended coverage. This rule adds the Honey Research, Promotion, and Consumer Information Act and Watermelon Research and Promotion Act to the definition of the term "Act."

When 7 CFR Part 1200 was established, there were four research, promotion, and education programs in operation. These programs included Cotton Research and Promotion, 7 CFR Part 1205; Potato Research and Promotion Plan, 7 CFR Part 1207; Egg Research and Promotion, 7 CFR Part 1250; and Wheat and Wheat Foods Research and Nutrition Education, 7 CFR Part 1280. In addition, 7 CFR Part 1260 contained procedures to formulate a Beef Research and Information Order. With the establishment of Part 1200, each of the subparts setting out the procedures to formulate on order under the separate research, promotion, and education programs were rendered duplicative and unnecessary. Accordingly, the rule establishing Part 1200 terminated those subparts. Those subparts, however, were not at that time deleted from the Code of Federal Regulations. The wheat subpart was deleted as a result of the termination of the Wheat and Wheat Foods Research and Nutrition Education Order which was published October 31, 1986 (51 FR 39738). Therefore, this action deletes each of the following subparts from the Code of Federal Regulations: 7 CFR 1205.1-1205.19; 7 CFR 1207.1-1207.19; 7 CFR 1250.1-1250.19. Part 1260, Beef Research and Information has been amended since promulgation of Part 1200 by a new Part 1260, Beef Promotion and Research Order (51 FR 26132) and implementing regulations (51 FR 11557; 51 FR 35196). The newly amended Beef Promotion and Research Act (Pub. L. 99-198; 7 U.S.C. 1260 et seq.; effective January 1, 1986) does not provide for hearings to establish or amend an order. Therefore, this rule deletes reference to the Beef Research and Information Act in Part 1200.

List of Subjects

7 CFR Part 1200

Administrative practice and procedure.

7 CFR Parts 1200, 1205, 1207, 1250

Agricultural research.

Accordingly, the Agricultural Marketing Service is amending Chapter XI of Title 7 as follows:

PART 1200—RULES OF PRACTICE AND PROCEDURE GOVERNING PROCEEDINGS UNDER RESEARCH, PROMOTION, AND EDUCATION PROGRAMS

1. The authority citation for Part 1200 is revised to read as follows:

Authority: Cotton Research and Promotion Act, as amended, Pub. L. 89–502, 89th Cong., approved July 13, 1966, 7 U.S.C. 2101–2119; Egg Research and Consumer Information Act, as amended, Pub. L. 93–428, 93rd Cong., approved October 1, 1974, 7 U.S.C. 2701–2718; Floral Research and Consumer Information Act, Pub. L. 97–98, 97th Cong., approved December 22, 1981, 7 U.S.C. 4301–4319; Potato Research and Promotion Act, as amended, Pub. L. 91–670, 91st Cong., approved January 11, 1971, 7 U.S.C. 2611–2627; Wheat and Wheat Foods Research and Nutrition Education Act, Pub. L. 95–113, 95th Cong., approved September 29, 1977, 7 U.S.C. 3401–3417; Honey Research, Promotion, and Consumer Information Act, Pub. L. 98–590; 98th Cong., approved October 30, 1984, 7 U.S.C. 4601–4612; Watermelon Research and Promotion Act, Pub. L. 99–198; 99th Cong., approved December 23, 1985, 7 U.S.C. 4901–4916.

2. Section 1200.2, paragraph (a) is revised to read as follows:

§ 1200.2 Definitions.

* * * * *

(a) The term "Act" means the Cotton Research and Promotion Act, as amended, Pub. L. 89–502, 89th Cong., approved July 13, 1966, 7 U.S.C. 2101–2119; the Egg Research and Consumer Information Act, as amended, Pub. L. 93–428, 93rd Cong., approved October 1, 1974, 7 U.S.C. 2701–2718; the Floral Research and Consumer Information Act, Pub. L. 97–98, 97th Cong., approved December 22, 1981, 7 U.S.C. 4301–4319; the Potato Research and Promotion Act, as amended, Pub. L. 91–670, 91st Cong., approved January 11, 1971, 7 U.S.C. 2611–2627; the Wheat and Wheat Foods Research and Nutrition Education Act, Pub. L. 95–113, 95th Cong., approved September 29, 1977, 7 U.S.C. 3401–3417; the Honey Research, Promotion, and Consumer Information Act, Pub. L. 98–590, 98th Cong., approved October 30, 1984, 7 U.S.C. 4601–4612; the Watermelon Research and Promotion Act, Pub. L. 99–198; 99th Cong., approved December 23, 1985, 7 U.S.C. 4901–4916; and any subsequent research, consumer information, promotion, and nutrition education acts established as Public Law by Congress.

* * * * *

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for Part 1205 continues to read as follows:

Authority: Sec. 15, 80 Stat. 285; 7 U.S.C. 2114, Sec. 7, 80 Stat. 281, 7 U.S.C. 2106.

§ 1205.1 through 1205.19 [Removed]

2. Part 1205 is amended by removing Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate Orders Under the Cotton Research and Promotion Act (§§ 1205.1–1205.19).

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

1. The authority citation for Part 1207 continues to read as follows:

Authority Title III of Pub. L. 91–670; 84 Stat. 2041; 7 U.S.C. 2611–2627, as amended, unless otherwise noted.

§ 1207.1 through 1207.19 [Removed]

2. Part 1207 is amended by removing Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate a Plan Under the Potato Research and Promotion Act (§§ 1207.1–1207.19).

PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation for Part 1250 continues to read as follows:

Authority: Pub. L. 93–428, 88 Stat. 1171 (7 U.S.C. 2701 *et seq.*) (Egg Research and Consumer Act).

§§ 1250.1 through 1250.19 [Removed]

2. Part 1250 is amended by removing Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate an Order Under the Egg Research and Consumer Information Act (§§ 1250.1–1250.19).

Signed in Washington, DC, on April 9, 1987.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 87–8597 Filed 4–17–87; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87–AWP–6]

Revision to Montague, California Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: An error was noted in the revision to the Montague, California, transition area that was published in the **Federal Register** on March 5, 1987, (52 FR 6778), (Airspace Docket No. 87–AWP–6). This action corrects that error.

EFFECTIVE DATE: 0901 UTC, June 4, 1987.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297–1648.

SUPPLEMENTARY INFORMATION:

History

Federal Register document (87–4563), published on March 5, 1987, revised the Montague, California, transition area. An error was discovered in the revised description and this action corrects that error. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document (87–4563), as published in the

Federal Register on March 5, 1987, (52 FR 6778) is corrected as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Montague, CA [Revised]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Siskiyou County Airport (lat. 41°46'54" N., long 122°28'01" W.); that airspace extending upward from 1,200 feet above the surface within 9.5 miles east and 6 miles west of the 356° and 176° bearings from the Montague RBN, extending from 8 miles north to 1 mile south of the RBN; and within 9.5 miles east and 6 miles west of the 180° bearing from the Montague RBN, extending 19 miles south of the RBN.

Issued in Los Angeles, California, on April 9, 1987.

Wayne C. Newcomb,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87-8732 Filed 4-17-87; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-2797]

Prohibited Trade Practices; Tarra Hall Clothes, Inc., et al.

AGENCY: Federal Trade Commission.

ACTION: Notice of 30 day period for public comment on petition by Abraham Cohen to reopen and modify the order in Docket No. C-2797.

SUMMARY: Abraham Cohen, individual respondent in the order in Docket No. C-2797, filed a petition on April 2, 1987, requesting that the Commission reopen and modify the order.

DATE: The deadline for filing comments in this matter is May 15, 1987.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Requests for copies of the petition should be sent to Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Jerry R. McDonald, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-2971.

SUPPLEMENTARY INFORMATION: The petitioner, Abraham Cohen, no longer has an interest in the corporation in the order, Tarra Hall Clothes, Inc. He is now president of Hartz & Company, Inc., an importer of wool products and manufacturer of men's clothing. The order modification requested petitioner would remove petitioner from the order's prohibition on importing wool products except upon filing a bond with the Secretary of the Treasury in a sum double the value of the imported wool products and any duty thereon, conditioned upon compliance with the Wool Products Labeling Act of 1939. The petition was placed on the public record on April 15, 1987.

List of Subjects in 16 CFR Part 13

Labeling, Textile, Trade practices, Warranties, Wool.

Emily H. Rock,

Secretary.

[FR Doc. 87-8751 Filed 4-17-87; 8:45 am]

BILLING CODE 6750-01-M

POSTAL SERVICE

39 CFR Parts 224, 233, 273 and 962

Implementation of the Program Fraud Civil Remedies Act

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service adopts final regulations implementing the Program Fraud Civil Remedies Act of 1986. These regulations establish the administrative procedures for imposing the statutory authorized civil penalties and assessments against any person who makes, submits, or presents a false, fictitious or fraudulent claim or written statement to the Postal Service.

EFFECTIVE DATE: May 20, 1987.

FOR FURTHER INFORMATION CONTACT: Chris Klepac, (202) 268-2962.

SUPPLEMENTARY INFORMATION: On March 11, 1987, the Postal Service published for comment in the **Federal Register** (52 FR 7454) proposed regulations implementing the Program Fraud Civil Remedies Act of 1986, Pub. L. 99-509, enacted on October 21, 1986, codified at 31 U.S.C. 3801 through 3812. That Act generally provides that any person who knowingly submits a false claim or statement to the Federal Government in an amount less than $150,000 may be liable for an administrative civil penalty of not more than $5,000 for each false claim or statement, and, in certain cases, to an assessment equal to double the amount falsely claimed.

The Postal Service received no public comments on its proposed regulations. For ease of administration, however, we decided to separate the rules governing the conduct of administrative hearings under the Act from the main body of the regulations. Accordingly, the hearing procedures will appear as Part 962 in title 39, Code of Federal Regulations, whereas the regulations implementing the remainder of the Act will appear as Part 273 of that title. In addition to conforming editorial changes, a new section expressly authorizing continuances and extensions is being added to the hearing procedures, and cross references to the new regulations are being incorporated in 39 CFR Parts 224 and 233.

Accordingly, the Postal Service amends 39 CFR Parts 224 and 233, and adds new Parts 273 and 962 to read as follows:

List of Subjects in 39 CFR Parts 224, 233, 273 and 962

Organization and functions (Government agencies), Administrative practice and procedure, Fraud, Penalties, Crime, Postal Service.

PART 224—[AMENDED]

1. The authority citation for Part 224 continues to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, and 409.

§ 224.1 [Amended]

2. In § 224.1, paragraph (c)(4)(ii)(A) is amended by inserting "section 3803 of title 31," immediately after "title 18,".

§ 224.6 [Amended]

3. Section 224.6(b) is amended by—

a. Removing the "and" after the semicolon in paragraph (b)(15) and the period at the end of paragraph (b)(16);

b. Inserting a semicolon and "and" immediately after "conventions" in paragraph (b)(16); and

c. Republishing for the reader's convenience the introductory text of paragraph (b) and adding new paragraph (b)(17) reading as follows:

* * * * *

(b) The Law Department : * * *

(17) Performs, through the General Counsel, the function of Reviewing Official under the Program Fraud Civil Remedies Act in accordance with Part 273 of this title.

§ 224.7 [Amended]

4. Section 224.7 is amended by adding immediately after the third sentence the following new sentence: "In addition, through the Chief Postal Inspector, it performs the function of Investigating Official under the Program Fraud Civil

Remedies Act in accordance with Part 273 of this title."

PART 233—[AMENDED]

5. The authority citation for Part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 2254.

§ 233.1 [Amended]

6. Section 233.1 is amended by adding at the end thereof the following new paragraph(c):

* * * * *

(c) *Issuance.* The Chief Postal Inspector, in accordance with Part 273 of this title, may issue documentary subpoenas under the Program Fraud Civil Remedies Act.

7. The undesignated center heading "Damage or Loss of Government Property" is removed and new Part 273 is added to read as follows:

PART 273—ADMINISTRATION OF PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

Authority: 31 U.S.C. Chapter 38; 39 U.S.C. 401.

§ 273.1 Purpose.

This part establishes procedures for imposing civil penalties and assessments under the Program Fraud Civil Remedies Act of 1986 (codified at 31 U.S.C. 3801–3812) against any person who makes, submits, or presents, or causes to be made, submitted, or presented, a false fictitious, or fraudulent claim or written statement to the Postal Service. Procedures governing the hearing and appeal rights of any person alleged to be liable for such penalties and assessments are set forth in Part 962 of this title.

§ 273.2 Definitions.

(a) "Claim" means any request, demand, or submission—

(1) Made to the Postal Service of property, services, or money (including money representing grants, loans, insurance, or benefits); or

(2) Made to a recipient of property, services, or money from the Postal Service or to a party to a contract with the Postal Service—

(i) For property or services if the United States—

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance or benefits) if the United States—

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to the Postal Service which has the effect of decreasing an obligation to pay or account for property, services, or money.

(b) "Complaint" refers to the administrative Complaint served by the Reviewing Official on a Respondent pursuant to § 273.8.

(c) "Investigating Official" refers to the Chief Postal Inspector of the Postal Service or any designee within the United States Postal Inspection Service who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(d) "Judicial Officer" refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or for purposes other than specified in § 962.21 of this title any designee within the Judicial Officer Department.

(e) "Knows or has reason know," for purposes of establishing liability under 31 U.S.C. 3802, means that, with respect to a claim or statement, although no proof of specific intent to defraud is required, a person—

(1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim of statement; or

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

(f) "Person"refers to any individual, partnership, corporation, association, or private organization.

(g) "Postmaster General" refer to the Postmaster General of the United States or his designee.

(h) "Presiding Officer" refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing authorized by 31 U.S.C. 3803 in accordance with Part 962 of this title.

(i) "Respondent" refers to any person alleged to be liable for civil penalty or assessment under 31 U.S.C. 3802.

(j) "Reviewing Official" refers to the General Counsel of the Postal Service or any designee within the Law Department who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(k) "Statement" means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for)—

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit from, the Postal Service, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan or benefit.

§ 273.3 Liability for false claims and statements.

Section 3802 of title 31, United States Code, provides for liability as follows:

(a) Claims.

(1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent; or

(ii) Includes or is supported by any written statement asserting a material fact which is false, fictitious, or fraudulent; or

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand

for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made, presented, or submitted to the Postal Service, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Postal Service, recipient, or party.

(4) Each claim for property, services, or money is subject to the civil penalty referred to in paragraph (a)(1) of this section regardless of whether such property, service, or money is actually delivered or paid.

(5) If the Government has made payment on a claim, a person subject to the civil penalty referred to in paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or twice the amount of that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. This assessment shall be in lieu of damages subtained by the United States because of such claim.

(b) Statements.

(1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making, presenting or submitting such statement had a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made, presented, or submitted to the Postal Service when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Postal Service.

(c) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, the civil penalty referred to in paragraph (a)(1) of this section may be imposed on each such person without regard to the amount of any penalties collected or demanded from others.

(d) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment, an assessment may be imposed against any such person or jointly and severally against any combination of such persons. The aggregate amount of the assessments collected with respect to such claim shall not exceed twice the portion of such claim determined to be in violation of paragraph (a)(1) of this section.

§ 273.4 Non-exclusivity of penalty authority.

(a) A determination by the Reviewing Official that there is adequate evidence to believe that a person is liable under 31 U.S.C 3802, or a final determination that a person is liable under such statute, may provide the Postal Service with grounds for commencing any administrative or contractual action against such person which is authorized by law and which is in addition to any action against such person under Chapter 38 of title 31, United States Code.

(b) In the case of an administrative or contractual action to suspend or debar any person from eligibility to enter into contracts with the Postal Service, a determination referred to in paragraph (a) of this section shall not be considered as a conclusive determination of such person's responsibility pursuant to Postal Service procurement regulations.

§ 273.5 Investigations of alleged violations.

(a) Investigations of allegations of liability under 31 U.S.C. 3802 shall be conducted by the Investigating Official.

(b)(1) For purposes of an investigation under this part, the Investigating Official may issue a subpoena requiring the production of all information, documents, reports, answers, records, accounts, papers, and data not otherwise reasonably available to the Postal Service. Any subpoena issued by the Investigating Official shall cite 31 U.S.C. 3804(a) as the authority under which it is issued, shall be signed by the Investigating Official, and shall command each person to whom it is directed to produce the specified documentary material at a prescribed time and place.

(2) In the case of contumacy or refusal to obey a subpoena issued pursuant to paragraph (b)(1) of this section, the district courts of the United States have jursidiction to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt. In any case in which the Postal Service seeks the enforcement of a subpoena under under this section, the Postal Service shall request the Attorney General to petition the district court for the district in which the person receiving the subpoena resides or conducts business to issue such an order.

(c) Upon completing an investigastion under this part, the Investigating Official shall submit to the Reviewing Official a reporting containing the findings and conclusions of his investigation, including:

(1) A description of the claims or statements for which liability under 31 U.S.C. 3802 is alleged;

(2) A description of any evidence which supports allegations of liability under 31 U.S.C. 3802, or where applicable, a description of any evidence that tends to support a conclusion that such statute has not been violated;

(3) An estimate of the amount of money or the value of property or services allegedly requested or demanded in violation of 31 U.S.C. 3802;

(4) A statement of any exculpatory or mitigating circumstances which may relate to the claims or statements under investigation;

(5) A statement of the amount of penalties and assessments that, considering the information described in paragraphs (c) (3) and (4) of this section, the Investigating Official recommends be demanded from the person alleged to be liable; and

(6) An estimate of the prospects of collecting the amount specified in paragraph (c)(5) of this section, and any reasons supporting such estimate.

(d) Nothing in these regulations modifies any responsibility of the Investigating Official to report violations of criminal law to the Attorney General

§ 273.6 Evaluation by reviewing official.

(a) Based upon the investigatory report prepared by the Investigating Offical, the Reviewing Official shall determine whether there is adequate evidence to believe that a person is liable under 31 U.S.C. 3802, and , if so, whether prosecution would likely result in the imposition and collection of civil penalties and applicable assessments.

(b) If the Reviewing Offical determines that a case has merit and should be referred to the Judicial Officer for assignment to a Presiding Officer, he must first transmit to the Attorney General a written notice containing the following information:

(1) A statement setting forth the Reviewing Official's reasons for proposing to refer the case to a Presiding Officer;

(2) A description of the claims or statements for which liability under 31 U.S.C. 3802 is alleged;

(3) A statement specifying the evidence that supports the allegations of liability;

(4) An estimate of the amount of money or the value of property or services allegedly requested or demanded in violation of 31 U.S.C. 3802;

(5) A statement of any exculpatory or mitigating circumstances which may relate to the claims or statements under investigation;

(6) A statement of the amount of penalties and assessments that, considering the factors listed in paragraphs (b)(4) and (5) of this section, the Reviewing Official recommends be demanded from the person alleged to be liable; and

(7) A statement that, in the opinion of the Reviewing Official, there is a reasonable prospect of collecting the amount specified in paragraph (b)(6) of this section and the reasons supporting such statement.

(c) No allegations of liability under 31 U.S.C. 3802 with respect to any claim made, presented, or submitted by any person shall be referred to the Judicial Officer if the Reviewing Official determines that (1) an amount of money in excess of $150,000; or (2) property or service with a value in excess of $150,000 is requested or demanded in violation of section 3802 in such claim or in a group of related claims which are submitted at the time such claim is submitted.

§ 273.7 Concurrence of Attorney General.

(a) The Attorney General is required by 31 U.S.C. 3803(b) to respond to the Reviewing Official's written notice described in § 273.6 within 90 days. The Reviewing Official may refer allegations of liability to the Judicial Officer only if the Attorney General or his designee approves such action in a written statement which specifies—

(1) That the Attorney General or his designee approves the referral to the Judicial Officer of the allegations of liability set forth in the notice described in § 273.6; and

(2) That the initiation of a proceeding under the Program Fraud Civil Remedies Act is appropriate.

(b) If at any time after the Attorney General approves the referral of a case to the Judicial Officier, the Attorney General or his designee transmits to the Postmaster General a written finding that the continuation of any proceeding under the Program Fraud Civil Remedies Act with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, such proceeding shall be immediately stayed and may be resumed only upon written authorization of the Attorney General.

§ 273.8 Issuance of complaint.

(a) If the Attorney General or his designee approves the referral of allegations of liability to the Judicial Officer, the Reviewing Official shall serve on the Respondent, pursuant to paragraph (b) of this section, a Complaint, which:

(1) Specifies the allegations of liability against the Respondent, including the statutory basis for liability;

(2) Identifies the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(3) Specifies the amount of penalties or assessments the Postal Service seeks to impose;

(4) Informs the Respondent of his right to request or oral hearing before, or a decision on the record by, a Presiding Officer concerning the allegations of liability and the amount of proposed penalties or assessments;

(5) Informs the Respondent of how to request a hearing described in paragraph (a)(4) of this section;

(6) Includes a copy of the procedures which govern hearings under the Program Fraud Civil Remedies Act, and which are set forth in Part 962 of this title; and

(7) Notifies the Respondent that his or her failure to request a hearing on the issues raised by the Complaint within 30 days of its receipt may result in the imposition of the proposed penalty and assessments pursuant to §§ 962.4(a) and 962.15(d) of this title.

(b) Service of a Complaint issued under paragraph (a) of this section must be effected by registered or certified mail, return-receipt requested, or by personal delivery. In the case of personal service, the person making service shall, if possible, secure from the person sought to be served, or his or her agent, a written acknowledgment of receipt, showing the date and time of such receipt. If the person upon whom service is made declines to acknowledge receipt, the person effecting service shall execute a statement, indicating the time, place and manner of service, which shall constitute evidence of service.

§ 273.9 Collection of civil penalties or assessments.

(a) Any penalty or assessment imposed under the Program Fraud Civil Remedies Act may be recovered in a civil action brought by the Attorney General. In any such action, no matter that was raised or that could have been raised in a hearing conducted under Part 962 of this title or pursuant to judicial review under 31 U.S.C. 3805 may be raised as a defense and the determination of liability and the determination of amounts of penalties and assessments shall not be subject to review. A civil action to recover a penalty or assessment shall be commenced within three years after the date on which the determination of liability for such penalty or assessment becomes final.

(b) The amount of any penalty or assessment which has become final may be collected by administrative offset in accordance with 31 U.S.C 3716, 3807.

(c) Any penalty or assessment imposed by the Postal Service under this part shall be deposited in the Postal Service Fund established by section 2003 of title 39.

§ 273.10 Reports.

(a) Not later than October 31 of each year, the Postmaster General shall prepare and transmit to the appropriate committees and subcommittees of the Congress an annual report summarizing actions taken under the Program Fraud Civil Remedies Act during the most recent 12-month period ending the previous September 30.

(b) The report referred to in paragraph (a) of this section shall include the following information for the period covered by the report:

(1) A summary of matters referred by the Investigating Official to the Reviewing Official under this part;

(2) A summary of matters transmitted to the Attorney General under this part;

(3) A summary of all hearings conducted by a Presiding Officer under Part 962 of this title, and the results of such hearings; and

(4) A summary of the actions taken during the reporting period to collect any civil penalty or assessment imposed under the Program Fraud Civil Remedies Act.

8. New Part 962 is added to read as follows:

PART 962—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

Authority: 31 U.S.C. Chapter 38; 39 U.S.C. 401.

§ 962.1 Purpose.

This part establishes the procedures governing the hearing and appeal rights of any person alleged to be liable for civil penalties and assessments under the Program Fraud Civil Remedies Act of 1986 (codified at 31 U.S.C. 3801–3812).

§ 962.2 Definitions.

(a) "Attorney" refers to an individual authorized to practice law in any of the United States or the District of Columbia or a territory of the United States.

(b) "Complaint" refers to the administrative Complaint served by the Reviewing Official on a Respondent pursuant to § 273.8 of this title.

(c) "Initial Decision" refers to the written decision which the Presiding Officer is required by § 962.20 to render, and includes a revised initial decision issued following a remand.

(d) "Investigating Official" refers to the Chief Postal Inspector of the Postal Service or any designee within the United States Postal Inspection Service who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(e) "Judicial Officer" refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or for purposes other than specified in § 962.21 any designee within the Judicial Officer Department.

(f) "Party" refers to the Postal Service or the Respondent.

(g) "Person" refers to any individual, partnership, corporation, association, or private organization.

(h) "Postmaster General" refers to the Postmaster General of the United States or his designee.

(i) "Presiding Officer" refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing authorized by 31 U.S.C. 3803.

(j) "Recorder" refers to the Recorder of the United States Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260–6100.

(k) "Representative" refers to an attorney or other advocate.

(l) "Respondent" refers to any person alleged to be liable for a civil penalty or assessment under 31 U.S.C. 3802.

(m) "Reviewing Official" refers to the General Counsel of the Postal Service or any designee within the Law Department who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

§ 962.3 Petition for hearing.

Within 30 days of receiving the Postal Service's Complaint, issued pursuant to § 273.8 of this title, alleging liability under 31 U.S.C. 3802, the Respondent may request a hearing under the Program Fraud Civil Remedies Act by filing a written Hearing Petition with the Recorder in accordance with § 962.22(b). The Respondent's Petition must include the following:

(a) The words "Petition for Hearing Under the Program Fraud Civil Remedies Act," or other words reasonably identifying it as such;

(b) The name of the Respondent as well as his or her work and home addresses, and work and home telephone numbers; or other address and telephone number where the Respondent may be contacted about the hearing proceedings;

(c) A statement of the date the Respondent received the Complaint issued by the Reviewing Official;

(d) A statement indicating whether the Respondent requests an oral hearing or a decision on the record;

(e) If the Respondent requests an oral hearing, a statement proposing a city for the hearing site, with justification for holding the hearing in that city, as well as recommended dates for the hearing; and

(f) A statement admitting or denying each of the allegations of liability made in the Complaint, and stating any defense on which the Respondent intends to rely.

§ 962.4 Referral of complaint.

(a) If the Respondent fails to request a hearing within the specified period, the Reviewing Official shall transmit the Complaint to the Judicial Officer for referral to a Presiding Officer, who shall issue an initial decision based upon the information contained in the Complaint.

(b) If the Respondent files a Hearing Petition, the Reviewing Official, upon receiving a copy of the Petition, shall promptly transmit to the Presiding Officer a copy of the Postal Service's Complaint.

§ 962.5 Scope of hearing; evidentiary standard.

(a) A hearing under this part shall be conducted by the Presiding Officer on the record (1) to determine whether the Respondent is liable under 31 U.S.C. 3802, and (2) if so, to determine the amount of any civil penalty or assessment to be imposed.

(b) The Postal Service must prove its case against a Respondent by a preponderance of the evidence.

(c) The parties may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the Presiding Officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 962.6 Notice of hearing.

(a) Within a reasonable time after receiving the Respondent's Hearing Petition and the Complaint, the Presiding Officer shall serve, in accordance with § 962.23, upon the Respondent and the Reviewing Official, a Notice of Hearing containing the information set forth in paragraph (b) of this section.

(b) The Notice of Hearing required by paragraph (a) of this section must include:

(1) The tentative hearing site, date, and time;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The nature of the hearing;

(4) The matters of fact and law to be decided;

(5) A description of the procedures governing the conduct of the hearing; and

(6) Such other information as the Presiding Officer deems appropriate.

§ 962.7 Hearing location.

An oral hearing under this part shall be held—

(a) In the judicial district of the United States in which the Respondent resides or transacts business; or

(b) In the judicial district of the United States in which the claim or statement upon which the allegation of liability under 31 U.S.C. 3802 was made, presented, or submitted; or

(c) In such other place as may be agreed upon by the Respondent and the Presiding Officer.

§ 962.8 Rights of parties.

Any party to a hearing under this part shall have the right—

(a) To be accompanied, represented, and advised, by a representative of his own choosing;

(b) To participate in any prehearing or post-hearing conference held by the Presiding Officer;

(c) To agree to stipulations of fact or law, which shall be made part of the record;

(d) To make opening and closing statements at the hearing;

(e) To present oral and documentary evidence relevant to the issues at the hearing;

(f) To submit rebuttal evidence;

(g) To conduct such cross-examination as may be required for a full and true disclosure of the facts; and

(h) To submit written briefs, proposed findings of fact, and proposed conclusions of law.

§ 962.9 Responsibilities and authority of presiding officer.

(a) The Presiding Officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The Presiding Officer's authority includes, but is not limited to, the following:

(1) Establishing, upon adequate notice to all parties, the date and time of the hearing, as well as, in accordance with § 962.7, selecting the hearing site;

(2) Holding conferences, by telephone or in person, to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(3) Continuing or recessing the hearing in whole or in part for a reasonable period of time;

(4) Administering oaths and affirmations to witnesses;

(5) Issuing subpoenas, requiring the attendance and testimony of witnesses and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the Presiding Officer considers relevant and material to the hearing;

(6) Ruling on all offers, motions, requests by the parties, and other procedural matters;

(7) Issuing any notices, orders, or memoranda to the parties concerning the proceedings;

(8) Regulating the scope and timing of discovery;

(9) Regulating the course of the hearing and the conduct of the parties and their representatives;

(10) Examining witnesses;

(11) Receiving, ruling on, excluding, or limiting evidence in order to assure that relevant, reliable and probative evidence is elicited on the issues in dispute, but irrelevant, immaterial or repetitious evidence is excluded;

(12) Deciding cases, upon motion of a party, in whole or in part by summary judgment where there is no disputed issue of material fact;

(13) Establishing the record in the case; and

(14) Issuing a written initial decision containing findings of fact, conclusions of law, and determinations with respect to whether a penalty or assessment should be imposed, and if so, the amount of such penalty or assessment.

§ 962.10 Prehearing conferences.

(a) At a reasonable time in advance of the hearing, and with adequate notice to all parties, the Presiding Officer may conduct, in person or by telephone, one or more prehearing conference to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations or admissions of fact or as to the contents and authenticity of documents;

(4) Limitation of the number of witnesses;

(5) Exchange of witness lists, copies of prior statements of witnesses, and copies of hearing exhibits;

(6) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(7) Discovery;

(8) Possible changes in the scheduled hearing date, time or site; and

(9) Any other matters related to the proceeding.

(b) Within a reasonable time after the completion of a prehearing conference, the Presiding Officer shall issue an order detailing all matters agreed upon by the parties, or ordered by the Presiding Officer, at such conference.

§ 962.11 Respondent access to information.

(a)(1) Except as provided in paragraph (a)(2) of this section, the Respondent, at any time after receiving the Notice of Hearing required by § 962.6, may review, and upon payment of a duplication fee established under § 265.8(c) of this title, may obtain a copy of, all relevant and material documents, transcripts, records, and other materials, which relate to the allegations of liability, and upon which the findings and conclusions of the Investigating Official under § 273.5 of this title are based.

(2) The Respondent is not entitled to review or obtain a copy of any document, transcript, record, or other material which is privileged under Federal law.

(b) At any time after receiving the Notice of Hearing required by § 962.6, the Respondent shall be entitled to obtain all exculpatory information in the possession of the Investigating Official or the Reviewing Official relating to the allegations or liability under 31 U.S.C. 3802. Paragraph (a)(2) of this section does not apply to any document, transcript, record, or other material, or any portion thereof, in which such exculpatory information is contained.

(c) Requests to review or copy material under this section must be directed to the Reviewing Official who must respond within a reasonable time.

§ 962.12 Depositions; interrogatories; admission of facts; production and inspection of documents.

(a) General Policy and protective orders. The parties are encouraged to engage in voluntary discovery procedures. In connection with any discovery procedure permitted under this part, the Presiding Officer may issue any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents. Each party shall bear its own expenses relating to discovery.

(b) Depositions. (1) After the issuance of a Notice of Hearing described in § 962.6, the parties may mutually agree to, or the Presiding Officer may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(2) The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Presiding Officer.

(3) No testimony taken by depositions shall be considered as part of the evidence in the hearing unless and until such testimony is offered and received in evidence at such hearing. Depositions will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted for a decision on the record, the Presiding Officer may, in his discretion, receive depositions as evidence in supplementation of that record.

(c) Interrogatories to parties. After the issuance of a Notice of Hearing described in § 962.6, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the Presiding Officer will determine the extent to which the interrogatories will be permitted.

(d) Admission of facts. After the issuance of a Notice of Hearing described in § 962.6, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(e) Production and inspection of documents. Upon motion of any party showing good cause therefor, and upon notice, the Presiding Officer may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery or admissible evidence. If the parties cannot themselves agree thereon, the Presiding Officer shall specify just terms and conditions in making the inspection and taking the copies and photographs.

(f) Limitations. Under no circumstances may a discovery procedure be used to reach—

(1) Documents, transcripts, records, or other material which a person is entitled to review pursuant to § 962.11;

(2) The notice sent to the Attorney General from the Reviewing Official under § 273.6 of this title; or

(3) Other documents which are privileged under Federal law.

§ 962.13 Subpoenas.

(a) General. Upon written request of either party filed with the Recorder or on his own initiative, the Presiding Officer may issue a subpoena requiring:

(1) Testimony at a deposition. The deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Presiding Officer;

(2) Testimony at a hearing. The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) Production of books and papers. In addition to paragraphs (a)(1) and (a)(2) of this section, the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) Voluntary cooperation. Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third-party books, papers, documents, or other tangible things whenever possible.

(c) Requests for subpoenas.

(1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books, papers, documents, or other tangible things sought.

(3) The Presiding Officer, in his discretion, may honor requests for subpoenas not made within the time limitations specified in this paragraph.

(d) Requests to quash or modify. Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Presiding Officer may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Presiding Officer may act upon such a request at any time after a copy has been served upon the opposing party.

(e) Form; issuance.

(1) Every subpoena shall state the title of the proceeding, shall cite 31 U.S.C. 3804(b) as the authority under which it is issued, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Presiding Officer shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) Service. (1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshall or deputy marshall, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Presiding Officer as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

§ 962.14 Enforcement of subpoenas.

In the case of contumacy or refusal to obey a subpoena issued pursuant to §§ 962.9(b)(5) and 962.13, the district courts of the United States have jurisdiction to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt. In any case in which the Postal Service seeks the enforcement of a subpoena under this section, the Postal Service shall request the Attorney General to petition the district court for the district in which a hearing under this part is being conducted or in which the person receiving the subpoena resides or conducts business to issue such an order.

§ 962.15 Sanctions.

(a) The Presiding Officer may sanction a person, including any party or representative, for—

(1) Failing to comply with a lawful order or prescribed procedure;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) Failure to comply with an order. When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the Presiding Officer may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit such party from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) Failure to prosecute or defend. If a party fails to prosecute or defend an action under this part commenced by service of a Complaint, the Presiding Officer may dismiss the action or enter an order of default.

(e) Failure to make timely filing. The Presiding Officer may refuse to consider any motion or other pleading, report, or response which is not filed in a timely fashion.

§ 962.16 Disqualification of reviewing official or presiding official.

If a Respondent believes, in good faith, that the Reviewing Official or Presiding Officer should be disqualified because of personal bias, or other reason, the Respondent may file a timely and sufficient affidavit alleging such belief with supporting evidence. If the Presiding Officer finds that such allegations concerning the Reviewing Official are meritorious, he may direct the Reviewing Official to disqualify himself and request the appointment of a new Reviewing Official. Where a Respondent seeks the disqualification of a Presiding Officer, such Presiding Officer, may, in his discretion, disqualify himself at any time during the proceeding. In the event a Reviewing Official or Presiding Officer withdraws from a hearing, the proceeding shall be stayed until the assignment of a new Reviewing Official or Presiding Officer.

§ 962.17 Ex parte communications.

Communications between a Presiding Officer and a party shall not be made on any matter in issue unless on notice and opportunity for all parties to participate. This prohibition does not apply to procedural matters. A memorandum of any communication between the Presiding Officer and a party shall be transmitted by the Presiding Officer to all parties.

§ 962.18 Post-hearing briefs.

Post-hearing briefs and reply briefs may be submitted upon such terms as established by the Presiding Officer at the conclusion of the hearing.

§ 962.19 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Presiding Officer orders otherwise. Transcripts or copies of the proceedings may be obtained by the parties at such rates as may be fixed by contract between the reporter and the Postal Service.

§ 962.20 Initial decision.

(a) After the conclusion of the hearing, and the receipt of briefs, if any, from the parties, the Presiding Officer shall issue a written initial decision, including his or her findings and determinations. Such decision shall include the findings of fact and conclusions of law which the Presiding Officer relied upon in determining whether the Respondent is liable under 31 U.S.C. 3802, and, if liability is found, shall set forth the amount of any penalties and assessments imposed.

(b) The Presiding Officer shall promptly send to each party a copy of his or her initial decision, and a statement describing the right of any person determined to be liable under 31 U.S.C. 3802, to appeal, in accordance with § 962.21, the decision of the Presiding Officer to the Judicial Officer.

(c) Unless the Respondent appeals the Presiding Officer's initial decision, such decision, including the findings and determinations, is final.

§ 962.21 Appeal of initial decision to judicial officer.

(a) *Notice of appeal and supporting brief.*

(1) A Respondent may appeal an adverse initial decision by filing, within 30 days after the Presiding Officer issues an initial decision, a Notice of Appeal with the Recorder. The Judicial Officer may extend the filing period if the Respondent files a request for an extension within the initial 30-day period and demonstrates good cause for such extension.

(2) The Respondent's Notice of Appeal must be accompanied by a written brief specifying the Respondent's exceptions, and any reasons for such exceptions, to the Presiding Officer's initial decision.

(3) Within 30 days of receiving the Respondent's brief, the Reviewing Official may file with the Judicial Officer a response to the Respondent's specified exceptions to the Presiding Officer's initial decision.

(b) *Form of review.*

(1) Review by the Judicial Officer will be based entirely on the record and written submissions.

(2) The Judicial Officer may affirm, reduce, reverse, or remand any penalty or assessment determined by the Presiding Officer.

(3) The Judicial Officer shall not consider any objection that was not raised in the hearing unless the interested party demonstrates that the failure to raise the objection before the Presiding Officer was caused by extraordinary circumstances.

(4) If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence, the Judicial Officer shall remand the matter to the Presiding Officer for consideration of such additional evidence.

(c) *Decision of judicial officer.*

(1) The Judicial Officer shall promptly serve each party to the appeal with a copy of his decision and a statement describing the right to judicial review under 31 U.S.C. 3805 of any Respondent determined to be liable under 31 U.S.C. 3802.

(2) The decision of the Judicial Officer constitutes final agency action and becomes final and binding on the parties 60 days after it is issued unless a petition for judicial review is filed.

§ 962.22 Form and filing of documents.

(a) Every pleading filed in a proceeding under this part must—

(1) Contain a caption setting forth the title of the action, the docket number (after assignment by the Recorder), and a designation of the document (e.g., "Motion to Quash Subpoena");

(2) Contain the name, address, and telephone number of the party or other person on whose behalf the paper was filed, or the name, address and telephone number of the representative who prepared such paper; and

(3) Be signed by the party or other person submitting the document, or by such party's or person's representative.

(b) The original and three copies of all pleadings and documents in a proceeding conducted under this part shall be filed with the Recorder, Judicial Officer Department, United States Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260–6100. Normal Recorder business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time. The Recorder will transmit a copy of each document filed to the other party, and the original to the Presiding Officer.

(c) Pleadings or document transmittals to, or communications with, the Postal Service, other than to the Recorder under paragraph (b) of this section, shall be made through the Reviewing Official or designated Postal Service attorney. If a notice of appearance by a representative is filed on behalf of a Respondent, pleadings or document transmittals to, or communications with, the Respondent shall be made through his representative.

§ 962.23 Service of notice of hearing, other documents.

Unless otherwise specified, service of a Notice of Hearing or any other document under this part must be effected by registered or certified mail, return-receipt requested, or by personal delivery. In the case of personal service, the person making service shall, if possible, secure from the party or other person sought to be served, or his or her agent, a written acknowledgement of receipt, showing the date and time of such receipt. If the person upon whom service is made declines to acknowledge receipt, the person effecting service shall execute a statement, indicating the time, place and manner of service, which shall constitute evidence of service.

§ 962.24 Computation of time.

(a) In computing any period of time provided for by this part, or any order issued pursuant to this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the applicable period of time is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

§ 962.25 Continuances and extensions.

Continuances and extensions may be granted under these rules for good cause shown.

§ 962.26 Settlement.

(a) Either party may make offers of settlement or proposals of adjustment at any time.

(b) The Reviewing Official has the exclusive authority to compromise or settle any allegations of liability under 31 U.S.C. 3802 without the consent of the Presiding Officer at any time after the date on which the Reviewing Official is permitted to refer allegations of liability to a Presiding Officer and before the date on which the Presiding Officer issues an initial decision.

(c) The Postmaster General has the exclusive authority to compromise or settle any penalty or assessment determined under this part at any time after the date on which the Presiding Officer issues an initial decision, or at any time after the date on which the Judicial Officer issues a decision on appeal, except during the pendency of an appeal to the appropriate United States district court pursuant to 31 U.S.C. 3805 or during the pendency of an action to collect any penalties or assessments pursuant to 31 U.S.C. 3806.

(d) The Attorney General has the exclusive authority to compromise or settle any penalty or assessment the determination of which is the subject of a pending petition for judicial review, or a pending action to recover such penalty or assessment.

(e) The Reviewing Official may recommend settlement terms to the Postmaster General, or the Attorney General, as appropriate.

§ 962.27 Limitations.

A hearing under this part concerning a claim or statement allegedly made, presented, or submitted in violation of 31 U.S.C. 3802 shall be commenced within six years after the date on which such claim or statement is made, presented, or submitted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87–8795 Filed 4–17–87; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–3188–3]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is approving a revision to the Indiana State Implementation Plan (SIP) for carbon monoxide (CO). The revision pertains to a revised CO plan for Marion County, Indiana. USEPA's action is based upon the revision which was submitted by the State on March 4, 1985, in response to a February 24, 1984, notice of SIP deficiency issued under section 110(a)(2)(H) of the Clean Air Act (Act). On July 22, 1986 (51 FR 26269), USEPA proposed to approve this revision, because it ensures attainment and maintenance of the CO National Ambient Air Quality Standards (NAAQS) as expeditiously as is practicable.

EFFECTIVE DATE: This final rulemaking becomes effective on May 20, 1987.

ADDRESSES: Copies of this approval of the Marion County CO plan, the SIP revision, the proposed and final technical support documents, public comments on the notice of proposed rulemaking, and other materials relating to this rulemaking are available at the following addresses: (It is recommended that you telephone Steven D. Griffin, at (312) 353–3849, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Indiana Department of Environmental Management, Office of Air Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206–6015

Copies of this revision to the Indiana SIP are available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steven D. Griffin, (312) 353–3849.

SUPPLEMENTARY INFORMATION: The 1977 Clean Air Act Amendments added Part D to Title I of the Act. Under this part, the States were required to revise their SIPs for all nonattainment areas and to submit the revisions to USEPA by January 1, 1979. The revised plans were to provide for attainment of the NAAQS by December 31, 1982, unless the States demonstrated that they could not attain the CO or ozone NAAQS by that date despite the implementation of all reasonably available control measures. If USEPA approved a plan which showed that attainment could not be achieved by December 31, 1982, the attainment date for CO or ozone could be extended up to December 31, 1987.

In the May 19, 1981, **Federal Register** (46 FR 27339), USEPA approved the 1979 Indiana CO SIP for Marion County. This plan was designed to show attainment of the CO NAAQS by December 31, 1982.

However, significant CO exceedances were monitored in Marion County during 1981 and 1982. Because of these, USEPA notified the State of Indiana on February 24, 1984, that the Marion County CO SIP was inadequate. USEPA required that a SIP revision be submitted within 1 year following the notice of SIP deficiency. The SIP deficiency notice was issued in accordance with USEPA policy appearing in the November 2, 1983, **Federal Register** (48 FR 50686). In addition, this submittal was to conform to the USEPA's "Guidance Document for the Correction of Part D SIP's for Nonattainment Areas", which was released on January 27, 1984. This document referenced the original transportation control plan elements which were published in the January 22, 1981, **Federal Register** (46 FR 7182).

The State of Indiana, in response to USEPA's notification, submitted a revised CO SIP for Marion County on March 4, 1985. USEPA reviewed this technical information and requested additional information. As a result, supplemental technical information was submitted to USEPA on October 7, 1985. In addition, the State of Indiana submitted its transportation control measures (TCMs) portion of the CO SIP on February 12, 1985.

Air Quality Analysis

Three CO monitors were located in the CO nonattainment area during the period of 1981 thru 1983 (the base period of the SIP). During this period, the 8-hour CO standard of 9 parts per million (ppm) averaged over 8 hours (not to be exceeded more than once per year) was only violated at the L.S. Ayres site, which is located at the intersection of Washington and Meridian. The highest second-high 8-hour CO concentration monitored at this site was 11.7 ppm recorded in June 1981.[1] No violations of the 1-hour standard were recorded at any of the monitoring sites.

From a modeling and emission reduction standpoint, the most stringent CO concentration was 11.1 ppm recorded in 1983 and not the 11.7 ppm concentration recorded in 1981. The shorter control period (1983–1987) which results from the use of the 1983 concentration has the effect of limiting the impact of emissions reductions from the implementation of transportation control measures. However, the State has submitted documentation sufficient to call the 1983 reading into question. This submittal includes a duplication of the strip chart which supports the observation of the Indianapolis Air Pollution Control Division (APCD) that the monitor may have been unstable or malfunctioning on this day. Because the November 24, 1983, 8-hour concentration is discredited, the second-high concentration of 11.7 ppm monitored in 1981 becomes the baseline CO concentration for determination of required emissions reductions.

Emission Inventory

The Indianapolis APCD developed the CO emission inventory for its post-1982 plan. It was assumed that major stationary source emissions of CO had a negligible impact on the CO concentrations in the nonattainment area because no such sources were known to be located near this area. The plan only addresses the mobile source CO emissions in the nonattainment area and in the central business district (CBD). The plan shows that the CO concentration patterns in the nonattainment area point to the existence of intersection-specific problem areas (hotspots) rather than to an areawide problem. Despite this, the plan includes both a demonstration of attainment based on a rollback of CBD mobile source CO emissions as well as a demonstration of attainment based on hotspot microscale dispersion modeling. An emissions inventory was developed for specific intersections as well as for the CBD. The mobile source emissions inventory was developed using USEPA's mobile source emissions factor models, MOBILE 2.5 and MOBILE 3. Due to timing constraints, the Indianapolis APCD used MOBILE 2.5 for the initial intersection-specific (hotspot) analysis. An updated hotspot analysis submitted on October 7, 1985, used MOBILE 3 as required by USEPA. The plan does include a comparison of the results from MOBILE 2.5 with those from MOBILE 3 for the CBD emissions total.

The annual and worst-case daily CBD mobile source emission factors were calculated for 1981, 1983 thru 1987, and 1995. These factors took into account the impact of the Federal Motor Vehicle Emission Control Program (FMVCP), but ignored other impacts such as the committed TCMs.

In regard to the base period and projected traffic levels, the plan notes that current (base period) and projected Vehicle Miles Traveled (VMT) were difficult to determine due to the limited amount of available traffic count data. Currently, each major CBD intersection receives one 48-hour traffic count every 3 years. There has been no continuous counting at a permanent site to provide detailed traffic trend data.

The Indianapolis APCD determined through the use of available traffic count data that despite the recent significant commercial growth in the downtown area, no upward trend in VMT was observed during the past decade. Excluding year-to-year variations, no overall increases in traffic levels are evident in the data. Nonetheless, the plan assumes a 1 percent per year growth rate for the VMT between 1981 and 1987. This assumption is consistent with the same assumption used by the Indianapolis Department of Transportation for short-term planning purposes.

Based on the use of a travel demand model for 1981, the Indianapolis APCD determined that the CBD had an average daily VMT of 395,400. Projecting the traffic demand to the year 2000 and accounting for both the assumed VMT growth rate and the impacts of planned traffic improvement projects, the Indianapolis APCD determined that the CBD VMT would increase by 27.7 percent between 1981 and the year 2000, giving an average annual growth rate of 1.4 percent. This growth rate was used to determine the 1995 VMT level. The same growth rates were applied to all arterials in the CBD.

The available data predicts that a 25.8 percent drop in annual CBD CO emissions will occur between 1981 (the base year of the rollback analysis) and 1987.

[1] Pursuant to 40 CFR 50.8, the 8-hour average CO standard concentration may not be exceeded *more than once* per year. Therefore, the second-highest CO concentration is the appropriate baseline concentration for computing required CO emissions reductions.

Modeling and Demonstration of Attainment

The Marion County plan approaches the CO demonstration of attainment in several ways. First, assuming the data for the L.S. Ayres site are the worst-case concentrations for the CBD, the SIP discusses a rollback analysis of the total CBD emissions. The highest second-high 8-hour CO concentration (11.7 ppm) in 1981 at the L.S. Ayres site was used in the rollback analysis.

Second, recognizing the hotspot nature of the emissions within the nonattainment area, the plan describes the results of an intersection-specific dispersion analysis using CALINE 3. This later analysis was updated in the October 7, 1985, submittal. The CALINE 3 line source dispersion model along with intersection-specific emission estimates by traffic link segments were used to calculate CO concentrations at 12 major intersections in the CO nonattainment area. These intersections were selected because either they had associated CO monitors or because they suffered from notable traffic congestion.

The hotspot modeling indicated that 5 intersections had the potential to violate the CO NAAQS in 1983. These intersections are: Pennsylvania and Washington; Delaware and Ohio; Meridian and 11th Street; Delaware and Michigan; and Delaware and Washington. Based on the modeling, none of these intersections has the potential to violate the CO NAAQS in 1986. The modeled worst-case intersection in 1986 was the intersection of Delaware and Ohio, for which an 8-hour concentration of 8.9 ppm was calculated.

USEPA had reviewed some of the initial CO modeling and expressed concern over several aspects of the modeling. The additional modeling data (second series) submitted on October 7, 1985, addressed USEPA's technical concerns on the first series of modeling. In the second series of modeling, the 12 intersections considered in the first modeling series were screened to determine which intersections were located in street canyons. Two intersections, Washington/Meridian and Pennsylvania/Market, were found to be street canyon locations. For these 2 intersections, 1983 and 1987 concentrations were calculated using a street canyon algorithm given in USEPA's indirect source evaluation guideline (EPA–450/4–78–001). The following 8-hour concentrations were calculated: 12.0 ppm in 1983 and 9.0 ppm in 1987 for Washington/Meridian; and 11.8 ppm in 1983 and 8.8 ppm in 1987 for Pennsylvania/Market.

The results of the revised CALINE 3 modeling showed no violations of the 8-hour CO NAAQS for 1987 at any of the 5 modeled intersections. The highest 1987 8-hour concentration modeled was 7.5 ppm at the intersection of Pennsylvania and Washington. Both the CBD emission rollback analysis and the hotspot modeling results imply that the CO NAAQS will be attained in the nonattainment area by December 31, 1987.

Control Strategies

The State of Indiana submitted its TCMs portion of the Marion County CO plan on February 12, 1985. The SIP included a commitment to implement a one-way pair project involving Washington and Maryland Streets in the CBD. This project is expected to provide better signal timing progression on Washington Street, to increase the average speed of traffic, and to shorten queue lengths significantly. The Maryland Street project was completed in 1985. The Washington Street project was scheduled for completion in August 1986; however, this deadline has been changed to December 31, 1987, for reasons to be explained later in this notice. This control measure will result in smoother traffic flow along Washington resulting in higher average vehicle speeds. The projected impact of the higher speeds was included in the modeling analysis for 1987. Higher vehicle speeds lead to significantly lower CO emission rates. The number of traffic lanes on Washington Street will be reduced while maintaining the existing street width, which will also lead to improvements in traffic flow. Marion County also expects the FMVCP to have a significant downward effect on CO emissions from mobile sources. All of the other transportation elements in the 1979 SIP have been implemented.

Maintenance of the NAAQS

In order to ensure maintenance of the CO NAAQS, a comparison was made between the anticipated increase in the traffic volume and the predicted change in the fleet composite CO emission factor for the CBD during the period of 1987 to 1995. A 27.6 percent reduction in the emission factor is expected betweeen 1987 and 1995. The CBD VMT is expected to increase by 13.5 percent uniformly throughout the CBD. Therefore, continued improvement in the downtown CO concentrations and maintenance of the NAAQS is expected to occur after 1987.

Demonstration of Reasonable Further Progress

The CO SIP submittal contains the anticipated yearly CO emission reductions in the CBD along with the yearly reduction needed to meet USEPA's "straight line" reasonable further progress (RFP) requirement. The data indicate that RFP was achieved in the CBD after 1984 and will be maintained through 1987. The SIP also presents a graphical CO emissions RFP demonstration for the worst-case hotspot intersection. This graphical presentation demonstrates that RFP will be achieved and maintained at this intersection through 1987.

USEPA's Technical Review and Determination

USEPA's review of the ambient monitor strip chart record for November 24, 1983, supports the Indianapolis APCD view that this second-high concentration at the L.S. Ayres site should be discredited due to probable monitor instability. USEPA has determined that the appropriate second-high 8-hour design concentration should be 11.7 ppm as monitored in 1981.

USEPA has determined that Indianapolis' plan has successfully demonstrated attainment of the CO NAAQS by December 31, 1987. Assuming that the L.S. Ayres site has the worst-case CO concentration site in the CBD, the rollback analysis shows CO emissions must be reduced by 22.8 percent from the 1981 CBD total. The plan predicts a 24.5 percent emission reduction by 1987 based on daily emissions, or a 25.8 percent emission reduction by 1987 based on annual emissions.

USEPA's review of the hotspot analysis as revised in the October 7, 1985, submittal shows that a demonstration of attainment by December 31, 1987, has been successfully made for the worst-case intersections. The ambient monitoring data from the 3 sites support the view that the CO nonattainment problem in downtown Indianapolis is hotspot in nature; therefore, by developing an approvable plan for the hotspot problems, Indiana has ensured the attainment and maintenance of the CO NAAQS throughout the nonattainment

area. Additionally, USEPA has determined that the Marion County CO plan appropriately demonstrates RFP toward attainment of the CO NAAQS.

Public Comments on Proposed Rulemaking

On July 22, 1986 (51 FR 26269), USEPA proposed to approve the Marion County CO plan as ensuring attainment and maintenance of the CO NAAQS throughout the CO nonattainment area. The Indianapolis APCD submitted comments on the proposed approval on September 29, 1986. The APCD supported USEPA's proposed approval of the plan but stated that the west connector for the one-way street pair would be delayed due to a land acquisition issue. The APCD anticipates that this TCM will be completed and in operation by December 31, 1987. Otherwise, the APCD has not monitored a CO NAAQS violation since publication of the proposed rulemaking notice and no other difficulties have resulted to prevent expeditious attainment and maintenance of the NAAQS.

USEPA agrees with APCD's conclusion that the delay in completion of the TCM will not jeopardize attainment of the CO NAAQS by December 31, 1987, because APCD has demonstrated that the CO NAAQS could be attained without implementation of the one-way street pair. As long as APCD remains committed to completion and operation of the TCM by December 31, 1987, the expeditiousness test of the Act is met.

No further public comments were received concerning this proposed rulemaking.

Conclusion

USEPA is approving the Marion County CO plan which demonstrates attainment of the NAAQS by December 31, 1987, and RFP in the existing nonattainment area. USEPA also approves the adopted transportation control measure (TCM).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 19, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Carbon monoxide, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 13, 1987.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart P—Indiana

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows.

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.770 is amended by adding paragraph (c)(62) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(62) On March 4, 1985, Indiana submitted a revision to the Marion County carbon monoxide (CO) plan. USEPA approved this plan based on monitoring and modeling data and a commitment to implement a one-way street pair in the Indianapolis central business district. These elements demonstrate attainment of the CO National Ambient Air Quality Standards by December 31, 1987.

(i) Incorporation by reference.

(A) Marion County CO plan for attainment and maintenance of the CO NAAQS from Indianapolis Air Pollution Control Division, Sections 1.0, 3.4, 4.1, 4.2, 4.3.1, 4.3.2, 4.4, 5.1, 5.5.4, 6.1, 6.2.1, 6.2.2, 6.3, and 6.4, dated November 12, 1984.

(B) Letter from Indiana forwarding Marion County CO plan to USEPA, dated March 4, 1985.

(ii) Additional material.

(A) Portion of additional technical information from Indianapolis Air Pollution Control Division, including Section 1.0, dated August 28, 1985.

(B) Letter from Indiana forwarding additional technical information, dated October 7, 1985.

[FR Doc. 87–8691 Filed 4–17–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[Gen. Docket 84–1234; FCC 86–552]

Common Carrier Services; Establishment of Policies Pertaining to a Mobile Satellite Service; Financial Qualifications

AGENCY: Federal Communications Commission.

ACTION: Declaratory Order.

SUMMARY: The Commission has clarified certain portions of its Second Report and Order in Gen. Docket 84–1234 (52 FR 4017; February 9, 1987) regarding the establishment of a mobile satellite service (MSS). In the Second Report, the Commission held that in order to participate in the consortium to be licensed to operate the MSS system, applicants were required to demonstrate their financial qualifications by placing $5 million into an escrow account. This declaratory order was adopted in response to petitions filed by two of the applicants seeking clarification of details regarding the escrow accounts. The Commission has clarified that unconditional letters of credit and performance bonds may be used to demonstrate financial qualifications as alternatives to establishing a $5 million escrow account. It has also clarified that any loans relied on by applicants to raise this sum must be unconditional and freely transferable to the consortium.

EFFECTIVE DATE: April 6, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fern Jarmulnek, Satellite Radio Branch, Common Carrier Bureau, (202) 634–1624.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Declaratory Order, Gen. Docket 84–1234, adopted April 2, 1987 and released April 6, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Declaratory Order

In the *Second Report and Order* in

Gen. Docket 84–1234 (52 FR 4017; February 9, 1987), the Commission established policies to govern the establishment of a mobile satellite service (MSS). It determined that only one first generation MSS system was feasible and adopted a joint ownership structure for this system. The system's licensee was to be a consortium comprised of all qualified and willing entities that had MSS system applications on file as of the specified cut-off date. The Commission conditioned participation in the consortium on each applicant demonstrating its financial qualifications by making an initial $5 million cash contribution into the consortium and placing this amount into an escrow account by April 13, 1987.

In response to petitions for clarifications, the Common Carrier Bureau clarified several matters pertaining to the escrow accounts. The Bureau stated that since unconditional letters of credit and performance bonds provide as firm an assurance that funds are available as a cash deposit, these financial instruments would be acceptable alternatives to establishing an escrow account. The Bureau also clarified that any loans relied on by an applicant to raise the $5 million must be unrestricted by the lender. In other words, the funds must actually be available to the applicant to transfer to the consortium without further approval of the lender. The Bureau stated that in the *Second Report and Order*, the Commission intended that only applicants with unconditioned access to the required funds on April 13, 1987 be able to participate in the consortium, as well as in discussions on the formation of the consortium.

Ordering Clauses

Pursuant to § 0.291 of the Commission's rules on delegations of authority, it is ordered that unconditional letters of credit and performance bonds may be submitted as alternatives to depositing $5 million in cash into an escrow account.

It is further ordered that each qualified applicant's April 13 notification to the Commission must contain documentation of the immediate availability of the $5 million and certification from the applicant that this sum is under its sole control and may be freely transferred by the applicant to the consortium upon the applicant's decision to join the consortium.

List of Subjects in 47 CFR Part 25

Satellite radio communication, Satellites.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 87–8742 Filed 4–17–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–3; FCC 87–101]

Adjustment of Pre-Sunrise Operations by Daytime-Only AM Radio Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Interim policy.

SUMMARY: Pending the conclusion of current rule making, the FCC has adopted the interim policy of authorizing AM daytime-only radio broadcast stations not now permitted to do so, to operate pre-sunrise with a minimum power of 10 watts from 6 a.m. local time to local sunrise, between the first Sunday and the last day of April 1987, if they would not thereby infringe international agreements on protection against interference. This amendment carries out Congressional instructions in the statute that advanced the annual start of daylight saving time to the first Sunday in April. This will lessen disadvantages that the listening public and daytime-only stations would otherwise experience as a result of the earlier start of daylight saving time.

EFFECTIVE DATE: The policy entered into effect on March 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Louis C. Stephens, Mass Media Bureau, FCC, (202) 254–3394.

SUPPLEMENTARY INFORMATION:

First Report and Order

Adopted: March 24, 1987.
Released: April 3, 1987.
By the Commission:

1. In the *Notice of Proposed Rule Making* we adopted in this proceeding on January 6, 1987, 52 FR 2566, published January 23, 1987, we invited comment on our proposal to amend the rules governing pre-sunrise operations by daytime-only AM radio broadcast stations. The purpose of the rule change is to offset, insofar as possible, the effects on broadcast service by daytime-only stations arising from the fact that, under Pub. L. No. 99–359, daylight saving time will now start on the first Sunday in April, instead of the last Sunday. Unless present requirements relating to pre-sunrise operations were adjusted, the change in the start of daylight saving time would have an adverse effect on daytime-only stations and their listeners. We accordingly proposed to permit daytime-only stations that can do so without infringing international agreements, to operate between 6:00 a.m. local time and local sunrise, using a minimum of 50 watts power or such higher power as they have been individually authorized to use presunrise. This operating time extension was proposed to apply during April of each year between the first Sunday and the last day of the month.[1]

2. We find that the record before us is insufficient for us to decide upon a permanent rule structure. Thus, this *First Report and Order* makes interim adjustments to permissible pre-sunrise operations by eligible daytime-only stations between April 5 and April 30, 1987. We shall conduct further rule making before we adopt definitive rule changes applicable to future years. The interim adjustments are those proposed, as stated in the previous paragraph, except that pending further rule making the minimum power will be 10 watts instead of the proposed 50-watts. The Commission will, as soon as possible, but in no event later than April 1, 1987, issue notifications to licensees that qualify for pre-sunrise operation in April 1987 at powers greater than those specified in previously issued authorizations.

Background

3. As a general matter, daytime-only stations are not permitted to operate with their regularly licensed facilities until local sunrise. The FCC determines the time when local sunrise occurs at each station as of the fifteenth day of each month. That time, adjusted to the nearest quarter-hour, is prescribed in each station's license as the hour, expressed in local standard time, when it may start using its regularly licensed daytime facilities during that month. Since it advances local time one hour, the effect of daylight saving time on daytime-only stations is to delay, for the remainder of the month, the time they may begin daytime operation. The later start in the use of daytime facilities

[1] Starting daylight saving time on the first Sunday in April, instead of the last Sunday of that month, will mean that daylight saving time will begin three or four weeks earlier than previously. It will begin four weeks earlier in years when the first Sunday of April falls on the first or second day of the month. In years (like 1987) when the first Sunday falls between April 3 and April 7, daylight saving time will begin three weeks earlier than heretofore.

during the month of April deprives the public of one hour of a daytime-only station's service with daytime facilities during the important "drive time." [2] The effect is especially acute in the case of daytime-only only stations that do not qualify for Pre-Sunrise Service Authorizations (PSRA'S),[3] and therefore may not operate at all during all or part of the lost hour of morning broadcasting.

4. Congress recognized that the earlier start of daylight saving time would affect service by daytime-only stations. It directed, in section 2(d)(1) of Pub. L. No. 99–359 that:

> . . . the Federal Communications Commission shall, consistent with any existing treaty or other agreement, make such adjustment by general rules, or by interim action pending such general rules, with respect to the hours of operation of daytime standard amplitude modulation broadcast stations, as may be consistent with the public interest, including the public's interest in receiving interference-free service.

The Comments

5. Eleven parties listed in Appendix A filed comments. No reply comments were received. Support for the proposed rule changes was expressed by the Maryland-District of Columbia-Delaware Broadcasters Association, WSAF, WATH and Voice of the Master.[4] The National Association of Broadcasters (NAB) expressed general support, but felt concerned at the resultant interference to groundwave signals of some clear channel stations. NAB urged the Commission to weigh carefully whether, taking into account the public interest factors unique to this proceeding (including the Congressional mandate and the limited period of adjusted pre-sunrise operation), it might be preferable to use some approach other than a 50-watt minimum power. The Association for Broadcast Engineering Standards (ABES), in principle, opposes the authorization of minimum pre-sunrise power that would cause interference to both the groundwave and skywave service rendered by Class I–A stations. In recognition of "mitigating" circumstances, however, ABES asks that, if the Commission adopts the proposed rule, it make it clear that this adjustment is for the sole purpose of offsetting the effects of Pub. L. 99–359, and that it will not constitute a precedent for action in other circumstances.

6. The Clear Channel Broadcasting Service (CCBS) submitted engineering studies showing that the pre-sunrise use of 50 watts or 25 watts could cause interference to the skywave and groundwave service areas of Class I clear channel stations. CCBS accordingly advocates that the minimum power be fixed at 10 watts. This would generally assure protection against interference to the groundwave (primary) service areas of Class I stations, although it would cause interference within their skywave (secondary) service areas. CCBS also differed with the anticipation expressed in the *Notice, supra,* that the added interference caused by stations operating under the proposed rule would occur, typically, for only 15 to 30 minutes a day during the added period of daylight saving time in April. Data provided in the Engineering Statement accompanying the CCBS comments indicates that in some areas the period of such added interference would range from 45 to 60 minutes each day, and that in some cases it could be as long as 75 minutes. CCBS believes that in no case should pre-sunrise operation be extended more than one hour. CCBS states also that letters received by several clear channel stations during experience in 1973 with a 50-watt minimum pre-sunrise power authorization such as the one now proposed indicated that it caused substantial interference to service by clear channel stations. [5] CCBS argues that allowing the amount of interference that may be expected to result from the proposed 50-Watt minimum pre-sunrise power for daytime-only stations would be contrary to the intent of section 2(d)(1) of Pub. L. No. 99–359, which directs the Commission to take into consideration the public interest in interference-free service, in adjusting the rules governing station operation by daytime-only stations.

7. Empire State, licensee of clear channel station WGY, Schenectady, N.Y., citing examples of the long range and uncertain character of skywave interference, opposes the proposed rule changes, and advocates that, instead of adopting them, the Commission provide each AM daytime-only station with a 50-watt FM station, an action that is beyond the scope of this proceeding. Palmer, licensee of clear channel station WHO, Des Moines, Iowa, also opposed the proposed rule, stating that the period between 5 and 8 a.m. is the "critical listening time" for the WHO audience. Palmer calculates, on the basis of an engineering study accompanying its comments, that between nine and ten million persons within WHO's groundwave service area would no longer be able to receive interference-free service from the station during the pertinent period. After noting WHO's farm and news programming during the early morning hours, Palmer concluded that its loss would be disproportionate to the service gain for daytime-only stations under the proposed rule, and referred to the express Congressional mandate that the Commission consider the public's interest in interference-free signals. Therefore, Palmer argues, the proposed rule change should not be adopted.

8. Price also opposes the proposed rule, arguing that the present rule governing pre-sunrise operations—§ 73.99, 47 CFR 73.99—strikes the right balance between the needs of clear channel and daytime-only stations. WGN advocates the middle position put forward by CCBS: establishing a minimum power of 10 watts, rather than 50 watts, on the basis that this strikes a better balance between the interests of service from unlimited-time and daytime-only stations, in keeping with the Congressional mandate to consider the public interest in interference-free service. Supporting engineering data accompanying the WGN comments

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[2] Drive time is the period of peak radio listening during the morning hours when most people are traveling between home and place of work. It is thus a time of heightened opportunity for broadcasting service to the radio listening public, and a period of significantly high advertising revenues that are important to a station's ability to compete by providing desired program services.

[3] Section 73.99 of the Commission's Rules, 47 CFR 73.99, establishes the conditions under which daytime-only stations that qualify to do so may be issued PSRA's authorizing them to operate pre-sunrise between 6 a.m. local time and local sunrise, using the antenna systems they are licensed to employ starting at local sunrise. Eligibility to do so and the reduced power levels that may be used depend, under the rule, on the channel occupied, the need to protect other stations against interference, and limitations that derive from international commitments of the United States with respect to interference protection to stations in other countries.

[4] Voice of the Master also proposed the creation of a new class of low powered AM stations, which is outside the scope of this proceeding. This proposal will be associated with other comments under consideration concerning the overall program of possible revisions to the AM rules which is separately before the Commission.

[5] In 1973, the Commission adopted a minimum power of 50 watts for pre-sunrise broadcasting during extended daylight saving time. That action was taken as an interim measure pending further consideration of the basis for such operations that it would be appropriate to adopt in the form of definitive rule amendments. Within a year, however, the fuel crisis that had precipitated that extension of daylight saving time abated sufficiently that the period of daylight saving time was restored to its traditional scheduling. The need for it having thus ceased, the Commission ended the special provision for pre-sunrise operations during extended daylight saving time without reaching a conclusion on the mooted question of the power level it would have been appropriate to prescribe in a definitive rule amendment.

depicted the overlap of desired and interfering signals for clear channel station WGN (AM), Chicago, Illinois.

Discussion

9. The instruction in section 2(d)(1) of Pub. L. No. 99–359 confronts the Commission with the need to make difficult decisions. It is a familiar characteristic of signal propagation in the AM band that skywave reflection from the ionosphere of even low-power transmissions can cause interference during the nighttime at distances of hundreds of miles. *Any* augmentation of pre-sunrise operations by daytime-only stations above that which provides full protection to unlimited-time stations will inevitably increase the level of interference received by other stations. Thus, the mandate of Pub. L. No. 99–359 must be understood as calling upon the Commission to establish an appropriate balance between augmented pre-sunrise service by daytime-only stations and resultant incremental interference to other stations.

10. Out task, therefore, is to determine the power level for pre-sunrise operations by daytime-only stations that will enable them to reach a meaningful number of potential listeners, while not causing undue interference to service provided by other stations in this country that are licensed to operate during nighttime hours. As we have already noted, Congress has expressly forbidden any action that would involve infringement of international obligations of the United States. Therefore, it is only with respect to stations within the United States that the Commission must seek to establish an appropriate balance between service gains and losses. That balance cannot be found in a simple comparison of the numbers of persons who gain pre-sunrise service with the numbers of others who lose it. This is espectally apparent in the case of daytime-only stations assigned to the Class I–A clear channels. The primary service areas of the clear channel stations typically range from 100 to 200 miles from their transmitters, and protected secondary skywave service is provided beyond this to approxmately 750 miles from their transmitters. Even at the low powers contemplated for pre-sunrise operations by daytime-only stations, as the comments noted above observed, the population of wide areas within which the signals of the clear channel stations would be subject to interference would be substantial. Conversely, the potential audiences of daytime-only stations operating pre-sunrise at low power would total far fewer persons.

11. In these circumstances, given the Cogressional intent that some relief be provided to daytime-only stations, we must turn to factors other than comparative population counts for guidance as to where to strike the balance between augmented pre-sunrise service by daytime-only stations and optimal preservation of service by other stations. For this purpose, we think it appropriate to take into account the act that low-power pre-sunrise operations by daytime-only stations will provide service premarily—in some cases, exclusively—to the local communities to which they are assigned. By contrast, the interference those operations will causes would affect persons living at comparatively great distances from the communities to which clear channel stations are assigned. It is not a derogation of the potential usefulness of clear channel service at considerable distances from their principal communities to recognize, and attach decisive importance to, the needs of members of the immediate communities where daytime-only stations are assigned. In balancing the public interest considerations pertinent to our decision, we think that our legisiative mandate compels us to attach more importance to preservation of the capacity of daytime-only stations to provide local service during the April morning drive-time periods affected by the earlier start of daylight saving time than to the preservations of service by clear channels at very great distances from their principal communities. The well known characteristics of nighttime AM signal propagation permit no other conclusion, for no relief could be provided to daytime-only stations, that predominantly serve nearby listeners, without causing interference to vastly larger areas distant from clear channel stations.

12. Recognizing the trade-offs, we must determine where to strike the appropriate balance. We believe that the comments by CCBS, and the licensees of several clear channel AM stations suggests a reasonable approach. They advocate reducing the minimum power permitted for pre-sunrise operations by daytime-only stations to 10 watts, at which the primary, groundwave service rendered by Class I clear channel stations would generally by protected. Since the groundwave service of these stations is relatively constant, compared with the variable, intermitted, and less reliable secondary service rendered by their skywave signals, we believe that the primary focus of our concern here should be on the protection of groundwave service, not skywave service. It appears appropriate to protect the groundwave service of clear channel stations aganist interference, but undersirable to foreclose the opportunities for early morning broadcasting by daytime-only stations during the extended period of daylight saving time by requiring them to protect skywave service. As previously noted, groundwave service, although it generally ranges out 100 to 200 miles, reaches listeners far less remote from the station that those within the secondary service area, which extends out to approximately 750 miles from the transmitter.

13. The trade-off for preserving the groundwave service areas of major unlimited-time stations is, thus, reduced service range for some daytime-only stations during their pertinent April pre-sunrise operations. Fixing the generally applicable minimum power for pre-sunrise operations of daytime-only stations at 10 watts, as CCBS proposed, rather than the 50-watt level contemplated in the *Notice*, would result in shorter range for the pre-sunrise service of daytime-only stations that would have to be held to 10 watts in order to protect the groundwave service of clear channel stations. On the other hand, since the test that would be applied under the CCBS proposal is protection to groundwave service, it is possible that some daytime-only stations could operate at higher powers than under the proposal in the *Notice*. Although the *Notice* proposed not going below a 50-watt mimimum, the basis for calulating permissible pre-sunrise powers was protection to the skywave, as well as the groundwave, service of clear channel stations. As we understand the alternative put forward by CCBS, the permitted power for pre-sunrise operations during the pertinent period would be based on protecting only the groundwave service of the clear channel stations. On this basis, some daytime-only stations that would have been held down to 50 watts because of interference to skywave service might be permitted more than 50 watts if their permissible power were calculated on the less rigorous basis of protecting only the groundwave service of the clear channel stations. We believe that the CCBS proposal might provide the proper balance between clear channel stations and daytime-only sations. We think it desirable, before attempting to reach final decision on this matter, to invite further comment, directed particilarly to the approach that has been suggested by CCBS, and to the appropriate basis on which to evaluate, comparatively, the

benefits of enhanced local serivce to some members of the listening against the consequent interference to service available to others. We plan to issue a further Notice in the near future, inviting further comment on these and related issues.

14. Meanwhile, the statute makes it incumbent upon the Commission to alleviate the adverse effects that the earlier start of daylight saving time will have on service by daytime-only broadcast stations in April 1987. Pub. L. No. 99–359 provided the means for accomplishing this by expressly authorizing the Commission, pending completion of this rule making, to make appropriate adjustments by "interim action." We will exercise this authority by permitting pre-sunrise operations during April 1987 on the basis as proposed in the January 6, 1987, *Notice of Proposed Rulemaking, supra,* except that, in lieu of the proposed minimum power of 50 watts, we adopt, in the interim, a minimum power of 10 watts that will be applied during 1987.

We shall shortly notify the daytime-only stations that are affected by the 10-watt power minimum the specific powers that they may use during pre-sunrise operations conducted between 6 a.m. standard time and local sunrise from April 5, 1987, (the first Sunday in April, this year) through April 30, 1987, inclusive. Daytime-only stations that do not receive a specific notification for this period will be permitted to operate using facilities specified in pre-sunrise service authorizations previously issued.

Paperwork Reduction Act

15. The action taken herein has been analysed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection or record-keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours on the public.

Regulatory Flexibility Analysis

16. Regulatory flexibility analysis.

I. Need and Purpose of the Action

The action taken here carries out a statutory instruction that the FCC adjust the hours of broadcasting by daytime-only AM radio stations appropriately to reflect the advance of the start of daylight saving time to the first Sunday in April. Insofar as is consistent with international agreements and the public interest, the rule lessens the burden placed on daytime-only stations whose start of daily operations would otherwise be deferred by an hour starting the first Sunday in April, 1987.

II. Summary of Issues Raised by Public Comment in Response to the Notice of Proposed Rule Making in This Proceeding

The only significant issues raised are those noted in paragraph 5 through 8, *supra.*

III. Significant Alternatives Considered and Rejected

For the reasons discussed in paragraphs 9 through 14, the Commission is aware of no reasonable alternatives to the action taken herein. It balances the need for relief, and for moderation of resultant interference, applies the interim conclusions reached to relief to be provided during April, 1987, and provides for further opportunity to review the associated questions before the adoption of definitive rule changes that would be regularly applicable in future years.

Orders

17. Accordingly, pursuant to authority contained in section 2 of Pub. L. No. 99–359, 15 U.S.C. 206(a), and taking into consideration: (a) the desirability of conducting further rule making before reaching final decision concerning what definitive rule changes would best fulfill the purposes of that statute; and (b) the need to give immediate effect to the interim provision applicable to pre-sunrise broadcasting in April 1987 in order to assure that the relief it provides will be timely, It is Ordered, effective immediately, That:

(1) The Chief of the Mass Bureau shall promptly issue to each daytime-only AM radio broadcast station whose minimum pre-sunrise operating power hereunder may not exceed 10 watts, an authorization to operate pre-sunrise between 6 a.m. local time and local sunrise, during the period April 5, 1987 through April 30, 1987, in accordance with the below stated conditions.

(2) The authorization of pre-sunrise operations by daytime-only stations during the above-stated period in April, 1987 shall be subject to the requirement that protection be provided to stations in other countries in accordance with international obligations of the United States.

(3) The Chief, Mass Media Bureau shall determine, and shall state in the authorizations directed to individual daytime-only stations, the powers at which they may conduct pre-sunrise operations during the above-stated period, using the antenna system that it is licensed to start using at local sunrise. He shall fix that power at the highest level, not exceeding 0.5 kW, that each station may use while duly protecting other stations against objectionable interference; provided that such power shall in no case be less than 10 Watts unless a lower level, or refraining from pre-sunrise broadcasting altogether, should be necessary to provide due interference protection to stations in other countries.

(4) Daytime-only stations receiving authorizations for pre-sunrise operations in conformance with the above-stated requirements and conditions may so operate during the above-prescribed period, without filing applications for such authorization, but only after submitting to the Chief, Mass Media Bureau, FCC Headquarters, Washington, DC 20554, a written statement containing the information which will be specified in the authorization.

(5) Daytime-only stations that do not receive authorizations issued hereunder, but that have previously issued PSRA's may, during the prescribed hours of April 1987, operate at the powers authorized in such PSRA's.

18. It is further ordered, That, this docket shall remain open for further rule making pursuant to a **Further Notice of Proposed Rule Making** that we will issue in due course.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Parties Who Filed Comments

Association for Broadcast Enginering Standards (ABES)
Clear Channel Broadcast Service (CCBS)
Empire State Radio Partners, Ltd. (Empire State), licensee of clear channel station WGY, Schenectady, NY
Maryland-District of Columbia-Delaware Broadcasters Association, Inc. (MD–DC–DE Asso.)
National Association of Broadcasters (NAB)
Palmer Communications, Inc. (Palmer), licensee of clear channel station WHO Des Moines, IA
Price Communications Corporation (Price), licensee of five clear channel stations:
KOB, Albuquerque, NM
KOMA, Oklahoma City, OK
WLAC, Nashville, TN
WOWO, Fort Wayne, IN
WWKB, Buffalo, NY
Safe Broadcasting Corporation, licensee of daytime-only station WSAF, Triton, GA (WSAF)
Wath, Incorporation, (WATH) Licensee of daytime-only station WATH, Athens, OH
WGN Continental Braodcasting Company (WGN), licensee of clear channel station WGN, Chicago, IL
Voice of the Master

[FR Doc. 87–8747 Filed 4–17–87; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

United States Railway Association

49 CFR Ch. IX

Deletion of Regulations; Chapter Vacated

AGENCY: United States Railway Association.

ACTION: Removal of regulations.

SUMMARY: The United States Railway Association, created by the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) has been sunsetted by the Conrail Privatization Act of 1986 (Pub. L. 99–509). This document will remove the regulations of the Association from the Code of Federal Regulations.

EFFECTIVE DATE: April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Peter J. Gallagher, (301) 229–2606.

List of Subjects in 49 CFR Parts 901, 903, and 932

Organization and functions, Sunshine Act, Privacy.

For the reasons set out in the **SUMMARY** statement, Title 49, of the Code of Federal Regulations is amended as follows:

1. Parts 901, 903, and 932 are removed; and

2. Chapter IX is vacated.

Peter J. Gallagher,

General Counsel Corporate and Secretary.

March 3, 1987.

[FR Doc. 87–8740 Filed 4–17–87; 8:45 am]

BILLING CODE 8240-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 61220–7033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the share of the sablefish target quota (TQ) allocated to hook-and-line gear in the West Yakutat District of the Eastern Regulatory Area of the Gulf of Alaska will be achieved on April 15, 1987. The Secretary of Commerce is prohibiting retention of sablefish in this district by persons using hook-and-line gear after 12:00 noon April 15, 1987, through December 31, 1987.

EFFECTIVE DATES: From 12:00 noon April 15, 1987, Alaska Daylight Time (ADT), until midnight, Alaska Standard Time (AST), December 31, 1987. Public comments may be submitted to the Regional Director until April 30, 1987.

ADDRESS: Comments should be addressed to Robert W. McVey, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 021668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP are at 50 CFR Part 672.

Paragraph 672.20(a) of the regulations establishes an optimum yield range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska, which is further divided annually into target quotas (TQs) for each groundfish species. For 1987, TQs were established for each of the groundfish species and apportioned among the regulatory areas and districts.

Section 672.2 of the regulations defines the West Yakutat District of the Eastern Regulatory Area in the Gulf of Alaska (Emergency interim rule, 52 FR 422, January 6, 1987). The TQ for sablefish is 4,000 mt in this district (52 FR 785, January 9, 1987). Paragraph 672.24(b)(1) of current regulations provides a share of the TQ for hook-and-line gear in the West Yakutat District equal to 95 percent of the TQ, or 3,800 mt. When the share of the TQ is taken, further catches of sablefish by hook-and-line vessels must be treated as prohibited species and discarded at sea.

Prior to the season starting date April 1, NMFS conducted an area registration program to better estimate numbers of vessels participating in the sablefish hook-and-line fishery in each district throughout the Gulf of Alaska. Based on results of the program, NMFS estimates that about 199 hook-and-line vessels are fishing for sablefish in the West Yakutat District. This estimate includes 107 vessels that were registered by April 1 and 92 more vessels that registered during the course of the season. Of this latter number, 54 vessels shifted from the Southeast Outside/East Yakutat District following the close of that district on April 9. About 2,230 mt have been landed through April 10. On the basis of the average catch rates experienced by the fleet through this date, NMFS estimates that the balance of the quota, or 1,570 mt, will be harvested by noon on April 15, 1987. Therefore, the West Yakutat District is closed to sablefish fishing by hook-and-line vessels at 12:00 noon, local time, on April 15, 1987. Further catches of sablefish by hook-and-line vessels must be treated as prohibited species and discarded at sea. This closure will be effective upon filing for public inspection with the **Federal Register** and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game under § 672.22(b). Public comments on this notice may be submitted to the Regional Director at the address above for 15 days following its effective date.

Classification

Overharvesting of sablefish, which would increase the risk of overfishing of this species, will result unless this notice takes effect promptly. NOAA therefore finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed. This action is taken under § 672.22 and § 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: April 15, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[Doc. 87–8837 Filed 4–16–87; 8:58 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 75
Monday, April 20, 1987

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

Animal and Plant Health Inspection Service

7 CFR Part 330

9 CFR Part 94

[Docket No. 85-345]

Plant Pests and Exportation and Animal Products; Garbage

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document would change regulations that apply to garbage that can spread diseases or pests of livestock, poultry, or plants. It would expand the definition of garbage, free some garbage from regulation, and clarify which garbage is to be considered, for purposes of regulation, as "arriving" in a jurisdiction. The proposed rules would protect against the spread of diseases and pests without unnecessarily regulating garbage that does not present such risks.

DATE: Comments must be received May 20, 1987.

ADDRESSES: Send written comments to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 85-345. Comments received may be inspected at Room 728 of the Federal building between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald B. Caffey, Assistant to the Deputy Administrator, PPQ, APHIS, USDA, Room 656, Federal Building, 6505 Belcrest Road, Hyattsville MD 20782, 301-436-7633.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) has garbage regulations concerning plant pests in 7 CFR 330.400 and garbage regulations concerning livestock and poultry diseases in 9 CFR 94.5. The two sets of regulations are substantially the same, the regulate garbage arriving in the United States, and its territories and possessions, in order to prevent the spread of plant pests and animal diseases.

Definition of Garbage

The definition of garbage in the current regulations does not specifically include unconsumed meals and other food prepared for passengers and crew on aircraft. Such foods could spread plant and animal pests and diseases, and have been construed by the agency to be "garbage" subject to the regulations. The proposal would clarify the regulations specifically to include these foods in the definition of garbage.

Regulated Garbage

Only certain garbage is regulated. For instances, garbage on vessels which travel solely between continental United States ports or solely between continental United States ports and Canadian ports is unlikely to contain any pests or organisms that could disseminate plant pests or animal diseases that are not already widely prevalent or distributed within and throughout the United States. Consequently, such garbage is not regulated by the regulations.

In general, the garbage regulations do regulate garbage that could spread animal diseases and plant pests from outside the United States, and plant pests from Hawaii and from territories and possessions of the United States.

APHIS believes that one of the most effective ways of ensuring that potentially harmful garbage is stored and disposed of so that it does not spread plant pests and animal diseases is to regulate it according to the itinerary of the means of conveyance the garbage is on or has come from. By regulating *all* garbage that is on or unloaded from a means of conveyance that has been to a jurisdiction where certain plant and animal diseases exist, APHIS is not put in the position of having to distinguish between "safe" garbage and "unsafe" garbage on the same means of conveyance.

APHIS recognizes, however, that certain steps can be taken to ensure that a mean of conveyance contains no potentially harmful garbage, even if it has at some time in the past been to a jurisdiction where plant pests and animal diseases exist. A means of conveyance, for example, that has been out of the United States and Canada during the previous two years is highly unlikely to be carrying potentially harmful garbage, even if it has been to a foreign port sometime in its history. Additionally, certain procedures for emptying, cleaning, and disinfecting the means of conveyance will guard against the dissemination of plant pests and livestock and poultry diseases.

Garbage Regulated Because of Movements Outside the United States or Canada.

In general, regulated garbage would include garbage on or removed from a means of conveyance that within the preceding two years has been to a port outside the United States and Canada. The garbage is not regulated if the port is in Canada because the plant and animal disease situation in Canada presents little risk of transmitting plant and animal diseases and pests not already widely disseminated in the United States.

If a means of conveyance other than an aircraft would be accompanied by a certificate stating that it has been emptied of garbage and certain stores, and that it has subsequently been cleaned and disinfected under an inspector's supervision, and, after the cleaning and disinfection, and means of conveyance has not visited a non-Canadian foreign port, its garbage would not be regulated. The stores that would have to be removed would be: All meats and meat products, whatever the country of origin, except sterile, canned, cooked meats which are shelf-stable without refrigeration; all fresh and condensed milk and cream from countries designated in 9 CFR 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs. Garbage on or removed from an aircraft that within the preceding two years has been to a port outside the United States and Canada would not be regulated if all garbage and stores have previously been removed and, after the removal of the

garbage and stores, the aircraft has not visited a non-Canadian foreign port. Because of the comparably low volume of stores carried by an aircraft, as compared to that carried on other means of conveyance, documentation indicating the nature and country of origin of the aircraft's stores does not customarily accompany the aircraft. This is in contrast, for example, to the documentation that does customarily accompany stores on a vessel. Such lack of documentation on an aircraft would make it difficult for APHIS to make an accurate determination of whether specific stores left on an aircraft present a risk of disseminating diseases or plant pests in the United States. Consequently, this proposal would require that *all* garbage and stores be removed from an aircraft before subsequent garbage on the aircraft can qualify for an exemption from the garbage regulations.

In the case of an aircraft, neither cleaning and disinfection nor a certificate would be required, because APHIS believes that the removal of prohibited and restricted material, combined with removal modular galley construction and ordinary sanitary practices on airplanes, would ensure that there would be little risk of disseminating animal diseases and plant pests.

Garbage Regulated Because of Movement from Hawaii, Territories, or Possessions.

Garbage on or removed from a means of conveyance would also be regulated if the means of conveyance moved to the continental United States, either directly or indirectly, from Hawaii or from any territory or possession within the preceding year. Additionally, garbage would be regulated which is on or removed from any means of conveyance that within the preceding year moved from Hawaii to any territory or possession, or moved from any territory or possession to any other territory or possession or to Hawaii. Note that a one-year period is proposed for these movements, in contrast to the two-year period proposed for movements from outside the United States. This difference is because movements from Hawaii, or from territories or possessions, pose the risk of spreading only plant pests, whereas movements from outside the United States pose the risk of spreading both plant pests and animal diseases. Experience has shown that it is extremely unlikely that stores of plant origin would remain on a means of conveyance for over one year. Simply removing the stores would be adequate to protect against plant pests, because the plant pests that could be transmitted by the stores are unlikely to remain viable on the means of conveyance for very long after the stores are removed. In contrast, even after the stores are removed, some livestock or poultry disease organisms could remain viable on a means of conveyance for significant periods of time. Consequently, the two-year period appears necessary for means of conveyance arriving from places where livestock or poultry diseases exist that are not already disseminated in the United States.

As with movements from outside the United States, certain exceptions to the regulation of garbage are proposed for means of conveyance that move to the continental United States from Hawaii or territories or possessions; that move to Hawaii from territories or possessions; or that move to territories or possessions from other territories or possessions or from Hawaii.

If a means of conveyance other than an aircraft would be accompanied by a certificate from an inspector stating that it has been emptied of all garbage and all fresh fruits and vegetables, any garbage subsequently generated would not be regulated, if after the removal of the original garbage and stores, the means of conveyance has not visited the continental United States from Hawaii or a territory or possession; visited Hawaii from a territory or possession; or visited a territory or possession from any other territory or possession or from Hawaii. Aircraft garbage would be subject to similar provisions, except that a certificate would not be required for aircraft.

Commingled

It is also proposed that regulated garbage also include garbage that is commingled with regulated garbage. This is necessary since it would be virtually impossible to separate regulated garbage from other garbage, and since any disease organism or pests in regulated garbage would contaminate other garbage.

Arriving

The current garbage regulations regulate garbage on or unloaded from certain means of conveyance "arriving" in specific places. Under the current garbage regulations, there has been some confusion as to whether garbage on or removed from a means of conveyance would be regulated at a port of arrival in the continental United States, Hawaii or a territory or possession, when the port of arrival is not the first port of arrival in the specified jurisdiction. For example, would garbage on a ship or airplane continue to be regulated at the port of Philadelphia if the ship or airplane "arrived" in the port of New York from Europe, and then moved to the port of Philadelphia? Or would garbage on a ship or airplane be regulated at the port of Honolulu if the ship or airplane "arrived" in the port of Hilo from the United States Virgin Islands, and then moved to Honolulu?

In general, it was intended that garbage on or removed from these means of conveyance would be regulated at subsequent ports in the specified jurisdictions (exceptions are discussed above), since plant pests and disease organisms could still be on the means of conveyance at subsequent ports. The proposed amendments to the garbage regulations reflect this intent.

Northern Mariana Islands

The definition of "territories or possessions" in the current garbage regulations in 7 CFR does not include the Northern Mariana Islands. The Northern Mariana Islands *are* included in an otherwise identical definition in the garbage regulations in 9 CFR. Because the Northern Mariana Islands are a trust territory of the United States and because plant pests exist there that could spread to other jurisdictions in the United States, the Northern Mariana Islands would be included in the definition of "territories or possessions" in the garbage regulations in 7 CFR.

Miscellaneous

This document would also make certain nonsubstantive charges in the regulations for clarity.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this proposed rule would have an effect on the economy of less than 100 million dollars; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United-States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Although this document proposes changes that appear to be significant for helping to prevent the dissemination of plant pests and livestock and poultry

diseases, in almost all cases the adoption of the proposal would not require persons to change their current practices.

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

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 7 CFR Part 330

Customs duties and inspection, Garbage, Plant diseases, Plants (Agriculture), Quarantine, Transportation.

List of Subjects in 9 CFR Part 94

Animal diseases, Garbage, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products.

Title 7—[Amended]

PART 330—FEDERAL PLANT PEST REGULATIONS, GENERAL: PLANT PESTS: SOIL, STONE, AND QUARRY PRODUCTS: GARBAGE

Accordingly, 7 CFR Part 330 would be amended as follows:

1. The authority citation for Part 330 would be revised to read as follows:

Authority: 7 U.S.C. 147A, 150bb, 150dd–150ff, 161, 162, 164a, 450, 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 330.100, all definitions would be placed in alphabetical order and all lettered paragraph designations would be removed; and the definitions of "garbage" and "territories or possessions" would be revised and a new definition of "regulated garbage" would be added, to read as follows:

§ 330.100 Definitions.

* * * * *

Garbage. That material designated as "garbage" in § 330.400(b).

* * * * *

Regulated garbage. That material designated as "regulated garbage" in § 330.400(c) and § 330.400(d).

* * * * *

Territories or possessions. Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

* * * * *

3. In § 330.400, the heading would be revised; paragraph (a) would be revised; paragraphs (b), (c), and (d) would be redesignated as paragraphs (g), (h), and (i) respectively; and new paragraphs (b), (c), (d), (e) and (f) be added, as follows:

§ 330.400 Regulation of certain garbage.

(a) Hawaii, Puerto Rico, the Virgin Islands of the United States, Guam, and all other Insular Possessions of the United States are hereby quarantined, and the movement therefrom to other parts of the United States of garbage is hereby regulated as provided in this section to prevent the spread of the dangerous plant diseases and insect pests specified in §§ 318.13, 318.58, and 318.82 or other plant pests which exist in such areas. Also, to prevent the dissemination of plant pests and livestock and poultry diseases, garbage is regulated as otherwise provided in this part because of international movements of means of conveyance.

(b) *Garbage.* For purposes of this part, garbage means all waste material derived in whole or in part from fruits, vegetables, meats, or other plant or animal (including poultry) material, and other refuse of any character whatsoever that has been associated with any such material on board any means of conveyance, and including food scraps, table refuse, galley refuse, food wrappers or packaging materials, and other waste material from stores, food preparation areas, passengers' or crews' quarters, dining rooms, or any other areas on means of conveyance. For purposes of this part, garbage also means meals and other food that were available for consumption by passengers and crew on an aircraft but were not consumed.

Note.—Not all garbage is regulated for the purposes of this part. Garbage regulated for the purposes of this part is defined as "regulated garbage" in paragraphs (c) and (d) of this section.

(c) *Garbage regulated because of movements outside the United States or Canada.* For purposes of this part, garbage on or removed from a means of conveyance is regulated garbage, if, when the garbage is on or removed from the means of conveyance, the means of conveyance has moved within the previous 2-year period to any port outside the United States and Canada. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1.* Garbage on or removed from a means of conveyance other than an aircraft is *not* included as regulated garbage under paragraph (c) of this section, if the following conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an inspector stating the following:

(A) That the means of conveyance had first been cleared of all garbage and of all meats and meat products, whatever the country of origin, except sterile, canned, cooked meats that are shelf-stable without refrigeration; all fresh and condensed milk and cream from countries designated in 9 CFR 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs; and

(B) That the means of conveyance had then been cleaned and disinfected under the inspector's supervision; and

(ii) Since being cleaned and disinfected, the means of conveyance has not visited a non-Canadian foreign port.

(2) *Exception 2.* Garbage on or removed from an aircraft is *not* included as regulated garbage under paragraph (c) of this section if the following conditions are met when the garbage is on or removed from the aircraft:

(i) The aircraft had been cleared of all garbage and all stores; and

(ii) After the garbage and stores referred to in paragraph (c)(2)(i) of this section were removed, the aircraft has not moved to a non-Canadian foreign port.

(d) *Garbage regulated because of certain movements to or from Hawaii, territories, or possessions.* For purposes of this part, garbage on or removed from a means of conveyance is regulated garbage, if at the time the garbage is on or removed from the means of conveyance, the means of conveyance has moved during the previous one-year period, either directly or indirectly, to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii, or to Hawaii from any territory or possession. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1.* Garbage on or removed from a means of conveyance other than an aircraft is *not* included as regulated garbage under paragraph (d) of this section if the following two

conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an inspector, saying that the means of conveyance had been cleared of all garbage and all fresh fruits and vegetables; and

(ii) After being cleared of the garbage and stores referred to in paragraph (d)(1)(i) of this section, the means of conveyance has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(2) *Exception 2.* Garbage on or removed from an aircraft is *not* included as regulated garbage under pargraph (d) of this section if the following two conditions are met when the garbage is on or removed from the means of conveyance:

(i) This aircraft had been previously cleared of all garbage and all fresh fruits and vegetables; and

(ii) After the garbage and stores referred to in paragraph (d)(2)(i) of this section were removed, the aircraft has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(e) Garbage that is commingled with regulated garbage is also regulated garbage.

(f) *Restrictions on regulated garbage.* (1) Regulated garbage shall not be on or removed from a means of conveyance, or be disposed of, unless in accordance with the provisions of this part.

(2) Regulated garbage is subject to general surveillance for compliance with this section by Animal and Plant Health Inspection Service inspectors and to such disposal measures as authorized by section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), section 10 of the Plant Quarantine Act of 1912, as amended (7 U.S.C. 164a), section 2 of the Act of February 2, 1930, as amended (21 U.S.C. 111), and section 306 of the Act of July 17, 1903, as amended (19 U.S.C. 1306), to prevent the dissemination of plant pests and livestock or poultry diseases.

* * * * *

4. § 330.400, all references to "garbage" in redesignated paragraphs (g)(1), (h), and (i)(2) and (i)(3) would be changed to "regulated garbage"; and the first sentence in redesignated paragraph (g)(1) would be revised and made into two sentences to read as follows:

§ 330.400 Regulation of certain garbage.

* * * * *

(g)(1) All regulated garbage must be contained in tight, leak-proof covered receptacles during storage on board a means of conveyance while in the territorial waters, or while otherwise within the territory of the United States. All such receptables shall be contained inside the guard rail if on a watercraft.

* * * * *

Title 9—[Amended]

PART 94—[AMENDED]

Accordingly, 9 CFR Part 94 would be amended as follows:

1. The authority citation for Part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.5, the heading would be revised; paragraph (a) would be revised; paragraphs (b), (c), and (d) would be redesignated as paragraphs (f), (g), and (h), respectively; and new paragraphs (b), (c), (d), and (e) would be added, as follows:

§ 94.5 Regulation of certain garbage.

(a) *Garbage.* For purposes of this part, garbage means all waste material derived in whole or in part from fruits, vegetables, meats, or other plant or animal (including poultry) material, and other refuse of any character whatsoever that has been associated with any such material on board any means of conveyance, and including food scraps, table refuse, galley refuse, food wrappers or packaging materials, and other waste material from stores, food preparation areas, passengers' or crew's quarters, dining rooms, or any other areas on means of conveyance. For purposes of this subpart, garbage also means meals and other food that were available for consumption by passengers and crew on an aircraft but were not consumed.

Note.—Not all garbage is regulated for the purposes of this part. Garbage regulated for the purposes of this part is defined as "regulated garbage" in paragraphs (b) and (c) of this section.

(b) *Garbage regulated because of movements outside the United States or Canada.* For purposes of this part, garbage on or removed from a means of conveyance is regulated garbage, if, when the garbage is on or removed from the means of conveyance, the means of conveyance has moved within the previous 2-year period to any port outside the United States and Canada. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1.* Garbage on or removed from a means of conveyance other than an aircraft is *not* included as regulated garbage under paragraph (b) of this section if the following conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an inspector stating the following:

(A) That the means of conveyance had first been cleared of all garbage and of the following: All meats and meat products, whatever the country of origin, except sterile, canned, cooked meats that are shelf-stable without refrigeration; all fresh and condensed milk and cream from countries designated in 9 CFR 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs; and

(B) That the means of conveyance had then been cleaned and disinfected under the inspector's supervision; and

(ii) Since being cleaned and disinfected, the means of conveyance has not visited a non-Canadian foreign port.

(2) *Exception 2.* Garbage on or removed from an aircraft is *not* included as regulated garbage under paragraph (b) of this section if the following two conditions are met:

(i) The aircraft had been cleared of all garbage and all stores; and

(ii) After the garbage and stores referred to in paragraph (b)(2)(i) of this section were removed, the aircraft has not moved to a non-Canadian foreign port.

(c) *Garbage regulated because of certain movements to or from Hawaii, territories, or possessions.* For purposes of this part, garbage on or removed from a means of conveyance is regulated garbage, if the means of conveyance has moved during the previous one-year period, either directly or indirectly, to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1.* Garbage on or removed from a means of conveyance other than an aircraft is *not* included as regulated garbage under paragraph (c) of this section if the following two conditions are met when the garbage is

on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an inspector, stating that the means of conveyance has been cleared of all garbage and all fresh fruits and vegetables; and

(ii) After being cleared of the garbage and stores referred to in paragraph(c)(1)(i) of this section, the means of conveyance has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(2) *Exception 2.* Garbage or or removed from an aircraft is *not* included as regulated garbage under paragraph (c) of this section if the following two conditions are met when the garbage is on or removed from the means of conveyance:

(i) The aircraft had been cleared of all garbage and all fresh fruits and vegetables; and

(ii) After the garbage and stores referred to in paragraph (c)(2)(i) of this section were removed, the aircraft has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(d) Garbage that is commingled with regulated garbage is also regulated garbage.

(e) *Restrictions on regulated garbage.* (1) Regulated garbage shall not be on or removed from a means of conveyance, or be disposed of, unless in accordance with the provisions of this part. (2) Regulated garbage is subject to general surveillance for compliance with this section by Animal and Plant Health Inspection Service inspectors and to such disposal measures as authorized by section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), section 10 of the Plant Quarantine Act of 1912, as amended (7 U.S.C. 164a), section 2 of the Act of February 1, 1903, as amended (21 U.S.C. 111), and section 306 of the Act of July 17, as amended (19 U.S.C. 1306), to prevent the dissemination of plant pests and livestock or poultry diseases.

* * * * *

3. In § 94.5, all references to "garbage" in redesignated paragraphs (f)(1), (g), and (h)(2) and (h)(3) would be changed to "regulated garbage"; and the first sentence in redesignated paragraph (b)(1) would be revised and made into two sentences to read as follows:

§ 94.5 Regulation of certain garbage.

(f)(1) All regulated garbage must be contained in tight, leak-proof covered receptacles during storage on board a means of conveyance while in the territorial waters, or while otherwise within the territory of the United States. All such receptacles shall be contained inside the guard rail if on a watercraft.

* * *

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Done in Washington, DC, this 14th day of April, 1987.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[Doc. 87-8659 Filed 4-17-87; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, and 70

Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: In 1981, the Nuclear Regulatory Commission (NRC) issued orders to require certain NRC fuel cycle and other radioactive material licensees to submit emergency plans to the NRC. The NRC is now proposing to amend its regulations to place a requirement for such emergency plans in its regulations. The proposed rule would require the approximately 30 licensees subject to the orders to revise their existing emergency plans which include, among other things, descriptions of the means and equipment to mitigate the consequences of an accident and to promptly notify offsite response organizations if an accident occurs that might result in a significant release of licensed radioactive material.

DATES: Comment period expires July 20, 1987. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

A free single copy of the draft Regulatory Analysis, including the environmental assessment and finding of no significant impact (NUREG–1140), may be obtained by writing to the Distribution Section, Document Control Branch, Division of Information Support Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Copies of NUREG–0762, –0767, –0810, –1179, –1189, and –1198, the technical reports referenced in this notice, may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Copies of the above NUREG reports and also comments received by the Commission on the proposed rule are available for inspection or copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen A. McGuire, Regulation Development Branch, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (telephone: (301) 443–7900).

SUPPLEMENTARY INFORMATION:

Background

During the Commission's deliberations concerning nuclear power plant emergency preparedness after the Three Mile Island accident, the Commission directed the staff to evaluate the need to change the emergency preparedness regulations for fuel cycle and other radioactive material licensees.

In late 1980, the staff reevaluated previously submitted emergency plans for radioactive releases for fuel fabrication plants and found some apparent weaknesses. For example, some plans did not have arrangements for the prompt notification of offsite response organizations.

Upon noting these weaknesses, the NRC staff prepared orders requiring 62 licensees to submit comprehensive onsite radiological contingency plans (46 FR 12566). These orders, which were issued in February 1981, required some licensees, based on their licensed possession limits, to plan for actions that would be needed in the event of an accident. The actions would be those necessary to: protect workers, limit the release of radioactive materials, and mitigate adverse consequences of the accident. The orders were issued to operators of fuel processing and fabrication plants, UF_6 production plants, and radioactive material users authorized to possess large quantities of radioactive materials in unsealed form. The licensees selected were those

authorized to possess quantities of radioactive materials that could as a result of a severe accident potentially result in a radiation exposure in excess of 1 rem effective dose equivalent to someone offsite. As a result of these orders, about half of the affected licensees reduced their authorized possession limits for radioactive material, thus no longer requiring them to submit contingency plans to NRC.

On June 3, 1981, the Commission published in the **Federal Register** (46 FR 29712) an advance notice of proposed rulemaking on emergency preparedness for certain fuel cycle and other radioactive material licensees. In this advance notice, the Commission proposed to codify the radiological contingency planning requirements set forth in the Commission's orders, as well as consider requiring offsite emergency plans. The Commission noted in the advance notice that it would use factors such as possession limits, potential for accidental criticality, chemical toxicity of radioactive materials, and potential radiation hazards for all of the NRC licensees whose radioactive material possession limits were such that severe accidents could result in offsite radiation doses exceeding the lower end of the protective action guides established by the EPA.

Public Comments on the Advance Notice of Proposed Rulemaking

The Commission received 18 responses to its advance notice of proposed rulemaking. Comments were received from five Federal agencies, four State agencies, five corporations, one university, one laboratory, one nonprofit Federal corporation, and the Conference of Radiation Control Program Directors. The following discussion summarizes the major comments and gives the Commission's response to each comment.

Comment: Many commenters questioned the need for the suggested regulations. One Agreement State said there is ". . . little likelihood of a serious accident; those incidents which have occurred have been handled adequately without pre-existing plans, using existing resources and guidelines." Commenters said that many of the facilities that would be covered do not have the potential to exceed the EPA s protective action guide dose of 1 rem under any credible accident conditions. Uranium mills, UF_6 conversion plants, and low-level waste burial grounds were cited by commenters as examples. Another example where emergency plans were not considered necessary was the case in which the radioactive materials are spread among many different buildings so that release of a large proportion due to a single event is not credible. Several commenters said NRC already requires them to be adequately prepared to respond to an emergency, and that there is no need for additional regulations. The Agreement States of New Mexico and Washington said they were already adequately prepared for any credible accident and saw no need for a regulation. On the other hand, the State of New York saw a need to reevaluate the adequacy of its existing emergency planning.

One commenter said the need for the regulation should be tested against past accident experience to determine the urgency and realism of the proposal. Another commenter said that, compared to nuclear power plants, fuel cycle and byproduct material licensees have much less radioactive material, do not have a large energy source to act as a driving force and do not concentrate their radioactive materials in a single location. Thus the consequence of an accident would be much smaller, and there would never be a need to evacuate or shelter people.

Response: The NRC has carefully analyzed accident source terms, potential release fractions, and radiation doses attributable to a range of accidents at fuel cycle and other radioactive material licensees. The details are given in "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees," NUREG–1140. Specific conservative accident scenarios have been considered for specific types of licensees, and release fractions and doses have been calculated based on these scenarios. The accident history of different types of facilities has been considered. As a result of the analysis, some facilities, such as uranium mills and depleted uranium metal processors, are excluded from needing an emergency plan for responding to a release.

On the other hand, the analysis does indicate that, at a few licensed facilities, offsite doses due to an accident might theoretically exceed the lower end of the range of doses for which the EPA recommends that protective actions to protect the public be considered. In addition, in a few cases an accident could cause significant exposure to chemically toxic soluble uranium. The NRC would especially like to receive comments on the accident scenarios presented in the analysis. The NRC is particularly interested in comments concerning the conservatism in the analysis as it pertains to specific classes of facilities.

Comment: A second major comment was that the need for emergency plans should be evaluated on a case-by-case basis. Several examples were given where the licensed possession limits might indicate the need for a plan, but the actual circumstances would make a large release impossible. For example, a radiopharmaceutical manufacturer said that it uses only a small quantity of its iodine-125 at one time. The rest is stored in lead containers in a fume hood, the air from which is filtered three times before release. Commenters said the remoteness of the site should be a factor taken into consideration. In the case of one uranium mill, the nearest residence is 22 miles away. The comment was made that case-by-case review of the need for plans is feasible because so few licensees would be affected.

Response: The proposed rule would allow licensees the opportunity to demonstrate that an emergency plan for responding to a release would not be needed because no reasonably forseeable accident could result in doses to the public approaching the protective action guides.

Comment: Several commenters thought FEMA review of State and local emergency response capabilities was unnecessary because possible accidents would be so much smaller than at nuclear power plants. It was said that simpler, less complex review and evaluation processes were better. Several Agreement States objected to a FEMA review of their programs. Other commenters thought FEMA could make valuable contributions.

Response: The NRC has considered the nature and depth of the needed offsite coordination in the previously mentioned Regulatory Analysis and concluded that written site-specific State and local plans reviewed by FEMA are not needed because the accidents can be responded to as part of the community's general emergency response capabilities. These necessary capabilities (e.g., fire, ambulance, police support) are routinely used for emergencies of all sorts. The small potential doses, small areas affected, and small numbers of people involved are factors indicating that the community's normally existing emergency response capabilities are adequate and that additional response capabilities are not necessary.

Comment: Some commenters thought failure of uranium mill tailing dams should be included.

Response: The NRC has considered these events and concluded that they should not be included because radiation doses associated with such

accidents are so low that EPA protective action guides would not be exceeded even over a very long time (months or years), nor would the licensed materials present a chemical toxicity hazard. A complete explanation is presented in "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees," NUREG–1140.

Comment: Many commenters thought the NRC should provide a document describing the contents of the licensee's emergency plans and the nature of the preparedness needed.

Response: The NRC agrees and plans to revise its reports, NUREG–0762, "Standard Format and Content for Radiological Contingency Plans for Fuel Cycle and Materials Licensees," and NUREG–0810, "Standard Review Plan for the Review of Radiological Contingency Plans for Fuel Cycle and Materials Facilities." The revised reports will be published, possibly as Regulatory Guides, concurrently with the final rule.

Comment: Several commenters thought the suggested regulations would be burdensome and expensive to both licensees and to States and that the cost would greatly exceed the benefits.

Response: The NRC believes that the rule will not be excessively expensive or burdensome to States or local governments. States and local governments will not be expected to write specific plans for specific facilities or have other special emergency preparedness. The NRC believes that the normally available capabilities of States and local governments for responding to industrial emergencies and the normally available radiological health capabilities of States will be adequate to deal with accidents at fuel cycle and other radioactive material licensees. These radiological emergencies would involve small (not life threatening) doses, small areas, and small numbers of people. The potential risks are much lower than the risks from accidents involving chemical plants or the shipping of hazardous chemicals, to which States and local governments routinely respond. In other words, the response to radiological accidents at fuel cycle and other radioactive materials licensees can and should be handled by State and local governments as part of their normal emergency response capability without additional resources. Thus, an adequate level of emergency preparedness should not be a financial burden to State and local governments.

With regard to benefits, the benefits are admittedly small because of the low probability of exceeding protective action guide doses and the low probability that a dose of a few rems would have harmful consequences. Although costs to licensees were found to exceed potential benefits (see Regulatory Analysis, Section 3), the Commission concludes that the protection provided by engineered safety features should be bolstered by the ability to mitigate the consequences of an accident and reduce potential releases of radioactive materials.

Comment: Several commenters thought NRC should provide funding to States for State planning.

Response: The NRC sees no need for funding for State planning because a need for site-specific State planning beyond the emergency preparedness capabilities normally present has not been identified.

Comment: Several commenters objected to the way in which EPA's protective action guides were applied. They said the whole body guide was actually a 1 rem to 5 rem range, whereas the NRC arbitrarily selected 1 rem.

Response: The NRC considers 1 rem as the point at which planning should begin. The potential releases are relatively small, and the areas and numbers of people involved are small. Thus, it is practical to consider actions at the lower end of the protective action guide range.

Comment: Other commenters said that the ICRP Publication 26 methodology should be used to determine the protective action guides for radioactive materials that are inhaled and deposited in the body.

Response: The ICRP Publication 26 methodology was used.

Comment: One commenter said Part 72 spent fuel storage licensees should be covered under the regulation.

Response: The need for licensee emergency procedures for accidental releases by Part 72 licensees is being considered in a separate rulemaking published for public comment on May 27, 1986 (51 FR 19106).

Comment: One commenter said sealed sources should be covered under this regulation.

Response: The NRC considers that there is no need to include most sealed sources in this rulemaking because sealed source accidents are already adequately dealt with in other parts of the regulations. (See, for example, §§ 20.402(a), 20.403, 30.33(a)(2), 34.25, 34.32(g) and (h), and 70.60). In addition, based on the history of accidents involving sealed sources at licensed facilities, the NRC finds that additional emergency preparedness beyond that now existing at these facilities is not warranted.

However, the NRC has included in its rulemaking foils, plated sources, thin-window sealed sources (such as those sometimes used for americium-241) and sealed sources using low-melting temperature metal such as aluminum. The NRC is continuing to study this matter and specifically requests experimental information or other analyses on whether these types of sealed sources should be included in the rule.

Comment: The comment was made that a large number of byproduct material licensees do not list the specific radionuclides they will possess, but only a total curie limit for classes of nuclides, for example those with atomic numbers 3 through 83. (This approach is recommended in Regulatory Guide 10.5, "Applications for Type A License of Broad Scope," Item 8A and Item 8D.) This makes it impossible to determine, based on possession limits, whether extensive emergency preparedness is really appropriate.

Response: The NRC will not require emergency plans for a facility unless a significant accidental release of radioactive materials is credible. If a licensee would be covered by the rule because the licensee is authorized to possess material it does not possess and has no intention of possessing in the future, the solution is for the licensee to request a license amendment to reduce the licensed possession limit. If the licensee actually possesses or may possess in the future enough material to be covered by the regulation, but there are site-specific reasons why a significant release is not credible, the proposed rule would allow the licensee to demonstrate this.

The Proposed Rule

The Commission is proposing amendments to 10 CFR Parts 30, 40, and 70 on emergency preparedness. The proposed rule would cover fuel cycle and other radioactive material licensees that may have the potential for a significant accidental release of NRC-licensed materials. These proposed regulations would require certain licensees to maintain emergency plans for responding to such accidents.

Licensees Needing Plans

The criteria selected for establishing whether a licensed facility would be required to establish and maintain special emergency plans for significant accidental releases are whether a credible severe accident could theoretically deliver a radiation dose of 1 rem effective dose equivalent, 5 rems to the thyroid, or soluble uranium intake

exceeding 2 milligrams to a member of the public.

The EPA recommends that actions to protect the public be considered if projected whole body doses due to an accident are in the range of 1 to 5 rems, taking into account the practicality of the actions that would be taken. The proposed rule uses the 1-rem low end of the dose range as the criteria for establishing whether a licensed facility needs an emergency plan for responding to a release. In addition, conservative assumptions have been used to estimate the doses which could result from an accident. Doses that would result from an actual accident should realistically be far below the calculated doses on which the regulation is based.

The EPA's draft protective action guides apply to radiation received uniformly over the body. These guidelines are not applicable if the radiation dose is not uniform or if only some body organs receive the radiation dose. To account for radionuclides that are deposited nonuniformly in the body, such as those possessed by fuel cycle and other radioactive material licensees, the effective dose equivalent from these radionuclides is used to replace the whole body dose equivalent.

The effective dose equivalent is defined as the sum of the external radiation dose equivalent plus the dose equivalent to each body organ due to radioactivity deposited within the body multiplied by a risk weighting factor for the organ. The weighting factors are taken from "Recommendations of the International Commission on Radiological Protection," ICRP Publication 26, Pergamon Press, Oxford, 1977.

The conservative accident scenarios and dose calculations which form the technical basis for the proposed rule are described in detail in the previously mentioned "Regulatory Analysis of Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees," NUREG–1140.

Except for radioiodine doses, which are calculated for infants, doses are calculated for an average adult. Doses to infants and older children would be slightly different due to differences in their metabolisms. Unfortunately, doses to age groups younger than adults have not been calculated for the modern ICRP Publication 26 dosimetric models except for a few radionuclides. The NRC considers the differences between adult doses and child doses to be insignificant in comparison with the other uncertainties in the analysis. The NRC also considers that the inherent conservatism in its accident dose calculations and its use of the 1-rem lower end of the range for protective action consideration provide an adequate margin of safety. Public comments on this item are specifically requested.

For most licensees who would be required to establish and maintain a plan, the degree of risk is small. For most licensees, even worst-case doses to an individual on the plume centerline resulting at any distance are less than 5 or 10 rems. Realistically, actual doses that anyone would receive should be far lower. Finally, the probability of a serious radiological accident is small, less than 10^{-4}/yr, and the probability of a serious accident simultaneous with highly adverse meteorology is less than 10^{-5}/yr. Details are provided in the Regulatory Analysis, NUREG–1140, Sections 2.4, 2.5, and 3.

The rupture of a large heated cylinder of UF_6 is an exception in that both the probability and the consequences due to the chemical toxicity of the released material could be of greater concern than the radiation doses from any plausible accident at fuel cycle or other radioactive material facilities. As part of the analysis for this proposed rulemaking, the rupture outdoors of a hot cylinder containing 14 tons of UF_6 was analyzed, and predictions were made concerning the consequences of such a rupture. These predictions have been compared with the results of the actual release that occurred during the January 4, 1986, accident at the Sequoyah facility ("Rupture of a Model 48Y UF_6 Cylinder and Release of Uranium Hexafluoride," NRC Report NUREG–1179, February 1986). The quantity and duration of the release were quite close to what was predicted. Also, it appears that the actual onsite and offsite consequences were also quite close to what was predicted. ("Assessment of the Public Health Impact from the Accidental Release of UF_6 at the Sequoyah Fuels Corporation Facility at Gore, Oklahoma," NRC Report NUREG–1189, March 1986.)

Airborne releases due to a severe accident at these licensed facilities are likely to occur rapidly with little warning. The only types of accidents identified in NUREG–1140 for which protective action guide doses or the 2-milligram soluble uranium intake could theoretically be exceeded are a fire, a UF_6 cylinder rupture, and a criticality accident. Public input is sought on other types of accidents that might lead to significant releases of licensed materials. Releases from a fire could start even before the fire is detected or shortly thereafter. Plume travel time to nearby people is likely to be no more than a few minutes. Releases would usually end within half an hour to an hour when the local fire department has controlled the fire. As a result, protective actions must be taken very quickly to be effective.

In view of two factors—(1) realistically, radiation doses and soluble uranium intakes should generally be low compared to protective action guides and (2) the fast-moving nature of the accidents of concern—evacuation planning is not necessary, appropriate, or feasible. In particular, evacuation of neighborhoods before plume arrival will generally not be possible. Instead the emphasis of emergency preparedness should be on ending the accident as quickly as possible, reducing the quantity of material released, protecting workers onsite, and promptly restoring the facility to a safe condition. Offsite, it would be appropriate for police and fire personnel to move people out of areas of dense smoke or fumes or get them to seek shelter indoors. Such actions are routine for fires and chemical releases and would be expected whether there were an emergency plan or not.

The proposed amendments to Parts 30, 40 and 70 would require that licensees authorized to possess in excess of certain quantities of byproduct materials, source materials, and special nuclear materials must submit emergency plans for responding to releases or an evaluation that shows that offsite doses due to a release of radioactive materials under reasonable and plausible circumstances would not exceed 1 rem effective dose equivalent, a thyroid dose of 5 rems, or a soluble uranium intake exceeding 2 milligrams. The proposed rule would also cover any future plutonium fuel fabrication plants.

The table of quantities in Part 30 that would require evaluation of the need for an emergency plan was taken from "A Regulatory Analysis of Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees," NUREG–1140. The table lists quantities that might theoretically deliver an effective dose equivalent of 1 rem in the event of a severe accident. The quantities were calculated by assuming that the most exposed member of the public would inhale a fraction of 10^{-6} of those materials. External doses from cloudshine and groundshine are then added to the internal dose. The 1-rem effective dose equivalent is a 50-year dose commitment calculated by the methods of ICRP Publications 26, 28, and 30.

The table in Part 30 includes all nuclides, except for I–129, listed on 20 or more of NRC's approximately 9,000 byproduct material licenses. (I–129 was

not included in the table because saturation would prevent the thyroid from absorbing enough I–129 to reach the 5-rem protective action guide for thyroid dose. Thus, I–129 is too weakly radioactive to be significant to emergency planning.) The table also includes all betagamma emitters listed on any license for which the quantity to deliver a 1-rem effective dose equivalent would be less than 10,000 curies. The table also includes all alpha emitters listed on any license for which the quantity to theoretically deliver a 1-rem effective dose equivalent would be less than 2 curies.

The quantities in the table in Part 30 are different from quantities previously published in NUREG–0767, "Criteria for Selection of Fuel Cycle and Major Materials Licensees Needing Radiological Contingency Plans," Federal Register Notices with Orders to Licensees (46 FR 12566), and an Advance Notice of Rulemaking (June 3, 1981; 46 FR 29712). The main reasons for the differences are: (1) Dosimetric models from ICRP Publications 26, 28, and 30 have been used instead of the older models from ICRP Publication 2; and (2) release fractions have changed as the result of further study. The intercept fraction remains 10^{-6} for nondepositing radionuclides. In addition, two new pathways, external radiation from groundshine and from cloudshine, are included.

In Part 40, emergency plans would be required only for handling significant quantities of uranium hexafluoride. It was concluded in NUREG–1140 that uranium and thorium in chemical forms less volatile than uranium hexafluoride would not require emergency plans because plausible releases could not cause doses exceeding 1 rem effective dose equivalent, the threshold dose for requiring an emergency plan. The dose threshold would not be exceeded because the low volatility of uranium and thorium compounds, other than uranium hexafluoride, causes low release fractions and because the low specific activities of uranium and thorium result in low doses from a given weight of material.

The chemical toxicity of uranium and thorium are also not of concern except for the highly soluble uranium from a uranium hexafluoride release. Other compounds of uranium or thorium would not cause as large an intake due to lower quantities released and are not as acutely toxic as the very soluble uranium compound created by the uranium hexafluoride release.

In Part 70, plans would be required for potential releases of plutonium and releases due to criticality accidents in addition to uranium hexafluoride releases. The analyses for criticality accidents and plutonium releases are included in NUREG–1140.

Hazardous Chemical Releases

The NRC also considered requiring emergency planning for NRC-licensed facilities with nonradioactive hazardous chemicals. Certain NRC-licensed facilities that would be required to have an emergency plan for radioactive materials might also have nonradioactive hazardous chemicals. The issue of offsite emergency planning, preparedness, and response for release of hazardous chemicals is addressed by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, enacted October 17, 1986. (Single copies are available without charge by visiting or writing: Senate Document Room, Hart Senate Office Building, Room B–04, Washington, DC 20510.) Title III of that Act, independently entitled, "Emergency Planning and Community Right-To-Know Act of 1986," establishes a comprehensive and detailed program under the auspices of EPA and FEMA for community involvement, planning, training, emergency notification, response, and enforcement in the event of an offsite release of hazardous, extremely hazardous, and toxic chemicals. All facilities with a threshold quantity of any of several hundred listed chemicals are subject to the Act. By interim final rule, the EPA established threshold planning quantities and associated reportable quantities (November 17, 1986, 51 FR 41570).

The Act requires each State to establish local emergency planning committees in each area with a facility possessing in excess of the threshold quantities of hazardous chemicals. Facility operators are required to notify the emergency coordinator of the local emergency committee immediately upon a release of a reportable quantity of a listed hazardous chemical. Notification to the local coordinator of the release of an unlisted chemical is required as well if the chemical is subject to the entirely separate reportable quantities requirement of Superfund. The Act is to be fully implemented by October 16, 1988. Failure to immediately report a release may cause the facility owner or operator to be subject to an EPA fine of up to $25,000 (and imprisoned for up to two years if the violation is willful).

The Act also requires that each local emergency planning committee prepare an emergency plan for facilities under its jurisdiction. Plans must include the following: "(1) Identification of facilities subject to the requirements . . . (2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release . . . (3) Designation of a community response coordinator and facility emergency coordinators . . . (4) Procedures providing reliable, effective, and timely notification by the facility response coordinators and the community response coordinator to persons designated in the emergency plan and to the public that a release has occurred . . . (5) Methods for determining the occurrence of a release and the area or population to be affected by such release . . . (6) A description of emergency equipment and facilities in the community and at each facility . . . and identification of the persons responsible for such equipment and facilities . . . (7) Evacuation plans . . . (8) Training programs, including schedules for training of local emergency response and medical personnel . . . and (9) Methods and schedules for exercising the emergency plan."

The Act requires facility owners and operators to promptly provide local emergency planning committees with any information the committees need to develop and implement the emergency plans. Failure to provide requested information may result in an EPA fine of no more than $25,000 per day.

The Act presently does not cover radioactive materials because these are not listed in the Statutory reference (Chemical Emergency Preparedness Program, USEPA, November 1985, Revision 1, 9223.9–1A, available from EPA). However, a comparison of the content of a licensee's radiological emergency plan as would be required by this proposed rule indicates that the information likely to be requested from facility owners and operators by local emergency response committees if radiological hazards were covered would be contained in plans that meet the NRC's proposed rule.

A preliminary review of the EPA reference listed chemicals indicates that any NRC materials licensee that would be subject to radiological emergency planning for releases of radioactive materials will likely be subject to the new law. It is also highly likely that several hundred, if not thousands, of other materials licensees, that would not be subject to radiological emergency planning, will be subject to the new law. The new law is more comprehensive, detailed, and demanding than any program contemplated or recommended by the NRC staff for offsite emergency planning for nonradiological chemical

hazards. State and local participation in the emergency response program is mandatory, and the issuance of other permits and licenses to a chemical facility operator is not made contingent upon facility compliance. Rather, facility compliance is expected because of heavy civil penalties for failure to abide by the recordkeeping, reporting and notification provisions of the Act.

The NRC staff, accordingly, believes that the obligation of NRC to ensure adequate emergency planning and response for release offsite of hazardous chemicals can be met by requiring that applicants for licenses and for license renewals who would be subject to the radiological emergency planning requirements being proposed demonstrate and maintain substantial compliance with the Emergency Planning and Community Right-To-Know Act of 1986. Therefore, the proposed rule would require NRC licensees having the potential for significant offsite releases of radioactive materials to also demonstrate compliance with the requirements of the Emergency Planning and Community Right-To-Know Act of 1986 with respect to hazardous chemicals they may possess.

Licensees that would not be required by the rule to have an emergency plan for licensed material also would not be required to demonstrate to NRC compliance with the Emergency Planning and Community Right-to-Know Act of 1986. The proposed rule is directed toward and would affect only those licensees with the potential for a significant release of licensed radioactive material, taking into account both the radioligical and chemical toxicity of the licensed material. Undoubtedly, many NRC licensees who would not be covered by the proposed rule possess in excess of the threshold quantities of some hazardous chemical. The NRC in this rulemaking has not made a finding that those hazardous chemicals do not require emergency preparedness. Rather, the licensees are still required by EPA to comply with the requirements of the Emergency Planning and Community Right-to-Know Act of 1986 and would be subject to severe civil and criminal penalties for failure to comply.

Uranium hexafluoride production facilities are covered by the Act because they possess hydrogen fluoride and fluorine, both of which are on the list of hazardous chemicals. The local emergency planning committee for each area is required by the Act to decide, among other things, the area or population that could be affected by a release as well as procedures for timely notification of the public. NUREG–1140 recommended a distance of one mile from the release point as the area affected. This distance is based on U.S. Department of Transportation criteria for releases of hazardous chemicals in transport accidents. The criteria are those used by the Johns Hopkins University Laboratory Applied Physics Laboratory to derive the emergency action distances given in "Hazardous Materials-Emergency Response Guidebook," U.S. Department of Transportation Report DOT–P5800.2, 1980. However, the local emergency planning committees may select any distance of criteria they consider appropriate. In addition, the local emergency preparedness committees also select the means of notifying the public.

Lessons Learned From a Uranium Hexafluoride Release

On January 4, 1986, a cylinder filled considerably above its 14-ton capacity with uranium hexafluoride ruptured while being heated at the Sequoyah Fuels Corporation facility in Gore, Oklahoma. One worker died and several other workers were injured. The death and injuries were caused by exposure to hydrogen flouride, produced by a reaction of the uranium hexafluoride with airborne moisture.

After the accident, the NRC formed a Lessons-Learned Group that reviewed the accident and recommended improvements. (See "Release of UF_6 from a Ruptured Model 48Y Cylinder at Sequoyah Fuels Corporation Facility: Lessons-Learned Report," NRC report NUREG–1198, June 1986.) A number of the recommendations are relevant to this proposed rule and are discussed here. Readers wanting to know why the recommendations were made should refer to NUREG–1198.

Recommendation 3.1.1.2. (1). "The individuals responsible for development, maintenance, updates, and implementation of the contingency plan (i.e., the emergency plan) should be clearly identified at both the corporate and site levels."

Resolution. The recommendation was adopted in the proposed rule. The proposed rule would require each plan to describe the responsibilities of the licensee's personnel should an accident occur including responsibilities for developing, maintaining, and updating the plan.

Recommendation 3.1.1.2 (2). "Audits of contingency plan implementation should be conducted by individuals not having direct implementation responsibility, and the audits should include evaluation of the appropriateness of the plan, procedures, facilities, equipment (including location of facilities and equipment), training and periodic exercise in the spectrum of accidents or emergencies possible at the facility."

Resolution. The recommendation was generally adopted in the proposed rule by requiring that exercises be evaluated by individuals not having direct implementation responsibility for the plan. Audits of exercises should provide a good indication of how well the plan would really work in an emergency.

Recommendation 3.1.2.2 (1). "A systematic training program should be established to familiarize all plant personnel with the general contents of the contingency plan and appropriate response actions. Specific training should be provided to individuals (both site and corporate) who might be assigned specific response function and responsibilities."

Resolution. The recommendation was adopted in the proposed rule. The proposed rule would require the licensee to train workers how to respond in an emergency.

Recommendation 3.1.2.2 (2). "Offsite organizations who might be requested to support an emergency response should be invited to attend training specific to the response expected."

Resolution. The recommendation was adopted in the proposed rule. The proposed rule would require the licensee to offer instruction and orientation tours to fire, police, medical, and other offsite emergency personnel.

Recommendation 3.1.3.2. (1). "Drills and exercises involving substantial staff response to a spectrum of simulated emergency situations should be conducted periodically. The simulated events should be based on prepared scenarios to demonstrate specific objectives, and they should be observed and critiqued by qualified personnel. Any deficiencies observed should be evaluated and responsibility for corrective action assigned and followed."

Resolution. The recommendation was adopted in the proposed rule. The proposed rule would require quarterly communication checks and annual exercises to test response to simulated emergencies. Audits of exercises would be required by personnel having no direct implementation responsibility. Deficiencies in the plan would have to be corrected.

Recommendation 3.1.3.2. (2). "Drills and exercises should periodically include the offsite organizations which might be called upon for support (local

police, civil defense, health departments, etc.), as well as corporate personnel."

Resolution. The recommendation was adopted in the proposed rule. The proposed rule would require the licensee to invite offsite response organizations to participate in the licensee's exercises.

Recommendation 3.1.4.2 (1). "Consider requiring a designated Emergency Operation Center (EOC) onsite and an alternate EOC either offsite or in another onsite location which is unlikely to be impacted by the incident. The EOC and alternate EOC should contain adequate communications capability and accommodations to provide for coordination of the onsite emergency response activities and notifications and coordination with offsite supporting organizations. The EOC or alternate EOC should be accessible 24 hours a day."

Resolution. The proposed rule would require a control point rather than an emergency operations center. The term emergency operations center was intentionally not used in the rule because that term has a specific meaning in nuclear power plant emergency preparedness that would be inappropriate for the smaller, less complex, and generally faster moving accidents that fuel cycle and other radioactive material licenses would have to respond to. The proposed rule would also require the ability to perform notification and coordination even if parts of the facility were unusable due to the accident.

Recommendation 3.1.4.2 (2). "Locations of emergency equipment and kits should be reviewed by the NRC and licensees so that in the event of an emergency in a given facility location, or inaccessiblity of a large portion of the facility, access to adequate emergency equipment and facilities, including emergency decontamination facilities, can be assured. Equipment caches should be in multiple locations."

Resolution. The staff agrees with this recommendation and the proposed rule would require that notification of offsite response organizations and coordination of onsite response efforts be possible even if part of the facility or equipment is unavailable due to the accident. The prosed rule has no other specific requirements for multiple equipment caches, however. The exact locations of emergency equipment is appropriate for consideration when NRC reviews the licensee's submitted emergency plan.

Recommendation 3.1.4.2 (3). "Consideration should be given to providing strategically placed 'air capsule escape units' to allow workers to escape from portions of a facility in which there exists a potential for exposure to toxic fumes for more than a few moments."

Resolution. This recommendation was not specifically adopted in the proposed rule. The proposed rule would require means and equipment for mitigating the consequences of accidents, including those provided to protect workers onsite. However, in general, air capsule escape units are not believed to be useful or practical for accidents at fuel cycle and other radioactive material facilities. In most cases it is believed that the quickest and best way to escape the accident is to leave the area as quickly as possible. In the case of fires and explosions, attempted use of such capsules could increase hazard. Rather than adopt a general requirement, the use of air capsule escape units could be considered on a case-by-case basis for special situations in which ordinary means of escape are not available.

Recommendation 3.1.4.2 (4). "The facility comunications system should include a radio system compatible with local police or other offsite responder communictions systems. In addition, the licensee should attempt to identify beforehand to local and state police, insofar as practical, offsite individuals who would be called on for support in the event of an emergency at the site. Radio communications with police officials during an emergency can resolve specific issues."

Resolution. This recommendation was not specifically adopted in the proposed rule. The proposed rule would require the licensee to provide a means of notifying offsite response organizations, but whether that would include radios is appropriate for negotiation between the licensee and the offsite response organizations on a case-by-case basis. In general, the NRC would recommend radios but would consider other means of maintaining adequate communication. The rule also requires the licensee to provide appropriate instructions to offsite response organizations. The question of lists of individuals who might be called to the site will be discused in a guide on this subject.

Recommendation 3.2.1.2 (1). "The events described in the radiological contingency plan required of certain NMSS licensees should be reviewed to develop a consistent analysis and classification of events. The resulting classification should be used in NRC decision criteria to initiate transition of the NRC from a normal mode to higher response modes."

Resolution. This recommendation was adopted. The proposed rule includes a classification system for accidents.

Recommendation 3.3.2.1.2 (1). "Personnel of local agencies that might be called upon to respond to emergencies should be given training."

Resolution. This recommendation was adopted in the proposed rule. The licensee would be required to offer to police, fire, medical and other offsite emergency personnel information on how to respond to an accident as well as orientation tours of the facility.

Recommendation 3.3.3.2. "Hospital staff who might reasonably be expected to deal with injuries from a major accident should be trained to deal with all aspects of the injuries. Radiological plans and their use in drills are desirable."

Resolution. This recommendation was adopted in the proposed rule. The rule would require the licensee to offer instructions and orientation tours to medical personnel and would require the licensee to invite medical personnel to participate in the licensee's exercises.

Recommendation 3.3.4.2. "Radiological contingency planning should include site control plans and methods for implementing site access control. Local law enforcement groups that might be called on in an emergency should be trained."

Resolution. The NRC agrees with this recommendation, and the propsed rule would require means and equipment for mitigation the consequences of accidents. Site access control plans would be one means of mitigating the consequences of accidents and would be contained in the licensee's plans, as appropriate, for the particular site. The rule would require the licensee to offer instructions and orientation tours to police personnel

Proposed requirements. Licensees would be given the option of demonstrating that emergency plans for responding to accidental releases are not needed because doses would not exceed 1 rem effective dose equivalent as a result of a creditble accident at their specific facility. The table of radionuclides in the proposed regulations was developed using conservative, pessimistic, or "worst-case" assumptions. Each assumption is possible at some "generic" facility, but may not be realistic for a specific actual facility. Thus the licensee is given the option of analyzing accidents for the actual existing facility and determining site-specific maximum credible releases. If after the review, the NRC staff agrees that the resulting doses would be below 1 rem, an emergency plan for responding to the release would not be required.

The licensee also has the option of revising facility design, operating

procedures, or possession limits to reduce potential doses below 1 rem effective dose equivalent in lieu of perparing an emergency plan for responding to an accidental release.

If an emergency plan for responding to an accidental release is needed, it would include:

(1) *Facility description.* A brief description of the licensee's facility and area near the site. The purpose is to provide the reader with enough basic information to evaluate thelicensee's plan. Significant nearby facilities, such as schools, should be included in the site area description.

(2) *Types of accidents.* An identification of each type of accident for which protective actions might be needed. Typically, the accidents of concern are fires involving radioactive materials, releases of large quantities of uranium hexaflouride, and criticalities involving high-enriched uranium or plutonium. Releases of hazardous chemcials that could affect the radiological safety of the facility and result in releases of or exposure to radioactive materials must also be considered.

(3) *Classification of accidents.* A classification system for classifying accidents as site area emergencies or general emergencies. These classes are adopted from nuclear power plant emergency planning, but modified for fuel cycle and other radioactive material licensees. A general emergency means releases that may cause doses offsite exceeding 1 rem effective dose equivalent or 5 rems to the thyroid have occured, are in progress, or may occur. In this case, offsite actions may be needed. A site area emergency means events are in progress or have occurred that reaquire a response from offsite organizations, but doses woud not be expected to exceed 1 rem effective dose equivalent or 5 rems thyroid.

(4) *Detection of accidents.* Identification of the means of detecting each type of accident in a timely manner. The means of detection could include one or more of the following: fire alarms, criticality alarms, visual observation, stack monitors, or radiation monitors, as appropriate.

(5) *Mitigation of consequences.* A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment. Mitigating actions could include actions to reduce or stop the release and actions to protect workers such as evacuating the building or decontaminating personnel. Means for limiting releases could include sprinkler systems and other fire suppression systems, fire detection systems, physical separation of material, storage in fire-resistant containers, use of fire-resistant building materials, fire-fighting capabilities, procedures prohibiting flammable materials in areas where radioactive materials are found, filter systems, use of water sprays to knock-down UF_6, and others.

Equipment might include respiratory protection equipment for employees, evacuation alarms, and equipment possessed by the licensee to reduce or stop the release. It would not include equipment brought to the site by offsite response organizations.

This item is not intended to require backfits or design changes. Plant design is subject to a more complete safety review when the license application is reviewed.

(6) *Assessment of releases.* A brief description of the methods and equipment to assess releases of radioactive materials.

This does not mean real-time assessment. It means measurements made after the release has occurred to determine how much material was released. The NRC does not believe that real-time estimates of releases are generally possible for the types of accidents of concern. Significant releases are not likely to occur by way of monitored release paths. Monitored paths would generally contain filters that would reduce any release to negligible levels. Furthermore, if a release were detected from a monitored release path there would generally be no way to determine that additional material was not being released by way of unmonitored paths. In addition, even if one could assure that the entire release were monitored so that a release rate could be determined, there would be no way to know the duration of the release or whether the release rate would subsequently rise or fall greatly. This situation is different from that at nuclear power plants where the containment can be sampled and therefore the entire inventory subject to release can be calculated. Beyond this, measurements of releases would generally be made much too late to be of any usefulness during the emergency response. The recommended approach therefore is to estimate source terms for each accident type in the *planning* and then decide in the planning what recommendations would be made to offsite response organizations for each accident type. In summary, one cannot wait until a potential accident is underway to decide what recommendations should be made. There is not enough time during the accident.

(7) *Responsibilities.* A brief description of the responsibilities of licensee personnel should an accident occur, including the identification of personnel responsible for promptly notifying offsite response organizations and the NRC; also responsibilities for developing, maintaining, and updating the plan. In general, responsibilities should be described for the position rather than by naming individuals so that personnel changes do not require amending the emergency plan. Offsite response organizations would generally include fire, police, medical, state radiological safety organizations, and perhaps other emergency personnel. (Agreement State licensees would notify the State rather than the NRC.)

(8) *Notification and coordination.* A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The means of notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify NRC immediately after notification of the appropriate response organizations and not later than one hour after the licensee declares an emergency.

In general, the licensee would be expected to be able to contact the local police by radio so that adequate two-way communication could be maintained throughout the accident. In a few cases, the licensee may want to seek assistance from the Department of Energy under the Federal Radiological Emergency Response Plan (see 50 FR 46524; November 8, 1985).

(9) *Information to be communicated.* A brief description of the types of information on facility status, radioactive releases, and recommended actions, if necessary, to be given to offsite response organizations and to the NRC.

(10) *Training.* A brief description of the training the licensee will provide workers on how to respond to an emergency and any special instructions and orientation tours the licensee would offer to fire, police, medical, and other emergency personnel.

Instructions on how to deal with the radiation release should be appropriate for the personnel and should clearly state the specific actions expected of

them and things they should and should not do. After the more comprehensive initial training, refresher briefings are suggested annually. A desirable time would be soon after the exercise has been conducted so that training deficiencies can be corrected and recommendations of the audits relevant to training can be implemented. Refresher briefings for offsite response organizations should be conducted at a frequency considered appropriate by those organizations.

(11) *Recovery.* A brief description of the means of restoring the facility to a safe condition after an accident. Detailed procedures are not appropriate because the exact nature of the accident cannot be forseen. Instead general criteria are appropriate.

(12) *Exercises and audits.* Provisions for conducting quarterly communications checks with offsite response organizations and annual onsite exercises to test response to simulated emergencies. The licensee shall invite offsite response organizations to participate in the annual exercises. Exercises must use scenarios not known to exercise participants. An Audit of each exercise must be conducted by individuals not having direct implementation responsibility for the plan. Audits of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the audits must be corrected.

The exercises are for the purpose of familiarizing the licensee personnel with the emergency plan, training them in the use of site-specific response procedures, and for identifying and correcting deficiencies in the plan. All deficiencies in the plan must be corrected, including problems with procedures, training, staffing, equipment, etc. Participation by offsite personnel is not required. Annual means once each calendar year, at any time during the year.

The NRC would like comments specifically on whether exercises should be required annually or once every two years. The issue is whether the increased practice would improve the quality of the response sufficiently to make annual exercises worth their cost.

The case in favor of annual exercises can be summarized as follows. Exercises are valuable training opportunities that not only help to train personnel, but help identify deficiencies in emergency response plans and procedures. Since it is generally impracticable to exercise all portions of a program during each exercise, it is important to conduct exercises often enough to eventually cover all aspects of a program over a reasonable time period. Exercising annually is sufficient to meet this need. Experience has taught that by conducting exercises, portions of the plan and procedures that were thought to be adequate can be found to be deficient. For example, during the December 17, 1986 exercise at Allied Chemical, an emergency action level that initiates a general emergency was determined to be inappropriate and had to be revised. If not for the opportunity to actually use the emergency action levels during the exercise, this inconsistency could have persisted for many years undetected. Therefore, it is important to have annual exercises as a method to identify problem areas. In addition, personnel need these opportunities to actually demonstrate their capabilities. With several people trained to fill each emergency response position, an individual could go several years before having an opportunity to participate, even with an annual exercise frequency. With a two year frequency this could lead to personnel not having an opportunity to participate in an exercise for a considerable number of years.

The case in favor of less than annual exercises, for example, biennual exercises can be summarized as follows. While nuclear power plants exercise annually, the potential hazard from a radioactive materials facility is enormously lower and the complexity of the needed response is much less. Therefore, having the same exercise frequency as nuclear power plants is not justified in terms of the potential hazard nor needed to maintain an adequate level of preparedness. In addition, annual exercises could place an excessive burden on offsite response organizations. This burden may be difficult for them to meet especially considering that they may have to participate in many other exercises required by the Emergency Planning and Community Right-to-Know Act of 1986.

(13) *Hazardous chemicals.* A description sufficient to demonstrate the applicant's compliance with the Emergency Planning and Community Right-to-Know Act of 186, Title III, Pub. L. 99–499, if applicable to the applicant's activities at the proposed place of use of the radioactive material. This should include a summary of the information provided to the local emergency committee and to whom and when the information was sent.

In brief, the licensee is required to give prompt notification to appropriate offsite response organizations, providing these organizations with information on the situation and recommended actions, and assuring that these officials have been offered instruction in advance. In addition, in order to assure that offsite response organizations expected to respond to an accident have been consulted in the formulation of the plan, the licensee must allow such offsite organizations 60 days to comment on the plan and must provide these comments to the NRC.

The NRC has also considered the need for: (1) Formal public information programs for people living close to licensed facilities who might be advised to take protective actions if an accident occurred; and (2) formal notification of the potentially affected public in the event on an accident. The NRC has concluded that the need for any actions of this type are best left to the local offsite emergency response organizations and officials who have jurisdiction and responsibility for protecting the people in the vicinity of the facility. This approach has been adopted for hazardous chemicals in the Emergency Planning and Community Right-to-Know Act of 1986. The NRC will encourage State and local authorities to consider the need for such actions and to work with the licensee on a case-by-case basis.

Most, if not all, of the licensees who would be required to submit an emergency plan by this regulation have already submitted onsite Radiological Contingency Plans under the orders issued in 1981. Those plans already include essentially the same information that would be required under the new regulation, but most of the plans are likely to require some changes to meet the new rule. The NRC plans to allow licensees who have submitted Radiological Contingency Plans one year to make the necessary changes. Alternatively, these licensees could submit an evaluation showing that an emergency plan is not necessary. The changes or evaluation would then have to be submitted to the Commission as provided for in the proposed rule. The NRC would not expect those licensees to resubmit their entire plans when submitting changes. Rather, at the time of renewal of their licenses, licensees would resubmit their entire plan revised to conform to the new rule as a part of their renewal application. Licensees covered by the rule who have not submitted Radiological Contingency Plans would be allowed one year to submit either an emergency plan or an evaluation showing that an emergency plan is not needed.

The NRC will consult with FEMA as appropriate under the terms of the

FEMA–NRC memorandum of understanding. Agreement States receiving plans would also be free to consult FEMA if they desired. NRC encourages licensees to work with State governments to develop comprehensive emergency plans for other hazards.

The staff identified about 60 NRC licensees who would be covered by the rule as proposed. The staff estimated, however, that about 15 of those licensees would probably lower their possession limits so they would not be covered and that about 15 would probably demonstate that the 1-rem dose is not plausible. Realistically, probably no more than about 30 licensees would actually submit a emergency plan. Perhaps about 5 to 10 Agreement State licensees would also eventually be covered because the new requirements would be a matter of compatability with Agreement States.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The rule not affect the probability or the size of accidental radioactive releases. It might is some cases reduce the doses people near the facility site could receive. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The environmental assessment and finding of no significant impact are contained in Section 4.3 of "A Regulatory Analysis for Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees," NUREG–1140. Single copies are available without charge upon written request from NRC Distribution Section, Office of Information Resources Management, USNRC, Washington, DC 20555.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of these requirements.

Regulatory Analysis

The Commission has prepared a regulatory analysis (NUREG–1140) on this proposed regulation. The analysis examines the accident scenarios considered by the Commission (see Section 2) as well as the costs and benefits of actions considered (see Section 3). The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis (NUREG–1140) may be obtained without charge upon written request from: Distribution Section, Office of Information Resources Management, USNRC, Washington, DC 20555.

As indicated previously, the Commission in particularly interested in receiving public comments on the regulatory analysis. Comments on the analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities.

The proposed rule would required development and implementation of emergency plans by licensees who are authorized to possess significant amounts of radioactive material. These companies do not fall within the definition of a small business found in the Small Business Act, 15 U.S.C. 632, or within the small business size standards set forth in 13 CFR Part 121. The proposed rule affects about 60 out of some 9,000 licensees. However, the staff believes that about 15 of these licensees could amend their licenses to reduce quantities of material they are authorized to possess and about 15 could perform an evaluation showing no need to be covered by the rule. Realistically, probably no more than about 30 licensees would actually submit emergency plans. These 30 licensees are essentially identical to those issued orders to require onsite contingency plans in 1981. An additional 5 to 10 Agreement State licensees might have to submit emergency plans because the rule would be made an item of compatability with Agreement State programs.

Thus, the proposed rule would not impose a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act of 1980.

Any small entity affected by this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact, should notify the Commission of this in a comment that indicates the following:

(a) The small entity's size in terms of annual income or revenue and number of employees;

(b) How the proposed regulation would result in a significant economic burden upon the small entity as compared to that on a larger entity;

(c) How the proposed regulations could be modified to take into account the entity's differing needs or capabilities.

The comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Additional Views of Commissioners Asselstine and Carr

Commissioner Asselstine stated, "I approve this proposed rule as far as it goes. However, I believe that in light of the fast-moving nature of the accidents of concern for the types of facilities covered by this proposed rule, the Commission should give further consideration to requiring a formal notification system for promptly alerting the public within an appropriate emergency planning zone (EPZ) in the event of an accident. Staff studies and experience from the January 4, 1986 accident at the Sequoyah Fuels Corporation facility demonstrate the necessity for quick decisions and prompt actions in the case of an emergency. The regulatory analysis prepared in support of this rule (NUREG–1140) states that 'The goal should be to make decisions on protective actions and start implementing these decisions within 5 or 10 minutes of discovering the accident.' Releases are expected to end within half an hour to an hour. It appears to me that in view of these circumstances, prompt notification of the affected public to enable individuals to take appropriate and timely protective actions is a sensible approach which the Commission should require. Along with requiring prompt notification system, I believe provisions for annual dissemination of information to the public located within an EPZ relating to notification methods and protective actions is also necessary. I would appreciate comments on these suggestions."

Commissioner Carr stated, "I agree that the proposed rulemaking should be published for public comment, but I am concerned about the conservatism used

by the staff in its accident dose calculations and its use of the 1-rem lower end of the range for protective action given the Commission policy (1985 Policy and Planning Guidance) that emergency planning should be based on realistic assumptions."

Commissioner Carr requests public comments on these concerns.

List of Subjects

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Government contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirement, Scientific equipment, Security measures, Special nuclear material.

Under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 30, 40, and 70.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 30.3, 30.34(b), (c), and (f), 30.41(a) and (c), and 30.53 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 30.6, 30.36, 30.51, 30.52, 30.55, and 30.56(b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 30.4, all definitions are alphabetized, the lettering system for the definitions is deleted, and three new definitions are added alphabetically to read as follows:

§ 30.4 Definitions.

* * * * *

"Effective dose equivalent" means the sum of the product of the dose equivalent to the organ or tissue and the weighting factors applicable to each of the body organs or tissues that are irradiated. Weighing factors are: 0.25 for gonads, 0.15 for breast, 0.12 for red bone marrow, 0.12 for lungs, 0.03 for thyroid, 0.03 for bone surface, and 0.06 for each of the other five organs receiving the highest dose equivalent.

"General emergency" means events may occur, are in progress, or have occurred that could cause the release of radioactive materials sufficient to cause doses offsite exceeding 1 rem effective dose equivalent or 5 rems to the thyroid or an intake of 2 milligrams of soluble uranium.

* * * * *

"Site area emergency" means events may occur, are in progress, or have occurred that require offsite response but are not expected to cause a release of radioactive materials sufficient to cause doses offsite to exceed 1 rem effective dose equivalent or 5 rems to the thyroid or an intake of 2 milligrams of soluble uranium.

* * * * *

3. In § 30.32, a new paragraph (g) is added to read as follows:

§ 30.32 Application for specific licenses.

* * * * *

(g)(1) Each application to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in § 30.72, "Schedule C—Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release," must contain either:

(i) An evaluation showing that the maximum dose to a person offsite due to a release of radioactive materials under reasonable and plausible circumstances would not exceed 1 rem effective dose equivalent or 5 rems to the thyroid; or

(ii) An emergency plan for responding to a release of radioactive material.

(2) One or more of the following factors may be used to support an evaluation submitted under paragraph (g)(1)(i) of this section:

(i) The radioactive material is physically separated so that only a portion could be involved in an accident;

(ii) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(iii) The release fraction in the respirable size range would be lower than the release fraction shown in § 30.72 due to the chemical or physical form of the material;

(iv) The solubility of the radioactive material would reduce the dose received;

(v) Facility design or engineer safety features in the facility would cause the lease fraction to be lower than shown in § 30.72;

(vi) Operating restrictions or procedures would prevent a release fraction as large as that shown in § 30.72; or

(vii) Other factors appropriate for the specific facility.

(3) An emergency plan for responding to a release of radioactive material submitted under paragraph (g)(1)(ii) of this section must include the following information:

(i) *Facility description:* A brief description of the licensee's facility and area near the site.

(ii) *Types of accidents:* An identification of each type of accident for which protective actions may be needed.

(iii) *Classification of accidents:* A classification system for classifying accidents as site area emergencies or general emergencies.

(iv) *Detection of accidents:* Identification of the means of detecting each type of accident in a timely manner.

(v) *Mitigation of consequences:* A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(vi) *Assessment of releases:* A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) *Responsibilities:* A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC; also responsibilities for developing, maintaining, and updating the plan.

(viii) *Notification and coordination:* A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of

contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify NRC immediately after notification of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency.

(ix) *Informatioin to be communicated:* A brief description of the types of information on facility status, radioactive releases, and recommended actions, if necessary, to be given to offsite response organizations and to the NRC.

(x) *Training:* A brief description of the training the licensee will provide workers on how to respond to an emergency and any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel.

(xi) *Safe shutdown:* A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) *Exercises and audits:* Provisions for conducting quarterly communications checks with offsite response organizations and annual onsite exercises to test response to simulated emergencies. Quarterly communications checks will offsite response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the annual exercises.

Participation of offsite response organizations in annual exercises although strongly recommended is not required. Exercises must use scenarios not known to exercise participants. The license shall conduct an audit of each exercise using individuals not having direct implementation responsibility for the plan. Audits of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the audits must be corrected.

(xiii) *Hazardous chemicals:* A description sufficient to demonstrate the applicant's compliance with the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499, if applicable to the applicant's activities at the proposed place of use of the byproduct material.

(4) The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to NRC. The licensee shall provide any comments received within the 60 days to the NRC with the emergency plan.

4. In § 30.34, a new paragraph (f) is added to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(f) Licensees required to submit emergency plans by § 30.32(g) shall follow the emergency plan approved by the Commission. The licensee may change the approved plan without Commission approval only if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the appropriate NRC Regional Office specified in § 30.6 within six months after the change is made. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan shall not be implemented without prior application to and prior approval by the Commission.

* * * * *

5. A new § 30.72 is added to read as follows:

§ 30.72 Schedule C—Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release.

Radioactive material[1]	Release fraction	Quantity (curies)
H-3	.5	20,000
C-14	.5	1,000
Na-22	.01	9,000
Na-24	.01	10,000
P-32	.5	100
P-33	.5	1,000
S-35	.5	900
C1-36	.01	5,000
K-42	.01	9,000
Ca-45	.01	20,000
Sc-46	.01	3,000
Ti-44	.01	100
V-48	.01	7,000
Cr-51	.01	300,000
Mn-56	.01	60,000
Fe-55	.01	40,000
Fe-59	.01	7,000
CO-60	.001	5,000
Ni-63	.01	20,000
Cu-64	.01	200,000
Zn-65	.01	5,000
Ge-68	.01	2,000
Se-75	.01	10,000
Kr-85	1.0	6,000,000
Sr-89	.01	3,000
Sr-90	.01	90
Y-91	.01	2,000
Zr-93	.01	400
Zr-95	.01	5,000
Nb-94	.01	300
Mo-99	.01	30,000
Tc-99	.01	10,000
Tc-99	.01	400,000
Ru-106	.01	200
Ag-110m	.01	1,000
Cd-109	.01	1,000
Cd-113	.01	80
In-114m	.01	1,000
Sn-113	.01	10,000
Sn-123	.01	3,000
Sn-126	.01	1,000
Sb-124	.01	4,000
Sb-126	.01	6,000
Te-127m	.01	5,000
Te-129m	.01	5,000
I-125	.5	7
I-131	.5	5
Xe-133	1.0	900,000
Cs-134	.01	2,000
Cs-137	.01	3,000
Ba-133	.01	10,000
Ba-140	.01	30,000
Ce-141	.01	10,000
Ce-144	.01	300
Pm-145	.01	4,000
Pm-147	.01	4,000
Sm-151	.01	4,000
Eu-152	.01	500
Eu-154	.01	400
Eu-155	.01	3,000
Gd-153	.01	5,000
Tb-160	.01	4,000
Ho-166m	.01	100
Tm-170	.01	4,000
Hf-172	.01	400
Hf-181	.01	7,000
Ir-192	.001	40,000
Au-198	.01	30,000
Hg-203	.01	10,000
Pb-210	.01	8
Bi-207	.01	5,000
Bi-210	.01	600
Po-210	.1	600
Ac-228	.001	4,000
Np-237	.001	2
Am-241	.001	2
Am-242	.001	2
Am-243	.001	2
Cm-242	.001	60
Cm-243	.001	3
Cm-244	.001	4
Cm-245	.001	2
Cf-252	.0019	9(20 mg)
Any other beta-gamma emitter	.01	10,000
Mixed fission products	.01	1,000
Mixed corrosion products	.01	10,000
Contaminated equipment bega-gamma	.001	10,000
Irradiated materiala, any form other than solid noncombustible	.01	1,000
Irradiated material, solid noncombustible	.001	10,000
Mixed radioactive waste, beta-gamma	.01	1,000

Radioactive material[1]	Release fraction	Quantity (curies)
Package mixed waste, beta-gamma[2]	.001	10,000
Any other alpha emitter	.001	2
Contaminated equipment, alpha	.0001	20
Packaged waste, alpha[2]	.0001	20
Combinations of radioactive materials listed above[1]		

[1] For combinations of radioactive materials, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in Schedule C exceeds one.

[2] Waste packaged in Type B containers does not require an emergency plan.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

6. The authority citation for Part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 112, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)–(3), 40.35 (a)–(d) and (f), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 40.5, 40.25(c) and (d)(3) and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

7. In § 40.4, all definitions are alphabetized, the lettering system for the definitions is removed, and two new definitions are added alphabetically to read as follows:

§ 40.4 Definitions.

* * * * *

"General emergency" means events may occur, are in progress, or have occurred that could cause the release of radioactive materials sufficient to cause doses offsite exceeding 1 rem effective dose equivalent or 5 rems to the thyroid or an intake of 2 milligrams of soluble uranium.

* * * * *

"Site area emergency" means events may occur, are in progress, or have occurred that require offsite response but are not expected to cause a release of radioactive materials sufficient to cause doses offsite to exceed 1 rem effective dose equivalent or 5 rems to the thyroid or an intake of 2 milligrams of soluble uranium.

* * * * *

8. A new paragraph (i) is added to § 40.31 to read as follows:

§ 40.31 Applications for specific licenses.

* * * * *

(i)(1) Each application to possess uranium hexafluoride in excess of 50 kilograms in a single container or 1000 kilograms total must contain either:

(i) An evaluation showing that the maximum intake of uranium by a member of the public due to a release under reasonable and plausible circumstances would not exceed 2 milligrams; or

(ii) An emergency plan for responding to the radiological hazards of an accidental release of source material and to any associated chemical hazards directly incident thereto.

(2) One or more of the following factors may be used to support an evaluation submitted under paragraph (i)(1)(i) of this section:

(i) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(ii) Facility design or engineered safety features in the facility would reduce the amount of the release; or

(iii) Other factors appropriate for the specific facility.

(3) An emergency plan submitted under paragraph (i)(1)(ii) of this section must include the following:

(i) *Facility description:* A brief description of the licensee's facility and area near the site.

(ii) *Types of accidents:* An identification of each type of accident for which protective actions may be needed.

(iii) *Classification of accidents:* A classification system for classifying accidents as site area emergencies or general emergencies.

(iv) *Detection of accidents:* Identification of the means of detecting each type of accident in a timely manner.

(v) *Mitigation of consequences:* A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(vi) *Assessment of release:* A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) *Responsibilities:* A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC; also responsibilities for developing, maintaining, and updating the plan.

(viii) *Notification and coordination:* A commitment to and a brief description of the means of promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify NRC immediately after notification of the offsite response organizations and not later than one hour after the licensee declares an emergency.

(ix) *Information to be communicated:* A brief description of the types of information on facility status, radioactive releases, and recommended actions, if necessary, to be given to offsite response organizations and to the NRC.

(x) *Training:* A brief description of the training the licensee will provide workers on how to respond to an emergency and any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel.

(xi) *Safe shutdown:* A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) *Exercises and audits:* Provisions for conducting quarterly communications checks with offsite response organizations and annual onsite exercises to test response to simulated emergencies. Quarterly communications checks with offsite response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the annual exercises.

Participating of offsite response organizations in annual exercises although strongly recommended is not required. Exercises must use scenarios not known to exercise participants. The licensee shall conduct an audit of each exercise using individuals not having direct implementation responsibility for the plan. Audits of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the audits must be corrected.

(xiii) *Hazardous chemicals:* A description sufficient to demonstrate the applicant's compliance with the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99–499, if applicable to the applicant's activities at the proposed place of use of the source material.

(4) The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the NRC. The licensee shall provide any comments received within the 60 days to the NRC with the emergency plan.

9. In § 40.35, a paragraph (f) is added to read as follows:

§ 40.35 Conditions of specific licenses issued pursuant to § 40.34

* * * * *

(f) Licensees required to submit emergency plans by § 40.31(i) shall follow the emergency plan approved by the Commission. The licensee may change the plan without Commission approval if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within six months afte the change is made. Proposed changes that decrease the effectiveness of the approved emergency plan shall not be implemented without prior application to and prior approval by the Commission.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

10. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22 (a), (b), (d)–(k), 70.24 (a) and (b), 70.32(a) (3), (5), (6), (d), and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)–(g)(3), and (h)–(j) are issued under sec. 161b, 68 Stat. 948, as amended (41 U.S.C. 2201(b)); §§ 70.7, 70.22a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51 (c)–(g), 70.56, 70.57 (b) and (d), and 70.58 (a)–(g)(3) and (h)–(j) are issued under sec. 161i, 69 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k), and (l), 70.59 and 70.60 (b) and (c) are issued under sec. 161o, 69 Stat. 950, as amended (42 U.S.C. 2201(o)).

11. In § 70.4, all definitions are alphabetized, the lettering system for the definitions is removed, and three new definitions are added alphabetically to read as follows:

§ 70.4 Definitions.

* * * * *

"Effective dose equivalent" means the sum of the products of the dose equivalent to the body organ or tissue and the weighting factors applicable to each of the body organs or tissues that are irradiated. Weighting factors are: 0.25 for gonads, 0.15 for breast, 0.12 for red bone marrow, 0.12 for lungs, 0.03 for thyroid, 0.03 for bone surface, and 0.06 for each of the other five organs receiving the highest dose equivalent.

"General emergency" means events may occur, are in progress, or have occurred that could cause the release of radioactive materials sufficient to cause doses offsite exceeding 1 rem effective dose equivalent or 5 rems to the thyroid or an intake of 2 miligrams of soluble uranium.

* * * * *

"Site area emergency" means events may occur, are in progress, or have occurred that require offsite response but are not expected to cause a release of radioactive materials sufficient to cause doses offsite to exceed 1 rem effective dose equivalent or 5 rems to the thyroid or an intake of 2 milligrams of soluble uranium.

* * * * *

12. In § 70.22, paragraph (i) is revised to read as follows:

§ 70.22 Contents of applications.

* * * * *

(i)(1) Each application to possess enriched uranium or plutonium in quantities such that a criticality accident alarm system is required, uranium hexafluoride in excess of 50 kilograms in a single container or 1000 kilograms total, or in excess of a 2 curies of plutonium in unsealed form or on foils or plated sources, must contain either:

(i) An evaluation showing that the maximum dose to a member of the public offsite due to a release of radioactive materials under reasonable and plausible circumstances would not exceed 1 rem effective dose equivalent or an intake of 2 milligrams of soluble uranium, or

(ii) An emergency plan for responding to the radiological hazards of an accidental release of special nuclear material and to any associated chemical hazards directly incident thereto.

(2) One of more of the following factors may be used to support an evaluation submitted under paragraph (i)(1)(i) of this section:

(i) The radioactive material is physically separated so that only a portion could be involved in an accident;

(ii) All or part of the radioactive material is not subject to release during an accident or to criticality because of the way it is stored or packaged;

(iii) In the case of fires or explosions, the release fraction would be lower than 0.001 due to the chemical or physical form of the material;

(iv) The solubility of the material release would reduce the dose received;

(v) The facility design or engineered safety features in the facility would cause the release fraction to be lower than 0.001;

(vi) Operating restrictions or procedures would prevent a release large enough to cause a member of the public offsite to receive a dose exceeding 1 rem effective dose equivalent; or

(vii) Other factors appropriate for the specific facility.

(3) Emergency plans submitted under paragraph (i)(1)(ii) of this section must include the following information:

(i) *Facility description:* A brief description of the licensee's facility and area near the site.

(ii) *Types of accidents:* An identification of each type of accident for which protective actions may be needed.

(iii) *Classification of accidents:* A classification system for classifying accidents as site area emergencies or general emergencies.

(iv) *Detection of accidents:* Identification of the means of detecting

each type of accident in a timely manner.

(v) *Mitigation of consequences:* A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(vi) *Assessment of release:* A brief description of the methods and equipment to assess releases of radioactive materials.

(viii) *Responsibilities:* A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC; also responsibilities for developing, maintaining, and updating the plan.

(viii) *Notification and coordination:* A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify NRC immediately after notification of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency.

(ix) *Information to be communicated:* A brief description of the types of information on facility status, radioactive releases, and recommended actions, if necessary, to be given to offsite response organizations and to the NRC.

(x) *Training:* A Brief description of the training the licensee will provide workers on how to respond to an emergency and any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel.

(xi) *Safe shutdown:* A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) *Exercises and audits:* Provisions for conducting quarterly communications checks with offsite response organizations and annual onsite exercises to test response to simulated emergencies. Quarterly communications checks with offsite response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the annual exercises. Participation of offsite response organizations in annual exercises although strongly recommended is not required. Exercises must use scenarios not known to exercise participants. The licensee shall conduct an audit of each exercise using individuals not having direct implementation responsibility for the plan. Audits must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the audits must be corrcted.

(xiii) *Hazardous chemicals:* A description sufficient to demonstrate the applicant's compliance with the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99–499, if applicable to the applicant's activities at the proposed place of use of the special nuclear material.

(4) The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to NRC. The licensee shall provide any comments received within the 60 days to the NRC with the emergency plan.

* * * * *

§ 70.22 [Amended]

13. In § 70.22 (i), footnote 3 is removed.

§ 70.23 [Amended]

14. In § 70.23(a)(11), footnote 2 is removed and reserved.

15. In § 70.32, paragraph (i) is revised to read as follows:

§ 70.32 Conditions of licensee.

* * * * *

(i) Licensees required to submit emergency plans in accordance with § 70.22(i) shall follow the emergency plan approved by the Commission. The licensee may change the approved plan without Commission approval if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the appropriate NRC Regional Office specified in Appendix D, Part 20 of this chapter, a copy of each change within six months after the change is made. Proposed changes that decrease the effectiveness of the approved emergency plan shall not be implemented without prior application to and prior to approval by the Commission.

* * * * *

Dated at Washington, DC, this 14th day of April, 1987.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 87–8801 Filed 4–7–87; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87–ASW–12]

Proposed Removal of Control Zone: Camden, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the control zone at Camden, AR. One of the requirements to have a control zone is that hourly and special weather observations must be taken at the airport upon which the control zone is designated. This action is necessary since the required weather observations are no longer provided. This action will raise the floor of controlled airspace in the vicinity of the Harrell Field Airport, Camden, AR, to 700 feet above ground level.

DATE: Comments must be received on or before May 20, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87–ASW–12, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

An informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Robert P. Wheeler, Airspace and Procedures Branch, ASW–534, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-12."

The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth, TX 76101. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the control zone at Camden, AR. Weather observations must be taken during the times and dates a control zone is effective. Camden, AR, does not meet the criteria for retention of the control zone since Sunbelt Airlines ceased operation and no longer provides a weather observer. This action will raise the floor of controlled airspace to 700 feet above ground level in the vicinity of the Harrell Field Airport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Camden, AR [Removed].

Issued in Fort Worth, TX, on April 9, 1987.

Larry L. Craig,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87-8733 Filed 4-17-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF STATE

22 CFR Part 171

[SD-206]

The Freedom of Information Reform Act of 1986—Revision of Fees, Fee Waiver Policy, and the Law Enforcement Exemption

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570) regarding fees, fee waivers, and law enforcement records. It codifies the requirements for expeditious processing of FOIA requests which have been recognized in custom and practice since 1983 in accordance with Department of Justice guidance. It also revises the general fee schedule applicable to all requests under the FOIA, Privacy Act, Ethics in Government Act, and Executive Order 12356 as provided in Part 171.

DATE: Comments must be received on or before April 23, 1987.

ADDRESSES: Comments may be mailed to Frank M. Machak, Information and Privacy Coordinator, Room 1239, Department of State, 2201 C St., NW., Washington, DC 20520, or delivered to that office between 9:00 a.m. and 5:00 p.m., Monday through Friday. Comments received may be inspected in the Public Reading Room located in Room 1239 between 9:00 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Frank M. Machak (Information and Privacy Coordinator) 202-647-7740, or Cathleen Corken (Attorney Adviser) 202-647-3022.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) amended the Freedom of Information Act (5 U.S.C. 552) by modifying the terms of exemption 7 and by supplying new provisions relating to the charging and waiving of fees. The Reform Act specifically requires the Office of Management and Budget to develop and issue a schedule of fees and guidelines, pursuant to notice and comment, which OMB did on January 16, 1987. As the result of comments received, OMB issued the final publication of fee schedule and guidelines implementing certain provisions of the Reform Act on March 27, 1987 (52 FR 10012). In addition to the OMB guidelines, the Department of Justice provided agencies with advisory fee waiver policy guidance regarding the Reform Act in keeping with their statutory responsibility to encourage compliance with the FOIA; this guidance was distributed to all agency heads in a memorandum from Assistant Attorney General Stephen J. Markman on April 2, 1987. Finally, as the result of administrative practice and judicial precedents, the Department of Justice developed guidelines for agencies to use in considering requests

for expedition of FOIA requests; since this guidance has been a matter of custom and practice since 1983, the Department is codifying it in its rules at this time.

The amendments to 22 CFR Part 171 include both the OMB and Justice guidance, as well as the amended language of exemption 7 pertaining to law enforcement records.

The Department of State believes that the abbreviated public comment period for these proposed rules is reasonable in view of the month-long period during which OMB's guidance was subject to public comment. Further, in accordance with 5 U.S.C. 553(b)(3)(B), the Department finds it impractical to impose a lengthy public notice period due to the April 25 statutory deadline for rule promulgation and unnecessary in view of the considerable public comment received during OMB's notice period.

List of Subjects in 22 CFR Part 171

Administrative practice and procedure, Classified information, Freedom of Information, Privacy.

For the reasons set forth in the preamble, portions of Title 22, Chapter I, Subchapter R of the Code of Federal Regulations, are set forth below:

PART 171—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

1. The authority citation for Part 171 is revised to read as follows and the authority citations following the sections in Part 171 are removed:

Authority: Sec. 3, Administrative Procedure Act, as amended (Pub. L. 89–478, Stat. 250); The Freedom of Information Act, as amended (5 U.S.C. 552); the Privacy Act (5 U.S.C. 552a); E.O. 12065; the Ethics in Government Act of 1978 (Pub. L. 95–521); (22 U.S.C. 2658 and 3926); and the Freedom of Information Reform Act of 1986 (Pub. L. 99–570).

2. Section 171.6 is revised to read as follows:

§ 171.6 Fees—general.

(a) The Department will charge a fee of $.25 per page for copies of documents which are identified by an individual and reproduced at the individual's request for retention, except that there will be no charge for requests involving costs of $1.00 or less.

(b) The Department will charge the actual cost of production for copies prepared by computer (such as tapes or printouts), including operator time.

(c) The Department will charge the actual direct costs of producing the document(s) for methods of reproduction or duplication other than those described in paragraphs (a) and (b) of this section.

(d) In those cases when estimated duplication charges are likely to exceed $25, the Department shall notify requesters of the estimated amount of fees, unless they have indicated in advance their willingness to pay fees as high as those anticipated. Such notice shall offer requesters the opportunity to confer with Department personnel with the objective of reformulating requests to meet their needs at lower costs.

(e) Certification under the official seal that a copy or extract made from an official document is a true copy; the fee for certifying each copy of each page is $2.00.

(f) The Department shall charge the actual costs for sending documents by special methods such as express mails, etc.

(g) Remittances shall be in the form of either a personal check or bank draft drawn on a bank in the United States, a postal money order, or cash. Remittance shall be made payable to the order of the Treasurer of the United States and delivered or mailed to the Information and Privacy Coordinator, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520. The Department will assume no responsibility for cash sent by mail.

(h) Fees must be paid in full prior to release of requested documents and/or provision of services described above.

(i) A receipt for fees paid will be given only upon request.

(j) See § 171.13 for additional fees chargeable for Freedom of Information requests.

3. Section 171. 10 is amended by adding paragraphs (d), (e), (f), (g), (h), (i), (j), and (k) to read as follows:

§ 171.10 Definitions.

* * * * *

(d) The term "direct costs" means those expenditures which the Department actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(e) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The Department will attempt to ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the Department and the requester. For example, agencies should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" should be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph g of this section). Searches may be done manually or by computer using existing programming.

(f) The term "duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The Copy provided must be in a form that is reasonably usable by requesters.

(g) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph h of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(h) The term " 'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, agencies must determine the use to which a requester will put the documents requested. Moreover, where an agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Department will seek additional clarification before assigning the request to a specific category.

(i) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of

vocational education, which operates a program or programs of scholarly research.

(j) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in h of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(k) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Department may also look to the past publication record of a requester in making this determination.

(a) * * *

4. Section 171.11 is amended by revising paragraph (a)(7) to read as follows:

§ 171.11 Exemptions.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: (i) Could reasonably be expected to interfere with enforcement proceedings; (ii) would deprive a person of a right to a fair trial or an impartial adjudication; (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (iv) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (v) would disclose techniques and procedures for law information investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (vi) could reasonably be expected to endanger the life or physical safety of any individual.

* * * * *

5. Section 171.12 is revised to read as follows:

§ 171.12 Time limits.

(a) Whenever possible, the Department will furnish the requested records within 10 days (excluding Saturdays, Sundays, and legal public holidays) of receipt of the request by the Information and Privacy Coordinator, except as cited in § 171.4 of this subchapter.

(b) The Department will consider requests for expeditious handling whenever the requester can demonstrate one of the following:

(1) An individual's life or personal safety would be jeopardized by the failure to process a request immediately, or

(2) Substantial due process rights of the requester would be impaired by the failure to process immediately and that the information sought is not otherwise available.

6. Section 171.13 is revised to read as follows:

§ 171.13 Fees.

(a) In addition to fees cited in § 171.6, the following shall be applicable with respect to services rendered to members of the public under this subpart:

(1) The following is the range of categories and average grade levels for employees within each category who perform the search and review functions involved in responding to a FOIA request:

(i) Administration/clerical (to include GS–1 through GS–8 or FS–9): GS–5/5 or FS–9/1.

(ii) Professional (to include GS–9 through GS–13 or FS–5 through FS–2): GS–11/5 or FS–4/4.

(iii) Executive (to include GS–14 through SES or FS–2 through SFS): GS–15/1 or FS–1/1.

(2) The salary rates for these categories will be calculated based on the rates published on the "Department of State Salary Chart" effective at the time that the function was actually performed; copies of this chart are available in the Public Reading Room and will be provided upon request, as well as to requesters with their acknowledgment letters.

(3) The costs for manual search include the salary of the category of the employee who actually performed the search function (as provided in paragraph (a)(1) of this section plus an additional 16 percent of that rate to cover benefits.

(4) The cost for computer searches will be calculated based on the salary of the category of the employee who actually performed the computer search (as provided in paragraph (a)(1) of this section plus 16 percent of that rate to cover benefits, in addition to the direct costs of the central processing unit, input-output devices, and memory capacity of the actual computer configuration.

(5) Only requesters who are seeking documents for commercial use will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. The cost for review will be calculated based on the salary of the category of the employee who actually performed the review (as provided in paragraph (a)(1) of this section plus 16 percent of the rate to cover benefits. Charges will be assessed only for the initial review (i.e., review undertaken the first time in order to analyze the applicability of specific exemption(s) to a particular record or portion of a record) and not for review at the administrative appeal level of the exemption(s) already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review will be assessed.

(6) If records requested under this Subpart are stored elsewhere than the headquarters of the Department of State at 2201 C. Street, NW., Washington, DC, the special costs of returning such records to the headquarters shall be included in the search costs. These costs will be computed at the actual cost of transportation of either a person or the requested record between the place where the record is stored and Department headquarters when, for time or other reasons, it is not feasible to rely on Government mail service or diplomatic pouch.

(7) When no specific fee has been established for a service, or the request

for a service does not fall under one of the above categories due to the amount or size or type thereof, the Information and Privacy Coordinator is authorized to establish an appropriate fee, pursuant to the criteria established in Office of Management and Budget Circular No. A–25, entitled "User Charges."

(b) Where it is anticipated that the fees chargeable under this Subpart will amount to more than $25 and the requester has not indicated in advance her/his willingness to pay fees as high as anticipated, the requester shall be promptly notified of the amount of the anticipated fees or such portion thereof as can readily be estimated. In appropriate cases, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the requester to confer with knowledgeable Departmental personnel in an attempt to reformulate the request in a manner which will reduce the fees and meet the needs of the requester. Dispatch of such a notice or request shall suspend the running of the period for response by the Department until a reply is received from the requester.

(c) Search costs are due and payable even if the record which was requested cannot be located after all reasonable efforts have been made, or if the Department determines that a record which has been requested, but which is exempt from disclosure under this Subpart, is to be withheld.

(d) The Department will begin assessing interest charges on an unpaid bill starting the the 31st day following the day on which the billing was sent. The accrual of interest will be stayed upon receipts of the fee, rather than upon its processing by the Department. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.

(e) A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Department reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Department will aggregate any such requests and charge accordingly.

(f) The Department will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The Department estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, the Department will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) Requesters who have previously failed to pay fees charged in a timely fashion (i.e., within 30 days of the date of the billing), the Department will require such requesters to pay the full amount owed plus any applicable interest as provided above or demonstrate that they have, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process new requests or a pending requests from such requesters.

When the Department acts under paragraphs (f)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from recept of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the Department has received payments described above.

(g) In accordance with the provisions and authorities of the Debt Collection Act of 1982 (Pub. L. 97–365), the Department reserves the right to disclose information to consumer reporting agencies and to use collection agencies, where appropriate, to encourage repayment.

Section 171.14 is added to read as follows:

§ 171.14 Categories of requesters for fee purposes.

There are four categories of requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories:

(a) The Department will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought for commercial use. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents.

(b) The Department will provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(c) The Department will provide documents to representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 171.10(k) above, and the request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(d) The Department will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 which permits fees only for reproduction. Requesters must reasonably describe the records sought.

(e) In making a determination regarding a requester's eligibility under one of the categories in this section, the Department may require the requester to provide extensive relevant information regarding the proposed use of the documents and/or the requester's identity, background, education, occupation, organizational/institutional affiliation, etc. Failure to provide such information may result in the requester's forfeiture of consideration under one of the preferred categories under this section and/or of fee waiver consideration.

(f) For purposes of this section, the Department shall require requesters to sign a statement verifying the appropriateness of their inclusion in a perferred category.

(g) In determining future eligibility for preferred status and/or fee waiver, the Department will take into account the failure of a requester who was previously granted preferred status but failed to fulfill the obligations of that category.

Section 171.15 is added to read as follows

§ 171.15 Fee waivers and appeals.

(a) Waiver or reduction of any fee provided for in §§ 171.6 and 171.13 may be made upon a determination by the Chief of the Request Processing Section, Room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520. The Department will utilize Department of Justice guidance and will employ the following six-factor analysis in making determinations regarding the waiver or reduction of fees; all six criteria must be satisfied before fees will be waived or reduced.

(1) Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government."

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(2) Disclosure of the information "is not primarily in the commercial interest to the requester."

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclousure; and, if so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in discloure, that disclosure is "primarily in the commercial interest of the requester."

(b) The Department will not waive or reduce fees for requesters (persons or organizations) from whom unpaid fees remain due to the Department for another information access request.

(c)(1) The Department's decision to refuse to waive or reduce fees as requested under paragraph (a) of this section may be appealed to the Chief of the Informaton Access Branch, Room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520. Appeals should contain as much information and documentation as possible to support the request for a waiver or reduction of fees.

(2) Appeals will be reviewed by the Information Access Branch Chief who may consult with other officials of the Department as appropriate. The requester will be notified within thirty working days from the date on which the Department received the appeal.

Donald J. Bouchard,

Assistant Secretary, Bureau of Administration.

April 16, 1987.

[FR Doc. 87-8859 Filed 4-17-87; 8:45 am]

BILLING CODE 4710-24-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3188-7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S Environmental Protection Agency (USEPA).

ACTION: Extension of public comment period.

SUMMARY: On December 8, 1986 (51 FR 44081), USEPA proposed rulemaking to revise the sulfur dioxide designation for Pierce Township in Clermont County, Ohio from nonattainment to attainment of the National Ambient Air Quality Standards. A 30-day comment period was provided at the time of the proposed rulemaking. In response to a request from the Natural Resources Defense Council (NRDC), the public comment period was extended an additional 60 days to March 9, 1987. The NRDC has requested a further extension to enable them to examine and comment on the following data analysis that USEPA forwarded to NRDC on March 25, 1987.

1. NRDC requested a copy of a USEPA memorandum dated January 13, 1987, relating to coal sampling and analysis data from the Beckjord Plant as well as any other records containing or referring to such data. (This information is often used in determining the compliance status of a source.)

2. NRDC requested a copy of the air quality modeling demonstration used to develop the current federally enforceable emissions limits for the Beckjord Plant.

This information has been added to the docket for this rulemaking action and is available at the Region V Office of USEPA for public review. Additionally, USEPA has requested the most current information from the State of Ohio concerning the compliance status of the Beckjord plant. The information requested by NRDC and the information being submitted by the State may demonstrate that the Beckjord Plant is no longer in compliance with its emission limit under the federally approved Ohio State Implementation Plan. If this is demonstrated, USEPA may disapprove Ohio's redesignation request for Pierce Township without further proposal because USEPA can only redesignate an area to attainment if all sources with the potential to cause a nonattainment problems are in compliance with the SIP. See Sheldon Meyers', then Director of Office of Air Quality Planning and Standards, April 21, 1983, memorandum summarizing USEPA's section 107 Designation Policy.

Because this information has a bearing on the approvability of the redesignation request for Clermont County, USEPA believes the request for an extension is appropriate. Therefore, based upon NRDC's request, USEPA is extending the public comment period to May 15, 1987.

DATE: Comments must be postmarked on or before May 15, 1987.

ADDRESSES: Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section (5AR-26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region, Chicago, Illinois 60604, (312) 886-6088.

Authority: 42 U.S.C. 7401-7642

Dated: April 9, 1987.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 87-8786 Filed 4-17-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 700

[OPTS-260002; FRL 3157-2]

Proposed Fees for Processing Premanufacture Notices, Exemption Applications and Notices, and Significant New Use Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 26(b) of the Toxic Substances Control Act (TSCA) authorizes EPA to require, by rule, the payment of a reasonable fee from any person required to submit data under section 4 or 5 of TSCA. EPA is proposing a rule that would require manufacturers, importers, and processors to pay fees for premanufacture notices (PMNs), PMN exemption applications and notices, and significant new use notices submitted under TSCA section 5 (a) and (h) (Section 5 notices) EPA is proposing a fee of $100 for section 5 notices submitted by small business concerns and for low volume exemption notices under 40 CFR 723.50 and test market exemption applications under § 720.38, and $2,500 for all other section 5 notices.

DATES: An informal hearing, if requested, will be held beginning approximately July 20, 1987. The exact time and location of the hearing will be available by calling EPA's TSCA Assistance Office. Comments on this proposed rule and requests for an informal hearing must be submitted by July 6, 1987.

ADDRESS: All comments should be sent to: OTS Document Control Officer (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M St. SW., Washington, DC 20460.

Comments should include the docket number OPTS–260002. Comments received on this proposed rule will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. NE–G004 at the address given above.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, (202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 26(b) of TSCA provides that the Administrator may, by rule, establish fees for persons required to submit data under sections 4 and 5 of TSCA (including premanufacture notices, significant new use notices, and exemption applications and notices) to defray the costs of administering TSCA. EPA must take into account a submitter's ability to pay the fee and the Agency's cost of reviewing the submitted data. Section 26(b) provides for maximum fees of $100 for a "small business concern" and $2,500 for all others. Section 26(b)(2) of TSCA gives EPA authority to define "small business concern."

II. Background

On July 11, 1986, EPA published in the **Federal Register** (51 FR 25250) a Notice of Availability of its "PMN User Fee Background Paper" (the paper) which includes (1) the costs that the Agency believes may be defrayed by the collection of such fees, (2) the major options that the Agency has identified for implementing section 26(b), (3) a preliminary estimate of the economic impacts of such options, and (4) a possible definition of "small business concern."

The costs that EPA believes may be defrayed through fees collected pursuant to section 26(b) include all costs associated with receiving, processing, storing, and analyzing data submitted pursuant to section 5, as well as all costs associated with regulatory and other actions that may be prompted by a submission. The direct cost elements that may be defrayed include the salaries and expenses (including supplies, training, travel, and equipment) of the EPA Office of Toxic Substances personnel associated with these section 5 activities, and the cost of associated data processing, computer equipment, and contractor effort. Direct costs also include support functions such as secretarial, clerical, and supervisory management. Indirect costs that may be defrayed include research and development in support of the PMN program. In addition, the Agency incurs other general overhead such as personnel processing, administrative management, budget execution, rent, and utilities.

EPA's analysis of direct costs (EPA, Office of Toxic Substances. D. Harper, D. McMurrer. "Economic Analysis of Proposed PMN Fee Rule", January 1987) indicates that certain costs are generally incurred with every type of section 5 notice. These costs are associated with the activities of providing pre-filing assistance to submitters, providing protection for confidential business information (CBI), processing, duplicating, and storing documents contained in submissions, and initial risk screening (usually including chemical characterization, environmental and human exposure analysis, and a preliminary toxicity review (including human and environmental effects)). These costs add up to approximately $3,000 to $3,200 per submission. Those submissions that require more detailed analysis and regulatory action cost approximately $13,000 to $15,000 more per submission. None of the above costs include indirect costs, i.e., general Agency overhead such as costs incurred by the Office of General Counsel, the Office of Policy, Planning and Evaluation, and the Office of Administration, and research and compliance costs.

Obviously, any fee that the Agency establishes pursuant to section 26(b) will recover substantially less than the total costs of administering section 5. For fiscal 1987, total Agency costs, both direct and indirect, could reach $22 million compared to the maximum recovery of costs that the Agency could receive pursuant to section 26(b) of $4.5 million.

The two major options discussed in the Paper were: (1) a flat fee of $2,500 with a $100 reduced fee for small business concerns, and (2) variable fees to reflect relative Agency costs. The rationale that EPA noted for the flat fee option was that it would defray review costs to the maximum extent possible under section 26(b), would be easy to administer and easy to understand, and would apply to a well defined group—all section 5 notice submitters. EPA also noted that it might discourage some firms from submitting section 5 notices.

The rationale given for the variable fee option was that because Agency costs vary according to the type of submission (regular PMN, low-volume exemption notice, polymer PMN, or test market exemption application), the amount of data provided with the section 5 notice, the number of CBI claims included with the notice, and whether a group of notices relate to a sequence of chemical intermediates, such a scheme would more accurately reflect the range of costs for individual submissions. For example, EPA could charge $1,250 for a section 5 notice that costs the Agency $2,500 to review, and charge $2,500 (the maximum permitted under section 26(b)) for one that costs the Agency $5,000 or more to review. The problem with this option is that it is complex to administer, and with an upper limit of $2,500, the Agency probably could not significantly differentiate fees.

The preliminary economic analysis that EPA provided in the Paper indicated that companies might not submit approximately 10 percent of their potential section 5 notices if EPA required the maximum fees permitted under section 26(b).

III. Evaluation of Comments on EPA's "PMN User Fee Background Paper"

EPA received comments on the Paper from three associations and nine companies. The associations commenting were: Synthetic Organic Chemical Manufacturers Association (SOCMA), Chemical Manufacturers

Association (CMA), and National Paint and Coatings Association (NPCA). The companies commenting were Diamond Shamrock Chemicals Company; The Dow Chemical Company; Firmenich, Inc.; Hach Company; Hardman, Inc.; Hilton-Davis Chemical Company; Dynamit Nobel Chemicals; The O'Brien Corporation; and Pennzoil Products Company.

There was no unanimity on any of the options or issues presented in the Paper. However, most comments (10 out of 12) asserted that fees could or would affect innovation, in that some section 5 notices would not be submitted to EPA for review if a fee were imposed pursuant to section 26(b). One comment stated that there would be no adverse impact on innovation if fees were kept to $2,500 or less; one commenter opposed fees on philosophical grounds. The following table tallies the comments generated for certain options:

Comment categories	No. of comments
A. Innovation:	
1. Adverse impact generally	10
2. No adverse impact if kept to max. of $2500	1
3. Specific concern for low volume, test market, and polymers	5
4. Fees not a deciding factor as to commercialization after PMN review completed	1
B. Flat vs. Variable Fee Scheme:	
1. Keep it simple	2
2. Support variable fee	3
C. Relating Fees to Test Data, Extent of Confidentiality:	
1. Support relating to amount of test data	1
2. Oppose relating to amount of test data	3
3. Support relating to extent of confidentiality	1
4. Oppose relating to extent of confidentiality	1
D. Support Treating Related Notices as One for Fee Purpose	2
E. When to Pay:	
1. Support paying with Notice of Commencement	5
2. Support paying with section 5 submission	1
F. Support $40 Million Sales Definition of Small Business Concern	2
G. Support Alternative Fees (SOCMA suggests $50/$1500 scheme with exemptions for low volume chemicals)	1

Significant concern was expressed by five comments for the negative impact on innovation that might be caused if the maximum $2,500 fee was assessed for low volume, test market, and polymer exemption submissions. Comments pointed out that some specialty chemicals are produced in very small lots, usually on a custom-order basis, and could not be expected to generate enough revenue to justify paying a $2,500 fee. Two comments stated that EPA's preliminary economic analysis supported their conclusions in this regard.

EPA did not receive any data illustrating the impact of particular fees on chemical innovation. Two comments addressed the quality of EPA's preliminary economic analysis. One comment expressed the belief that the "short term impact" of charging the maximum fee authorized by section 26(b) would be substantially greater than portrayed by EPA, and that "long term" impacts had not been given adequate weight by the Agency. Unfortunately, no additional data or analyses were presented that would permit the Agency to revise its estimate of fees' impact. One comment questioned EPA's estimate of revenues projected to be received by companies from sales of their new chemical substances because the revenue data used by EPA (PMN submitters' first and third year production estimates) were maximum estimates. The Agency believes that it used a reasonable methodology in view of the unavailability of any better estimates of production for these new chemical substances. The Agency solicits suggestions concerning practical alternative methods of estimating these revenues.

IV. Discussion of Proposed Rule

After careful analysis of all the comments received by EPA on the Paper, and review of its economic analysis, the Agency has decided to propose a fee of $100 for all section 5 notices received from small business concerns and for all low-volume exemption notices and test market exemption applications, and $2,500 for all other section 5 submissions. The fees would be collected at the time of submission of the section 5 notice. EPA also proposes to define "small business concern" as any firm whose sales when combined with its parent company's (or the firm's sales, if no parent exists) totaled $40 million or less in its fiscal year preceding the submission date of its section 5 notice.

The Agency decided to propose a flat rather than variable fee scheme because (1) it has received no data or convincing argument to support a variable scheme; (2) it believes, at this time, that the difficulties of administering a variable scheme (i.e., developing and maintaining the detailed cost justification for each fee level and ascertaining whether a submission qualified for a particular fee) would outweigh the possible improvement in fairness; and (3) a variable scheme would probably result in the collection of revenue that was too small to warrant the effort of its establishment.

The Agency decided not to propose relating fees to the quantity or quality of test data submitted or the degree of confidentiality requested because it believes that the reaction that it received to these ideas was inconclusive, and because the costs and difficulties in administering the fee program would be significantly increased.

EPA decided to propose that all fees be collected at the time a firm submits its section 5 notice because EPA determined that its proposed fee structure would not sufficiently defray the Agency's costs of reviewing PMNs (which is not dependent on a new chemical substance's commercialization) if it permitted payment of fees with a Notice of Commencement of Manufacture or Import (NOC). The Agency estimates it would receive approximately $4.5 million annually with its proposal if fees were collected at the time of submission, compared to $2.0 million annually if it collected fees with NOCs. Furthermore, no data or compelling arguments were offered that collecting fees up front would have a significant impact on commercialization. One comment stated that fees are not a deciding factor as to commercialization after the PMN review is completed.

EPA is proposing the $40 million in annual sales definition for "small business concerns" because it is an integral part of another TSCA definition of small business (used to implement section 8(a)(3)(B)) and consequently has been though considerable public comment and review. The Agency has received no negative comment on this proposal (which was contained in the Paper).

TSCA section 8(a)(3)(B) requires the Agency to define, for purposes of secion 8(a) requirements concerning reporting and recordkeeping, "small manufacturers and processors". "Small manufacturer" was defined by EPA, in the **Federal Register**, Jan. 15, 1985 (50 FR 2047) (40 CFR 704.3), as firms whose parent company (or the manufacturers themselves if no parent exists) has either annual sales below $400 million *and* that produces a chemical at volumes less than 100,000 pounds annually at any individual production site, or sales less than $4 million, regardless of the quantity of chemicals produced by that manufacturer. However, because production volume projections are speculative for new chemical substances, the Agency is proposing using only the $40 million in sales portion of the definition.

In addition, SOCMA, which voiced major concern over the ability of its members to pay the maximum $2,500 fee, noted that the majority of its members have annual sales under $50 million. Presumably, EPA's proposed definition of "small business concern"

would alleviate the fee proposal's impact on most of SOCMA's members.

To ensure that only persons who qualify for the reduced $100 fee as small business concerns take advantage of the reduced fee, EPA is proposing to require each person paying the lower fee to certify in its section 5 notice that the person is a small business concern under proposed § 700.43.

EPA is proposing the submitters of low-volume exemption notices and test market exemption applications pay a reduced fee of $100 because the Agency's economic analysis (see Appendix) indicates that those submissions would be severely impacted by a higher fee. Also, EPA received convincing arugments from commenters that those submissions could tolerate only a nominal fee. EPA is not proposing but is still considering instituting the reduced $100 fee for polymer exemption PMNs. EPA's economic analysis indicates that almost 12 percent of new polymers reviewed by EPA would qualify for a $100 fee as a low volume exemption, as a submission from a small business concern, or both. Of the remaining 1058 new polymers, only 4 percent would be severely impacted by the imposition of a $2500 fee. EPA especially encourages the submission of data and comment only this aspect of its proposal, as well as the appropriateness of $100 as a "reduced" fee.

Finally, the Agency is not proposing to consider section 5 notices related to a sequence of intermediates in the same manufacturing process as one for fee purposes. EPA noted in its paper that the Agency often reviews these notices together and consequently, the costs for review of each such notice may be lower than for independent submissions. However, the costs of EPA handling each "sequenced" section 5 notice are still greater than the proposed fees, primarily because of the CBI procedures that apply to each notice and because indirect costs also would be allocated to each notice. Furthermore, because approximately one-half of the notices that EPA receives are "sequenced", the revenues that EPA would receive from its fee program if it provided special treatment for these notices would be reduced to such a point as to call into question the purpose of the fee program. Finally, the comments that EPA received on this issue did not persuade the Agency that there was general support for such special treatment.

The proposed rule also clarifies the status of joint submitters. EPA allows persons to submit section 5 notices jointly with others (for example, see 40 CFR 720.40(e) in the PMN rule). EPA is proposing that the fee would be the same for a joint submission of a section 5 notice as for the same kind of notice submitted by a single firm. However, with respect to the lower $100 fee for small business concerns, the lower fee would not apply to a joint submission unless all the joint submitters qualify as small business concerns under the proposed definition. Each of the joint submitters would be required in the section 5 notice to certify that it qualifies as a small business concern under proposed § 700.43.

V. Economic Impacts

A. Introduction

In analyzing the economic impact of the proposed rule (EPA, Office of Toxic Substances. D. Harper, D. McMurrer. "Economic Analysis of Proposed PMN Fee Rule." January 16, 1987), EPA considered both the rule's impact on chemical innovation (that is, the effect of a fee on a firm's decision to file a section 5 notice) as well as the total cost of the rule. The total cost of the rule will be the sum of (1) the revenues foregone by firms not willing to submit section 5 notices as a direct result of the fees, and (2) the cost of the fees.

The Agency believes that the impact on the expected profitability of a new chemical substance as a result of any potential fee is one of the most important factors to consider in evaluating fees' impact on innovation. At some point, a firm will choose not to submit a notice for a new chemical substance rather than incur any additional costs prior to commercialization. EPA's analysis focuses on this factor by evaluating fees as a percent of the present value of expected revenues.

B. Methodology

For purposes of this analysis, the Agency estimated the impact of fees by examining fees as a portion of the present value of expected revenue for the sample section 5 notices. Based on the behavior characterized in a previous study of test costs on a limited number of PMNs (Centaur Associates Inc. 1985: Analysis of Withdrawn and Voluntarily Tested PMNs), if fees are no more than 1.0 percent of expected revenue, the Agency assumes that fees would have a minimal impact on new chemical substances' revenues and profits and that fees will not affect a firm's decision to commercialize a new chemical substance. Fees in the range of 1.0 to 3.0 percent of expected revenues are assumed to have a moderate impact on revenues and an indeterminate effect on a firm's marketing decisions. If fees are 3.0 percent or more of expected revenues, the Agency assumes that fees will have a severe impact on revenues and that the impact is likely to result in a firm choosing not to submit a section 5 notice.

C. Impacts

EPA's economic analysis of the impact of its proposal shows that 236, or 10 percent of the total number of section 5 notices and exemption applications expected to be received by EPA in calendar year 1987 will not be submitted as a result of the imposition of fees. The foregone annual revenue from the unsubmitted notices is estimated to total $0.4 million. The total annual value of the fees that EPA expects to collect as a result of this proposal is $4.5 million. The total annual cost of the rule then is $4.9 million.

VI. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of Regulatory Impact Analysis. This proposed rule is not major as that term is defined in section 1(b) because: the annual effect of the rule on the economy will be less than $100 million (less than $5 million); it will not cause any significant increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review prior to publication as required by Executive Order 12291.

VII. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. (b)), EPA certifies that this proposed rule will not have a significant economic impact on a substantial number of small businesses because the fee proposed for small business concerns affects only an insignificant number of potential section 5 notices and is nominal and most relative to any firm's overall revenues.

VIII. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Numbers 2070–0012 and 2070–0038

List of Subjects in 40 CFR Part 700

Chemicals, Environmental protection, User fees.

Dated: April 13, 1987.

Lee M. Thomas,

Administrator.

Therefore, it is proposed that Chapter I, Subchapter R of 40 CFR be amended by adding Part 700, consisting at this time of Subpart C, to read as follows:

PART 700—GENERAL

Subpart A—B—[Reserved]

Subpart C—Fees

Sec.

700.40 Purpose and applicability.
700.43 Definitions.
700.45 Fee payments.
700.49 Failure to remit fees.

Authority: 15 U.S.C. 2625.

Subparts A—B—[Reserved]

Subpart C—Fees

§ 700.40 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to collect fees from manufacturers, importers, and processors who sumit notices and applications to EPA under section 5 of the Toxic Substances Control Act (15 U.S.C. 2604) to defray part of EPA's cost of administering the Act.

(b) *Applicability.* This subpart applies to all manufacturers, importers, and processors who submit certain notices and applications to EPA under section 5 of the Act.

§ 700.43 Definitions.

Definitions in section 3 of the Act (15 U.S.C. 2602), as well as definitions contained in § 720.3 of this chapter, apply to this subpart ;unless otherwise specified in this seciton. In addition, the following definitions apply:

"Exemption application" means any application submitted to EPA under section 5(h)(1) of the Act, in accordance with § 720.38 of this chapter, or under section 5(h)(2) of the Act.

"Exemption notice" means any notice submitted to EPA under §§ 723.50 and 723.175 of this chapter.

"Joint submitters" means two or more persons who submit a section 5 notice together.

"Person" means a manufacturer, importer, or processor.

"Premanufacture notice" or "PMN" means any notice submitted to EPA pursuant to section 5(a)(1)(A) of the Act in accordance with Part 720 of this chapter or § 723.250 of this chapter.

"Section 5 notice" means any PMN, significant new use notice, exemption notice, or exemption application.

"Significant new use notice" means any notice submitted to EPA pursuant to section 5(a)(1)(B) of the Act in accordance with Part 721 of this chapter.

"Small business concern" means any person whose total annual sales in the person's fiscal year preceding the date of the submission of the applicable seciton 5 notice, when combined with those of the parent company (if any), are less than $40 million.

§ 700.45 Fee payments.

(a) *Persons who ;must pay fees.* Persons submitting a section 5 notice to EPA shall remit for each notice the appropriate fee identified in paragraph (b) of this section in accordance with the procedures in paragraph (d) of this section.

(b) *Fees.* Persons shall remit fee payments to EPA as follows:

(1) *Small business concerns.* Small business concerns shall remit a fee of $100 for each section 5 notice submitted.

(2) *Others.*Persons other than small business concerns shall remit fees according to the type of section 5 notice as follows:

(i) *Premanufacture notices.* Persons shall remit a fee of $2,500 for each PMN submitted.

(ii) *Significant new use notices.* Persons shall remit a fee of $2,500 for each significant new use notice submitted.

(iii) *Exemption applications.* (A) Persons shall remit a fee of $100 for each exemption application submitted under section 5(h)(1) of the Act and § 720.38 of this chapter.

(B) Persons shall remit a fee of $2,500 for each exemption application submitted under section 5(h)(2) of the Act.

(iv) *Exemption notices.* (A) Persons shall remit a fee of $100 for each exemption notice submitted under § 723.50 of this chapter.

(B) Persons shall remit a fee of $2,500 for each exemption notice submitted under § 723.175 of this chapter.

(c) *Joint submitters.* Joint submitters of a section 5 notice are required to remit the appropriate fee identified in paragraph (b) of this section for each section 5 notice regardless of the number of joint submitters for that notice. To qualify for the fee identified in paragraph (b)(1) of this section, each joint submitter of a section 5 notice must qualify as a small business concern under § 700.43.

(d) *Remittance procedure.* (1) Each remittance under this section shall be in United States currency and shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency.

(2) Each remittance shall be sent to the Environmental Protection Agency, Washington Accounting Office, attention: TS/PMN, P.O. Box 360227M, Pittsburg, PA 15251. The remittance may not be sent to EPA with the section 5 notice. The section 5 notice is to be sent to Document Control Officer, Office of Toxic Substance (TS–790), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(3) Persons who submit a section 5 notice shall place a unique identifying number, which may include a combination of letters and numbers, on each section 5 notice submitted. The same identifying number shall appear on the corresponding fee remittance under this section. If a remittance applies to more than one section 5 notice, persons shall include the identifying number for each section 5 notice to which the remittance applies and the amount of the remittance which applies to each notice.

(4) Any person who remits the fee identified in paragraph (b)(1) of this section shall write or type the words, "The company named in Part 1, section A is a small business concern under § 700.43" under "CERTIFICATION" on Page 2 of the Premanufacture Notice for New Chemical Substances (EPA Form 7710–25 (4–26–83)). (Approved by the Office of Management and Budget under Control Number 2070–0012 and 2070–0038.)

§ 700.49 Failure to remit fees.

EPA will not consider a section 5 notice to be complete, and will not begin to process or review it, until the appropriate remittance under § 700.45(d) has been sent to EPA as provided in § 700.45(d) and received by EPA.

[FR Doc. 87–8780 Filed 4–17–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 86–496]

Satellite Communications; Extension of Comment Period

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment periods.

SUMMARY: This order extends the time for filing comments on the Notice of

Proposed Rulemaking which proposes revisions and amendments to the Commission's rules governing satellite communications. This action is taken in response to a motion by AT&T.

DATES: Comments on the proposed rules are not due on or before June 8, 1987 with reply comments due on or before July 27, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rosalee Gorman at (202) 634–1624.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking was published at 52 FR 6175 (March 2, 1987).

List of Subjects in 47 CFR Part 25

Satellite radio communications, Satellites.

Order

In the Matter of Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference Between Fixed Satellites at Reduced Orbital Spacings and to Revise Application Processing Procedures for Satellite Communication Services; CC Docket No. 86–496; RM–4206.

Adopted: April 7, 1987.

Released: April 13, 1987.

By the Domestic Facilities Division

1. Under consideration is a Motion for Extension of Time filed on behalf of American Telephone & Telegraph Company (AT&T) requesting additional time in which to file comments on the *Notice of Proposed Rulemaking* (NPRM) in the above-captioned matter. 2 FCC Rcd 762 (1987). This request is supported by GTE Spacenet Corporation (GTE). AT&T asks that the comment dates of April 27, 1987 and June 15, 1987 be extended until June 8, 1987 for initial comments and July 27, 1987 for reply comments. Based on the reasons discussed herein, good cause exists for extending the comment periods. AT&T's request is therefore granted.

2. In support of its request, AT&T states that due to the complexity of the issues involved in this proceeding, described by AT&T as an "omnibus" revision of Part 25 of the Commission's rules governing satellite communications, commenters need an additional six weeks in which to analyze and evaluate the proposals. These rules will affect the design, technical standards and operations of earth and satellite equipment, frequency coordination, monitoring and reporting requirements, licensing criteria and application procedures. In its supporting comments, GTE states that it has identified at least seventy-five issues on which it plans to comment. As pointed out by AT&T, some of the subjects raised by the NPRM have occupied entire dockets in other proceedings.

3. AT&T also asserts that the Commission's proposals will not only affect satellite services but also will impact on services that share frequency bands with satellite services such as those in its terrestrial microwave network. According to AT&T, the Commission's proposals are derived from diverse sources and have been developed over years of operations, further complicating the issues involved. Both AT&T and GTE state that they have already expended considerable effort in responding to the NPRM, including the establishment by AT&T of four task groups to study the questions raised. Both believe that their comments would be must more constructive and beneficial to the Commission if the requested extension were granted.

4. AT&T's request, as supported by GTE, demonstrates good cause for granting a six-week extension of time in this proceeding. In the past, the Commission has acknowledged that where complex and difficult technical issues are presented, as is the case in this NPRM, extensions of time in which to comment are not unreasonable. *See TV Signal for Captioning for the Deaf*, 36 Rad. Reg. 2d (P&F) 1197 (1976) where a two month extension for filing comments was granted. *See also Motions for Extensions of Time Before the Common Carrier Bureau*, 44 Rad. Reg. 2d (P&F) 96 (1978).

5. In addition, AT&T and GTE have already spent considerable time in studying and evaluating the issues involved in this proceeding. Their assertions that additional time is necessary are thus based upon careful preliminary consideration of the proposals and not on any desire to delay this proceeding.

6. Accordingly, pursuant to § 0.291 of the Commission's rules on delegation of authority, AT&T's request for an extension of time is granted. Comments in this proceeding are now due on June 8, 1987 and reply comments on July 27, 1987.

Federal Communications Commission.

Thomas S. Tycz,

Deputy Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 87–8744 Filed 4–17–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket 87–7]

Radio and Television Broadcasting; Amendment of the Broadcast Multiple Ownership Rule

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; Extension of comment/Reply comment period.

SUMMARY: This action grants a motion for extension of time for filing comments and reply comments in response to the *Notice of Proposed Rule Making* in MM Docket No. 87–7 (Amendment of § 73.3555 of the Commission Rules, the Broadcast Multiple Ownership Rules), 52 FR 8086, March 16, 1987. The National Association of Broadcasters (NAB) requested that the deadline for filing comments be extended for 60 days to allow for the collection of relevant data and the completion of various studies that could be utilized by the Commission in resolving the issues raised in this proceeding. Since the *Notice* in this proceeding specifically requested the type of empirical and statistical data being collected by NAB and since the Commission was persuaded that the requested extension was reasonably necessary to facilitate the completion of the subject studies, the Commission is extending the dates. The Commission also dismissed as moot a motion for extension of time filed by the New York State Consumer Protection Board, in view of its action granting NAB's motion.

DATES: Comments are now due by June 15, 1987 and replies by July 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

[FR Doc. 87–8746 Filed 4–17–87; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 52, No. 75
Monday, April 20, 1987

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.

ACTION

VISTA Literacy Corps Projects; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of availability of funds; VISTA Literacy Corps projects.

The Division of VISTA and Service-Learning Programs, ACTION, announces the availability of funds for fiscal year 1987 for new VISTA Literacy Corps grants authorized by Section 109 of the Domestic Volunteer Service Act Amendments of 1986 (Pub. L. 99–551). VISTA Literacy Corps grants will be awarded for up to a twelve month period. No requests for renewals or continuations may be sought by grantees under this announcement.

Application packages and technical assistance on grant preparation are available from ACTION/VISTA Headquarters, 806 Connecticut Avenue NW., Washington, DC 20525, (202–634–9445).

A. Background and Purpose

Congress created Volunteers In Service To America (VISTA) in 1964 to alleviate and eliminate poverty and its related problems in the United States. VISTA is a full-time, year-long volunteer program which encourages and enables men and women 18 years and older from all backgrounds to perform meaningful and constructive volunteer service. The Volunteers live among, and at the economic level of, the low-income people served. The VISTA program has served poor individuals most effectively by assisting low-income communities and residents to develop the facility, skills, and resources needed for achieving self-sufficiency. VISTA also enlists the commitment and support of the private sector toward attainment of this goal. Literacy training and education represent a longstanding and integral part of the VISTA mission. VISTA Volunteers have been involved in the mobilization of community efforts to combat illiteracy among disadvantaged populations since the inception of the VISTA program.

The Domestic Volunteer Service Act Amendments of 1986 directed the VISTA program to commit additional volunteers to the literacy challenge through the formation of the VISTA Literacy Corps.

The statutory purpose of the VISTA Literacy Corps is to use VISTA Volunteers in developing, strengthening, supplementing and expanding the literacy efforts of both public and private nonprofit organizations at the local, State, and Federal levels to mobilize local, State, Federal and private sector financial and volunteer resources in attacking the problem of illiteracy particularly within low-income areas throughout the United States. In addition, the VISTA Literacy Corps will encourage public/private partnerships; promote voluntarism; heighten the visibility of the literacy issue; and increase the capacity of low-income communities to address their respective literacy needs.

Objectives

ACTION will award four grants through this notice for the placement of VISTA Literacy Corps Volunteers in ACTION Region III (KY, MD, DE, OH, PA, VA, DC, WV), Region IV (AL, FL, GA, MS, NC, SC, TN), Region V (IL, IN, IA, MI, MN, WI), and Region VI (AR, KS, LA, MO, NM, OK, TX). These four regions experience concurrently the highest poverty and illiteracy rates in the country as measured by the most recent census data and the English Language Proficiency Study. The Agency will be awarding one grant per region for VISTA Literacy Corps projects. Each grant will support a maximum of 15 VISTA Volunteers per ACTION region for one year of service. Each of the regions will focus on different emphasis areas of the literacy problem as prescribed below:

Region III: Literacy projects to provide comprehensive services that will curb the intergenerational transfer of illiteracy within families by instructing parents and children together. In particular VISTA will seek literacy programs affiliated with libraries and Head Start projects that focus on the overall concerns of low-income families in need. Such programs should have the reading materials available that will entice and challenge all age groups represented in the family unit.

Region IV: Literacy projects to provide special programs that will benefit unemployed parents. Cooperative arrangements with social services offices and job training partnership sites will receive priority consideration.

Region V: Literacy projects that concentrate on preventive educational training for potential school dropouts and other young adults who may be "educationally at risk" as well as programs that offer retraining and remedial skills enhancement particularly to inner-city youth.

Region VI: Literacy projects that assist migrant and immigrant families who are seeking permanent resident status under the new Immigration Control and Reform Act or other low-income individuals who would achieve literacy in English through such training.

Based on the accomplishments of these four pilot projects, VISTA will encourage the development of training materials and models, where possible, that can be replicated or adopted easily by other regions and areas of the nation sharing similar demographics.

B. Eligible Applicants

Eligible applicants for the VISTA Literacy Corps grants include: public or private nonprofit agencies; local, State and national literacy councils and organizations; community-based nonprofit organizations; local and state education agencies; local and state agencies administering adult basic education programs; educational institutions; libraries, anti-poverty organizations; and local, municipal and State governmental entities designated to administer job training plans under the Job Training Partnership Act.

C. Available Funds and Scope of Grant

ACTION anticipates awarding approximately $120,000 for each of the four grants to support the work of VISTA Literacy Corps Volunteers. The amount of each grant includes the monthly subsistence allowance for the VISTA Volunteers. This support is commensurate to the cost-of-living of the assignment area and covers the cost of food, housing and incidentals, and a monthly stipend paid to the Volunteer upon completion of his/her service.

Applicants should demonstrate their commitment for matching the Federal contribution toward the operation of the VISTA Literacy Corps grant in the areas of transportation, supervision, and/or training. This support can be achieved through cash or allowable in-kind contributions.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA Literacy Corps Program.

D. General Criteria for Grant Selection

The general criteria for the VISTA Literacy Corps projects are consistent with those established for the selection of VISTA sponsors and projects. All of the following elements must be incorporated in the applicant's submission.

The project must:

- Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973 as amended (42 U.S.C. 4951, *et seq.*) applicable published regulations, guidelines and ACTION policies.
- Comply with applicable financial and fiscal requirements established by ACTION or other elements of the Federal Government.
- Show that the goals, objectives, and volunteer tasks are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable and verifiable result.
- Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project.
- Outline specific plans for the continuation of program activities upon the termination of ACTION funds.
- Have evidence of local public and private sector support (in the form of endorsement letters limited to those organizations, government entities, and education institutions, having direct involvement with the applicant).
- Have a permanent mechanism of self-evaluation.
- Provide frequent and effective supervision of the volunteers.
- Identify resources needed and make them available to volunteers to perform their tasks.
- Have the management and technical capability to implement the project successfully.

In addition to the general criteria, the authorizing statute stipulates that priority consideration will be given to the following literacy programs and projects that apply for funding:

- Those that assist individuals in greatest need of literacy training who reside in unserved or underserved areas with the highest concentration of illiteracy and of low-income individuals and families;
- Those that serve individuals reading at the zero to fourth grade levels;
- Those that focus on providing services to high risk populations, e.g., school dropouts and minority youth
- Those that operate in areas with the highest concentration of individuals and families living at or below the poverty level;
- Those providing literacy services to parents of disadvantaged children between the ages of two and eight who may be educationally at risk, and
- Statewide programs and projects that support the creation of new literacy efforts, encourage coordination of intrastate literacy efforts and provide technical assistance to local literacy efforts.

E. Application Review Process

ACTION's VISTA Headquarters will review and evaluate all eligible applications submitted under this announcement. ACTION's VISTA and Service-Learning Director will make the final selection from among the applications. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

F. Application Submission and Deadline

One signed orignal and two copies of all completed applications must be submitted to the Director of VISTA and Service Learning Programs, ACTION, 806 Connecticut Avenue, NW., Room M–1000, Washington, DC 20525. The deadline for receipt of applications in 5 PM EST July 15, 1987. Applications postmarked 5 days before the deadline date will also be accepted for consideration.

All grant applications must consist of:

a. Application for Federal Assistance (SF 424, Pages 1–9) and VISTA Project Application (Form A–1421) with a detailed budget justification and a narrative of project goals and objectives.

b. CPA certification of accounting capability.

c. Copy of recent Articles of Information, or a letter of good standing from the Governor's Office.

d. Proof of non-profit status or an application for non-profit status, and related documentation.

e. Resume of potential VISTA Supervisor, if available, or the resume of the director of the applicant agency or project.

f. Organizational chart illustrating the relationship of the VISTA project to the overall objectives of the sponsor organization.

g. The professional affiliations and/or literacy-related activities of Board of Director Members should be specified.

Signed at Washington, DC, this 14th day of April, 1987.

Donna M. Alvarado,

Director.

[FR Doc. 87–8716 Filed 4–17–87; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

1987–88 National Marketing Quota and Price Support Level for Flue-Cured Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC), USDA.

ACTION: Notice of determination of 1987–88 marketing quota.

SUMMARY: The purpose of this notice is to affirm determinations made by the Secretary of Agriculture with respect to the 1987 crop of flue-cured tobacco in accordance with the Agricultural Adjustment Act of 1938 as amended, and the Agricultural Act of 1949, as amended. In addition to other determinations, the Secretary of Agriculutre determined the 1987 marketing quota for flue-cured tobacco to be 707 million pounds, approximately 3 percent below last year's quota, and that the price support level would be $1.435 per pound.

EFFECTIVE DATE: December 12, 1986.

FOR FURTHER INFORMATION CONTACT: Robert L. Traczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5187. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Traczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major' since implementation of these

determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchses; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) are required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This notice of determination is issued in accordance with the Agricultural Adjustment Act of 1938, as amended (the "1938 Act") and the Agricultural Act of 1949, as amended (the "1949 Act"), in order to announce for the 1987 marketing year for flue-cured tobacco the following:

1. The amount of domestic manufacturers' intentions;
2. The amount of the average exports for the 1984, 1985, and 1986 crop years;
3. The amount of the reserve stock level;
4. The amount of adjustment needed to maintain loan stocks at the reserve stock level;
5. The amount of the national marketing quota;
6. The national average yield goal;
7. The national acreage allotment;
8. The national acreage reserve:

A. For establishing acreage allotments for new farms, and

B. For making corrections and adjusting inequities in old farms;

9. The national acreage factor;
10. The national yield factor; and
11. The price support level.

The determinations set forth in this notice have been made on the basis of the latest available statistics of the Federal Government and after due consideration of data, views, and recommendations received from flue-cured tobacco producers and others pursuant to a proposed Notice of Determination (51 FR 39768) which was published on October 31, 1986.

Discussion

Fifteen written comments were received during the comment period. Each discussed the procedure for estimating exports; suggestions ranged from approval of last year's procedure to the insistence that all Bureau of Census recorded exports be counted in the export component of the quota calculation. The major discussion of the comments centered around clarifying Bureau of Census export declarations and report codes to more accurately differentiate between kinds and origins of shipments. Based upon a review of these comments and the experience of establishing the 1986 national marketing quotas for flue-cured and burley tobaccos, it has been determined that the 1987 marketing quota determination will be based, in part, on using estimated exports. Such exports are the difference between domestic manufacturers' exported use and the total use of domestically grown flue-cured tobacco. However, USDA is discussing with the Bureau of Census the possibility of modifying certain export codes to more adequately describe tobacco shipments.

Eight of the comments urged that the reserve stock level calculation omit the 1986-crop loan receipts or that sales of post-1984 loan stocks be projected to the end of the marketing year. The 1938 Act does not provide for the omission of any post/1984 loan-stock tobacco. However, post-1984 loan-stock tobacco sold on a deferred sale basis was not included in this calculation.

Cost data is gathered on a per-acre basis. To convert data to a per-pound basis as required by the Act, USDA proposed to use a trend yield. Six commentors favored trend yields for such purpose.

Two commentors requested that the 1987 crop price support level be the same as was established for the 1986 crop. However, in accordance with the statutory formula set forth at sections 106(d) and (f) of the 1949 Act, the price support level must be reduced.

Marketing Quotas

Section 317(a)(1) of the 1938 Act (7 U.S.C. 1314c(a)(1)) provides, in part, that the national marketing quota for a marketing year for flue-cured tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of flue-cured tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, necessary to adjust loan stocks to the reserve stock level. Section 317(a)(1)(C) further provides that, with respect to the 1986 through 1989 marketing years, any reduction in the national marketing quota being determined shall not exceed six percent of the previous year's national marketing quota. The "reserve stock level" is defined in section 301(b)(14)(C) of the 1938 Act as the greater of 100 million pounds or 15 percent of the national marketing quota for flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 138 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1987 crop of flue-cured by December 1, 1986. Six such manufacturers were required to submit such a statement for the 1987 crop and the total of their intended purchases for the 1987 crop was 355.0 million pounds.

Flue-cured tobacco exports, as recorded by the Bureau of Census, were 480.5 million pounds for the 1984–85 marketing year (July–June) and 435.0 million pounds for the 1985–86 year. World Agricultural Outlook Board USDA, estimates that Census-recorded exports will total 403.0 million pounds for the 1986–87 marketing year, making the projected 3-year average 439.5 million pounds.

However, domestic cigarette manufacturers export a certain amount of processed tobacco (blends) declared as unmanufactured tobacco exports, but which are included in the domestic manufacturers purchase intentions. Also, some leaf exporters may declare as flue-cured tobacco certain blends containing foreign-grown tobaccos. Because of these conditions, the Secretary adjusted flue-cured exports to more accurately reflect actual exports. Accordingly, the revised export totals are: 1984, 405.0 million pounds; 1985, 376.1 million pounds; and 1986, 368.0 million pounds. The 3-year average is 383.0 million pounds. This is virtually the same as given in the proposed notice.

In accordance with section 301(b)(14)(C) of the 1938 Act, the reserve stock level is the greater of 100 million pounds or 15 percent of the 1986 marketing quota for flue-cured tobacco. The national marketing quota for the 1986 crop year was 728.5 million pounds (51

FR 28850). Accordingly, the reserve stock level for use in determining the 1987 marketing quota for flue-cured tobacco is 109 million pounds.

As of December 12, Flur-Cured Tobacco Stabilization Corporation had in its inventory 159.9 million pounds (excluding pre-1985 stocks committed to be purchased by manufacturers and covered by deferred sales). Accordingly, the adjustment to maintain loan stocks at the reserve supply level is a decrease of 50.9 million pounds.

The total of the three marketing quota components for the 1987–88 marketing year is 678.1 million pounds. Section 317 of the 1938 Act further provides that the Secretary may increase the total by 3 percent. To ensure adequate production, the Secretary exercised this discretionary authority in determining the quota. Accordingly, the national marketing quota for the marketing year beginning July 1, 1987 for flue-cured tabacco is 707 million pounds.

Section 317(a) of the 1938 Act (7 U.S.C. 1314c(a)) provides that, beginning in 1983 and at 5 year intervals thereafter, the farm acreage allotment and preliminary farm yield for each farm shall be adjusted to reflect increases or decreases in the past 5 years' moving county average yield per acre and the in national average yield goal shall be adjusted to the past 5 years' moving national yield. Accordingly, it has been determined that the national average yield goal of 1989 pounds per acre for the 1986–87 marketing years will be the national average yield goal for the 1987–88 marketing year.

In accordance with section 317(a)(3) of the 1938 Act (7 U.S.C. 1314c(a)(3)), the national acreage allotment for the 1987 crop of flue-cured tobacco is determined to be 355,455.00 acres, which is the result of dividing the national marketing quota by the national average yield goal.

In accordance with section 317(e) of the 1983 Act (7 US.C. 1314c(e)), the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 3 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1987 crop of flue-tobacco of 900 acres is adequate for these purposes.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level which is determined in accordance with a formula prescribed in section 106 of the 1949 Act. With respect to the 1987 crop of flue-cured tobacco, the level of support is determined in accordance with sections 106(d) and (f) of the 1949 Act.

Section 106(f)(4) of the 1949 Act provides that the level of support for the 1987 crop of flue-cured tobacco shall be: (1) The level in cents per pound at which the 1986 crop of flue-cured tobacco was supported, plus or minus, respectively, (2) an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the maketing year for which the determination is being made, exluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than

(II) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the detemrination is made.

For the purpose of calculating the market-price component of the support level, the 1949 Act provides that the average market price be reduced 25 cents per pound for the 1985 marketing year and 30 cents per pound for prior marketing years.

The difference between the two 5-year averages (between (A) (I) and (A) (II)) is 1.4 cents per pound, the same as was estimated in the proposed notice. The difference in the cost index from January 1 to December 31, 1986 is 3.6 cents per pound the same as appeared in the proposed notice. Applying these components to the price support formula (1.4 cents per pound, two-thirds weight; −3.6 cents per pound, one-third weight) give a decrease in price support of 0.3 cents per pound. Accordingly, the 1987 crop of flue-cured tobacco will be supported at 143.5 cents per pound.

Determinations 1987–88 Marketing Year

Accordingly, the following determinations have been made for flue-cured tobacco for the marketing year beginning July 1, 1987:

(a) *Domestic manufacturers' intentions.* Manufacturers' intentions for the 1987 year totaled 355 million pounds.

(b) *3-year average exports.* The 3-year average exports are 383.0 million pounds, based on exports of 405.0 million pounds, 376.1 million pounds and 368.0 million pounds for the 1984, 1985, and 1986 crop years, respectively.

(c) *Reserve stock level.* The reserve stock level is 109 million pounds, based on 15 percent of 1986's national marketing quota of 728.5 million pounds.

(d) *Adjustment for the reserve stock level.* The adjustment for the reserve stock level is −50.9 million pounds, based on a reserve stock level of 109 million pounds and anticipated loan holdings of 159.9 million pounds.

(e) *National marketing quota.* The national marketing quota is 707 million pounds based on the total of the three components which comprise the quota plus a three percent upward discretionary adjustment in those three components.

(f) *National average yield goal.* The national average yield goal is determined to be 1,989 pounds. This goal is based on the 5-year national average yield for the 1977–81 marketing years.

(g) *National acreage allotment.* The national acreage allotment of an acreage-poundage basis is determined to be 355,455.00 acres. This allotment is determined by dividing the national marketing quota of 707 million pounds by the national average yield goal of 1,989 pounds.

(h) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm acreage allotments and for establishing allotments for new farms has been determined to be 900 acres.

(i) *National acreage factor.* The national acreage factor is determined to be 0.97.

(j) *National yield factor.* The national yield factor is determined and announced to be .8951.

(k) *Types of tobacco.* It has been determined that types 11, 12, 13, and 14 shall constitute one kind of tobacco for the 1986–87, 1987–88, and 1988–89 marketing years. It has been determined also that no substantial difference exists in the usage or market outlets for any

one or more of the types of flue-cured tobacco.

(l) *Price support level.* The level of support is 143.5 cents per pound based on a 1986 support level of 143.8 cents per pound and a downward adjustment of 0.3 cents per pound. The 0.3 cents downward adjustment is based on 1.4 cents per pound increase in the market price component (⅔ weight) and 3.6 cents per pound decrease in the cost component (⅓ weight).

Authority: Secs. 301, 313, 317, 375, 52 Stat. 38, as amended, 47, as amended, 79 Stat. 66, as amended, 52 Stat. 66, as amended (7 U.S.C. 1301, 1313, 1314c, 1375); Secs. 106, 401, 74 Stat. 6, as amended, 63 Stat. 1054, as amended (7 U.S.C. 1445, 1421).

Signed at Washington, DC, on April 8, 1987.

Milton J. Hertz,

Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87-8820 Filed 4-17-87; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

[Docket No. 87-015]

Rangeland Grasshopper Cooperative Management Program Final Environmental Impact Statement, Decision

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Based on the environmental analysis documented in the Final Environmental Impact Statement (FEIS), we have decided to implement the Integrated Pest Management (IPM) alternative as identified in the FEIS. The IPM alternative provides for the management of grasshoppers and Mormon crickets and is environmentally preferable to the other alternatives identified in the FEIS.

FOR FURTHER INFORMATION CONTACT: Charles H. Bare, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, APHIS, USDA, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION: On November 7, 1986, a notice was published in the **Federal Register** (51 FR 40470) announcing the availability of, and requesting comments on, a Draft Environmental Impact Statement (DEIS) on the Rangeland Grasshopper Cooperative Management Program. The official comment period ended December 22, 1986. However, we considered and responded to all comments on the DEIS that we received by January 16, 1987. The FEIS discusses the environmental impacts of several management alternatives and the rationale for the preferred alternative, Integrated Pest Management (IPM), which includes the use of *Nosema locustae*, a biological control. A notice was published in the **Federal Register** on March 20, 1987 (52 FR 89938) announcing the availability of the Final Environmental Impact Statement. The FEIS was filed with the U.S. Environmental Protection Agency on March 11, 1987.

Based on the environmental analysis documented in the FEIS, we have decided to adopt the IMP alternative as identified in the FEIS. In implementing the IPM alternative for the grasshopper and Mormon cricket management program, we will incorporate mitigation measures to minimize environmental impacts of the techniques utilized. The biological agents and chemical insecticides approved for use in the grasshopper and Mormon cricket management program are registered for this purpose pursuant to the Federal Insecticide Fungicide and Rodenticide Act, and will be applied according to label directions. Any unique site-specific concerns will be identified and addressed in the site-specific environmental analyses conducted in accordance with the FEIS.

The Organic Act of September 21, 1944 (7 U.S.C. 147a), the Act of April 6, 1937, as amended (7 U.S.C. 148-148e), 7 U.S.C. 450, and the Food Security Act of 1985, section 1773 (7 U.S.C. 148f), authorize APHIS to cooperate with State authorities to control infestations of grasshoppers and Mormon crickets.

Done in Washington, DC, this 15th day of April 1987.

Richard R. Backus,

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

[FR Doc. 87-8822 Filed 4-17-87; 8:45 am]

BILLING CODE 3410-34-M

Food and Nutrition Service

Child Nutrition Programs Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice annouces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals or free milk for the period from July 1, 1987-June 30, 1988. These guidelines are used by schools, institutions, and centers participating in the National School Lunch and School Breakfast Programs, Special Milk Program for Children, Child Care Food Program and by commodity schools. The annual adjustments are made pursuant to section 9 of the National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for increases in the Consumer Price Index.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION: This Notice has been reviewed under Executive Order 12291 and has been classified not major. This Notice will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for program participants, individual industries, Federal, State or local government agencies or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556 and No. 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612), and thus is exempt from the provisions of that Act.

Background

Pursuant to sections 9 and 17 of the National School Lunch Act (42 U.S.C. 1758 and 42 U.S.C. 1766), and sections 3 and 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1772 and 1773(e)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals in the National School Lunch Program (7 CFR Part 210),

School Breakfast Program (7 CFR Part 220), Child Care Food Program (7 CFR Part 226), commodity schools (7 CFR Part 210), and the guidelines for free milk in the Special Milk Program (7 CFR Part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size.

The Department requires schools and institutions which charge for meals separately from other fees to serve *free meals* to all children from any household with income at or below *130* percent of the poverty guidelines. The Department also requires such schools and institutions to serve *reduced price meals* to all children from any household with income higher than *130* percent of the poverty guidelines, but at or below *185* percent of the poverty guidelines. Schools and institutions participating in the Special Milk Program may, at local option, serve free milk to all children from any household with income at or below 130 percent of the poverty guidelines.

Definition of Income

"Income," as the term is used in this Notice, means income before any deductions such as income taxes, social security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) social security; (5) dividends or interest on savings or bonds or income from estates or trusts, (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which would be available to pay the price of a child's meal.

"Income", as the term is used in this Notice, does not include any income or benefits received under any Federal programs which are excluded from consideration as income by any legislative prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs due to prohibitions in the National School Lunch Act and the child Nutrition Act of 1966.

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 1987 through June 30, 1988. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the Federal income poverty guidelines by *1.30* and *1.85*, respectively, and by rounding the result upward to the next whole dollar. Weekly and monthly guidelines were computed by dividing annual income by 52 and 12, respectively, and by rounding upward to the next whole dollar.

[Effective from July 1, 1987 to June 30, 1988]

Household size	Reduced price meals—185 percent			Free meals—130 percent			Federal poverty guidelines		
	Year	Month	Week	Year	Month	Week	Year	Month	Week
48 Contiguous United States, District of Columbia, Guam, and Territories									
1	10,175	848	196	7,150	596	138	5,500	459	106
2	13,690	1,141	264	9,620	802	185	7,400	617	143
3	17,205	1,434	331	12,090	1,008	233	9,300	775	179
4	20,720	1,727	399	14,560	1,214	280	11,200	934	216
5	24,235	2,020	467	17,030	1,420	328	13,100	1,092	252
6	27,750	2,313	534	19,500	1,625	375	15,000	1,250	289
7	31,265	2,606	602	21,970	1,831	423	16,900	1,409	325
8	34,780	2,899	669	24,440	2,037	470	18,800	1,567	362
For each additional family member add	+3,515	+293	+68	+2,470	+206	+48	+1,900	+159	+37
Alaska									
1	12,691	1,058	245	8,918	744	172	6,860	572	132
2	17,094	1,425	329	12,012	1,001	231	9,240	770	178
3	21,497	1,792	414	15,106	1,259	291	11,620	969	224
4	25,900	2,159	499	18,200	1,517	350	14,000	1,167	270
5	30,303	2,526	583	21,294	1,775	410	16,380	1,365	315
6	34,706	2,893	668	24,388	2,033	469	18,760	1,564	361
7	39,109	3,260	753	27,482	2,291	529	21,140	1,762	407
8	43,512	3,626	837	30,576	2,548	588	23,520	1,960	453
For each additional family member add	+4,403	+367	+85	+3,094	+258	+60	+2,380	+199	+46
Hawaii									
1	11,674	973	225	8,203	684	158	6,310	526	122
2	15,725	1,311	303	11,050	921	213	8,500	709	164
3	19,777	1,649	381	13,897	1,159	268	10,690	891	206
4	23,828	1,986	459	16,744	1,396	322	12,880	1,074	248
5	27,880	2,324	537	19,591	1,633	377	15,070	1,256	290
6	31,931	2,661	615	22,438	1,870	432	17,260	1,439	332
7	35,983	2,999	692	25,285	2,108	487	19,450	1,621	375
8	40,034	3,337	770	28,132	2,345	541	21,640	1,804	417
For each additional family member add	+4,052	+338	+78	+2,847	+238	+55	+2,190	+183	+43

AUTHORITY: 42 U.S.C. 1758 Sec. 803 Pub. L. 97-35, 95 Stat. 521-535.

Dated: April 14, 1987.

S. Anna Kondratas,

Acting Administrator.

[FR Doc. 87-8821 Filed 4-17-87; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-508-604]

Preliminary Determination of Sales at Less Than Fair Value; Industrial Phosphoric Acid From Israel

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that industrial phosphoric acid (IPA) from Israel is being, or is likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances do not exist with respect to imports of IPA from Israel. We have notified the U.S. International Trade Administration (ITC) of our determinations, and we have directed the U.S. Customs Service to suspend liquidation of all entries of IPA from Israel that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by June 29, 1987.

EFFECTIVE DATE: April 20, 1987.

FOR FURTHER INFORMATION: Contact David Levine, Ross Cotjanle, or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1673, 377-3534 or 377-0161.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that IPA from Israel is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margin is shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances do not exist with respect to imports of IPA from Israel.

Case History

On November 5, 1986, we received a petition filed in proper form by FMC Corporation and the Monsanto Company, on behalf of the U.S. industry producing IPA. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of IPA from Israel are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a U.S. industry. The petition also alleged that critical circumstances exist with regard to imports of IPA from Israel.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on November 25, 1986 (51 FR 43651, December 3, 1986), and notified the ITC of our action. On December 22, 1986, the ITC determined that there is a reasonable indication that imports of IPA from Israel are materially injuring a U.S. industry (52 FR 612, January 7, 1987).

On January 9, 1987, we presented an antidumping duty questionnaire to Negev Phosphates Ltd. (NPL) and requested a response in 30 days. NPL accounted for virtually all exports from Israel to the United States of IPA during the period of investigation (June 1, 1986, through November 30, 1986). On February 5, 1987, respondent requested an extension of the due date for the questionnaire response. We granted the respondent an extension, and on February 27, 1987, we received a response to the quesionnaire. On March 13, 1987, the Department requested supplemental information. A supplemental response was received from the respondent on March 30, 1987. On April 1, 1987, the Department requested further clarification of certain information previously submitted by the respondent, and a second supplemental response was received from the respondent on April 6, 1987.

Scope of Investigation

The product covered by this investigation is IPA provided for in item 416.30 of the *Tariff Scedules of the United States* (TSUS).

Fair Value Comparisons

To determine whether sales of IPA from Israel in the United States were made at less than fair value, we compared the U.S. price to the foreign market value for the company under investigation using data provided in the response.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent United States price since the merchandise was purchased by an unrelated U.S. customer directly from the foreign manufacturer prior to importation. We calculated purchase price based on the unpacked, C&F prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, terminal expenses and ocean freight.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we based foreign market value for IPA on sales in the home market. We made deductions, where appropriate, for inland freight, terminal expenses, certain additional freight-related charges, packing, and quantity rebates. We made a circumstance of sale adjournment for differences in credit expenses incurred in both markets, in accordance with § 353.15(a) of our regulations.

We disallowed the following adjustments claimed by NPL. NPL claimed a level of trade adjustment to compensate for differences in levels of trade existing between the U.S. market and the home market for sales of IPA. Pursuant to § 353.19 of our regulations, we have disallowed this deduction because NPL has not established that NPL experienced actual differences in selling costs associated with sales at different levels of trade in the U.S. and the home markets.

NPL also claimed an adjustment for bad debt expenses. We disallowed this adjustment because we consider bad debt expenses to be indirect selling expenses since, under generally accepted accounting principles, bad debt is recovered over time by future price increases.

NPL claimed an offset in the home market for an expense which it claimed was "tantamount to a commission" on each U.S. sale. This expense appears from the response to be a price discount, and the sales value reported by NPL is net this expense. We, therefore, disallowed this adjustment.

We disallowed NPL's request for an adjustment for exchange rate risk insurance (EIS) receipts related to its U.S. sales. Participation in the EIS is an overall management technique to

safeguard against currency fluctuations. As such, indemnity payments resulting from the program do not qualify as directly-related expenses under § 353.15 of our regulations.

Finally, NPL requested an adjustment for differences in the costs of quality control tests performed on shipments in the two markets. We have disallowed this adjustment because it does not appear from the response that the different tests were conditions of the sales. As such, these tests are not directly related to specific sales of IPA, as required by section 353.15 of our regulations.

We will seek additional information on each of the disallowed adjustments prior to our final determination.

Currency Conversion

As Federal Reserve certified exchange rates were not available, we made currency conversions from new Israeli shekels to U.S. dollars in accordance with section 353.56(a) of our regulations, using the International Monetary Fund (IMF) International Financial Statistics.

Critical Circumstances

Petitioner alleged that "critical circumstances" exist with respect to imports of IPA from Israel. Under section 733(e)(1) of the Act, critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind or merchandise which is the subject of the investigation over a relatively short period.

In determining whether imports have been massive over a relatively short period of time, we normally consider the following factors: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of import statistics, we find that there is no reasonable basis to believe or suspect that imports of IPA from Israel have been massive over a relatively short period. Accordingly, we do not have to consider whether section 733(e)(1)(A) of the Act applies to this case. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of IPA from Israel. We have notified the ITC of this determination.

Verification

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use the standard verification procedures, including examination of relevant sales and financial records of the company under investigation.

Suspension of liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of IPA from Israel that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of IPA from Israel exceeds the U.S. price as shown in the table below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Estimated weighted-average margin percentage
Negev Phosphates Ltd. (NPL)	6.60
All others	6.60

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after the date of this determination or 45 days after the final determination.

Public Comment

In accordance with § 353.47 of the Commerce Regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on June 3, 1987, at the U.S. Department of Commerce, Room 1412, 14th and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by May 27, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within seven days after the hearing transcript is available, at the above address in at least ten copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

April 14, 1987.

[FR Doc. 87-8811 Filed 4-17-87; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 70222-7022]

Three Proposed Federal Information Processing Standards (FIPS); Revisions to FIPS 4, 58, and 59

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of three proposed revisions to FIPS 4, Calendar Date; FIPS 58, Representations of Local Time of the Day for Information Interchange; and FIPS 59, Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange.

SUMMARY: These revisions will adopt voluntary industry specifications developed by X3, an accredited committee of the American National Standards Institute (ANSI). The FIPS announcements for each of these standards have been revised to make them consistent with other recent FIPS for Data Elements and Representations and to indicate that new voluntary standards are being adopted.

Prior to submission of these proposed standards to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

These three revised Federal Information Processing Standards (FIPS) contain two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of each standard, are provided in their entirety in this notice; and (2) a specifications portion which deals with the technical requirements of the standards. Interested parties may obtain copies of the technical specifications from the American National Standards Institute, 1430 Broadway, New York, New York 10018, (212) 642–4900.

DATE: Comments must be submitted on or before July 20, 1987.

ADDRESS: Written comments on the proposed revisions to FIPS PUBS 4, 58, and 59 should be submitted to the Director, Institute for Computer Sciences and Technology, ATTN: Proposed Revisions to FIPS 4, 58, and 59, National Bureau of Standards, Technology Building, Room B–154, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Shirley Radack, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, telephone (301) 975–2833.

Ernest Ambler,

Director.

Dated: April 13, 1987.

Federal Information Processing Standards Publication 4–1, 1987 Month Day

Announcing the Standard for Representation for Calendar Date and Ordinal Date for Information Interchange

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards in accordance with section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations.

1. *Name of Standard.* Representation for Calendar Date and Ordinal Date for Information Interchange.

2. *Category of Standard.* Federal General Data Standard, Representations and Codes.

3. *Explanation.* This standard provides a means of representing calendar date and ordinal date to facilitate interchange of data among information systems.

4. *Approving Authority.* The Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards, Institute for Computer Sciences and Technology.

6. *Cross Index.* a. FIPS PUBS 58–1, Representations of Local Time of Day for Information Interchange.

b. FIPS PUB 59–1. Representations of Universal Time, Local Time Differentials, and United States Zone References for Information Interchange.

c. American National Standard ANSI X3.30–1985, Representation for Calendar Date and Ordinal Date for Information Interchange.

d. American National Standard ANSI X3.43–1986, Representations of Local Time of Day for Information Interchange.

e. American National Standard ANSI X3.51–1986, Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange.

f. International Standard ISO 3307–1975, Information Interchange—Represenations of Time of the Day.

g. International Standard ISO 4031–1978, Information Interchange—Representation of Local Time Differentials.

7. *Objectives.* The objectives of this standard are to improve the utilization of data resources of the Federal Government and avoid unnecessary duplications and incompatibilities in the collection, processing and dissemination of data.

8. *Applicability.* This Federal Data Element and Representation Standard is made available for data interchange among executive department and independents agencies, and for Federal data interchange with the non-Federal sector including industry, State, local and other governments, and the public at large.

9. *Implementation Schedule.* This standard becomes effective six months after approval. Use by Federal agencies is encouraged when such use contributes to operational benefits, efficiency, or economy.

10. *Specifications.* This standard adopts American National Standard ANSI X3.30–1985, Representation for Calendar Date and Ordinal Date for Information Interchange. The latter was approved on July 30, 1985 as a revision of ANSI X3.30–1971, and is published by the American National Standards Institute, 1430 Broadway, New York, NY 10018.

11. *Where to Obtain Copies.* Copies of this publication and the adopted specifications are available for sale by the National Technical Information Service, Springfield, VA 22161. (Sale of the specifications is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 4–1 (FIPS PUB 4–1) and title. When mocrofiche is desired, this should be specified.

Federal Information Processing Standards Publication 58–1, 1987 Moath Day

Announcing the Standard for Representations of Local Time of Day for Information Interchange

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards in accordance with section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations.

1. *Name of Standard.* Representations of Local Time of Day for Information Interchange.

2. *Category of Standard.* Federal General Data Standard, Representations and Codes.

3. *Explanation.* This standard provides uniform time representations based upon both the 12- and 24-hour timekeeping systems. It provides a means for representing local time of the day in digital form for the purpose of interchanging information among data systems. It specifies the time elements and their sequencing, the use of separators between time elements and the representation of the meridiem designator.

4. *Approving Authority.* The Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards, Institute for Computer Sciences and Technology.

6. *Cross Index.* a. FIPS PUB 4–1, Representation for Calendar Date and Ordinal Date for Information Interchange.

b. FIPS PUB 59–1, Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange.

c. American National Standard ANSI X3.30–1985, Representation for Calendar Date and Ordinal Date for Information Interchange.

d. American National Standard ANSI X3–1986, Representations of Local Time of Day for Information Interchange.

e. American National Standard ANSI X3.51–1986, Representations of Universal Time, Local Time Differentials, and United States Zone References for Information Interchange.

f. International Standard ISO 3307–1975, Information Interchange—Representations of Time of the Day.

g. International Standard ISO 4031–1978, Information Interchange—Representation of Local Time Differentials.

7. *Objectives.* The objectives of this standard are to improve the utilization of data resources of the Federal Government and avoid unnecessary duplication and incompatibilities in the collection, processing and dissemination of data.

8. *Applicability.* This Federal Data Element and Representation Standard is made available for data interchange among executive departments and independent agencies, and for Federal data interchange with the non-Federal sector including industry, State, local and other governments, and the public at large.

9. *Implementation Schedule.* This standard becomes effective six months after approval. Use by Federal agencies is encouraged when such use contributed to operational benefits, efficiency, or economy.

10. *Specifications.* This standard adopts American National Standard ANSI X3.43–1986, Representations of Local Time of Day for Information Interchange. The latter was approved on June 23, 1986 as a revision of ANSI X3.43–1977, and is published by the American National Standards Institute, 1430 Broadway, New York, NY 10018.

11. *Where to Obtain Copies.* Copies of this publication and the adopted specifications are available for sale by the National Technical Information Service, Springfield, VA 22161. (Sale of the specifications is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 58–1 (FIPS PUB 58–1) and title. When microfiche is desired, this should be specified.

Federal Information Processing Standards Publication 59–1, 1987 Month Day

Announcing the Standard for Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards in accordance with section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations.

1. *Name of Standard.* Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange.

2. *Category of Standard.* Federal General Data Standard, Representations and Codes.

3. *Explanation.* This standard provides uniform means for representing universal time, local time differentials, and United States time zone references to facilitate data interchange among information systems. It also relates local time expressions to universal time or a particular time zone.

4. *Approving Authority.* The Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards, Institute for Computer Sciences and Technology.

6. *Cross Index.* a. FIPS PUB 4–1, Representation for Calendar Date and Ordinal Date for Information Interchange.

b. FIPS PUB 58–1, Representation for Local Time of Day for Information Interchange.

c. American National Standard ANSI X3.30–1985, Representations for Calendar Date and Ordinal Date for Information Interchange.

d. American National Standard ANSI X3.43–1986, Representations of Local Times of Day for Information Interchange.

e. American National Standard ANSI X3.51–1986, Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange.

f. International Standard ISO 3307–1975, Information Interchange—Representations of Time of the Day.

g. International Standard ISO 4031–1978, Information Interchange—Representation of Local Time Differentials.

7. *Objectives.* The objectives of this standard are to improve the utilization of data resources of the Federal Government and avoid unnecessary duplication and incompatibilities in the collection, processing and dissemination of data.

8. *Applicability.* The Federal Data Element and Representation Standard is made available for data interchange among executive departments and independent agencies, and for Federal data interchange with the non-Federal sector including industry, State, local and other governments, and the public at large.

9. *Implementation Schedule.* This standard becomes effective six months after approval. Use by Federal agencies is encouraged when such use contributes to operational benefits, efficiency, or economy.

10. *Specifications.* This standard adopt American National Standard ANSI X3.51–1986, Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange. The latter was approved on June 23, 1986 as a revision of ANSI X3.51–1975, and is published by the American National Standards Institute, 1430 Broadway, New York, NY 10018.

11. *Where to Obtain Copies.* Copies of this publication and the adopted specifications are availabale for sale by the National Technical Information Service, Springfield, VA 22161. (Sale of the specifications is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 59–1 (FIPS PUB 59–1) and title. When microfiche is desired, this should be specified.

[FR Doc. 87–8812 Filed 4–17–87; 8:45 am]
BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico and South Atlantic Fishery Management Council's Scientific and Statistical Committees will convene a joint public meeting, to review the Amendment to the Secretarial Red Drum FMP, the Shrimp Amendment, the Mackerel Stock Assessment, and data on Bluefish and Flounder, the Swordfish FMP, and the

Spiny Lobster Limited Entry Proposal; will convene at 8 a.m., and recess at 5 p.m., on April 21, 1987, will reconvene at 8:30 a.m., and recess at 5 p.m., on April 22, 1987, and reconvene at 8:30 a.m., and adjourn at 12 noon on April 23, 1987. The meeting will be held at the Ramada Inn, 5303 West Kennedy Boulevard, Tampa, FL. For further information, contact Wayne E. Swingle, 5401 West Kennedy Boulevard, Tampa, FL; telephone: (813) 228–2815.

Dated: April 14, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–8788 Filed 4–17–87; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will convene public meetings with a closed session at the Le Pavillon Hotel, 803 Poydras, New Orleans, LA;

Council—On April 30, 1987, from 8:30 a.m. to 5 p.m., will review the Red Drum Amendment to the Secretarial Red Drum Fishery Management Plan (FMP); review the draft shrimp amendment; take action on Advisory Panel selection; and conduct a closed session to discuss personnel matters.

Committees—On April 29 at 8 a.m., the Red Drum Management Committee will convene; followed by the Administrative Policy Committee from 1 p.m. to 2 p.m.; the Advisory Panel Selection Committee from 2 p.m. to 4 p.m.; the Personnel Committee from 2 p.m. to 4 p.m. in the Council's suite, with a closed session not open to the public, to discuss personnel matters, and the Shrimp Management Committee from 4 p.m. to 5 p.m. For further information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: April 14, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–8789 Filed 4–17–87; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico and South Atlantic Fishery Management Councils; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico and South Atlantic Fishery Management Councils will convene jointly and will also convene jointly with their Intercouncil Mackerel Management Committee at the Le Pavillon Hotel, 803 Poydras, New Orleans, LA:

Joint Council—Councils will convene April 28, 1987, at 8:30 a.m. to 5 p.m., to review actions on the Mackerel Fishery Management Plan (FMP) and Spiny Lobster Limited Entry Plan.

Joint Committee—Councils will convene April 27 with their Intercouncil Mackerel Management Committee to review actions on the Mackerel Management FMP. For further information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, Lincoln Center, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: April 14, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–8790 Filed 4–17–87; 8:45am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Policy and Planning Committee will convene in Anchorage, AK, at 10 a.m., April 22–23, 1987, at the Federal Building, 701 C Street, Room C114, to discuss the Council's amendment cycle for fishery management plans; the Council's Statement of Organization, Practices, and Procedures, and to discuss how to better handle halibut proposals. The Committee may also discuss the need to revise the Council's joint venture permit review policy.

For further information contact Clarence Pautzke, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: April 14, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–8791 Filed 4–17–87; 8:45 am]

BILLING CODE 3510-22-M

Permits; Foreign fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to:

Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, DC. 20235

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 320 South New Street, Dover, DE 19901, 302/674–2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571–4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753–4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228–2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201, 503/221–6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274–4563

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523–1368

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202–673–5319).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register.** The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the

Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1987 have been received from the Governments shown below.

Dated: April 14, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code fishery	Regional fishery management councils
ABS—Atlantic Billfishes and Sharks.	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA—Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA—Gulf of Alaska	North Pacific.
NWA—Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA—Snails (Bering Sea)	North Pacific.
WOC—Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS—Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support
2	Processing and other support only
3	Other support only
*	Vessel(s) in support of U.S. vessels (Joint Venture)
**	Cargo transport vessels with fish finding equipment on board will receive an activity code 2 to enable them to perform both scouting as well as support activities.

Joint Venture

The Government of Denmark on behalf of the Faroe Islands has submitted permit applications for two trawlers, the *Radhamar* and the *F/V Olaf I Gardastovu,* for the Northwest Atlantic Ocean Fishery (NWA). The species and amounts requested for joint venture and *directed fishing are listed on the following chart:

S P E C I E S

[In Metric Tons]

Northwest Atlantic Ocean Fisheries						
Illex	Loligo	Mackerel	Herring	Red hake	Silver hake	American partner
3,000	1,500	3,000	3,000	2,000 (*1,000)	10,000 (*5,000)	Mayflower Int'l Gloucester, MA

[FR Doc 87-8792 Filed 4-17-87; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON EDUCATION OF THE DEAF

Public Meetings

AGENCY: Commission on Education of the Deaf.

ACTION: Notice of Public Meetings.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of forthcoming public meetings of the Commission on Education of the Deaf. They will be held in Clarkston, Georgia on May 21; Minneapolis, Minnesota on May 28; Seattle, Washington on June 6; and Santa Fe, New Mexico on July 1. The purpose of the meetings is to receive public input about the current and future status and needs of education of persons who are deaf. These meetings will be open to the public.

DATES: May 21 in Clarkston, Georgia; May 28 in Minneapolis, Minnesota; June 6 in Seattle, Washington; and July 1 in Santa Fe, New Mexico. Meetings will be held from 9:00 a.m. until 5:00 p.m.

ADDRESSES: *Clarkston meeting:* Building H, Room 101, DeKalb College, 555 North Indian Creek Drive, Clarkston, Georgia.

Minneapolis meeting: Courtyards 5 and 6, Sheraton Park Place Hotel, 5555 Wayzata Boulevard, Minneapolis, Minnesota.

Seattle meeting: Victoria Room, Sea Tac Hilton Hotel, 17620 Pacific Highway South, Seattle, Washington.

Santa Fe meeting: Ballroom, Eldorado Hotel, 309 West San Francisco Street, Santa Fe, New Mexico.

For Scheduling: To schedule a time to make statements at the meetings, call: for the Clarkston meeting, Holly Lumpkin, (404) 299-4110, 8:00 a.m.-4:30 p.m., E.S.T. no later than May 18; for the Minneapolis meeting, Mary Alice Gregg, (612) 221-1337, 7:30 a.m. to 4:00 p.m., C.S.T. no later than May 25; for the Seattle meeting, Nancy Hatfield, (206) 323-5770, 9:00 a.m.-5:00 p.m. M.S.T. no later than June 3; and for the Santa Fe meeting, Henrietta Quintana, (505) 827-6721, 8:00 a.m.-4:30 p.m. M.S.T. no later than June 26. All numbers are TDD/Voice. These are not toll free numbers.

FOR FURTHER INFORMATION CONTACT: Monica Hawkins, Commission on Education on the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets, SW, Washington, DC 20407, (202) 453-4353 (TDD) or (202) 453-4684 (Voice.).

SUPPLEMENTARY INFORMATION: The Commission will hold four public meetings to receive statements from interested persons and organizations concerning educational needs of persons who are deaf. The four meetings will be held, first, in Clarkston, Georgia on May 21; second, in Minneapolis, Minnesota on May 28; third, in Seattle, Washington on June 6; and fourth, in Santa Fe, New Mexico on July 1.

The meetings are open to the public. The invitation for participation is extended to all interested persons, including deaf students and adults; representatives of professional associations working with people who are deaf; parents; teachers; private/public school and program administrators; and representatives of educational agencies of Federal, State, and local governments.

These meetings are also open to persons who wish to respond to the Notice of Inquiry published in the **Federal Register** on April 2, 1987 (52 FR 10722).

Oral statements should be limited to approximately ten minutes with an additional 5 minutes for discussion. The Commission reserves the right to impose further time limitations on all statements and further restrictions to avoid duplication of statements.

Persons scheduled to make statements at the meetings are to bring twenty copies of a written text or summary of their statements to the meeting.

Records will be kept of the meetings and will be available for public inspection at the office of the Commission on Education of the Deaf, GSA Regional Office Building, Room

6646, 7th and D Streets, SW., Washington, DC.

Pat Johanson,

Staff Director, Commission on Education of the Deaf.

April 15, 1987

[FR Doc. 87-8834 Filed 4-17-87; 8:45 am]

BILLING CODE 6820-SD-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Proposed Additions

AGENCY: Committee for purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1987 commodities to be produced by workshops for the blind or other severely handicapped.

Comments must be received on or before May 19, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions:

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1987, November 3, 1986 (51 FR 39945).

Commodities:

Arming Wire—1350-00-889-8165

Slacks, Utility, Woman's—8410-01-074-6193, 8410-01-074-6194, 8410-01-074-6195, 8410-01-074-6196, 8410-01-074-6197, 8410-01-074-6198, 8410-01-074-6199, 8410-01-074-7868, 8410-01-074-7869, 8410-01-074-7870, 8410-01-074-7871, 8410-01-074-7872, 8410-01-074-7873, 8410-01-074-7874, 8410-01-074-7003, 8410-01-074-7004

C.W. Fletcher,

Executive Director.

[FR Doc. 87-8794 Filed 4-17-87; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on LHX Requirements; Cancellation of Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on LHX Requirements for April 25, 1987 as published in the **Federal Register** (Vol. 52, No. 67, Page 11310, Wednesday, April 8, 1987, FR Doc 87-7728.) has been cancelled. In all other respects the original notice remains unchanged.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 15, 1987.

[FR Doc. 87-8815 Filed 4-17-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Computer Applications to Training and Wargaming

ACTION: Change in location of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Computer Applications to Training and Wargaming scheduled for April 23-24, 1987 as published in the **Federal Register** (Vol. 52, No. 59, Page 9912, Friday, March 27, 1987, FR Doc 87-6709) will be held at the Institute for Defense Analyses, Alexandria, Virginia. In all other respects the original notice remains unchanged.

April 15, 1987.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87-8816 Filed 4-17-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Multi-National Cooperation for Follow-on Forces Attack Requirements

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Multi-National Cooperation for Follow-on Forces Attack Requirements scheduled for April 28-30, 1987 as published in the **Federal Register** (Vol. 52, No. 28, Page 4376-4377, Wednesday, February 11, 1987, FR Doc. 87-2828) will be held on June 4-5, 1987. In all other respects the original notice remains unchanged.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 15, 1987.

[FR Doc. 87-8817 Filed 4-17-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Military Traffic Management Command; Directorate of Personal Property; International Program Rate Solicitation

AGENCY: Military Traffic Management Command (MTMC), Department of the Army, DOD.

ACTION: Notice of Rate Solicitation 100-E., Volume 55 ITCBL.

SUMMARY: The next six-month cycle for the worldwide movement of household goods and unaccompainied baggage will be effective 1 October 1987. There are no significant changes for Volume 55. The initial filing date is 20 May 1987. The solicitation package for the October rate cycle will be distributed in April 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Scott or Mrs. Naomi King, HQ, Military Traffic Management Command, Attn: MT-PPC, (Room 408), Falls Church, Virginia 22041-5050, (202) 756-2385.

Robert F. Waldman,

Deputy Director, Directorate of Personal Property.

[FR Doc 87-8632 Filed 4-17-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CI87-290-000]

El Paso Production Co.; Application

April 14, 1987.

Take notice that on February 6, 1987, El Paso Production Company (Production Company) of 2919 Allen Parkway, Suite 900, Houston, Texas 77019, filed with the Commission an Application for Certificate of Public Convenience and Necessity to continue sales of gas as a successor-in-interest to

El Paso Natural Gas Company (El Paso) in certain leases and wells located in Arizona, New Mexico, Colorado, Oklahoma and Texas previously held by El Paso. Production Company states that the properties for which the certificate is requested are those properties the gas from which El Paso produced into its system on an "NGPA price" basis, as opposed to a cost-of-service basis, and which are subject to the Commission's sale for resale Regulations Under the Natural Gas Act. Production Company further states that it has executed a contract with El Paso providing that, as successor-in-interest, Production Company will continue the sale of the gas to El Paso under the same conditions and at the same price as obtained while El Paso owned the properties, in accordance with orders, rules, and regulations of the Commission.

By conveyance dated July 16, 1986, and effective July 1, 1986, El Paso transferred to Production Company all of its interest in leases and wells, the production from which had previously been priced by El Paso on a "NGPA basis." That is, the production was priced into El Paso's system as a first sale by El Paso's production division to its transmission division at prices established solely by reference to Title I and other provisions of the Natural Gas Policy Act of 1978 (NGPA). El Paso did not transfer to Production Company, by such conveyance, any wells or leases the production from which continues to be priced into its system on a cost-of-service basis pursuant to Commission's Regulation Under the Natural Gas Act (NGA).

Any person desiring to be heard or to make any protest with reference to said application should on or before April 27, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-8762 Filed 4-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI87-387-000 and CI87-415-000]

Ladd Petroleum Corp.; Applications for Limited-Term Abandonment and Blanket Limited-Term Certificate With Pregranted Abandonment

April 9, 1987.

Take notice that on March 27, 1987, as supplemented on April 7, 1987, Ladd Petroleum Corporation (Ladd) of 370 Seventeenth Street, Denver, Colorado 80202, filed applications pursuant to section 7 of the Natural Gas Act, 15 U.S.C. § 717f (1982) (NGA), and Part 157 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 157, for (1) authorization in Docket No. CI87-387-000 to abandon for a one-year limited-term sales of gas to Northern Natural Gas Company, Division of Enron Corp. (Northern) that are in excess of Northern's ratable take requirements from six wells in the Gomez Field, Pecos County, Texas, and (2) a blanket one-year limited-term certificate of public convenience and necessity with pregranted abandonment in Docket No. CI87-415-000 authorizing sales for resale in interstate commerce of such gas to third parties. Ladd also requests waiver of certain portions of Parts 154 and 271 of the Commission's Regulations, and requests expedited approval of the applications pursuant to the procedures of § 2.77 of the Commission's Regulations, 18 CFR 2.77.

In support of its applications Ladd states that the subject sales to Northern are made under a contract dated December 1, 1970, on file as Ladd's FERC Gas Rate Schedule No. 78, certificated in Docket No. CI76-743, and under a contract dated May 1, 1972, covered under Ladd's small producer exemption in Docket No. CS71-646. Ladd states Northern's takes of gas under the subject contracts have been substantially reduced without payment. On March 16, 1987, Ladd and Northern have executed agreements, to be effective the date of Commission authorization, amending the December 1, 1970, and May 1, 1972, contracts, to provide for the release of certain quantities of gas which are in excess of Northern's ratable take requirements for a primary term of twelve months and month-to-month thereafter, subject to termination by either party upon thirty days prior written notice, and to provide for the release and discharge of Northern from any minimum take requirement or take-or-pay liability, claim or demand for all past periods and continuing throughout the remaining terms of the agreements. The wells per contract, their spud dates, NGPA category and their approximate daily deliverability are shown below.

Contract date	Well name	Spud date	NGPA category	Mcf/d
12/1/70	FSOC Leon No. 1	7/22/70	104	4,000
	Ft. Stockton-Dixel Res. No. 1	9/12/71	104	217
	Ft. Stockton-Dixel Res. No. 2	7/19/71	104	586
5/1/72	South Gomez No. 1	7/20/72	104	5,800
	South Gomez No. 2	4/20/73	104	800
	South Gomez 3A No. 1	1/18/75	104	103
	xl			11,506

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Ladd to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-8763 Filed 4-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-357-000]

Newmont Oil Co.; Re-Notice of Application for Blanket Limited-Term Abandonment and Blanket Limited-Term Certificate of Public Convenience and Necessity With Pregranted Abandonment

April 14, 1987.

Take notice that on March 10, 1987, Newmont Oil Company (Newmont), 600 Jefferson, 9th Floor, Houston, Texas 77002, filed an Application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), the provisions of 18 CFR Parts 154 and 157, and 18 CFR 2.77(a)(1), seeking blanket limited-term abandonment authorization and a blanket limited-term certificate of public convenience and necessity authorizing the sale for resale in interstate commerce of certain natural gas, with pregranted abandonment, to be effective on April 1, 1987 and continuing through March 31, 1990, as more fully described in the Application which is on file with the Commission and open for public inspection.

Specifically, Newmont requests that the Commission authorize Newmont:

(1) To abandon for a three-year term sales for resale of gas subject to the Commission's NGA jurisdiction and previously certificated by the Commission as shown on Exhibit A, to the extent that such gas is released by Transcontinental Gas Pipe Line Corporation (Transco) for resale to third parties;

(2) To make sales for resale in interstate commerce for a period of three years of such abandoned gas, with pregranted abandonment of any such sale, without supply or market limitations; and

(3) A waiver of Part 154 of the Commission's Regulations concerning the establishment of rate schedules for any sales made under (2).

In support of its application Newmont states that it has entered into an Omnibus Contract Amendment and Settlement Agreement with Transco which provides for market responsive pricing, buyout of prior years take-or-pay deficiencies, a cap for producer deliverability, an annual quantity commitment providing for flexibility in takes for any given month, and assignment or release by Transco to third party purchasers of gas not purchased by Transco.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000.

Accordingly, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT "A".—GAS CONTRACTS BETWEEN NEWMONT OIL COMPANY AND TRANSCONTINENTAL GAS PIPELINE COMPANY

Field	FERC rate schedule and docket No.	Contract date	Transco contract No.	Vintage	Deliverability as 9/15/86		
					GWG	CSHD	Total
					MCFPD	MCFPD	MCFPD
Eugene Island Block 126 (Blocks 119, 120, 125 & 126) Offshore Louisiana	[2] CS 7150	[3] 09-02-81	61166	[a] 104		33	33
				[b] 104		89	89
				106		597	597
Eugene Island Block 128 (Blocks 128 & 129) Offshore Louisiana	[2] CS 7150	[3] 09-02-81	61168	[c] 102	282	21	303
				[d] 104		35	35
				106		90	90
High Island 111, Offshore Texas	[2] CS 7150	09-01-76	06511	[d] 104	860		860
				[b] 194	6165		6165

EXHIBIT "A".—GAS CONTRACTS BETWEEN NEWMONT OIL COMPANY AND TRANSCONTINENTAL GAS PIPELINE COMPANY—Continued

Field	FERC rate schedule and docket No.	Contract date	Transco contract No.	Vintage	Deliverability as 9/15/86		
					GWG	CSHD	Total
					MCFPD	MCFPD	MCFPD
Ship Shoal Block 72 (Block 86 N/E 4) Offshore Louisiana [1]	12,CI-453-000	[3] 06-15-81	61125				
Ship Shoal Block 72 Offshore Louisiana Offshore Louisiana	[2] CS 7150	[3] 09-02-81	61173	[c] 102	1718	458	2176
				106	58	38	96
South Pelto Block 10 Offshore Louisiana	[2] CS 7150	09-23-76	06520	[c] 102	7920	1858	9778
				[b] 104	3084		3084
South Pelto Block 10 Blocks 9 & Ship Shoal 68) Offshore Louisiana	[2] CS7150	08-15-78	06643	[c] 102	293	1251	1544
South Pelto Block 20 (Block 11) Offshore Louisiana	[2] CS 7150	[3] 09-02-81	61169	[c] 102	194	156	350
				[d] 104	191		181
				[b] 104	156	144	300
West Cameron Block 110 (Blocks 110 & 111 S/E 4) Offshore Louisiana	[2] CS 7150	[3] 09-02-81	61167	[b] 104	938		938
				106	2443		2443
Total					24292	4770	29062

[1] New Lease however rate schedule was nevertheless obtained.
[2] Small producer certificate expired 3/31/79.
[3] Rollover contract; original date 9/8/57; Transco Contract No. 06118.
[a] Replacement contract or recompletion.
[b] 1973-1974 biennium gas.
[c] New gas on old lease.
[d] Post 1974 gas.

[FR Doc. 87-8764 Filed 4-17-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. OR87-1-000, OR87-2-000, OR87-3-000, OR87-4-000, OR87-5-000, OR87-6-000, OR87-7-000, and OR87-8-000

Oxy Pipeline, Inc.; Petitions for Declaratory Orders

April 15, 1987.

Take notice that on March 5, 1987, Oxy Pipeline, Inc. (OPI) tendered for filing petitions for declaratory orders in the above-referenced dockets, which request that the Commission issue order(s) finding that it has no jurisdiction under the Interstate Commerce Act over OPI's various pipelines, or in the alternative, requests that it be exempted from the requirements of sections 6, 19a and 20 of the Interstate Commerce Act, 49 U.S.C. 6, 19a, 20.

OPI has filed memoranda in support of its petitions for declaratory orders.

Any person desiring to be heard or to protest said filings 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 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 6, 1987. 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 these filings are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-8767 Filed 4-17-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI87-414-000]

Vintage Petroleum, Inc.; Application for Limited-Term Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate

April 14, 1987.

Take notice that on March 30, 1987, Vintage Petroleum, Inc. (Vintage), 502 S. Main Mall, Suite 400, Tulsa, Oklahoma, 74103 has filed an application under section 7(b) of the Natural Gas Act and § 2.77 of the Commission rules. Vintage requests that the Commission issue an order granting Vintage (1) authority, for a limited term of three (3) years, to abandon sales to Northern Natural Gas Co. (Northern) of certain gas which is subject to NGA jurisdiction from the well designated as J. W. Henderson #1, Ozona Field, Crockett County, Texas, and (2) blanket pre-granted authorization for a limited term of three (3) years for any future sales of such gas under its small producer certificate issued in docket No. CS84-61-000. Vintage states that it is subject to substantially reduced takes without payment. The deliverability involved is approximately 700 MCFD and the J. W. Henderson No. 1 well produces NGPA section 104 minimum rate gas.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-8765 Filed 4-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF87-5051-000]

Western Area Power Administration; Application

April 15, 1987.

Take notice that on April 2, 1987, the Under Secretary of the Department of Energy tendered to the Federal Energy Regulatory Commission, pursuant to authority vested in the Federal Energy Regulatory Commission by Delegation Order No. 0204-108, a copy of rate order No. WAPA-28 for confirmation and approval on a final basis for a five year period to expire on the last day of the March 1992 billing period.

Pursuant to the authority delegated to the Under Secretary of the Department of Energy by Delegation Order No. 0204-108, as amended on May 28, 1986, the Under Secretary confirmed and approved on an interim basis, effective beginning on the first day of the April 1987 billing period, a New Rate Schedule RGP-F3 for Rio Grande Project Power marketed by the Western Area Power Administration (Western).

The new rate will be in effect pending the Commission's approval of it, or a substitute rate, on a final basis, or until superseded. The final revised FY 1985 Power Repayment Study dated February 1987, on which the power rate is based, indicates that a firm composite rate of 36.92 mills per kilowatthour (kWh) is necessary for project repayment. The new rate is an increase of 6.07 mills per kWh (19 percent) over the existing rates. Average annual project revenues are expected to increase from $2,388,000 to $2,840,000. The new rate is necessary to meet an increase in project interest expense caused by higher interest rates for additions and replacements and increases in operation and maintenance in future years. The Administrator of Western certifies that the rate is consistent with applicable laws and that it is the lowest possible rate consistent with sound business principles.

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 April 30, 1987. 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. 87-8766 Filed 4-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2261-000]

William W. Gallagher; Application

April 14, 1987.

Take notice that on February 6, 1987, William W. Gallagher filed an application pursuant to section 305(b) of the Federal Power Act to hold the following position:

Position	Name of corporation	Classification
Chairman and President. Director	Gallagher Capital Corp. Portland General Electric Co.	Authorized by law to underwrite. Public utility.

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, DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 28, 1987. 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 petition are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-8806 Filed 4-17-87; 8:45 am]

BILLING CODE 6717-01

[Docket No. ID-2260-000]

James J. Johnson; Application

April 14, 1987.

Take notice that on February 20, 1987, James J. Johnson filed an application pursuant to section 305(b) of the Federal Power Act to hold the following position:

Position	Name of corporation	Classification
President and director.	NSP-Minn	Public utility

Position	Name of corporation	Classification
Director	Square D. Co.	Supplying electrical equipment

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, DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 28, 1987. 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 petition are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-8807 Filed 4-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-85-000]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Technical Conference and Environmental Inspection

April 10, 1987.

Take notice that on April 22 and 23, 1987, members of the staff of the Federal Energy Regulatory Commission will conduct an environmental inspection of the replacement pipeline route through Burlington, Massachusetts, as proposed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. in Docket No. CP87-85-000. In addition, the Commission's staff will also conduct an environmental inspection of alternate pipeline routes in the towns of Burlington and Wilmington, Massachusetts.

The Commission's staff will also meet with officials of the town of Burlington, Massachusetts to discuss the proposed pipeline replacement project. Town officials attending the meeting will include: Mr. James D. Melchionna, Selectman; Mr. Richard Gladstone, Town Administrator; Ms. Colette Meunier, Planning Administrator; Mr. Syamal N. Chaudhuri, Superintendent of Public Works; and Ms. Joyce Frank, Counsel retained by the Board of Selectmen.

The technical conference will be held on April 23, 1987, at 9:00 a.m. at the Burlington Town Hall, Selectmen's Meeting Room. All parties to this proceeding and interested members of the public are invited to attend; however, mere attandance at the conference will not carry party status. Any person wishing to become a party to this proceeding must file a Motion to Intervene in accordance with Rule 214(d) of the Commission's Rules of Practice and Procedure (18 CFR 385.214(d)).

Further information concerning the technical conference and environmental inspection can be obtained from Mr. James P. Daniel, Federal Energy Regulatory Commission, Environmental Evaluation Branch, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-5364.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-8805 Filed 4-17-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3189-5]

Chesapeake Bay Executive Council; Meeting

The Chesapeake Bay Executive Council established in accordance with the Chesapeake Bay Agreement of December 1983, will be held from 10:00 a.m. to 2:00 p.m. on May 7, 1987, at the Airlie House, Warrenton, Virginia. This notice is published pursuant to section 10(a)(2) of Pub. L. 92-463, "The Federal Advisory Committee Act."

The agenda of the quarterly council meeting will include, but is not limited to:

10:00-10:10 Opening Remarks
10:10-10:30 Implementation Committee Report to the Executive Council
10:30-12:30 Discussion of the questions* by the Council, Citizens Advisory Committee panel, and Scientific and Technical Advisory Committee panel
12:30-1:30 Lunch Break
1:30 PM Executive Council reconvenes and gives comment and directions
2:00 PM Council meeting adjourns

* Questions to be discussed include:

(1) How can we ensure that research critical to management of the Chesapeake estuarine system is properly identified, prioritized and funded?

(2) How can we improve our monitoring programs so that they can provide better information for planning, implementation and regulatory programs?

(3) How can we integrate information on the environmental requirements of living resources into planning, implementation and regulatory programs?

(4) How much reliance can and should we place on models in planning, implementation and regulatory programs?

(5) How can we improve the overall planning process of the Council and its supporting committees and subcommittees?

(6) Are there any significant restoration and protection issues that are not being addressed by the Executive Council and its supporting committees?

Written comments from the public are welcomed and should be received at the Chesapeake Bay Liaison Office no later than April 29, 1987 for distribution to the members. Questions about the meeting or written comments should be directed to Mr. Harry Wells, U.S. EPA, Chesapeake Bay Liaison Office, Annapolis City Marina, Suite 109-110, Annapolis, Maryland 21403. The telephone number is: Area 301/266-6873.

Dated: April 8, 1987.

Charles S. Spooner,

Director, Chesapeake Bay Liaison Office.

[FR Doc. 87-8785 Filed 4-17-87; 8:45 am]

BILLING CODE 6560-50-M

Science Advisory Board

[FRL-3189-7]

Long-Range Ecological Research Needs Subcommittee; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that a two-day meeting of the Long-Range Ecological Research Needs Subcommittee of the Science Advisory Board's Executive Committee will be held on May 27 and 28, 1987. The meeting will begin at 9:00 a.m. on May 27, and will be held in the Administrator's Conference Room 1103 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. Adjournment on May 28 will taken place no later than 12:00 p.m.

The main purpose of the meeting is to begin as assessment of EPA's ecological research needs, specifically those research needs that address ecological problems that may be encountered or may persist in the future. The Subcommittee will discuss the evolution of EPA's ecological research agenda, from Agency inception to the present. EPA's Office of Research and Development will provide a briefing

based on their activities as related to these issues. Related activities that are currently in progress or in the planning stages, by other agencies, nations, and the private sector, will be discussed. In addition, the Subcommittee will begin to identify the broad, long-range, scientific questions that research programs of many agencies must prepare to answer. The Subcommittee welcomes input and information pertinent to the evaluation of these long-range ecological research activities.

The meeting will be open to the public. Any member of the public who wishes to attend, present information to the subcommittee, or obtain information concerning the meeting, should contact Ms. Janis Kurtz, Executive Secretary, or Mrs. Lutithia Barbee, Staff Secretary, (A101-F) Environmental Effects, Transport and Fate Committee, Science Advisory Board, U.S. EPA, 401 M. Street, SW., Washington, DC 20460, Telephone (202) 382-2552 or FTS 8-382-2552. Written comments will be accepted, and can be sent to Ms. Kurtz at the address above. Persons interested in making statements before the Subcommittee must contact Ms. Kurtz no later than May 20, 1987 in order to be assured of space on the agenda.

Dated: April 14, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87-8783 Filed 4-17-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Reclassification of FM Stations

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission has reclassified many FM broadcast stations pursuant to the new classifications set forth in BC Docket 80-90. In BC Docket 80-90, existing class B and C FM stations were given until March 1, 1987 to modify their facilities to meet the minimum facilities required for such stations or else be reclassified. This Notice serves to advise the public that this reclassification has taken effect. An Attachment to this Public Notice listing all affected stations has been prepared and is available for inspection and duplication in the Commission's Public Reference Room (Room 239) at 1919 M Street, NW., Washington, DC. Copies of this List may also be purchased from ITS, Inc., the official FCC copy contractor (202) 857-3800.

EFFECTIVE DATE: March 2, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gary Kalagian, (202) 632-2049 or John Boursy, (202) 634-6315.

Larry D. Eads,

Chief, Audio Services Division.

Reclassification of FM Facilities Pursuant to BC Docket 80-90

In the *Report and Order* in BC Docket 80-90, 94 FCC2d 152 (1983), the Commission specified a minimum transmitting antenna height above average terrain (HAAT) of 300 meters and a minimum effective radiated power (ERP) of 100 kW for class "C" facilities. The *Report and Order* also specified that class "B" facilities have an ERP which exceeds 25 kW. In order to provide existing stations an opportunity to meet these minimums, the Commission indicated that existing stations would have three years from the effective date of the *Report and Order* (i.e. March 1, 1984) to submit an application for appropriate minimum facilities or be reclassified. Thus, to avoid reclassification, an application proposing minimum class "B"or "C" facilities must have been received by March 1, 1987. Since, however, March 1, 1987, fell on a Sunday, the Commission has accepted applications to meet the class "B" and "C" minimums filed by the close of business on March 2, 1987, pursuant to 47 CFR 1.4(i).

In a Public Notice released March 24, 1987, FCC 87-93, the Commission stated that it would prepare a list of reclassified facilities as soon as possible after March 2, 1987. The Attachment to this Public Notice consists of that list of reclassified facilities. Also included on the list are additional allotments and assignments which will be subsequently reclassified should their applications to meet the minimum class "B" or "C" facilities be returned or dismissed and/or existing construction permits expire.

The list is arranged by allotment groups in order by channel number. Under each channel number, the allotment groups are ordered alphabetically by state and city. Each allotment group contains an allotment as it was classified prior to March 2, 1987 and any license, construction permit or application associated with the allotment as of the close of business on March 2, 1987. A group appears on the list if the class of any facility included in the group changes.

The new class of a license, construction permit, or application was determined from the listed ERP and HAAT values and the zone of the transmitter site. In most situations, the new class of the allotment itself was determined from the highest class specified for the license, construction permit or application listed in that allotment group. An Order amending the FM Tables of Allotments (Sections 73.202 and 73.505) pursuant to the Commission's *Report and Order* in BC Docket 80-90 will be issued as soon as possible. (*See* Public Notice, FCC 87-93, released March 24, 1987, which further explains how the Commission administered the reclassification process).

For some groups, the allotment channel was changed by a prior Rulemaking and this fact is so indicated. Therefore, some stations appear in two groups because they may still be operating on the old channel and have an application pending or construction permit for operation on the new channel.

Non-commercial educational facilities were also reclassified at the close of business on March 2, 1987, and are included on the list. However, groups for these facilities do not have an allotment associated with them unless they are located within the Mexican Border Area. The separation distance requirements between non-commercial educational facilities on channels 218, 219 and 220, non-commercial facilities separated in frequency by 10.6 or 10.8 MHz (53 or 54 channels) or non-commercial facilities in the Mexican Border Area and allotments or assignments on the non-reserved channels will be based on these new classifications and the distance obtained from Table A, B, or C of § 73.207 of the Commission's Rules. For other non-commercial educational facilities, the reclassification was for administrative purposes only.

The class change for any license, construction permit, or application indicated on the attached list constitutes a modification of that facilities' authorization by the Commission. Any errors detected in this list should be brought to our attention immediately. Reclassified facilities will not be issued a new authorization solely because of reclassification. When a new authorization is issued for any reason, the new class will appear.

The inclusion on this list of any application, construction permit, or license is only for the purpose of determining the class of the allotment or assignment, and does *not* constitute a determination on the merits of any matter concerning an application, construction permit, license or allotment that may be pending before the Commission. These situations include, but are not limited to:

(1) Applications which have not yet been found sufficient for tender or acceptable for filing are included on the list. Inclusion on the list does *not* mean that the application is either tenderable or acceptable.

(2) Applications which have been returned and for which petitions for reconsideration are pending are included on the list. The inclusion on the list does *not* mean that the petition for reconsideration has been granted; rather, it means only that the application will have the listed class *if* the petition for reconsideration is granted.

(3) Applications which include waiver requests not to reclassify the allotment are included on the list. The class of the allotment group has not been changed because of these requests. This does *not* mean that the waiver of reclassification has been granted; rather, it means that the allotment class will remain the same pending action on the waiver request.

(4) Construction permits which have expired but have applications for reinstatement pending are included on the list. The inclusion on the list does *not* mean that the construction permit has been reinstated; rather, it means only that the construction permit will have the listed class *if* the construction permit is reinstated.

(5) Licenses for which renewals have not been granted are included on the list. The inclusion on the list does *not* mean that the renewal has been granted; rather, it means only that the license will have the listed class *if* the renewal is granted.

The Attachment to this Public Notice is available for inspection in the Commission's Public Reference Room, Room 239, 1919 M St. NW., Washington, DC.

Questions regarding this Public Notice or the attached list should be directed to Gary Kalagian (202) 632–2049 or John Boursy (202) 634–6315.

[FR Doc. 87–8745 Filed 4–17–87; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–754–DR]

Amendment to Notice of a Major-Disaster Declaration; Pennsylvania

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania (FEMA–754–DR), dated November 9, 1985, and related determinations.

DATED: April 14, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

Notice.—The notice of a major disaster for the Commonwealth of Pennsylvania, dated November 9, 1985, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 9, 1985:

Clairton Municipal Authority in Allegheny County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe D. Winkle,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 87–8758 Filed 4–17–87; 8:45 am]
BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

First United Financial Services, Inc., 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 May 13, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First United Financial Services, Inc.*, Arlington Heights, Illinois; to engage *de novo* through its subsidiary, Arlington Mortgage Company, Arlington Heights, Illinois, in making, acquiring and servicing loans or other extensions of credit for the company's account and for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Dallas Guaranty Bancshares, Inc.*, Dallas, Texas; to engage *de novo* in making, acquiring and/or servicing loans for itself or for others of the type made by a consumer finance company or commercial finance company pursuant to section 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Founders Bancorp, Inc.*, Scottsdale, Arizona; to engage *de novo* through its subsidiary, Founders Bank Leasing Co., Inc., Scottsdale, Arizona, in the leasing of personal or real property, with the primary purpose of leasing automobiles pursuant to § 225.25(b)(5) of the Board's Regulation Y. Comments on this application must be received by May 11, 1987.

2. *Valley Capital Corporation*, Las Vegas, Nevada; to engage *de novo* through its subsidiary, Valley Electronic Services, Inc., Las Vegas, Nevada, in providing financially related data processing and data transmission services facilities, and data bases, or access to them pursuant to § 225.25(b)(7) of the Board's Regulation Y. Comments on this application must be received by May 11, 1987.

Board of Governors of the Federal Reserve System, April 14, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-8737 Filed 4-17-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 5, 1987.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Jeremy C. McCamic,* Wheeling, West Virginia; to acquire 17.37 percent of the voting shares of American Bancorporation, Wheeling, West Virginia, and thereby indirectly acquire Quaker City National Bank, Quaker City, Ohio.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *John E. Rednour,* DuQuoin, Illinois; to acquire up to an additional 9.99 percent of the voting shares of Perry County Bancorp, Inc., DuQuoin, Illinois, and thereby indirectly acquire DuQuoin State Bank, DuQuoin, Illinois.

Board of Governors of the Federal Reserve System, April 14, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-8738 Filed 4-17-87; 8:45 am]

BILLING CODE 6210-01-M

Nebraska Capital 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 May 11, 1987.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Nebraska Capital Corporation,* Lincoln, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Havelock Bank, Lincoln, Nebraska. Comments on this application must be received by May 5, 1987.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Community Bankers, Inc.,* Granbury, Texas; to acquire 80 percent of the voting shares of Farmers and Merchants State Bank, Burleson, Texas.

Board of Governors of the Federal Reserve System, April 14, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-8739 Filed 4-17-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 030187 AND 033187

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
(1) APV Holdings, PLC, Baker Perkins, PLC, Baker Perkins, PLC	87-1139	3/04/87
(2) Henry Crown & Co., Joanna Western Holdings, Inc., Joanna Western Consumer Products, Inc	87-1145	3/05/87
(3) Aoki Corp., Trust for the benefit of Mary M. Bodne, held by the Bodne Trust	87-1154	3/05/87
(4) Eastern Gas and Fuel Associates, Newmont Mining Corp., Peabody Holding Co., Inc	87-1156	3/05/87
(5) Peabody Holding Co., Inc., Eastern Gas and Fuel Associates, Coal Properties Corp	87-1157	3/05/87
(6) Dixons Group PLC, Cyclops Corp., Cyclops Corp	87-1159	3/05/87
(7) C.H. Beazer (Holdings) PLC, Edward Randall Phillips, Randall Phillips Builders, Inc., Philhall Corp	87-1170	3/05/87
(8) Lomas & Nettleton Financial Corp., National Bancshares Corp. of Texas, NBC's credit card accounts	87-1174	3/05/87
(9) Total Compagnie Francaise Des Petroles, Texas International Co., Texas International Co	87-1142	3/06/87
(10) Chrysler Corp., Beneficial Corp., Loan accounts	87-1133	3/09/87
(11) Isuzu Motors Ltd., Subaru-Isuzu Automotive Inc., Subaru-Isuzu Automotive Inc	87-1134	3/09/87
(12) Fuji Heavy Industries, Ltd., Subaru-Isuzu Automotive Inc., a joint venture, Subarau-Isuzu Automotive Inc., a joint venture	87-1135	3/09/87
(13) First Capital Holdings Corp. The E.F. Hutton Group Inc., E.F. Hutton Insurance Group, Inc	87-1161	3/09/87
(14) Transamerica Corp., Fairmont Financial, Inc., Fairmont Financial, Inc	87-1163	3/09/87
(15) Longview Fibre Co., Times Mirror Co., Times Mirror Land and Timber Co	87-1165	3/09/87
(16) Tele-Communications, Inc., J. Patrick Michaels, Jr. Atlantic American Holdings, Inc	87-1150	3/10/87
(17) Royal Dutch Petroleum Co., John J. Moller, USA Petroleum Corp	87-1151	3/10/87
(18) PacifiCorp, Davis Oil Co., Davis Oil Co	87-1169	3/10/87
(19) Coca-Cola Enterprises, Inc., The Coca-Cola Co., The Coca-Cola Bottling Co. of the Mid-South	87-1097	3/11/87
(20) Waste Management, Inc., Chemlawn Corp., Chemlawn Corp	87-1167	3/11/87
(21) American Trading and Production Corp., NEAC Partnership, Globe-Weis Division	87-1168	3/11/87
(22) The United Co., Sandy Ridge Energy Corp., Knox Creek Coal Corp	87-1202	3/11/87

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 030187 AND 033187—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
(23) Genicom Corp., Momentum Technologies, Inc., Momentum Technologies, Inc	87-1105	3/12/87
(24) J.H. Whitney & Co., Genicom Corp., Genicom Corp	87-1106	3/12/87
(25) Welsh, Carson, Anderson & Stowe IV, Genicom Corp., Genicom Corp	87-1107	3/12/87
(26) Anchor Media Ltd., WBC Associates, L.P., Wometco WLOS, Inc	87-1152	3/12/87
(27) Deak Morgan Limited, The Governor and Co. of the Bank of England, Johnson Matthey Commodities, Inc	87-1155	3/12/87
(28) Wakefern Food Corp., Mott's Super Markets, Inc., Mott's Super Markets, Inc	87-1160	3/12/87
(29) The Nomura Securities Co., Ltd., Eastdil Realty, Inc., Eastdil Realty, Inc	87-1179	3/12/87
(30) Daniel C. Sullivan, Lucky Stores, Inc., Yellow Front Stones, Inc	87-1180	3/12/87
(31) Cyprus Minerals Co., Moore McCormack Resources, Inc., Globe Metallurgical Inc	87-1207	3/12/87
(32) Super Valu Stores, Inc., Supermarket Operators of America Inc., Supermarket Operators of America Inc	87-1171	3/13/87
(33) Tenneco, Inc., Unisys Corp., S-P Marine, Inc	87-1177	3/13/87
(34) Senior Engineering Group PLC, Cronus Industries, Inc., Southwestern Engineering Co	87-1187	3/13/87
(35) Kirschner Medical Corp., Minnesota Mining and Manufacturing Co., ("3"), Metal Orthopedic Implant Business	87-1194	3/13/87
(36) Manufacturers Hanover Corp., Barclays PLC, Barclays American/Financial, Inc	87-1209	3/13/87
(37) Thyssen-Bornemisza Continuity Trust, c/o TBG Holdings, Glasco, Inc. (a/k/a Ball-Incon Glass Packaging Corp.), Glasco, Inc. (a.k/a Ball-InCon Glass Packaging Corp.)	87-1137	3/16/87
(38) Revlon Group Incorporated, Beecham Group PLC, Germaine Monteil Cosmetiques and Diane Von Furstenberg	87-1140	3/16/87
(39) Ball Corp., Glasco, Inc., a/k/a Ball InCon Glass Packaging Corp., Glasco, Inc., a/k/a Ball InCon Glass Packaging Corp	87-1146	3/16/87
(40) Van Leer Group Foundation, American Flange & Manufacturing Co., Inc., American Flange & Manufacturing Co., Inc	87-1153	3/18/87
(41) Itel Corp., Castle & Cooke, Inc., Castle & Cooke, Inc	87-1196	3/18/87
(42) Castle & Cooke, Inc., Itel Corp., Itel Corp	87-1197	3/18/87
(43) The Horsburgh & Scott Co. ESOP, TRW Inc., TRW Inc	87-1199	3/18/87
(44) Rohm & Haas Co., Borden, Inc., Borden's Polyco polymer business	87-1164	3/19/87
(45) Southmark Corp., Capital Holding Corp., Georgia International Life Insurance Co	87-1176	3/19/87
(46) Castle & Cooke, Inc., XTRA Corp., EXTRA Corp	87-1200	3/19/87
(47) Gulf & Western Inc., Barclays PLC, Barclays PLC	87-1217	3/19/87
(48) Craig Corp., Stater Bros., Inc., Stater Bros., Inc	87-1225	3/19/87
(49) PetroCorp, Royal Dutch Petroleum Co., Shell Oil Co	87-1226	3/19/87
(50) Great West Bancshares, Inc., Title USA Corp., Title USA Corp	87-1234	3/19/87
(51) Occidental Petroleum Corp., Royal Dutch Petroleum Co., Shell	87-1191	3/20/87
(52) Coca-Cola Enterprises, Inc., Ouachita Coca-Cola Bottling Co., Inc., The Coca-Cola Bottling Co. of the Mid-South	87-1223	3/20/87
(53) Neoax, Inc., Rexnord Inc., Fairfield Manufacturing Co., Inc	87-1183	3/23/87
(54) Centex Corp., Melody Homes, Melody Homes	87-1205	3/23/87

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 030187 AND 033187—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
(55) USG Corp., Beecham Group PLC, Beecham Home Improvement Products, Inc. and BHI	87-1138	3/25/87
(56) Litton Industries, Inc., Lamb Technicon Corp., Lamb Technicon Corp	87-1218	3/25/87
(57) Mitsubishi Chemical Industries, Limited, Bemis Co., Inc., Western Litho Plate and Supply Co	87-1231	3/25/87
(58) Investment Ltd. Partnership, MRC Holdings Corp., Midland-Ross Corp	87-1235	3/25/87
(59) Borg-Warner Corp., General Electric Co., GE Credit Corp	87-1149	3/26/87
(60) PPG Industries, Inc., Allegheny International, Inc., Allegheny International Medical Technology, Inc	87-1188	3/26/87
(61) Thomas M. Vickers—an individual, Enron Corp., HNG Cortez Pipeline Co	87-1206	3/26/87
(62) Oak Industries Inc., Banner Industries, Inc., Railway Maintenance Equipment Co	87-1233	3/26/87
(63) Sconnix Broadcasting Co., Reliance Capital Group, L.P., Blair Broadcasting Corp	87-1240	3/26/87
(64) Convergent Technologies, Inc., Baron Data Systems, Baron Data Systems	87-1241	3/26/87
(65) Commerzbank Aktiengesellschaft, Allied-Signal Inc., Linotype Co. (U.S.A.)	87-1242	3/26/87
(66) Newell Co., Anchor Hocking Corp., Anchor Hocking Corp	87-1246	3/26/87
(67) The Clayton & Dubilier Private Fund II L.P., Borg-Warner Corp., Borg-Warner Industrial Products, Inc	87-1247	3/26/87
(68) The Pittston Co., WTC International N.V., WTC International N.V	87-1269	3/26/87
(69) WTC International N.V., The Pttttston Co., The Pittston Co	87-1270	3/26/87
(70) The Pittston Co., WTC International, N.V., WTC International, N.V	87-1271	3/26/87
(71) SouthernNet, Inc., Telecommunications Systems, Inc., Telecommunications Systems, Inc	87-1285	3/26/87
(72) The Ohio Mattress Co., A. Bart Lewis, Susan Lewis and Julie Lewis, Sealy Mattress Co. of Michigan, Inc	87-1178	3/27/87
(73) Daniel J. Sullivan, Allegheny International, Inc., Bally Engineered Structures Inc	87-1215	3/27/87
(74) Jack Dalton, Allegheny International, Inc., Bally Engineered Structures, Inc	87-1216	3/27/87
(75) Reebok International Ltd., AVIA Group International, Inc., AVIA Group International, Inc	87-1230	3/27/87
(76) Joh. H. Andresen, Textron Corp., Packaging Systems Division of Ex-Cell-O	87-1181	3/29/87
(77) Southmark Corp., M.D.C. Holdings, Inc., Mizel Petro Resources, Inc	87-1283	3/30/87
(78) Santa Fe Southern Pacific Corp., Freeport-McMoRan, Inc., Freeport-McMoRan, Inc	87-1286	3/30/87
(79) Brierley Investments Ltd., Oglebay Norton Co., Oglebay Norton Co	87-1192	3/31/87
(80) The Vinton Corp., Hanson Trust PLC, Kaiser Cement Corp	87-1219	3/31/87
(81) Lone Star Industries, Inc., Hanson Trust PLC, Northwest Terminal assets of Kaiser Cement	87-1227	3/31/87
(82) The Atlantic Foundation, Goal Systems International, Inc., Goal Systems International, Inc	87-1280	3/31/87

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87-8748 Filed 4-17-87; 8:45 am]

BILLING CODE 6750-01-M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 010187 AND 013187

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
(1) Masco Corp., Alsons Corp., Alsons Corp	87-0914	01/07/87
(2) Flint Ink Corp., Allied-Signal, Inc., Sinclair and Valentine Division; Ridgeway Color Co	87-0951	01/07/87
(3) Ethyl Corp., Nelson Research & Development Co., Nelson Research & Development Co	87-0946	01/08/87
(4) Ethyl Corp., Nelson Research & Development Co., Nelson Research & Development Co	87-0947	01/08/87
(5) Delaware North Cos, Inc., (Jacobs Family Trust, UPE), Oncap Holding Corp., Airport Concession Division	87-0959	01/08/87
(6) Stewart A. Resnick, Texaco, Inc., Getty Agricultural Business, Inc	87-0962	01/08/87
(7) Co-Steel, Inc., Texas Industries, Inc., Texas Industries, Inc	87-0923	01/12/87
(8) Leon J. Simkins, Reed International, P.L.C., Deerfield Specialty Papers, Inc., Glassine Canada, Inc	87-0938	01/12/87
(9) Fuqua Industries, Inc., Allegheny International, Inc., Allegheny International Exercise Co	87-0961	01/12/87
(10) CDI Corp., The Estate of Ronald J. Smith, Technical Services, Inc	87-0990	01/14/87
(11) American Financial Corp., Taft Broadcasting Co., Taft Broadcasting Co	87-0984	01/15/87
(12) Trident Seafoods Corp., (Charles Bundrant, UPE), ConAgra, Sea-Alaska Products Division	87-0985	01/15/87

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 010187 AND 013187—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
(13) ConAgra, Inc., Trident Seafoods Corp., (Charles Bundrant, UPE), Trident Seafoods Corp., (Charles Bundrant, UPE)	87-0986	01/15/87
(14) Blue Shield of Western New York, Inc., Blue Shield of Northeastern New York, Inc., Blue Shield of Northeastern New York, Inc	87-0992	01/15/87
(15) TeLerate Inc., Dow Jones & Co., Dow Jones Financial Services	87-1000	01/15/87
(16) ConAgra, Inc., Ernest J. Miller, Jr., Ernest J. Miller Enterprises, inc., Interstate Feeders	87-0960	01/16/87
(17) Nutrition World, Inc., General Host Corp., Hickory Farms Division	87-0973	01/16/87
(18) Equitable of Iowa Companies Voting Trust, Alan Baer, Brandeis Department Store	87-0974	01/16/87
(19) Pope & Talbot, Inc., Potlatch Corp., Tissue Paper Plant at Ransom, PA	87-0975	01/16/87
(20) Ernest J. Miller, Jr. and E.J. Miller Enterprises, Inc., ConAgra, Inc., ConAgra, Inc.	87-0981	01/16/87
(21) The Kroger Co., Tengelmann Warenhandelsgesellschaft, Grocery Stores now operated by Family Center, Inc.	87-0983	01/16/87
(22) Mobil Oil Corp., FCS Energy Inc., (F. Browne Gregg, UPE), Big Four Mine	87-0991	01/16/87
(23) Mr. Sharad Tak, Lin Broadcasting Corp., WUSL-FM, a radio station	87-0952	01/20/87
(24) Pacific Asset Holdings, L.P., Western Union Corp., Western Union Corp	87-1009	01/20/87
(25) Brown Group, Inc., Whitenox Limited, Whitenox Limited	87-1005	01/23/87
(26) Cooper Industries, Inc., Joy Acquisition Corp., Petroleum Equipment and Products Segment	87-0967	01/27/87
(27) Rite-Aid Corp., The Kroger Co., The Kroger Co	87-0971	01/27/87
(28) Irving Bank Corp., Gulf & Western Inc., Associates Commercial Corp.	87-0993	01/27/87
(29) Great Lakes Chemical Corp., Mr. John M. Huntsman, Huntsman Chemical Corp	87-0994	01/27/87
(30) Burnham Broadcasting Co., L.P., The Oklahoma Publishing Co., WVUE, New Orleans	87-1002	01/27/87
(31) N.W. Ayer & Son, Inc., Mickelberry Corp., The Cunningham & Walsh Group, Inc.	87-1007	01/27/87
(32) Outboard Marine Corp., Stratos Boat Co., Stratos Boat Co	87-1008	01/27/87
(33) Bennett S. LeBow, Bell & Howell Co., COM products business of Bell & Howell Co	87-1030	01/27/87
(34) Waste Management, Inc., Valley Reclamation Charitable Trust, Valley Reclamation Co	87-0972	01/28/87
(35) The Stanley Works, Acme Holding Corp., Acme Holding Corp.	87-1006	01/29/87
(36) Bailey Manufacturing Corp., Golden Nugget, Inc., GNAC Corp. and six other corporations	87-1040	01/29/87

FOR FURTHER IMFORMATION CONTACT:
Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87-8749 Filed 4-17-87; 8:45 am]

BILLING CODE 6750-01-M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 020187 AND 022887

Name of acquiring person; Name of acquired person; Name of Acquired Entity	PMN No.	Date terminated
(1) Paccar Inc., Trico Industries, Inc., Trico Industries, Inc.	87-1037	02/02/87
(2) Vendex International N.V., Leonard Riggio, Barnes & Noble Bookstore, Inc.	87-1042	02/03/87
(3) Rochester Telephone Corp., Enterprise Telephone Co., Enterprise Telephone Co	87-1048	02/05/87
(4) NRM Operating Company, L.P., Mesa Operating Limited Partnership, Mesa Operating Limited Partnership	87-1062	02/05/87
(5) James R. Barker, Moore McCormack Resources, Inc., The Interlake Steamship Co. Moore McCormack	87-1066	02/05/87
(6) Tambrands Inc., Hygeia Sciences, Inc., Hygeia Sciences, Inc.	87-1078	02/05/87
(7) Sandoz Ltd., Unilever N.V., Stauffer Seeds, Inc.	87-1063	02/10/87
(8) William H. Binnie, Gordon Jewelry Corp., Catalog-Showroom Stores Div.	87-1068	02/10/87
(9) Kraft, Inc., Holleb & Co., Inc., Holleb & Co., Inc.	87-1069	02/10/87
(10) Sundor Group Limited Partnership, DWG Corporation, New Texsun, Inc.	87-1074	02/10/87
(11) The Duriron Co., Inc., Valtek Inc., Valtek Inc.	87-1032	02/11/87
(12) Florida Steel Corp., Blue Tee Corp., Knoxville Iron Co and Steel Service Co.	87-1047	02/11/87
(13) Richard A. Bernstein, Whittaker Corp., Whittaker General Medical Corp.	87-1055	02/13/87
(14) Peck-Lynn Group, Ltd., (Howard P. Hoeper, UPE) Petrofina S.A., Vercon Div.	87-1064	02/13/87

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 020187 AND 022887—Continued

Name of acquiring person; Name of acquired person; Name of Acquired Entity	PMN No.	Date terminated
(15) American Financial Corp., The Circle K Corp., The Circle K Corp.	87-1059	02/18/87
(16) Edmund M. Hoffman, American Bottling Co., American Bottling Co.	87-1060	02/18/87
(17) Siemens Aktiengesellschaft, Telecom Plus International, Inc., Tel-Plus Communications, Inc., Telecom Plus Rental	87-1087	02/18/87
(18) Dr. Ghaith R. Pharaon, Murray Industries, Inc., Murray Industries, Inc.	87-1089	02/18/87
(19) The Salk Institute for Biological Studies, Facing History and Ourselves National Foundation, Inc., B & D Ownership Corp.	87-1096	02/18/87
(20) Quintex Limited, (Christopher C. Skase, UPE), Princeville Development Corp., Princeville Development Corp.	87-1109	02/19/87
(21) Freeport-McMoRan Resource Partners, Ltd. Partnership, The Williams Companies, Agrico Chemical Co.	87-1079	02/24/87
(22) Lone Star Industries, Inc., Arthur A. Riedel and Northwest Aggregates Co., Pioneer Construction Materials Co., Western-Pacific	87-1083	02/24/87
(23) Alan E. Clore, Kaiser Aluminum & Chemical Corp., Kaiser Aluminum & Chemical Corp.	87-1092	02/24/87
(24) Reliance Group Holdings, Inc., Symbol Technologies, Inc., Symbol Technologies, Inc.	87-1093	02/24/87
(25) Hawker Siddeley Group Public Limited Co., Clarostat Mfg. Co., Inc., Clarostat Mfg. Co., Inc.	87-1094	02/24/87
(26) GB-Inno-BM S.A., Forest City Enterprises, Inc., FCE's Retail Home Improvement Center Div.	87-1108	02/24/87
(27) Fred G. Currey, The Greyhound Corp., GLI Operating Co. and BusLease, Inc.	87-1113	02/24/87
(28) Bank of New England, Commercial Credit Co., McCullagh Leasing, Inc.	87-1116	02/24/87
(29) Fred G. Currey, BusLease, Inc., BusLease, Inc.	87-1120	02/24/87
(30) The Prudential Insurance Company of America, Diamond Shamrock Corp., Diamond Shamrock Corp.	87-1088	02/25/87
(31) Quintex Limited, (Christopher C. Skase, UPE), Princeville Development Corp., Princeville Development Corp.	87-1103	02/25/87
(32) Gerald H. Stool, American Century Corp., American Century Corp.	87-1054	02/26/87
(33) Atlantic Research Corp., ORI Group, Inc., ORI Group, Inc.	87-1084	02/26/87
(34) The United Co., Cyprus Minerals Co., Sandy Ridge Energy Corp.	87-1121	02/26/87
(35) Christopher C. Skase, International H.R.S. Industries, Inc., Hal Roach Studios, Inc.	87-1127	02/26/87
(36) Norfolk Southern Corp., Ford Motor Co., Rouge Steel Co.	87-1114	02/27/87

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87-8750 Filed 4-17-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0097]

Union Carbide Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Union Carbide Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of vinyl chloride-acetate hydroxyl-modified copolymer, reacted with styrene-maleic anhydride copolymer, as a coating or component of a coating of articles intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B3985) has been filed by Union Carbide Corp., P.O. Box 670, Bound Brook, NJ 08805, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of vinyl chloride-acetate hydroxyl-modified copolymer, reacted with styrene-maleic anhydride copolymer, as a coating or component of a coating of articles intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: April 13, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-8735 Filed 4-17-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BERC-373-FN]

Medicare Program; Lowest Charge Levels

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: In those cases in which, in the judgment of the Secretary, a specified medical service, supply, or piece of equipment generally does not vary significantly in quality from one supplier to another, the Medicare reasonable charge for the item or service may not exceed the lowest charge level (LCL) at which the item or service is widely and consistently available in a locality. We are adding certain items of durable medical equipment, medical supplies, and prosthetic devices to the items already subject to the LCL criterion of reasonable charge payment. Extending the listing of items reimbursed on the basis of LCL should result in more equitable payment for essentially similar items and services and should also result in savings to the Medicare program.

EFFECTIVE DATE: For items supplied on or after May 20, 1987.

FOR FURTHER INFORMATION, CONTACT: Roberta Epps (301) 594-3867.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1833 of the Social Security Act (the Act) provides for payment for physician and most other Part B medical and other health services on a reasonable charge basis. (Exceptions include hospital outpatient services, which are paid for on a reasonable cost basis, and diagnostic laboratory services, which are paid for under a fee schedule.) The criteria for determining reasonable charge payments are described in section 1842(b)(3) of the Act. Under that section, payment for a given item or service is generally based on the lowest of: (1) The actual charge, (2) the physician's or supplier's customary charge for the service, or (3) the prevailing charge in the locality for similar items or services. Section 1842(b)(3) of the Act further provides that in the case of medical services, supplies and equipment (including equipment servicing) that, in the Secretary's judgment, do not vary significantly in quality from one supplier to another, the reasonable charge may not exceed the lowest charge level (LCL) at which a particular service or supply is widely and consistently available in a locality. Subpart E of our regulations at 42 CFR Part 405 define the terms and identify criteria for determination of reasonable charges. Our rules governing the application and calculation of the LCL are at 42 CFR 405.511.

Under section 42 CFR 405.509 of the regulations, services (other than physician services), supplies and equipment paid for on a reasonable charge basis are subject to an additional limitation known as the inflation-indexed charge (IIC). The IIC is the lowest of the fee screens (prevailing charge, customary charge, the prior IIC, or LCL) that is in effect on December 31 of the preceding fee screen year as updated by the annual change in the Consumer Price Index for all Urban Consumers (CPI-U). Customary charge, prevailing charge and lowest charge level screens are updated annually and the current year's reasonable charge may not exceed the lower of those screens or the IIC. The following example explains the relationship between the IIC and the LCLs in the general determination of reasonable charges.

Example: The LCL limit for an item is $90 on December 31, 1986. The other reasonable charge screens (prevailing charge, customary charge and IIC) in effect at that time are greater than the LCL level. The CPI-U increase, as compiled for the 12-month period ending on June 30, 1986, is 1.7 percent. Therefore, the IIC for fee screen year 1987 is $91.53 ($90.00 × 1.017). The reasonable charge for fee screen year 1988 will be the lowest of $91.53, the actual charge, the updated customary charge, the updated prevailing charge, or the updated LCL.

In 42 CFR 405.511, which implements the LCL provision, we define the LCL as the 25th percentile of the array of charges for a given item or service in the locality. The LCL is calculated annually as we perform other updates of reasonable charges. (As a result of changes to fee screen years and update cycles made by section 2306(b) of the Deficit Reduction Act of 1984 (Pub. L. 98-369) and section 9301(d) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), for items and services furnished on or after October 1, 1986, we calculate customary and prevailing charges and LCL limits in January of each year. Regulation revisions implementing these changes were published on October 1, 1986 (51 FR 34975). The LCL for items and services furnished after September 30, 1986 and before January 1, 1987 is the same as for items and services furnished before October 1, 1986.)

Under 42 CFR 405.511(b), we publish notice of any proposal to apply the LCL provision to a medical service, supply or

piece of equipment, and we give the public an opportunity to comment. Inclusion of a service, supply or piece of equipment in such a proposed notice reflects our proposed judgment that the particular item or service meets the criterion of section 1842(b)(3) of the Act that it does not vary significantly in quality from one supplier to another. We rely on public comment to give us a valuable check on our proposals and we consider comments before making a final determination.

II. Contents of Proposed Notice

On August 15, 1986 (51 FR 29310), we published a list of items and services that we proposed to add to the current list of items subject to the LCL provision. (We note that, although inclusion on the list would make the item or service subject to the LCL provision, the calculation of the LCL requires that the item or service be widely and consistently available in the locality used by the Medicare carrier for this purpose. In those localities where the item or service is infrequently furnished, the carrier might not be able to calculate an LCL, having the effect that the LCL would not be applied to the listed item in that particular locality. We did not describe this aspect of the LCL provision in our notice, since the methodology for making these calculations was already in place and our sole intention was to solicit comments on the proposed additions to the LCL list.)

In our selection of items for inclusion on the proposed list, we gave priority to items and services that are most frequently reimbursed under Medicare. (See S. Rep. No. 1230, 92d Cong., 2d Sess. 193 (1972).) The specific supplies and equipment identified for LCL purposes were those that account for the highest dollar volume of Medicare payment, as determined from our analysis of the Procedure File of the Part B Medicare Annual Data files for the 1983 calendar year. Certain items that do not account for a substantial dollar volume but are very similar to those that do also were included because failure to do so would invite use of the similar items solely to avoid the LCL limitation. Our decisions about proposed additions to the LCL list also were based on three studies and reports, which were identified in the proposed notice (see 51 FR 29, 312), among other factors.

We invited commenters who believe that an item or service in the proposed list varies significantly in quality from one supplier to another to provide detailed information to support their contention. We also invited commenters to suggest refinements of the HCFA Common Procedure Coding System (HCPCS), which is a system of codes used by the carriers for the identification of items and services on bills that we would use to describe items and services subject to the LCL provision.

Our proposed list identified primarily supplies, equipment and ambulance services. We did not propose at that time to extend the LCL provision to other widely prescribed services, such as physical therapy and chiropractic manipulation, but we invited public comment on the possible inclusion of these and other services in the future.

We also invited comments on the extent to which subsidized and nonsubsidized ambulance services exist in various localities, whether a different methodology is appropriate in the case of ambulance services because of subsidized services, and, if so, how such subsidized services should be defined and identified.

III. Response to Public Comments

We received timely comments from 744 owners and employees of ambulance companies (including police and fire department companies), 46 State and local governmental entities, 18 durable medical equipment suppliers and manufacturers (including associations), one labor union, 17 legislators, one physician, 27 professional associations (other than those for durable medical equipment), four attorneys, two physical therapists, and approximately 1000 beneficiaries and other individuals. All of the commenters opposed the proposal. Virtually all of the beneficiaries and individuals sent notes or petitions stating general opposition to extending the LCL provision to ambulance services.

Comments on the Length of the Comment Period

Comment: Several commenters asked for an extension of the 30-day comment period, citing the relative compexity of the proposal, the need for data from the Medicare carriers to do an item-by-item analysis of availability of products in specific localities and an analysis of financial impact, and the fact that the carriers had informed them that data were not readily available.

Response: We do not believe the data described by these commenters were necessary for interested parties to make informed comments on the proposal. As stated in the proposed notice, subjecting an additional item or service to the LCL methodology is based primarily upon the determination that the item or service does not vary significantly in quality from supplier to supplier. Commenters who believe that an item or service in the proposed list does vary significantly from one supplier to another were requested to specify in detail the nature of variations in quality, identify specific lower quality items, and provide data showing the relative market share of these products. We also asked commenters to provide detailed pricing information and discuss refinements of the HCPCS. Our expectation, therefore, was that we would receive comments concerning quality issues based upon the knowledge of the commenters.

Although the data requested by the commenters might assist them in the calculation of the precise financial impact of the proposal on specific products or services, such calculations would have primarily financial rather than legal significance. The use of the LCL methodology under the criteria of section 1842(b)(3) of the Act is specifically authorized by the statute and assumes that, in some cases, reimbursement for specific products would be decreased. Since the data do not presently exist in the format requested by the commenters and would take substantial time to create, we did not believe it would be appropriate to delay the rulemaking process in order to assemble information that is not directly pertinent to the process of assessing whether significant quality variations exist.

We do not believe that it is necessary or appropriate in the course of assessing whether an item should be added to the LCL list to announce exactly where the item is widely and consistently available in a locality. The question of availability in a locality pertains to the applicability of the LCL to particular products in a specific area, whereas the proposal and this notice pertain to whether the item should be added to the LCL list in the first place. Determinations about availability are made at the carrier level based on information available at the time that reasonable charges are determined. For the foregoing reasons, we did not grant requests for an extension of the 30-day comment period.

Comments on Significant Variations in Quality

Comment: A number of manufacturers of durable medical equipment and their associations objected to the absence in the proposed notice of data to establish clearly that items and services included in our list did not vary significantly in quality. In these commenters' view, the alleged absence of such data invalidates

the list since the statute and regulations require a judgment on the quality variation of each item on the list. The commenters stated that the Secretary cannot discharge his duty to determine lack of significant variation in quality by requiring the public to prove there are significant variations.

Response: The statutory requirement in section 1842(b)(3) of the Act that the Secretary make a determination that there is no significant variation in quality from one supplier to another does not identify the specific evidence to be used by the Secretary to establish the lack of significant variation or by the public as to the existence of significant variation. The statute calls for a judgment by the Secretary and does not prescribe either the process or the information to be relied upon. The process, established by regulation in 1978 (42 CFR 405.511, 43 FR 32300), has been for HCFA to identify items in sufficient detail that those items conforming to the description will not vary significantly in quality. The items described fulfill a specific medically determined need that can be provided by essentially similar items that meet that description. While prescribing practices may vary, the descriptions and circumstances under which items are used imply a high degree of substitutability and, hence, that the items do not vary significantly in quality. We then propose those items to the public by notice and solicit comments specific to those items so that we may benefit by the experience and knowledge of the public as to perceived significant variations in quality.

We recognize that there are variations between and among items but in our judgment such variations in quality do not *significantly* effect the medically necessary function of an item. The basic features of the items included under a HCPCS code are standard or sufficiently similar (for example, footrest, seat, etc., for wheelchairs) that items which have these features are identifiable as comprising a single, functionally equivalent item (for example, a wheelchair). Therefore, the items represent a commonality recognized and identified by the HCPCS code. Since each item within the code satisfies our coverage standards, we do not consider that any variations are significant. That is to say, if an item with a given HCPCS code is considered covered for a given medical need, then any item under that HCPCS code will be covered regardless of its source and is presumed to meet the need.

Potential items or services to be subject to the LCL were considered carefully before we published the notice of our proposed designation. We think that the opportunity for members of the health care profession and the general public to review the listing, and to call to our attention any information bearing on whether the item or service varies significantly in quality, is a valuable check on the validity and accuracy of our designation and assures that any final designation meets the requirements of section 1842(b)(3). The Secretary's judgment is not complete until after the comments have been reviewed. Therefore, only the final notice contains the pronouncement of the Secretary's judgment that an item or service does not vary significantly in quality. As indicated in the following response, we are making some revisions from the proposed listing.

It shoul also be noted that the procedure we followed in developing the proposed list was similar to the determination procedure used for standard wheelchairs and hospital beds, items currently subject to the LCL.

Comment: The majority of commenters contended that the products vary significantly in quality. Several examples were submitted, with descriptions of possible variations: ambulance services, wheelchairs, TENS, walkers and quad canes, commodes, oxygen concentrators, indwelling catheters (Foley-type), urinary collection and retention systems, and ostomy sets.

Response: For the most part, commenters on equipment and supplies described features of various items and how those features might differ in construction or fabrication. Possible consequences of failure were described. However, commenters generally did not: provide the identification of specific products considered of lower quality; indicate that negative consequences were in fact occurring; indicate that significantly lower quality items are now provided to Medicare patients; or indicate that there was any objective way to modify the HCPCS to partition the items into acceptable and unacceptable groupings.

In some cases, commenters pointed out special features primarily of a comfort or convenience nature that, in the case of certain patients, could have medical implications (for example, one patient might develop pressure ulcers using one design or construction of equipment while another design or construction is claimed to relieve such problems; or a particular design feature is of particular value to patients with limited dexterity). We note that where special features or services in excess of normal needs are covered, medically necessary and unattainable with items or services available at lowest charge levels (or even at prevailing and customary levels for non-LCL items or services), carriers have the authority under 42 CFR 405.506 to determine a reasonable charge that exceeds the customary charge, prevailing charge, or LCL of the normal item or service.

Upon review of comments and evaluation of additional information, we are not extending the LCL provisions to ambulance services and TENS. We also are clarifying the application of the LCL to certain ostomy supplies and to oxygen concentrators. However, we are extending the LCL provision to wheelchairs, walkers and quad canes, commodes, indwelling catheters (Foley-type), and urinary collection and retention systems, as proposed.

1. *Ambulance services.* We received extensive comments indicating that some lower charging ambulance companies receive government subsidies so that nonsubsidized companies could not compete at that price. Charges from such subsidized companies could determine the LCL. Moreover, several commenters indicated that within the same Medicare locality local governments have established a significantly different regulations on ambulance services with regard to both training and qualifications of personnel as well as requirements for equipment, with the result that there are significant differences in quality. We believe that, in light of these concerns, further study is warranted and we are therefore not including ambulance services in the list of services subject to LCL.

2. *Transcutaneous Electrical Nerve Stimulators (TENS).* Information developed in response to comments suggests that there may be significant quality variations among currently marketed TENS units, which are regulated by the Food and Drug Administration (FDA). We will attempt to ascertain more about any particular problem units and, for the time being, have decided to drop TENS from the list. We will consider excluding identified unreliable or ineffective units from program coverage and instituting LCLs for TENS at a later date.

3. *Ostomy sets.* One commenter provided a substantial discussion of the need for various ostomy bag accessories such as skin barriers, microporous tape and seal rings. We note that each of these items is coded and covered individually or can be purchased and paid for as a complete set. The concern expressed was that the present HCPCS code for bags sold separately does not distinguish between bags with or

without seal rings and that prices by lower charging suppliers might be for bags without seal rings while higher charging suppliers may be selling bags equipped with the seal ring. Thus, applying an LCL limit to ostomy bags generically could result in mixing products with significant quality differences.

Therefore, although LCLs will apply to other components of colostomy, ureterostomy and ileosotomy sets, until a coding distinction is made, the limits will not apply to ostomy bags that are not supplied as part of a set (HCPCS codes A4365 and A4366).

4. *Oxygen concentrators.* One commenter pointed out that oxygen concentrators vary in their output capacity and that they have different safety features. No evidence was provided, however, in support of the commenter's assertion that differences in safety features represent a significant difference in quality.

We recognize that the output capacities of concentrators vary; that is, between 2, 3, 4, 5 or more liters per minute. As indicated in section IV of this notice, however, present HCPCS codes provide for coding of oxygen concentrtators on the basis of the amount of oxygen actually utilized (i.e., in 244 cubic feet intervals) rather than on the basis of output capacities. However, some carriers make payment for rental or purchase of an oxygen concentrator without regard to the amount of oxygem used through use of a local code or by using HCPCS code E1396 (oxygen concentrator, equivalent to over 1952 cubic feet) for all concentrators. In these cases, we agree with the commenter that an LCL limit should not be applied at this time because of significant differences between concentrators of differing capacity.

Thus, we are instructing these carriers to modify their coding system to distinguish between concentrators of varying capacity; that is, 2, 3, 4 or 5 or more liters per minute at 85 percent or greater concentration. Those carriers will apply the LCL to concentrators effective January 1, 1988 at which time charge data for equipment of varying capacities will be available. In the case of carriers that currently make payment based on the amount of oxygen used, the LCL limit will be applied effective May 20, 1987. While there may be charges for equipment of varying capacities included under a single utilization category (for example, 976 cubic feet), all equipment billed under this category presumably is capable of producing the requisite amount of oxygen. Thus, any variation in capacity between concentrators is not considered significant since any excess capacity not used is not medically required.

5. *Wheelchairs.* One commenter indicated that the following characteristics of wheelchairs vary in quality: framework tubing, wheel bearings, wheel shock absorbency, handrim design and seat comfort, durability and ability to prevent decubitus ulcers. We recognize that wheelchair characteristics can vary in quality. However, we have no reason to believe that these variations significantly affect the medically necessary function of the item and the commenter did not present any concrete information to warrant or support such a conclusion. Also, we note that standard wheelchairs have been subject to the LCL provision for several years. Our experience has not shown that the market for standard wheelchairs at or below the LCL or the market in general consists of items that significantly vary in quality. Therefore, we conclude that wheelchairs do not significantly vary in quality and we have included wheelchairs in this notice.

6. *Walkers and quad canes.* One commenter stated that quality variations in walkers and quad canes result in substantial variations in durability and service needs. The commenter cited examples of components of walkers and quad canes that vary in quality. We acknowledge that components may vary in quality. However, we have no reason to believe that the variations significantly affect the medically necessary function of these items. We are not aware of nor did the commenter provide supporting information for the assertion that walkers and quad canes significantly vary in quality. We, therefore, conclude that walkers and quad canes do not significantly vary in quality and we have included walkers and quad canes in this notice.

7. *Commodes.* One commenter stated characteristics of commodes (e.g., welding and finish, tips, product construction, and leg adjustability) vary in quality. We recognize that these features of commodes may vary in quality but we have no reason to believe that these variations significantly affect the medically necessary functions of these items. The commenter did not present any supporting information for the assertion that commodes significantly vary in quality and we have included commodes in this notice.

8. *Indwelling catheters, Foley type.* Two commenters indicated that various product quality characteristics, common to all types of Foley catheters, affect patient care and costs. We acknowledge the variations in quality among and between indwelling catheters. However, the FDA has determined that currently marketed catheters are safe and effective. To that agency's knowledge, no studies have demonstrated *significant* variations in quality among and between catheters. The choice of the type catheter selected for the patient's use is subject to the preference of the physician and the purpose of the catheter. Patient reaction to the material used in the manufacture of catheters (e.g. latexs, Teflon, etc.) has resulted in the development of catheters of various fabric construction. We have recognized and responded to the fabric differences in catheters through the denotation of our HCPCS codes for catheters.

We believe that indwelling catheters, Foley type, do not significantly vary in quality and we have included such catheters in this notice. We have no reason to believe that the variations among and between indwelling catheters, Foley type, significantly affect the medically necessary function of these items and the commenters did not present any concrete information to warrant or support the assertion that such catheters *significantly* vary in quality.

9. *Urinary collection and retention systems, drainage bags with tube and leg bags with tubes.* Several commenters asserted that the presence or absence of various features of drain bags affect system cost, comfort and usefulness to the patient. One commenter provided samples of the various components of urinary collection systems. We recognize that quality variations exist among and between urinary collection and retention systems, leg bags with tubes. However, we have no reason to believe that the variations significantly affect the medically necessary function of these items. The commenters did not present any concrete information to warrant or support the assertion that urinary collections and retention systems, drainage bags with tubes, and leg bags with tubes *significantly* vary in quality. We are of the opinion that such systems do not significanlty vary in quality and we have included these items in this notice.

As noted above, where features primarily of a comfort or convenience nature are medically necessary due to a patient's particular circumstances and are unattainable with items or services available at lowest charge levels, carriers have the authority to determine a reasonable charge that exceeds the customary charge, prevailing charge or LCL of the normal item or service.

Comment: One commenter suggested that HCFA establish guidelines specific

to each item against which quality variations could be tested. Several commenters suggested that services (or lack of services) by a supplier be taken into account by HCFA in determining whether quality variations exist. For example, suppliers of cervical collars, stump socks and oxygen equipment that furnished customized fitting or instructions in the use of otherwise identical items felt that they should be paid higher than the LCL payment, as did suppliers who provided patient monitoring or respiratory services.

Response: Many of the costs for services the commenters cited in their argument are costs for noncovered services. For example, respiratory therapy or home patient monitoring services furnished by durable medical equipment suppliers are not covered. Services such as fitting, set-up, delivery and instructions for use are generally required and no evidence was offered indicating that such services are not provided as required by any suppliers, including the more economical suppliers. On the contrary, these comments clearly suggest that in some cases the variations in charges are due to the provision of noncovered services. We note that where special features or services in excess of normal needs are covered, medically necessary and unattainable with items or services available at lowest charge levels (or even at prevailing and customary levels for non-LCL items or services), carriers have the authority under 42 CFR 405.506 to make payments based on charges higher than customary or prevailing charges or the LCL.

However, we are not extending the LCL limitation to stump socks. As noted earlier, we gave priority to items and services that are most frequently paid for under Medicare. We specifically identified for LCL purposes those items that account for the highest dollar volume of Medicare payment in the durable equipment, medical supply and prosthetic categories. Due to an error in transposition of the code number for prosthetic stockings, the code for stump socks (a low volume item) was inadvertently included in the proposewd list while prosthetic stockings were omitted. Since prosthetic stockings were not subject to comment, they also will not be subject to LCL limitations at this time.

Comments on Widely and Consistently Available in a Locality

Comment: Without providing additional detail, a number of commenters disagreed that all the items and services are widely and consistently available in their localities. One commenter, citing a 1981 report of the General Accounting Office (GAO), alleged that standard wheelchairs (currently subject to the LCL screens) are not widely and consistently available.

Response: We believe that the commenters are under the erroneous impression that payment levels will be established that do not reflect charges in their locality. The regulations define the charge at which an item or service is widely and consistently available as the 25th percentile of the array of charges for that item or service. In program instructions (section 5015.1 of the Medicare Carriers Manual), we further limit the definition of widely and consistently available to items or services for which there are at least four suppliers in the locality furnishing the service and at least 20 charges for the service in that locality during the quarter (July-September) from which the charge data are derived. Thus, there must be at least five charges at or below the LCL during that quarter. If an item cannot meet these thresholds, no LCL can be calculated or applied in that locality. These thresholds are higher than those usewd when the GAO made its observations. At the time of the GAO observations HCFA required only four charges to calculate an LCL.

Comment: Several commenters stated that suppliers whose charges were above the LCL would refuse to accept assignment, and beneficiaries would either have to pay additional out-of-pocket expenses or seek a supplier that accepts assignment, which might involve considerable travel.

Response: We do not believe these outcomes are likely. For several years standard wheelchairs and hospital beds have been subject to the LCL criteria. Our experience with the use of LCL as a limit on reimbursement for these two items has not demonstrated a decrease in supplier acceptance of assignment. On the contrary, assignment is at a high level for both standard hospital beds and standard wheelchairs and has remained constant over the years. Our most recent data show that the assignment rate for standard wheelchairs is 88 percent and the assignment rate for standard hospital beds is 95 percent. Based on these rates, we have no reason to expect supplier acceptancew of assignment to decrease significantly for any additional items or services because they are subject to the LCL criteria.

Furthermore, we believe that acceptance of assignment is a marketing tool for suppliers that has a strong bearing on their ability to attract patient self-referrals (patients who select their supplier without referral from another party such as a physician or discharge planner) and, more importantly, to receive referrals from third partiers such as physicians and hospital discharge planners. In many cases, refusal to accept assignment will cause patients and third parties to change their referrals to those suppliers who accept assignment. It is more likely that the more economical suppliers will continue to accept assignment because they are the ones currently charging near or below the LCL. Any change in referrals is likely to be to a more economical supplier and to result in decreased out-of-pocket expenditures for beneficiary coinsurance. To the extent that LCLs create lower thresholds for increased out-of-pocket costs, they also create greater incentives to find less expensive suppliers even among beneficiaries who now deal with suppliers who do not accept assignment. Thus, there may be shifts of currently unassigned services to suppliers who accept assignment.

In addition, we believe that in most cases the difference between current reimbursement and reimbursement under an LCL has been overestimated (see the final Regulatory Impact Analysis in section V of this notice) so that the impact on the income of any given supplier (and thus the impact of LCLs on assignment decisions) will be less than widely supposed. Finally, regarding the possibility that a beneficiary might have to travel far to find a supplier that accepts assignment, if the carrier determines that a locality structure is causing a substantial inconvenience, the carrier can request a reconfiguration to better facilitate the implementation of the LCL.

Comment: Suppliers asked that deluxe and convenience items be deleted from the list of items subject to LCL reimbursement because they are not widely and consistently available in a locality.

Response: The proposed notice stated that convenience or deluxe items or features are not generally covered by the Medicare program, but, under certain circumstances, the items may be fully covered and reimbursed. For sake of completeness and accuracy, we believe that it is reasonable for such items or services to be subject to the LCL provision when comparable, covered, medically necessary items are also subject to the LCL. In this manner, we have uniform LCLs for similar items or services. As indicated above, if a carrier does not receive at least 20 charges in the data period (July-September) or if these charges were made by fewer than four suppliers, the

carrier would not be allowed to calculate an LCL for the deluxe item or feature under applicable program instructions.

Comment: Commenters stated that the locality used for establishing the LCL may be as large as an entire State, theoretically requiring a beneficiary to travel hundreds of miles to obtain an item or service at the payable rate. A further comment was that the locality for the LCL is the same as the prevailing charge locality for physicians and may not be appropriate for the LCL.

Response: For the purpose of making reasonable charge determinations, a locality is the geographic area for which a Medicare carrier derives the prevailing charges for items or services. A locality usually is a political or economic subdivision of a State, and it should include a cross-section of the population with respect to economic and other characteristics.

Medicare carriers delineate localities on the basis of their knowledge of local conditions. The localities may differ in population density, economic level and other factors, including medical considerations, affecting charges for items or services.

The localities used to determine prevailing charges for physicians may be the same as the localities used to determine the prevailing charge for other items or services but this can differ. For example, in many carrier service areas there are multiple localities for physician services but a single state-wide locality for durable medical equipment. We agree with the commenter that the prevailing charge locality generally used for physician services may not be appropriate for a specific LCL. In fact, our program instructions (section 5015.3 of the Medicare Carriers Manual) provide that when calculating and implementing an LCL for an item there may be advantages in using localities other than those previously used for determining the prevailing charges for the item. Such revised localities could be broader or more limited than the previously used locality and the locality structure could vary between items. However, when an LCL locality is modified for a particular item, the modified locality must be used to calculate the prevailing charge for that item.

Where a carrier determines that a locality structure is causing substantial inconvenience for beneficiaries to obtain items at LCL levels (for example, the beneficiaries are not in the delivery area of any supplier whose customary charge is at or below the LCL for the items), the carrier can request a reconfiguration to better facilitate the implementation of the LCL.

Comment: A few suppliers asked for a general exception to the LCL payment level for rural areas because of the allegedly greater cost of furnishing items and services in those areas.

Response: Because there was no supporting evidence of excessive costs in rural areas, we do not believe that it has been shown that there is justification for a blanket urban/rural exception to the LCL limits. We will instruct carriers to be alert to problems that may arise in specific rural areas. We believe the existing policies, as outlined in the preceding response regarding carrier authority and responsibilities for locality determinations, are sufficient to respond to any need to make distinctions between geographic areas for the purpose of calculating LCLs for specific items.

Comment: One commenter stated that consideration should be given to examining the regional variations in LCL levels not only to reduce the unreasonably high calculations but also to increase those that may be unreasonably low. In the commenter's opinion, the proposal penalizes suppliers who kept their charges as low as possible.

Response: The LCL is based upon actual submitted charges by suppliers within a locality. We believe that in the marketplace the actual charges reflect the costs associated with the business (overhead expenses) plus a reasonable profit. The actual charge is determined by the supplier and not by HCFA. Therefore, LCLs are an accurate and fair representation of the self-determined practice in the locality. As discussed below under "Calculations of LCLs," inherent reasonableness principles may be applied where necessary, and extreme variations in regional LCL levels may warrant such an application. We do not agree that lower charging suppliers are harmed by the establishment of an LCL. A more reasonable expectation is that such suppliers will see some increase in business.

Comments on Calculation of LCLs

Comment: A few suppliers and others who had contacted carriers for charge data and at the 25th percentile were told that the information was not readily available. The commenters noted that reimbursement levels for some items have not risen due to statutory freezes and the application of other fee increase limitations (such as the use of the inflation-indexed charge). They questioned whether carriers have the requisite data on which to base accurate LCL limits.

Response: Except for the two items of durable medical equipment presently subject to the LCL limit, carriers have not routinely computed the 25th percentile of the array of charges; there was no need for such information. Moreover, the LCL limits for 1987 will be based on claims processed in the July through September 1986 period and such data would not have been available when the requests were made. However, the carriers have been instructed to compute LCL limits for all items and services included in the notice and we have no reason to question the availability or accuracy of the charge data that will be used to make these calculations.

Comment: One commenter asked if the reputation of the supplier for reliability and integrity could be taken into account in calculating an LCL.

Response: Consideration of supplier reputation is beyond the provisions of the statute, the legislative history, and our regulations. Also, judgments about reputation would be so subjective as to be totally unadministrable.

Comment. A commenter suggested that HCFA use the inherent reasonableness principle instead of the LCL criteria to set reimbursement levels for the listed items and services.

Response: From the reimbursement point of view, the LCL is one of several limitations used in calculating reasonable charges, to be used in addition to the determination of customary, prevailing charges and the inflation indexed charges (IICs). LCLs, prevailing charges, customary charges and the IICs are all based on the actual charging pattern of suppliers. The inherent reasonableness principle applies when using the standard reasonable charge determination mechanisms results in grossly excessive or deficient charges (42 CFR 405.502(g)). There may well be circumstances where it is appropriate for carriers or HCFA to apply inherent reasonableness for an item subject to any of the reasonable charge limits (e.g., customary charges, prevailing charges, LCLs and the IICs). This might be true, for example, where there is no competitive market, or Medicare is the dominant payer so that the allowance computed at the 25th percentile of the array of customary charges results in a grossly excessive charge. Therefore, the use of inherent reasonableness is limited to special circumstances, while the use of LCLs is required wherever it can be determined that items do not vary significantly in quality. The use of LCLs does not

guarantee an inherently reasonable result, so that this principle may be applied to those services for which LCLs have been established. Therefore the use of LCLs and the use of inherent reasonableness screens must be viewed as concurrent limitations, not as substitutes for one another.

Miscellaneous Comments

Comment: Some commenters indicated their belief that under the LCL provision they will receive only 25 percent of their charges.

Response: These commenters have confused the meaning of "25 percent of" and the "25th percentile." The 25th percentile of charges means an actual charge which is equal to or higher than one quarter of all the charges. Thus, at least one out of every four transactions is at this price or less.

Comment: Many commenters stated that companies with lower charges will be forced out of business because of a smaller margin between their costs and reimbursement, and that companies with higher charges will predominate in the market place, contrary to the purpose of the LCL. Commenters also stated that, as a result of the proposal, services will become less widely and consistently available at the LCL.

Response: We do not agree with this comment. Payment for services on the basis of the LCL to companies with lower charges will be at or near the same amount currently received under the customary and prevailing charge methodology. Companies with lower charges could benefit from additional business due to their willingness to furnish requested items at the LCL. We do not believe any company will suffer adverse consequences from the application of the LCL great enough to force it out of business. On the other hand, companies with charges higher than the 25th percentile should expect a decrease in reimbursement. Based on our experience with wheelchairs and hospital beds, where, respectively, 88 and 95 percent of the claims have been made on assigned basis and the suppliers therefore have accepted LCL payment levels as payment in full, we see no reason to expect that these items will become less widely and consistently available.

Comment: A supplier commented that it is locked into a participation agreement (to accept Medicare assignment for all claims) and could go out of business before the agreement ends.

Response: We believe the commenter greatly overestimates the impact that the LCL limit will have on program reimbursement. (See the final Regulatory Impact Analysis in section V of this notice.) In addition, after carriers prepared data on 1987 payment levels (including customary, prevailing and LCl screens), the data were made available to suppliers during the period in which they had to decide whether to participate in Medicare. Suppliers should have found this information helpful in order to make a decision regarding their participation for 1987. For 1987, suppliers were not locked into their 1986 agreement. For 1988 and succeeding years, these data will continue to be made available during the time period that suppliers have to decide whether to participate in the Medicare supplier participation program.

Comment: A commenter expressed his opinion that carriers have had no reason to record or array charge data for durable medical equipment and oxygen equipment because reimbursement for fiscal year (FY) 1987 will be based upon the FY 1985 charge updated by the consumer price index. Therefore, the proposal will only make work for the carriers.

Response: We believe the commenter is referring to the inflation-indexed charge (IIC) and assumes that only the IIC will be used to establish reasonable charge levels. However, in addition to the IIC, the customary, prevailing and LCL screens continue to be used to determine the reasonable charge. Carriers continually maintain charge files and update the customary and prevailing charge for items and services each January. This practice is ongoing despite the various payment caps and special payment rules.

The standard methodology for the determined of LCLs has been in place for years, and LCLs are now calculated for wheelchairs and hospitals beds. There will be, of course, some additional work involved in computing a larger number of LCL limits. However, this is largely an automated process, the costs of which will be outweighed by the savings.

Comment: When HCFA adopted the 25th percentile as the LCL, it stated that it would evaluate the effect of that decision. To the best of the commenters' knowledge, HCFA never did this.

Response: HCFA evaluated the effect of the 25th percentile as the LCL in a report dated April 6, 1982, which was cited in the preamble to the proposed notice. The study ("Evaluation of the Impact of the Lowest Charge Level (LCL) Provision (Regulation at 42 CFR 405.511, Reasonable Charges for Medical Services, Supplies and Equipment)") found that the 25th percentile was an appropriate percentile for the LCL. In addition, according to the study, because charges often do not vary widely for certain items, the 25th percentile frequently encompasses a much higher percentile of the charges. We ascertained that sometimes the charge at the 25th percentile is the same as the charge at higher percentiles. Further, for items subject to existing LCL limits, the lack of quality related problems and the industry acceptance (as evidenced by the high assignment rates) clearly reinforce the conclusion that the 25th percentile is an appropriate percentile for calculating the LCL.

Comments on the Impact of LCLs

Comment: Commenters alleged that beneficiaries will have to use lesser quality services and items and will need greater medical care to take care of problems caused by inferior products and services. They believe the impact analysis should have addressed the possibility of higher medical costs.

Response: We have no reason to believe application of the LCL limit to additional items and services will add to medical care costs as the commenter suggests. No evidence in support of this result was provided.

Comment: In a commenter's view placing items and services on the LCL list as proposed will cause the quality of products and related services to deteriorate. He projected that products will necessarily have shorter life spans, thus raising costs in the long run.

Response: Based on experience with standard hospital beds and wheelchairs, there is no evidence that the quality of products subject to LCL services will deteriorate. We have no evidence whatsoever that quality has suffered on these items. In addition, since 25 percent of the current market for items we propose to add to the list is composed of items that are now below or at what will become the LCL, we have no reason to believe that these items will deteriorate in quality simply because they are added to the LCL list. Due to competitive and economic factors, warranty considerations, and the product liability laws, we believe manufacturers will continue to maintain the quality of their products.

Comment: A commenter observed that any savings achieved by this proposal will be minimal due to the impact of the inflation-indexed charge on establishing reasonable charges.

Response: We agree that the inflation-indexed charge (IIC) screen will have a greater effect on calculating reasonable charge levels than was estimated in the proposed notice. The effect of the IIC and a revised estimate of the fiscal

impact of our actions are discussed in Section V of this notice.

Comment: In the opinion of some commenters, the ability of U.S. manufacturers to compete with foreign-based competitors will decrease while relatively inexpensive foreign products are inferior in quality.

Response: Medical equipment suppliers have an incentive to buy their equipment and supplies in as prudent a manner as possible. This includes judging the relative price and quality of the products they are buying while keeping in mind factors such as availability of parts and the value of manufacturer's insurance and warranties. These are buying decisions properly left to the purchasing suppliers. Nothing in the application of LCL interferes with these decisions or places different requirements of any nature on foreign or domestic manufacturers. We do not have any information to establish that foreign-made products subject to the LCL vary significantly in quality from American-made items and the commenters did not supply any.

We are revising downward the economic impact of this notice. In addition, as stated earlier in this notice, the difference between the LCL and the prevailing charge is often not significant. Consequently, we do not expect a significant shift to occur in medical equipment suppliers purchasing decisions.

Comment: One commenter recommended that a product-specific and locality-specific analysis of the impact of the proposed notice be undertaken.

Response: The type of analysis requested by the commenter is not necessary to meet the requirements of Executive Order 12291 or the Regulatory Flexibility Act. In any case, we do not generally have data readily available to undertake this type of analysis. Further, to undertake a product-specific and locality-specific analysis in this case, we would need not only the LCLs for each specific code for each locality as determined by the carriers, but we would also need reliable and comparable data on the frequency with which each item was furnished and paid for. Despite our long-term efforts to improve our data on Medicare Part B payments, we do not have such data.

Comment: Several commenters recommended that physical therapy services not be made subject to the LCL provision because there are wide differences in training among therapists and therefore in quality of service.

Response: We invited comments from the public on the possible inclusion of physical therapy in the future. At this time we are not making a determination to subject physical therapy services to the LCL. Any such decision will be published as a proposed notice subject to public comment.

IV. List of Items

We are adding the following items to the list of items and services subject to the LCL provision, 42 CFR 405.511. Except as noted above under Section III of this notice, we are effectively adopting the list of items and services as proposed on August 15, 1986. In Section III, we explained that ambulance services will not be added to the list. Also deleted from the proposed list are TENS (E0720 and E0730) and stump socks (L8480). In addition, we note that certain colostomy supplies (A4365 and A4366), when obtained separately, are not subject to the LCL provision.

We are using the codes and terminology in the HCPCS to describe the services and items on the list. Except as specifically provided, all of the components of the items and devices listed below are subject to the LCL provision even if some of the components of an item are obtained separately by the beneficiary, or if some components are purchased while others are rented.

A. Items of Durable Medical Equipment

1. Standard Wheelchair, fixed full length arms, fixed or swing away detachable foot rests (E1130).
2. Wheelchair, detachable arms, desk or full length, swing away detachable foot rests (E1140).
3. Wheelchair, detachable arms, (desk or full length), swing away detachable elevating leg rests (E1150).
4. Wheelchair, fixed full length arms, swing away detachable elevating leg rests (E1160).
5. Amputee wheelchair, fixed full length arms, swing away detachable elevating leg rests (E1170).
6. Amputee wheelchair, fixed full length arms, without footrests or leg rests (E1171).
7. Amputee wheelchair, detachable arms (desk or full length), without foot rests or leg rests (E1172).
8. Amputee wheelchair, detachable arms (desk or full length), swing away detachable foot rests (E1180).
9. Amputee wheelchair, detachable arms (desk or full length), swing away detachable elevating leg rests (E1190).
10. Amputee wheelchair, fixed full length arms, swing away detachable foot rests (E1200).
11. Economy wheelchair, fixed full length arms, fixed foot rest (E1010).
12. Fully reclining wheelchair, fixed full length arms, swing away detachable elevating leg rests (E1050).
13. Fully reclining wheelchair, detachable arms, desk or full length, swing away detachable elevating leg rests (E1060).
14. Rollabout chair, without arms (E1030). (In lieu of medically necessary wheelchair (E1130)).
15. Rollabout chair, with fixed or removable arms (E1040). (In lieu of medically necessary wheelchair (E1130).)
16. Hospital Bed, with side rails, fixed height with mattress (E0250).
17. Hospital Bed, with side rails variable height, hi-ol, with mattress (E0255).
18. Hospital Bed, with side rails, semi-electric, head and foot adjustment, with mattress (E0260).
19. Hospital Bed, with side rails, total electric (head, foot and height adjustments, with mattress) (E0265).
20. Trapeze Bars, also known as patient helper, attached to bed, with grab bar (E0910).
21. Trapeze Bar, freestanding, complete with grab bar (E0940).
22. Walker, wheeled, without seat (E0141).
23. Walker, rigid (pick up), adjustable or fixed height (E0130).
24. Cane, quad or three prong, includes canes of all materials, adjustable or fixed, with tips (E0105).
25. Cane, includes canes of all materials, adjustable or fixed, with tip (E0100).
26. Sitz-type bath, portable, fits over commode seat (E0160).
27. Sitz-type bath, portable, fits over commode seat, with faucet attachments (E0161).
28. Sitz bath chair (E0162).
29. Commode chair, stationary, with fixed arms (E0163).
30. Commode chair, stationary, with detachable arms (E0165).
31. Pail or pan for use with commode chair (E0167).
32. Foot rest, for use with commode chair, each (E0175).
33. Decubitus care mattress, includes flotation or gel mattress (E0190).
34. Oxygen contents, gaseous, per cubic foot (E0400).
35. Oxygen contents, gaseous, per 100 cubic feet (E0405).
36. Oxygen contents, liquid per pound (E0410).
37. Oxygen contents, liquid, per 100 pounds (E0415).
38. Stationary compressed gas system, includes use of container, regulator with flow gauge, humidifier/nebulizer, cannula or mask and tubing (E0425).

39. Oxygen system, gaseous, portable, includes portable container, supply container, regulator with flow gauge, humidifier, cannula or mask and tubing (E0430).

40. Oxygen system, liquid, stationary, includes use of reservoir, contents, indicator, flowmeter, humidifier, cannual or mask and tubing (E0440).

41. Oxygen system, liquid, portable, includes portable container, supply reservoir, flow, humidifier, cannula or masks, tubing and refill adaptor (E0435).

42. Oxygen concentrator, equivalent to 244 cubic feet (E1388).

43. Oxygen concentrator, equivalent to 488 cubic feet (E1389).

44. Oxygen concentrator, equivalent to 732 cubic feet (E1390).

45. Oxygen concentrator, equivalent to 976 cubic feet (E1391).

46. Oxygen concentrator, equivalent to 1220 cubic feet (E1392).

47. Oxygen concentrator, equivalent to 1464 cubic feet (E1393).

48. Oxygen concentrator, equivalent to 1708 cubic feet (E1394).

49. Oxygen concentrator, equivalent to 1952 cubic feet (E1395).

50. Oxygen concentrator, equivalent to over 1952 cubic feet (E1396).

51. Humidifier, durable for extensive supplemental humidification during IPPB treatments or oxygen delivery, e.g., cascabe (E0550).

52. Humidifier, durable for supplemental humidification during IPPB treatment or oxygen delivery, e.g., cascade jr. (E0560).

53. Humidifier, durable glass or autoclavable plastic bottle (E0555).

54. Compressor, air power source for equipment which is not self-contained or cylinder driven (E0565).

55. Nebulizer, with compressor; e.g., Devilbiss pulmo-aid (E0570).

56. Nebulizer, durable, glass or autoclavable plastic, bottle type, for use with regulator or flowmeter (E0580).

57. Nebulizer, self-contained, ultrasonic (E0575).

58. Suction pump, home model, portable (E0600).

59. Seat lift chair, motorized to assist patient in standing and sitting (E0620).

60. Patient lift, hydraulic, with seat or sling (E0630).

61. Mattress, innerspring (E0271).

62. Mattress, foam rubber (E0272).

63. Bedside rails, half length (E0310).

64. Bedside rails, full length (E0310).

65. IPPB machines with automatic valves, exernal power source, includes cylinder regulator, built-in nebulization (E0510).

66. IPPB machines with automatic valves, electrically driven with internal compressor, built-in nebulization (E0515).

67. IPPB machines with manual valves, external power source, includes cyclinder regulator, built-in nebulization (E0500).

68. IPPB machines with manual valves, electrically driven with internal power source, built-in nebrulization (E0505).

69. Pressure pad, alternating with pump (E0180).

70. Pressure pad, alternating with pump, heavy duty (E0181).

B. Medical Supplies

1. Indwelling catheter, Foley type, two-way, teflon (A4341).

2. Indwelling catheter, Foley type, two-way, latex (A4342).

3. Indwelling catheter, Foley type, two-way, latex with teflon coating (A4343).

4. Indwelling catheter, Foley Type, two-way, all silicone (A4344).

5. Indwelling catheter, Foley type, two-way, silicone with customer coating (A4345).

6. Indwelling catheter, Foley type, three-way, latex or teflon for continuous irrigation (A4346).

7. Catheter insertion tray, includes catheter and drainage bag (A4353).

8. Urinary collection and retention system, drainage bag with tube (A4348).

9. Urinary collection and retention system, leg bag with tube (A4349).

10. Colostomy set (A4360).

11. Ureterostony set (A4430).

12. Surgical trays (A4550).

13. Catheter insertion tray, without tube and drainage bag (A4354).

14. Ideal bladder set (A4390).

15. Irrigation set for irrigation of ostomy (A4400).

C. Prosthetic Devices

1. Breast prosthesis, mastectomy bra (L8000).

2. Breast prosthesis, mastectomy form (L8020).

3. Cervical, Semi-rigid, adjustable (plastic collar) (L0140).

D. Additional Items of Durable Medical Equipment to Be Subject to the LCL Provision

In the August 15, 1986 notice we proposed that certain items normally considered either convenience or deluxe items or items with convenience or deluxe features be included as subject to the LCL criterion. We explained that convenience or deluxe items or features are not generally covered by the Medicare program. Where convenience or deluxe items or features are not medically necessary, reimbursement is limited to the reasonable charge for the comparable, covered, medically necessary item. In such circumstances, we proposed that the LCL applicable to the comparable, covered, medically necessary item would be used in determining the reasonable charge for the item.

However, we also stated that under certain circumstances (for example, due to the special medical needs of the beneficiary) items ordinarily classified as convenience or deluxe may be fully covered and reimbursed. In such situations, the LCL applicable to the following items is to be used in determining the reasonable charge for the items. For sake of completeness and accuracy, we are including in the list the HCPCS codes for both convenience or deluxe items (and for items with convenience or deluxe features), and the HCPCS codes of the comparable medically standard items.

1. Lightweight wheelchair, detachable arms (desk or full length), swing away detachable foot rests (E1240). (Comparable to E1140).

2. Lightweight wheelchair, fixed full length arms, swing away detachable foot rests (E1250). (Comparable to E1150).

3. Lightweight wheelchair, detachable arms (desk or full length), swing away detachable foot rests (E1260). (Comparable to E1140).

4. Lightweight wheelchair, fixed full length arms, swing away detachable elevating leg rests (E1270). (Comparable to E1150).

5. Rigid walker, wheeled, with seat (E0142). (Comparable to E0141).

6. Folding walker, wheeled, without seat (E0143). (Comparable to E0141).

7. Walker, wheeled, with seat and crutch attachment (E0145). (Comparable to E0141).

8. Walker, wheeled, with seat (E0146). (Comparable to E1041).

9. Walker, folding (pick up), adjustable or fixed height (E0135). (Comparable to E0141).

10. Commode chair, mobile, with fixed arms (E0164). (Comparable to E0163).

11. Commode chair, mobile, with detachable arms (E0166). (Comparable to E0165).

V. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is one that would result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. We consider all manufacturers and suppliers of durable medical equipment, medical supplies, prosthetic devices, and suppliers of ambulance services to be small entities for purposes of the RFA.

Although we stated in the proposed notice that our proposal met the $100 million criterion for a major rule under E.O. 12291, we now estimate that the impact of this notice will not exceed the $100 million threshold. Thus this notice does not qualify as a major rule under that criterion. However, at least one commenter stated that this notice could result in adverse effects meeting other criteria of E.O. 12291.

In light of that comment and the significant amount of interest shown by comments on the proposed notice, we have voluntarily prepared a final regulatory impact analysis. Furthermore, this final notice could have a significant impact on a substantial number of small entities. Thus, we have prepared a combined final regulatory flexibility analysis and regulatory impact analysis.

B. Effect on Program Expenditures

In the proposed notice, we estimated that the Medicare program would save $100 million by FY 1989 as a result of our proposal. However, we now estimate that savings under this final notice will be substantially lower.

The new savings estimates are:

Fiscal year	Savings (in millions)
1987	[1] $10
1988	10
1989	20
1990	20
1991	20

[1] Estimates are rounded to the nearest $10 million.

There are two major reasons for this substantial drop in estimated savings. First, in response to several inquiries about the basis for our savings estimates in the proposed notice, we reconsidered and reexamined them and found that our earlier estimates had not fully taken into account the effect of the inflation indexed charge (IIC). When the effects of the IIC are more fully considered, the LCL increases program savings by only a marginal impact beyond those achieved by the IIC. Second, we removed ambulance services, TENS, and certain colostomy supplies from the list of LCL items, for reasons explained in Section III of this notice.

C. Affected Entities

Projected savings will result from the impact of this notice on thousands of small entities. However, the estimated savings represent only 1.5 percent of program expenditures for these services and items. Therefore, we do not expect the impact on any one entity to be great.

It is difficult to estimate the number of small entities affected and some commenters specifically inquired how we had done so. In determining this number, we consulted standard references for the particular sectors of the economy affected and talked with representatives from the appropriate trade associations. Based on the information received, we determined ranges of numbers that represent a consensus of what is probable, estimating that the following small entities will be affected:

—55,000–60,000 drugstores and
—fewer than 10,000 durable medical equipment suppliers.

We expect manufacturers and suppliers of durable medical equipment, medical supplies, and prosthetic devices, and beneficiaries to be affected by this notice. However, we do not have sufficient data to predict exactly the nature of the impact of this notice or the magnitude of such impact. Below, we discuss likely outcomes.

1. Suppliers

Suppliers (and manufacturers that sell directly) likely will review reasonable charges in the locality to determine what strategy will achieve the best profit. In response to this notice, we expect them to assess wholesale prices of products of current and future stocks and costs of maintaining these stocks; to compare these costs to the prevailing charge level and the lowest charge level in the localities in which they operate; to assess the population in terms of ability to pay; to consider whether or not to accept assignment; and to decide whether or not they can stock the equipment and supplies at lower prices from other manufacturers.

Decisions resulting from the foregoing assessments probably will vary from locality to locality and from supplier to supplier. For example, suppliers whose charges exceed the LCL might be expected to shift their stock to lower-priced items, to otherwise seek to make their operations more efficient, or to change their policies regarding acceptance of assignment. In general, in a given area, the more widely divergent the prices, the greater the likely effect of the notice on suppliers. When the lowest charge level on a distribution curve is not far from the 75th percentile of customary charges, there should be little effect.

2. Manufacturers and Distributors

Decisions made by the suppliers in response to this notice probably will affect the manufacturers and wholesale distributors. The impact on an individual manufacturer might vary depending upon the manufacturer's degree of diversification of products, variations in reasonable charge levels and demand from locality to locality, variations based on Medicare's portion of the market, optimization of profitability margins, and other considerations.

3. Beneficiaries

The effects of this notice on beneficiaries will depend on the characteristics of both local suppliers and the individual beneficiary. It is important to note that an LCL for a specific item might not be applicable in all localities. As explained above, the calculation of an LCL for a specific item requires that at least four suppliers in the locality furnish the item and that there be at least twenty charges for the item in that locality. Obviously, those beneficiaries in localities not operating under LCL requirements will not be subject to any of the effects of LCL.

This notice will affect beneficiaries by affecting supplier charging patterns and assignment rates. Suppliers have several options when it comes to the amount they will charge for their items. Some suppliers may decrease their charges, others may continue charging at their current level, while others may increase their charges despite the applicability of an LCL.

In our initial regulatory impact analysis, we acknowledged the possibility of adverse consequences on beneficiaries as a result of imposing the LCL. We stated that, in response to the imposition of the LCL, suppliers may decline to accept assignment or refuse to participate. However, there are reasons to believe that beneficiaries will not be adversely affected by changing assignment rates. For example, the amount of competition among suppliers in a locality could prevent a decline in

assignment rates. Also, the rapid growth in the elderly population may increase the volume of supplier business enough to offset any loss in income attributable to the LCL provision, thus mitigating the need for suppliers in that locality to lower their assignment rates. Furthermore, suppliers that do not accept assignment must consider the financial risk of collection for that portion of the fee that Medicare does not pay.

Even in areas where assignment rates or the number of participating suppliers decline significantly in response to the LCL provision, increases in beneficiary out-of-pocket expenses will depend on whether: beneficiaries have supplemental health insurance or are dually covered under both Medicare and Medicaid; the payment limits of these alternative payment sources; and the suppliers' total charges. The latest data available indicate that over 75 percent of all beneficiaries either have supplemental health insurance or are also covered under Medicaid.[1] While not all those with supplemental insurance will be covered for the additional charges for which Medicare will no longer pay, we believe that many beneficiaries will be covered.

D. Alternatives

There are three alternatives we considered in the course of preparing this notice. (1) We could have continued to apply the LCL provision to only two items of durable medical equipment. We expect that prices would have continued to rise on items and services not currently subject to the LCL. (2) We could have included in the list more items and services than those finally added by this notice. This probably would have further added to program savings; however, we would have had to include items and services about which we do not have enough data to ensure against significant variations in quality. (3) We could issue a notice, as we are doing, that contains a comprehensive list of durable medical equipment, medical supplies, and prosthetic devices that, as best as we can determine, satisfy the requirements for application of the LCL provision. For all of the reasons discussed throughout this notice we have determined that this approach is the most preferable.

[1] *Supplemental Health Insurance Coverage Among Aged Medicare Beneficiaries*, Series B, Descriptive Report No. 5, Pub. by the Health Care Financing Administration and the Public Health Service.

E. Conclusion

E.O. 12291 requires us to assess the benefits, costs, and net benefits of all rules, major or otherwise. For major rules, we must discuss those costs and benefits in an impact analysis, and explain why the potential benefits outweigh the potential costs to society.

For the most part, the costs and disadvantages that could result from this notice will take the form of reduced payment to certain small entities and, possibly, if the assignment rate is reduced, more initial out-of-pocket expenses for the beneficiary.

The primary benefit expected to result from this notice is the anticiapted reduction in the cost to the Medicare program of durable medical equipment and of medical supplies. To the extent that suppliers continue to accept assignment, beneficiary liability will be reduced.

The application of the LCL provision to more items and services is expected to produce sustanital benefits in the form of economy and efficiency in the Medicare program, to eliminate wide variations in Medicare payment for virtually identical items and services, and to limit upward pricing trends of the health care marketplace as a whole. Therefore, we conclude that the overall benefits to society more than offset any resulting liabilities.

VI. Paperwork Reduction Act

The inclusion of new items and services in the list of items and services subject to the LCL provision does not impose paperwork collection requirements. Consequently, this notice need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3801 et seq.).

(Sections 1102, 1833, 1842(b)(3) and 1871 of the Social Security Act; 42 U.S.C. 1302, 13951, 1395u(b)(3) and 1395hh; 42 CFR 405.502 and 405.511)

(Catalog of Federal Domestic Assistance Program No. 13.774 Medicare-Supplementary Medical Insurance)

Dated: February 2, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: March 13, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-8803 Filed 4-17-87; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Acquired Immune Deficiency Syndrome (AIDS); Regional Education and Training Centers Program

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of availability of funds.

SUMMARY: The Bureau of Resources Development (BRD), Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1987 funds are available for training grants to develop three regional Education and Training Centers (ETCs). These centers will provide Acquired Immune Deficiency Syndrome (AIDS)/Human Immunodeficiency Virus (HIV) training for health care personnel with the goal of training: (1) Community primary care providers to be able to counsel, diagnose, and manage patients and (2) selected trainees to act as instructors in their local areas. The centers will operate in collaboration with health professions schools, community hospitals and local health departments. Funds were appropriated by Pub. L. 99-591 for this purpose under the authority of section 301 of the Public Health Service (PHS) Act (42 U.S.C. 241).

DATE: To receive consideration, applications must be received by the close of business June 19, 1987 by the Grants Management Officer at the address below. Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to Mrs. June Horner, Chief, Education and Training Centers Program, Office of AIDS Services Program, Room 9-21, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443-6745). Training grant applications and additional information regarding business, administrative and fiscal issues related to the awarding of grants under this notice may be requested from Mr. Donald C. Parks, Grants Management Officer, Bureau of Resources Development, Parklawn Building, Room 9-03, 5600 Fishers Lane, Rockville, Maryland 20857, (301/443-2630).

SUPPLEMENTARY INFORMATION:

Program Objectives

The purpose of the training program is to support the development of regional ETCs for the health provider community. The program objectives for each center are to: (1) Provide (in collaboration with health professions schools, local hospitals, and health departments) education and training to primary care providers (and others) on the treatment and prevention of AIDS; (2) provide updates of new and timely information about HIV infection to some 1,000 primary and secondary health care providers; and (3) serve as the support system for area health professionals through AIDS hotline, clearinghouse, and referral activities.

Availability of Funds

A sum of $1,535,000 will be made available to fund three ETCs in FY 1987. The project period will be for 3 years. This requires submission of a budget for each of the 3 years. Funds will be awarded in FY 1987 for the first year. Funds for the next 2 years are subject to availability of funds.

Eligible Applicants

All public and private entities, non-profit and for-profit, are eligible to apply. Eligible entities may include, but are not limited to, schools in academic health science centers; professional associations: consortia of health care and community organizations, i.e., Area Health Education Centers (AHECs): public or private hospitals and local health departments which could develop coordinated regional AIDS education and training programs.

Review Criteria

Applications for training grants will be reviewed and rated according to the applicant's ability to demonstrate:

1. The most cost effective ways of providing AIDS education and training to the largest number of health care professionals within its region:
2. Coordination, if appropriate, with an AHEC:
3. Collaboration with the AIDS demonstration projects supported by HRSA, the Alcohol, Drug Abuse and Mental Health Administration, the Robert Wood Johnson Foundation, and other AIDS projects;
4. Collaboration with medical and health professions schools, medical societies, local hospitals, and other health professional organizations;
5. A strategy whereby curricula used in the ETC program will, to the extent possible, be included in the course offerings of undergraduate and graduate medical education programs within the applicant's area of responsibility.
6. How it would serve a multi-state area;
7. A plan for evaluating the effectiveness of the ETC;
8. Coordination with existing AIDS hotlines, clearinghouses, and treatment and evaluation centers; and,
9. A plan for training health professionals who serve large numbers of minority patients.
10. A plan for continuation of the ETCs in the absence of Federal funds.

Preference will be given to applicants who propose a strategy for including a broad variety of health professions disciplines, i.e. physicians, dentists, physician assistants, social workers, psychologists, counselors, nurse practitioners, nurses, etc., both in the program development process, as well as in the proposed composition of trainee groups.

Allowable Costs

A successful applicant under this notice must spend funds it receives according to the approved application and budget; the authorizing legislation; terms and conditions of the award; the regulations of the Department and the PHS applicable to grants; the cost principles specified in 45 CFR Part 74, Subpart Q; the applicable Office of Management and Budget (OMB) circular for non-profit grantees; and for for-profit organizations, Appendix VI of the PHS grants policy statement.

Indirect costs for training grants other than those awarded to State or local government agencies shall be reimbursed at 8 percent of total allowable direct costs exclusive of tuition and related fees and expenditures for equipment, or at the actual indirect cost rate, whichever results in a lesser dollar amount. State and local government agencies shall receive reimbursement at their full indirect cost rates.

Other Award Information

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, Subpart J, Monitoring and Reporting of Program Performance.

Executive Order 12372

The ETC Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application package under this notice will contain a listing of States which have chosen to set up such a review and will provide a point of contact in the States for the review. Applicants should promptly contact their State single point of contact (SPOC) and follow their instructions prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

A number for the ETC Program is being requested for the OMB Catalog of Federal Domestic Assistance.

Dated: March 10, 1987.

David N. Sundwall,

Administrator, HRSA.

[FR Doc. 87-8736 Filed 4-17-87; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Availability of the Arctic Wildlife Refuge, Alaska, Coastal Plain Resource Assessment and Final Legislative Environmental Impact Statement

AGENCY: Department of the Interior.

ACTION: Notice of availability.

SUMMARY: As required by section 1002(h) of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980, the Department of the Interior has prepared its report to Congress concerning future management of the coastal plain of the Arctic National Wildlife Refuge, Alaska. In accordance with 40 CFR §§ 1506.4 and 1506.8 of the Council on Environmental Quality's regulations to implement the National Environmental Policy Act (NEPA), this report incorporates a final legislative environmental impact statement (LEIS). It will be submitted to Congress for its deliberation as to whether or not further oil and gas exploration, and oil development, production and transportation should be considered on the 1.5-million-acre coastal plain of the Arctic Refuge.

DATES: The Secretary can take public comment into account before deciding whether or not to submit formally to Congress the final recommendation as it is now written. The Environmental Protection Agency will be publishing a Notice of Availability specifying the time available for this public review. However, comments may be submitted at any time, and will be forwarded to the appropriate congressional committees for their consideration

during congressional deliberations on the future management of the coastal plain.

ADDRESS: Address comments to the Director, U.S. Fish and Wildlife Service, Division of Refuges, Room 2343, 18th and C Sts., NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Noreen Clough, U.S. Fish and Wildlife Service, Division of Refuges, 18th and C Streets, NW., Room 2343, Main Interior Building, Washington, DC 20240, telephone (202) 343–4313.

Copies of the report/LEIS have been sent to Federal, State, and local agencies with jurisdiction by law or special expertise; to the Government of Canada and to the Yukon and Northwest Territories governments; to concerned conservation organizations; to affected Alaska Native regional and village corporations and other Native organizations; to the oil and gas industry; and other interested members of the public. Copies have been distributed to all those who provided substantive comments on the draft report or who asked to be added to the mailing list for the final report. Additionally, copies are available at major libraries in the State of Alaska and the other 49 states, in the Arctic National Wildlife Refuge headquarters in Fairbanks, the Refuge field office in Kaktovik, AK, and all Regional Offices of the Fish and Wildlife Service, as listed below:

Arctic National Wildlife Refuge, 101 12th Ave., Box 20, Fairbanks, AK 99701, telephone (907) 456–0250. (Arctic NWR-Kaktovik Field Station, Kaktovik, AK 99747).

U.S. Fish and Wildlife Service, Refuges and Wildlife, Lloyd 500 Building, Suite 1692, 500 NE Multnomah St., Portland, OR 97232, telephone (503) 231–6118.

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Ave., SW, Room 1306, Albuquerque, NM 87103, telephone (505) 766–2321.

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111, telephone (612) 725–3563.

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Bldg., 75 Spring St., Atlanta, GA 30303, telephone (404) 221–3588.

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158, telephone (617) 965–5100.

U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225, telephone (303) 236–7920.

U.S. Fish and Wildlife Service, Refuges and Wildlife, 1011 E. Tudor Rd., Anchorage, AK 99503, telephone (907) 786–3388.

Individuals wanting a copy of the document should contact Ms. Clough or the Anchorage Regional Office.

SUPPLEMENTARY INFORMATION: The Alaska National Interest Lands Conservation Act (ANILCA) of 1980 set aside more than 100 million acres of land in Alaska as national parks, preserves, wildlife refuges, and wilderness areas. At that time, the Congress specifically left open the question of future management of the 1.5-million-acre coastal plain of the 19-million-acre Arctic National Wildlife Refuge because of the area's potentially enormous oil and gas resources and its important wildlife values. Section 1002(h) of ANILCA required that the Secretary of the Interior prepare and submit to Congress a report concerning the resources of the coastal plain. The report is to contain the following:

(1) The identification of those areas within the Arctic Refuge coastal plain ("1002 area") that have oil and gas production potential and estimates of the volume of oil and gas;

(2) A description of the fish and wildlife, their habitats, and other resources in the 1002 area;

(3) An evaluation of the adverse effects of carrying out further exploration, development and production of oil and gas on the 1002 area;

(4) A description of how oil and gas, if produced within the 1002 area, may be transported to processing facilities;

(5) An evaluation of how this oil and gas relates to the national need for additional domestic sources of oil and gas; and

(6) The recommendations of the Secretary with respect to whether further exploration for, and the development and production of oil and gas in the coastal plain should be permitted and, if so, what additional legal authority is necessary to ensure that the adverse effects of such activities on fish and wildlife, their habitat, and other sources are avoided or minimized.

The report/LEIS culminates more than 5 years of biological baseline studies, surface geological studies, and two seasons of seismic exploration surveys. The report/LEIS was prepared by the Fish and Wildlife Service, with cooperation from the U.S. Geological Survey and Bureau of Land Management.

The draft report/LEIS was released for public review and comment on November 24, 1986. Public hearings were held in January 1987 in Anchorage and Kaktovik, Alaska, and Washington, DC. These hearings were attended by representatives of the Governments of Canada and Alaska, Alaska Natives, other interested parties and the general public. More than 11,000 comment letters were received during the comment period, which closed February 6, 1987. Of these comment letters, more than 7,000 favored opening the Arctic Refuge coastal plain for oil and gas leasing and development.

To assist the Secretary of the Interior in making his recommendation, the report/LEIS analyzed a range of alternatives for management of the coastal plain: Opening the entire area for oil and gas leasing; opening a limited area to oil and gas leasing; permitting only additional exploration, including exploratory wells; taking no action regarding oil and gas activity but including the coastal plain in the comprehensive conservation planning process for the entire refuge; or designating the coastal plain as wilderness.

The potential environmental consequences of implementing these alternatives were also examined. Potential impacts were assessed for exploration, development drilling, and production. Impacts predicted for exploration and development drilling were minor or negligible on all wildlife resources on the coastal plain. Production of oil is expected to directly affect only 12,650 acres or 0.8 percent of the coastal plain. Consequences on species such as brown bears, snow geese, wolves, moose and the Central Arctic caribout are expected to be negligible, minor, or moderate. Potential major effects from production are limited to the Porcupine caribou herd and reintroduced muskoxen. A potential consequence to the Porcupine caribou herd would be displacement of portions of the herd seeking to calve in the upper Jago River area—the case only if the area were the site of a major producing oil field. It is unlikely, though possible, that such displacement would result in any appreciable decline in herd size. Effects on muskoxen could include displacement from currently used habitat, and a slowing of the herd's growth rate, as distinguished from a diminution in herd size.

Effects on subsistence could occur on the villagers of Kaktovik, and to a lesser degree in villages outside the coastal plain. In the case of the village of Kaktovik, a major restriction of subsistence activities could occur as a result of the physical changes proximate

to the village. Subsistence effects on villages outside the coastal plain and in Canada are expected to be minimal.

The Arctic Refuge coastal plain is rated by geologists as the most promising onshore oil and gas exploration area in the United States. Results of studies done indicate there is about a 19 percent chance that at least one "economic" oil field will be found, meaning enough oil can be recovered to make the cost of exploration and development worthwhile (estimated to be about 440 million barrels of oil). Assuming at least one economic field is found, estimates for the amount of oil that could be produced vary from a 95 percent chance of recovering 600 million barrels to a 5 percent chance of recovering 9.2 billion barrels (which would be approximately equal to Prudhoe Bay). The average of all estimates is 3.2 billion barrels. This amount of oil would mean that by the year 2005, the 1002 area could provide 4 percent of total U.S. oil demand and 8 percent of U.S. production, could reduce imports of foreign oil by nearly 9 percent, and could provide $79.4 billion in economic revenues. If 9.2 billion barrels are recovered, benefits to the economy are estimated as high as $325 billion. In 1986, U.S. domestic oil production dropped 9 to 10 percent. Production is predicted to drop an additional 4 to 5 percent in 1987, if prices do not drop this year. At the same time, U.S. oil consumption, which has exceeded domestic production since the 1960's, is expected to increase. Our oil imports are projected to exceed 50 percent of consumption of the 1990's. America's growing reliance on imported oil for the rest of the century could have potentially serious ramifications for our national security.

Based on the analyses conducted, public comment on the draft report, the national need for domestic sources of oil and gas, and the Nation's ability to develop such resources in an environmentally sensitive manner as demonstrated by two decades of success at Prudhoe Bay and elsewhere, the Secretary of the Interior has selected making available for consideration the entire Arctic Refuge coastal plain for oil and gas leasing as his preferred alternative. The step-by-step environmental planning, review, and evaluation procedures included in a leasing program provide the best opportunity for the Department to decide what areas to lease, based on the most accurate and advanced information available at each step of the leasing process.

The Secretary's preliminary recommendation appears in Chapter VIII of the final 1002 report/LEIS. The Secretary's recommendation will become final only upon formal submission by a separate Secretarial letter of the 1002 report/LEIS to the Congress of the United States.

Dated: April 15, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87-8810 Filed 4-17-87; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[NV-930-07-5101-09-XFKE]

Intent To Prepare an Environmental Document on a Fiber Optic Cable System and Notice of Scoping Period for American Telephone and Telegraph Company's (AT&T) Western Region Lightguide Project

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management and the Forest Service will be jointly directing the preparation of an environmental document to be prepared by a third-party contractor on the impacts of a proposed fiber optic cable system, AT&T's Western Region Lightguide Project, located between Cheyenne, Wyoming and the Sacramento, California area.

SUPPLEMENTARY INFORMATION: AT&T proposes to construct a fiber optic cable system between Cheyenne, Wyoming and the Sacramento, California area. The proposed action would allow AT&T to provide a capacity of 1.7 gegabits per second on a 36 fiber, single-mode lightguide system between Cheyenne, Wyoming (AT&T's western region, most easterly Regional Center) and Sacramento, California (a North to South Regional Center along the Pacific Coast). The routing also allows for public long-distance service at intermediate service points along the system.

The proposed route will primarily utilize existing rights-of-way (ROW) throughout its length. From Cheyenne, Wyoming to Salt Lake City, Utah, the existing copper cable K-Carrier ROW would be utilized and would enter Salt Lake City by way of Immigration Canyon. An existing or new conduit would be used from Salt Lake City to Brigham City, Utah. The route would follow the existing AT&T L-4 ROW from Brigham City to Lucin, Utah. The highway ROW would be used from Lucin to Oasis, Nevada. The K-Carrier ROW would then be followed from Oasis to Parran, Nevada. The preferred route would be adjacent to Highway 95 from Parran to Fallon, Nevada. From Fallon the route would proceed west along Alternate 95 to the junction of Highway 50. From this junction, the preferred route would follow the K-Carrier to a point near Mustang, then cross the Truckee River to a power line corridor into Sparks and Reno, Nevada.

There are two equally considered routes between Reno and the Sacramento area. The Northern route would follow the K-Carrier ROW across the Toiyabe and Tahoe National Forests to a point North of Auburn, California; then follow a public highway to the Sacramento area. The southern route would leave Reno traveling south along Highway 395 to the junction of Franktown Road; along Franktown Road to U.S. 395; through Carson City to Minden, Nevada; then along Highway 88 through Woodfords, Kirkwood, and Plymouth, California and thence on to the Sacramento area. A considerable amount of the route along Highway 88 in California would follow the old abandoned Highway 88.

Purpose and Need

The purpose and need for the AT&T proposed buried fiber optic communication cable between Cheyenne, Wyoming, and the Sacramento, California area is to enlarge the capacity of company facilities and to diversify communication systems. This enlargement of capacity and system diversification is needed for both existing and future AT&T clients. As a result of the divestiture of the U.S. market for nationwide interstate long-distance telephone service has become intensely competitive. Fiber optic technology has two major advantages over other communications systems: (1) It provides a higher quality of sound and digital data transmission than conventional systems, and (2) it is capable of transmitting much more information per cable than copper.

Project Components

The proposed construction would consist of approximately 1,150 miles of ½ inch diameter fiber optic cable within an existing cable ROW or within existing public road ROW.

The appurtenances include:

—Regeneration stations every 22 miles on the average (10' x 16' x 8' building).
—An electrical power distribution line from the nearest source to each regeneration station.

—Splice boxes spaced every 9,000 feet on the average.
—Manholes spaced every 2,000 feet on the average.
—Marker poles placed every 1,000 feet.

Tentative Alternatives Identified by AT&T

1. No Action (decision not to grant federal permits or ROW required for construction, operation and maintenance of the proposal).

2. The Union Pacific Railroad Corridor between Cheyenne, Wyoming and Salt Lake City, Utah. This alternative would add 60 miles to the AT&T proposed route.

3. AT&T has prepared two segment alternatives to the proposed route between Salt Lake City, Utah and Reno, Nevada. These segments are as follows:

a. The Southern Pacific Railroad Corridor from Wells, Nevada to Reno. This segment would add 71 miles to the proposed route.

b. Highway 50 from Fallon, Nevada through Carson City, Nevada, north along Highway 395, to Franktown road, to Highway 395 into Reno, Nevada. This route would add approximately 17 miles to the Salt Lake City, Utah to Reno, Nevada segment. This segment alternative would allow for the opportunity to provide fiber optic cable service to Carson City, Nevada (the State Capitol). If the northern route between Reno and the Sacramento area is selected as a result of the NEPA process, Carson City could be by-passed and the residents would not have immediate access to AT&T's fiber optic system.

Other Potential Alternatives

Other alternative fiber optic cable locations identified for possible analysis in the environmental document are as follows:

Reno/Carson City, Nevada area to Sacramento, California area via the following linear ROW corridors:

—Interstate Highway 80 (I–80) transportation ROW.
—Southern Pacific Railroad route along the I–80 corridor.
—The Southern Pacific Pipeline Company ROW in the proximity of the I–80 transportation corridor (locate cable within the pipeline ROW width and/or inside of abandoned pipeline segments).
—U.S. Highway 50 transportation ROW.
—Kingsbury Grade (Nevada State Highway 207 transportation ROW) to US Highway 50 transportation ROW.

Reno/Carson City, Nevada area to Sacramento, California area via the following major ridge routes:

—Henness Pass (Hoke Valley to Camptonville, California along or adjacent to national forest and county roads on the Toiyabe and Tahoe National Forests).
—U.S. Highway 88 transportation ROW to Iron Mountain ridge route on the El Dorado National Forest to U.S. Highway 50 (Mormon Emigration Trail).
—U.S. Highway 50 transportation ROW to Peavine Ridge on the El Dorado National Forest back to US Highway 50 transportation ROW.

Cheyenne, Wyoming to Salt Lake City, Utah or Sacramento, California area via the following routes:

—General location of the Williams Telecommunications fiber optic ROW from Cheyenne, Wyoming to Salt Lake City, Utah.
—General location of the US Telecom, Inc. fiber optic ROW from Cheyenne, Wyoming to Reno Junction, California.

Tentatively Identified Issues

Physical, biological, and socioeconomic resource issues that might be of concern are listed below by general categories. The environmental document for the fiber optic cable system will include both a general and site-specific analysis of these resources.

Written responses to these issues are requested. The responses should identify the site-specific resource issue and location that would be of concern during the construction and operation of this project.

- Air quality
- Fire hazards
- Seasonal construction periods/restrictions
- Visual resource impacts from ROW clearing and above surface facilities
- Noise during construction and operation
- Safety
- ROW clearing
- Herbicide use for vegetation control
- Impacts to other projects, existing ROW and land uses
- Crossing of fences, roads, highways, trails and other facilities
- Land rehabilitation
- Surface disturbance
- Affects to soil resources
- Control of runoff and sediment
- Geological hazards in unstable areas
- Access to ROW
- ATV-ORV use of ROW
- Developed and dispersed recreation
- Wilderness
- Areas of critical environmental concern/special designation areas
- Threatened or endangered plants and wildlife
- Wildlife seasonal restrictions
- Riparian areas, flood plains, wetlands and stream crossings
- Cultural resources
- Use of Scenic Highway ROW
- Restrict project to existing ROW
- Power transmission lines for regeneration stations
- Removal of facilities made obsolete by fiber optics
- Installation and/or joint use of conduits in congested areas
- Worker accommodations
- Community service requirements
- Federal, state, and local government corridor planning direction
- Timber management and/or operations
- Social/economics
- Benefits to regional and local areas (communities)
- Cumulative impacts of other interrelated projects

Tentative Schedule for Preparation of an EA/EIS

Project Schedule Element and Tentative Date

Application Filed w/BLM & USFS—February 17, 1987
Scoping—April 1987
Preparation of EA/EIS—April–July 1987
Public & Agency Review of Draft EA/EIS—August 1987
Final EA/EIS Approval—September 1987
ROW Grant/Land Use Authorization—November 1987
Construction Period—January–September 1988

ADDRESS: Written scoping comments will be accepted until May 7, 1987. Comments should be sent to State Director (NV–933), Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: For further information or to acquire a copy of the Western Region Lightguide Project scoping document write to the above address or call Ed Tilzey, (702) 784–5448.

Dated: April 14,1987.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87–8724 Filed 4–17–87; 8:45 am]
BILLING CODE 7001-54-M

Minerals Management Service

Agency Information Collection Activities Under OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management

and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting Jeane Kalas at 303–231–3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Report of Sales and Royalty Remittance

Abstract: The Report of Sales and Royalty Remittance is submitted by those individuals and companies producing minerals from leased Indian Lands or from leased Federal lands, both onshore and offshore. Respondents report monthly on oil and gas lease activities, documenting essential data used by the Royalty Management Program in the calculation of royalties due. Data include quantity and quality of the product, selling arrangement, price at which the product was sold and other pertinent information necessary to determine the correct royalty amount due, reconcile or audit data, and distribute and correlate payments with the appropriate accounts.

Bureau Form Number: MMS–2014
Frequency: Monthly
Description of Respondents: Oil and Gas Lessees, reporting activities from Indian or Federal onshore or offshore leases.
Annual Responses: 259,400
Annual Burden Hours: 259,400
Bureau Clearance Officer: Dorothy Christopher 703–435–6213

Dated: April 6, 1987.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 87–8728 Filed 4–17–87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4885, Block 147, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on April 8, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 10, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–8729 Filed 4–17–87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Illinois and Michigan Canal National Heritage Corridor Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86, Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Illinois and Michigan Canal National Heritage Corridor Commission will be held May 5, 1987, beginning at 10 a.m. at the Village Hall, Main & Fremont Street, Lemont, Illinois.

The Commission was originally established on August 24, 1984, pursuant to provisions of the Illinois and Michigan Canal Heritage Corridor Act of 1984, 98 Stat. 1456, 16 U.S.C. Sec. 461 note, to implement and suppport the conceptual plan.

Matters to be discussed at the meeting will include the election of officers and the Economic Development Administration (EDA) grant.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402–221–3481 (FTS 864–3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: April 10, 1987.

John Kawamoto,

Acting Regional Director, Midwest Region.

[FR Doc. 87–8823 Filed 4–17–87; 8:45 am]

BILLING CODE 4310-70-M

Sleeping Bear Dunes National Lakeshore Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission will be held at

9:30 a.m. (EDT), May 1, 1987, at the Hart Visitor Center Auditorium, 9922 Front Street (M–72), Empire, Michigan.

The Commission was established by the Act of October 21, 1970, 84 Stat. 1076, 16 U.S.C. 460x–3, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Sleeping Bear Dunes National Lakeshore and with respsct to the provision of Sections 9 (zoning bylaws), 12 (scenic roads), and 13 (commerical properties) of this Act.

The members of the Commission are as follows:

Mr. John B. Daugherty (Chairman)
Ms. Uledene Merrill
Mr. George T. Schilling
Mr. Lawrence J. Verdier
Mr. Charles Rubner
Ms. Cathlene Search
Ms. Evangeline J. Stanchik
Dr. Michael Chubb
Mr. George Weeks
Mr. Gary Jones

The agenda for the meeting will include discussions of recent park development projects and future projects, development concept plans for North Manitou Island, the Glen Haven Village, and the Platte River Management Plan.

The meeting will be open to the public. Any member of the public may file with the Commission prior to the meeting a written statement concerning the matters to be discussed. Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Richard R. Peterson, Superintendent, Sleeping Bear Dunes National Lakeshore, Empire, Michigan 49630, telephone (616) 326–5134.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the Office of Sleeping Bear Dunes National Lakeshore, Empire, Michigan.

Dated: April 10, 1987.

John Kawamoto,

Acting Regional Director, Midwest Region.

[FR Doc. 87–8824 Filed 4–17–87; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 196X)]

CSX Transportation, Inc.; Abandonment Exemption in Marion, Boyle and Lincoln Counties, KY; Exemption

CSX Transportation, Inc. (Applicant) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 34.82-mile line of railroad between milepost LC 68.63 near C&O Junction, Ky and milepost LC 103.5 near Stanford, KY, in Marion, Boyle, and Lincoln Counties, KY.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective 30 days from service of this decision (unless stayed pending reconsideration). Petitions to stay must be filed by 10 days after service, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by 20 days after services with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commisison should be sent to applicant's representatives:

Lawrence H. Richmond, Peter J. Shudtz, 100 North Charles Street, Baltimore, MD 21201

Charles M. Rosenberger, Patricia Vail, 500 Water Street, Jacksonville, FL 32202

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: April 9, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–8768 Filed 4–17–87; 8:45 am]

BILLING CODE 7035–01–M

Release of Waybill Data for Use in General Studies of Rail Traffic

The Commission has received a request from the Association of American Railroads for permission to use certain data from the Commission's 1985 and, when available, 1986 waybill sample to carry out general studies of the amount and percentage of rail traffic moving on light density lines. The studies will be used to analyze in the aggregate the potential changes in the U.S. rail network in the event of significant declines in traffic volume. Specifically, they seek waybill data on car identification, origin location and railroad, destination location and railroad, the railroads and interchanges in the route, carloads, tons, and revenue.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (49 FR 40328, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202) 275–6864.

Noreta R. McGee,

Secretary.

[FR Doc. 87–8755 Filed 4–17–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Fried Industries, Inc., et al.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Fried Industries, Inc. and Phillip Fried,* Civil Action No. 86–1207 was lodged with the United States District Court for the District of New Jersey on April 8, 1987. The proposed Consent Decree settles a lawsuit filed on March 27, 1986, pursuant to section 3008 of the Resource Conservation and Recovery Act, as amended, ("RCRA"), 42 U.S.C. 6928, for injunctive relief and for assessment of a civil penalty against Fried Industries, Inc. and Phillip Fried ("Defendants"). The complaint alleges, among other things, that Defendants violated the Act by disposing of hazardous waste at their manufacturing plant located in East Brunswick, New Jersey, ("Fried facility"), without a permit. The complaint alleges that Fried's acts violated the Subchapter III program of RCRA, including section 7:26–12.1 *et seq.* of the New Jersey Solid and Hazardous Waste Regulations, N.J.A.C. 7:26–1.1 *et seq.*, and entitled the United States, pursuant to section 3008 of RCRA, 33 U.S.C. 6928, to injunctive relief and to recover a civil penalty of not more than $25,000 per day of violation.

The proposed Consent Decree provides for the permanent cessation of all manufacturing and production activities at the Fried facility. Defendants Fried Industries and Phillip Fried are also required, among other things, to decontaminate all equipment pursuant to an EPA approved decontamination plan prior to renting, leasing or selling any such equipment. The proposed Consent Decree imposes stipulated penalties for failure to comply with the Decree.

The Department of Justice will receive for a period of thirty (30) days from the publication date of this notice written comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *Fried Industries, Inc. and Phillip Fried,* D.J. Ref. 90–7–1–303.

The proposed Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree can be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.00 (10 cents per copy page reproduction cost) payable to the Treasury of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–8769 Filed 4–17–87; 8:45 am]

BILLING CODE 4410–01–M

Lodging of a Stipulation of Dismissal Pursuant to the Clean Water Act; Wyoming Valley Sanitary Authority

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 10, 1987, a proposed Consent Decree in *United States, et al.* v. *Wyoming Valley Sanitary Authority,* Civil Action No. 85–1600, was lodged with the United States District Court for the Middle District of Pennsylvania. The proposed Consent Decree concerns the failure of the Wyoming Valley Sanitary Authority to implement an approvable pretreatment program prior to July 1, 1983. The proposed Consent Decree requires the defendant to pay a penalty of $15,000.00. Its pretreatment program has been approved since the filing of this complaint.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, et al.* v. *Wyoming Valley Sanitary Authority,* D.J. Ref. # 90–5–1–1–2482.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Middle District of Pennsylvania, P.O. Box 11754, 3rd and Walnut Street, Harrisburg, Pennsylvania, and at the Region III Office of the United States Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania.

Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–8770 Filed 4–17–87; 8:45am]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

National Council on the Humanities; Meeting

April 13, 1987.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on May 6–8, 1987.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. The meeting scheduled on May 6, 1987, and a portion of the morning and afternoon sessions on May 7–8, 1987 will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the session on May 6, 1987, will be as follows:

Committee Meeting

3:00 p.m. until adjourned, Jefferson Lecture Committee (Closed to the Public), Discussion of Jefferson, Lecture Nominees—Room 430

The agenda for the sessions on May 7, 1987, will be as follows:

8:30–9:30 a.m. Coffee for Council Members (Open to the Public)—Room 526

Committee Meetings

(Open to the Public)

Policy Discussion

9:30–10:30 a.m.
Education Programs—Room M–14
Fellowship Programs—Room 315
General Programs—Room 415
Research Programs—Room 316–2
State Programs—Room M–07 East

10:30 a.m. until adjourned (Closed to the Public), Discussion of specific grant applications before the Council

(Open to the Public)

Policy Discussion

2:00–2:30 p.m. Preservation Grants—Room M–07 West

2:30 p.m. until adjourned (Closed to the Public), Discussion of specific grant applications before the Council

The morning session on May 8, 1987, will convene at 8:30 a.m. in the stage area of the Old Post Office Pavillion. (Coffee for staff, guests, and Council members attending the meeting will be served from 8:30 a.m.–9:00 a.m.) A presentation by the Norwood School of Bethesda, Maryland, a grantee, is scheduled for 9:00 a.m. The plenary session of the meeting will begin at 9:30 a.m. in Council Room, M–09, and will be open to the public. The agenda for the morning session will be as follows:

Minutes of the Previous Meeting Reports
A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Conflicts of Interest Policy
E. Dates of Future Councils
F. Application Report and Gifts and Matching Report
G. Status of Fiscal year 1987 Funds
H. Fiscal Year 1988 Appropriation Request
I. Fiscal Year 1989 Budget Planning
J. Committee Reports on Policy and General Matters
1. Education Programs
2. Fellowship Programs
3. Preservation Grants
4. Research Programs
5. General Programs
6. State Programs
7. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, DC 20506, or call area code 202–786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 87–8797 Filed 4–17–87; 8:45 am]

BILLING CODE 7536–01–M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy or (3) information which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. DATE: May 1, 1987
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 316–2
PROGRAM: This meeting will review application for Summer Seminars for College Teachers in Arts, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1988.

2. DATE: May 4, 1987
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 315
PROGRAM: This meeting will review the Summer Seminars for College Teachers applications in Foreign Languages and Literatures, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1988.

3. DATE: May 15, 1987
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 315
PROGRAM: This meeting will review applications received in the Faculty Graduate Study Program for one year of doctoral study in the humanities, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1988.

4. DATE: May 4–5, 1987
TIME: 7:30 a.m. to 5:30 p.m.
ROOM: 415
PROGRAM: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after October 1, 1987.

5. DATE: May 14, 1987
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: M–14
PROGRAM: This meeting will review applications for Humanities Instruction in Elementary and Secondary and Higher Education, submitted to the Division of Education Programs, for projects beginning after August 31, 1987.

6. DATE: May 14–15, 1987
TIME: 7:30 a.m. to 5:30 p.m.
ROOM: 415
PROGRAM: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after October 1, 1987.

7. DATE: May 19–20, 1987
TIME: 7:30 a.m. to 5:30 p.m.
ROOM: 415
PROGRAM: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after October 1, 1987.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 87–8798 Filed 4–17–87; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by May 22, 1987. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 17, 1986.

The application received is as follows:

1. *Applicant:* David G. Ainley, Point Reyes Bird Observatory, Stinson Beach, California 94970.

Activity for Which Permit Requested

Taking. The applicant is conducting a research study of seabird habitat and diet. It is proposed to collect species as follows:

Species	Number
Emperor Penguin	25
Adelie Penguin	25
Chinstrap Penguin	25
Giant Fulmar	10
Cape Petrel	30
Antarctic Petrel	30
Snow Petrel	30
Antarctic Prion	30
Blue Petrel	30
Wilson's Storm Petrel	30
South Polar Skua	25
Antarctic Tern	30
Kelp Gull	30
Blue-eyed Shag	25
Kerguelan Petrel	25

Location

Ocean waters along the western side of the Antarctic Peninsula.

Dates

June–July 1987.

Authority to publish this notice has been delegated by the Director of the National Science Foundation.

Charles E. Myers,

Permit Office.

[FR Doc. 87–8727 Filed 4–17–87; 8:45 am]

BILLING CODE 7555-01-M

Biological Facilities Centers Panel; Notice of Establishment

The Assistant Director for Biological, Behavioral, and Social Sciences has determined that the establishment of the Biological Facilities Centers Panel is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Panel for the Biological Facilities Centers.

Purpose: Primarily to advise on the merit of proposals for research facilities and research-related purposes submitted to NSF for financial support. Additionally, the Panel provides oversight, general advice, and policy guidance to the Biological Facilities Centers Program.

M. Rebecca Winkler,

Committee Management Officer.

April 15, 1987.

[FR Doc. 87–8835 Filed 4–17–87; 8:45 am]

BILLING CODE 7555-01-M

Science Resources Studies; Notice of Establishment

The Assistant Director for Scientific, Technological, and International Affairs has determined that the establishment of the Advisory Committee for Science Resources Studies is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Committee for Science Resources Studies

Purpose: To provide advice concerning current and emerging science and technology issues, problems and opportunities and the kinds of data that would help illuminate them.

M. Rebecca Winkler,

Committee Management Officer.

April 15, 1987.

[FR Doc. 87–8836 Filed 4–17–87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published March 17, 1987 (52 FR 8390). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designed by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 A.M. and Subcommittee meetings usually begin at 8:30 A.M. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the May 1987 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634–3265, ATTN: Barbara Jo White) between 8:15 A.M. and 5:00 P.M., Eastern Time.

ACRS Subcommittee Meetings

Severe Accidents, April 22, 1987, Washington, DC. The Subcommittee will discuss the research plan intended to resolve the source term uncertainty areas and review the Expert Panels assessment of these programs.

Severe Accidents, April 23, 1987, Washington, DC. The Subcommittee will continue the review of the proposed generic letter for Individual Plant Examinations (IPEs) as part of the NRR Implementation Plan for the Severe Accident Policy Statement.

Advanced Reactor Designs, April 24, 1987, Washington, DC. The Subcommittee will review NUREG–1226, "Development and Utilization of the NRC Policy Statement on the Regulation of Advanced Nuclear Power Plants".

Thermal Hydraulic Phenomena, April 28, and 29, 1987, Idaho Falls, ID. The Subcommittee will: (1) Review the status of the thermal hydraulic research program, (2) review the activities of the INEL Technical Integration Center, (3) review the status of the proposed ISIF (Improved Scale Integral Facility), (4) review the final draft of the Research Compendium supporting the proposed ECCS Rule revision, (5) review the results of the OECD LOFT Program, (6) discuss the status of the TRAC Code Modeling effort, (7) discuss the status of the work of the RES Export's Group on Code Uncertainty, and (8) discuss briefly the issue of water hammer.

Joint Metal Components/Auxiliary Systems, May 5, 1987, Washington, DC. The Subcommittees will explore further the questions in Congressman P. Sharp's letter on implications for the safety of nuclear power plants of the recent Surry accidents.

AC/DC Power Systems Reliability, May 6, 1987, Washington, DC. The Subcommittee will review the proposed Station Blackout rule (SECY–85–163).

Safety Research Program, May 6, 1987, Washington, DC—CANCELLED.

Waste Management, May 18 and 19, 1987, Washington, DC. The Subcommittee will review selected pertinent nuclear waste management topics to be identified during an agenda planning session with NMSS and RES personnel on April 23, 1987.

Regulatory Policies and Practices, May 26, 1987, Washington, DC. The Subcommittee will continue its current review of the nuclear regulatory process.

Decay Heat Removal Systems, May 27, 1987, Washington, DC. The Subcommittee will continue its review of the NRR Resolution Position for USI A–45.

Generic Items, May 27, 1987, Washington, DC. The Subcommittee will discuss the process involved in identifying, prioritizing, resolving and implementing generic issues, and unresolved safety issues (USIs) so as to determine the effectiveness of this process.

Regional and I&E Programs, May 29, 1987, Region IV, Arlington, TX. The Subcommittee will review the activities under the control of the Region IV Office.

Babcock & Wilcox Reactor Plants, June 2, 1987, Washington, DC. The Subcommittee will continue its review of the long-term safety review of B&W reactors. This effort was begun during the summer of 1986; initial Committee comments offered on July 16, 1986 in a letter to V. Stello, EDO.

Joint Severe Accident/Probabilistic Risk Assessment, June 3, 1987, Washington, DC. The Subcommittees will review the Research report NUREG–1150, "Reactor Risk Reference Document", which was issued in February 1987 for public comments.

Occupational and Environmental Protection Systems, June 9 and 10, 1987 (tentative), Washington, DC. The Subcommittee will discuss issues concerning emergency plans and other matters.

Auxiliary Systems, June 11, 1987, Washington, DC. The Subcommittee will discuss the heating, ventilation, and air conditioning (HVAC) system malfunctions and their impact on safety systems. Also, it will discuss the recent experience associated with inadvertent actuation of fire protection systems and its interaction on safety systems. In addition, it will discuss recent events associated with instrument air system malfunctions, AEOD findings concerning the instrument air systems malfunctions and its recommendations to alleviate this problem.

Thermal Hydraulic Phenomena, June 18, 1987, Washington, DC. The Subcommittee will review: MIST Program Status including results of MIST Phase III tests, IST Scaling Coordination, and plans for a follow-on test Program.

Joint Severe Accidents/Probabilistic Risk Assessment, July 8, 1987, Washington, DC. The Subcommittees will conclude its review of the Research report NUREG–1150, "Reactor Risk Reference Document", which was issued in February 1987 for public comment.

Thermal Hydraulic Phenomena, July 16 or 30, 1987, Washington, DC. The Subcommittee will review: (1) Development of Uncertainty Methodology for BE ECCS Codes, (2) Status of the Generic Issue addressing Steam Generator/Steam Line Overfill Issues, (3) Status of the Water Hammer Issue.

Auxiliary Systems, July 23, 1987, Washington, DC. The Subcommittee will discuss with the NRC research staff and the personnel from the Sandia National Laboratories the progress of the "Scoping Study" being performed by the Sandia National Laboratories for NRC on the need for future research in the fire protection area.

Generic Items, Date to be determined (July/August), Washington, DC. The Subcommittee will continue the discussion on the effectiveness of the programs that address generic issues and USIs. Also, it will discuss with selected licensees the contribution to plant safety resulting from the implementation of the resolved generic issues and USIs.

Decay Heat Removal Systems, Date to be determined (July/August), Washington, DC. The Subcommittee will review: (1) The resolution status for GI 23: "RCP Seal Failure", and (2) the resolution status for GI 124: "AFW System Reliability".

Thermal Hydraulic Phenomena, Date to be determined (September/October), Washington, DC. The Subcommittee will review: (1) Final version of revised ECCS Rule, and (2) status of RES-proposed new integral test facility.

Joint Seabrook/Occupational & Environmental Protection Systems/Service Accidents, Date to be determined, Washington, DC. The Subcommittes will review Brookhaven National Laboratory's report of the Seabrook Emergency Planning Sensitivity Study and other related matters.

Seabrook Unit 1, Date to be determined, Washington, DC. The Subcommittee will review the application for a full power operating license for Seabrook Unit 1.

Joint Standardization of Nuclear Facilities/GE Reactors, Date to be determined, Washington, DC. The Subcommittee will review the Staff SER and Chapter I of the EPRI Requirements Document, and the GE Licensing Basis Agreement.

ACRS Full Committee Meeting

May 7–9, 1987: Items are *tentatively* scheduled.

*A. *Quantitative Safety Goals (Open)*—Review proposed NRC Implementation Plan including definition of large radioactive releases.

*B. *Radwaste Management and Disposal (Open)*—Briefing regarding proposed advisory functions on radwaste matters.

*C. *BWR Pipe Crack Guidance (Open)*—ACRS comments regarding NRC requirements for BWR pipe crack inspection and repair (tentative).

*D. *Station Blackout (Open)*—Review proposed NRC rule regarding resolution of Generic Issue A–44, Station Blackout.

*E. *NRC Severe Accident Policy (Open)*—Review proposed NRC plan for implementation of the NRC severe accident policy (tentative).

*F. *Severe Accident Research Program (Open)*—Discuss report of NRC Panel of Experts regarding the NRC severe accident research program and consideration of uncertainties in severe accident evaluation.

*G. *Risks of Radwaste Management and Disposal (Open)*—Discuss proposed ACRS comments regarding the risks of radwaste handling and disposal.

*H. *ACRS Subcommittee Activity (Open)*—The Committee will hear and discuss reports of ACRS subcommittees regarding assigned activities including thermal hydraulic phenomena, systems interactions, and control room habitability.

*I. *Nuclear Power Plant Safety Systems (Open/Closed)*—Discuss proposed ACRS comments regarding safety systems in foreign nuclear power plants and other safety improvements.

*J. *Nuclear Safety in the U.S.S.R. (Open)*—Report by NRC Commissioner regarding recent visit to discuss soviet nuclear power plant safety.

*K. *Advanced Reactor Policy (Open)*—Review NUREG–1226, Development and Utilization of the NRC Policy Statement on the Regulation of Advanced Nuclear Power Plants.

*L. *NRC Long Range Planning (Open)*—Briefing regarding strategic planning effort of the NRC.

*M. *Future ACRS Activities (Open)*—Discuss anticipated ACRS activities and items proposed for consideration by the full Committee.

*N. *Appointment of New Members (Closed)*—Discuss qualifications of candidates for appointment to the ACRS.

June 4–6, 1987—Agenda to be announced.

June 9–11, 1987—Agenda to be announced.

Dated: April 15, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–8802 Filed 4–17–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Privacy Act of 1974; Guidance on the Privacy Act Implications of "Call Detail" Programs to Manage Employees' Use of the Government's Telecommunications Systems

AGENCY: Office of Management and Budget.

ACTION: Publication in final form of guidance on the Privacy Act implications of "call detail" programs.

SUMMARY: Pursuant to its responsibilities under section 6 of the Privacy Act of 1974 (Pub. L. 93–579), the Office of Management and Budget (OMB) developed guidance on how, the recordkeeping provisions of that Act affect agencies' programs (so-called "call detail programs") to collect and use information relating to their employees use of long distance telephone systems. This proposal was published for public comment in the **Federal Register** on May 23, 1986 (51 FR 18982). Four comments were received, all from Federal agencies. The commentators generally supported the issuance of the guidance and suggested technical clarifications of certain points. Their suggestions have been incorporated into the final guidance below. This guidance:

- Describes the purposes of call detail programs and explains how they work.
- Notes that call detail records that contain only telephone numbers are not Privacy Act records, but that when linked with a name, they become Privacy Act records.
- Notes that when agencies start retrieving by reference to a linked number or name, they are operating a Privacy Act system of records.
- Urges agencies not to create artificial filing and retrieval schemes to avoid the Act.
- Suggests agencies establish a Privacy Act system of records in which to maintain these records, and provides a model notice for them to use.
- Discusses the disclosure provisions of the Act as they would pertain to such a call detail system, especially emphasizing that intra-agency disclosures for improper employee surveillance purposes or to identify and harass whistleblowers are not sanctioned under Section (b)(1) of the Privacy Act.

FOR FURTHER INFORMATION CONTACT: Robert N. Veeder, Information Policy Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, telephone 202–395–4814.

Guidance on the Privacy Act Implications of Call Detail Programs

1. Purpose

This guidance is being offered in conjunction with guidance on call detailing published by the General Services Administration. Whereas GSA's guidance focuses on how to create and operate such programs, this document explains the ways in which the Privacy Act of 1974 affects any records generated during the course of call detail programs.

Nothing in this guidance should be construed to (a) authorize activities that are not permitted by law; or (b) prohibit activities expressly required to be performed by law. Complying with these Guidelines, moreover, does not relieve a Federal agency of the obligation to comply with the provisions of the Privacy Act, including any provisions not cited herein.

2. Scope

These Guidelines apply to all agencies subject to the Privacy Act of 1974 (5 U.S.C. 552a).

3. Effective Date

These Guidelines are effective on the date of their publication.

4. Definitions

For the purposes of these Guidelines:

- All the terms defined in the Privacy Act of 1974 apply.
- "Call Detail Report"—This is the initial report of long-distance calls made during a specified period. A call detail report may be provided by a telephone company, the General Services Administration, or it may originate from a PBX (Private Branch Exchange) on an agency's premises. No monitoring of conversations takes place during or after the collection of data for this report. The report may contain such technical information as the originating number, destination number, destination city and State, date and time of day a call was made, the duration of the call, and actual or estimated cost of the call. At this stage, a call detail report contains no information directly identifying the individuals making or receiving calls.
- "Call Detail Information" or "Call Detail Records"—These are records generated from call detail reports through administrative, technical or investigative follow-up. In some cases call detail information or records will contain no individually identifiable information and therefore no Privacy Act considerations will apply. In other cases, the information and records will

be linked with individuals and the Privacy Act must be taken into consideration.

5. Background

Rapid growth in automated data processing and telecommunications technologies has created new and special problems relating to the Federal Government's creation and maintenance of information about individuals. At times, the capabilities of these technologies have appeared to run ahead of statutes designed to manage this kind of information, particularly the Privacy Act. An example is the establishment of call detail programs to help agencies control the costs of operating their long distance telephone systems. Call detail programs develop information about how an agency's telecommunications system is being used. The information may come from a number of sources, e.g., from agency installed or utilized devices to record usage information (pen registers or agency switching equipment); from central agency managers such as the General Services Administration or the Defense Communications Agency; or directly from the providers of telecommunications services.

There are many different purposes for call detail programs. Agency managers may use call detail information to help them choose more efficient and cost-effective ways of communicating. The information may be used to make decisions about acquiring hardware, software, or services, and to develop management strategies for using existing telecommunications capacity more efficiently. One aspect of this latter use may be the development of programs to identify unofficial use of the agency's telephone system. To this end, call detail programs work by collecting information about the use of agency telephone systems and then attempting to assign responsibility for particular calls to individual employees. Their two-fold purpose is to deter use of the system for unofficial purposes and to recoup for the government the cost of unofficial calls.

Soon, the establishment of call detail programs will become a government-wide priority, as part of a management initiative on reducing the government s administrative costs.

6. Privacy Act Implications

a. *Call Detail Records as Privacy Act Records.* The Privacy, Act of 1974 is the primary statute controlling the government's use of information about individuals. Not all individually identifiable information, however, qualifies for the Act's protections. With but few exceptions, only information that consists of "records" as defined by the Act, and which is maintained by an agency in a "system of records," triggers the Act's provisions. The Privacy Act defines a "record" as

> * * * any item, collection or grouping of information about an individual that is maintained by an agency including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph * * *.

A "system of records" is

> A group of any such records from which information is retrieved by the name of the individual or other identifying particular.

As we have indicated in our original Privacy Act implementing Guidelines (40 FR 28949, July 9, 1975), the mere capability of retrieving records by an identifying particular is not enough to create a system of records; the agency must actually be doing so.

The threshold question for call detail information, then, is whether a telephone number is a record within the meaning of the Privacy Act. The answer to this question depends upon how the telephone number is maintained.

Standing alone, a telephone number, is not a Privacy Act record. To achieve the status of a Privacy Act record, a telephone number must be maintained in a way that links it to an individual's name or some other identifying particular such as a Social Security Account Number.

When an agency assigns a specific phone number to an employee and maintains that information in a way that the name and number are inseparably connected, there is sufficient identification linkage that a Privacy Act record is created. (It should be noted that the Privacy Act does not require that the record be unique to the individual, only that it be "about" him or her and include his or her name or other identifying particular. Thus, a telephone number could be shared by several individuals and still meet the Privacy Act "record" definition.)

The initial call detail reports which contain only technical information about telephone usage do not consist of records within the meaning of the Privacy Act and they will therefore never reach the level of a system of records. For many areas of telecommunications management, the information in call detail reports will never become systems of records and the Privacy Act will have no application.

When, however, call detail records are used in management programs designed to control costs and determine individual accountability for telephone calls, Privacy Act considerations must be addressed. In order to carry out these kinds of call detail programs, agencies will have to link numbers and names so that they can determine who is responsible for what call. It is at this point, that the telephone number meets the Privacy Act definition of a "record."

b. *Call Detail Records in Privacy Act Systems of Records.* The next question, then, is when do files consisting of Privacy Act records, created by linking a telephone number and an individual's name become a system of records? This occurs when agencies use the Privacy Act record as a key to retrieve information from these files.

While it is important to remember that not every collection of data containing call detail records will be a Privacy Act system of records, agencies are cautioned against creating artificial filing schemes merely to avoid the effect of the Act when the establishment of a Privacy Act system of records would be appropriate. Since these records are clearly intended to establish individual responsibility for long distance telephone use, their use by the agency could have serious financial or disciplinary consequences for individual employees. By maintaining these records in conformance with the provisions of the Privacy Act, agencies can make certain that legitimate concerns about the implementation of call detail programs (e.g., improper use of the records for surveillance or employee harassment, unfairness, and record accuracy) are dealt with in a procedural framework that was designed to deal with such concerns.

Therefore, we recommend strongly that agencies create a Privacy Act system of records (or more than one system if that is appropriate) in which to maintain call detail records that contain information about individuals and are used to determine accountability for telephone usage.

Such a Privacy Act system of records might contain the following kinds of data:

- The initial call detail monthly listing (in whatever form it is kept, e.g., on paper, magnetic tape or diskettes);
- Locator information showing where in the agency specific telephones are located;
- Records relating to the identification of individual employees, and (1) linking them with specific calling numbers; (2) linking them with specific called numbers.

Note that not all Privacy Act records generated as a result of call detail programs would become a part of this system of records. Thus, investigative records of the Office of the Inspector General, personnel records reflecting administrative or disciplinary actions, finance and accounting records relating to cost attribution and recoveries, and the like, that are generated from call detail programs might be filed in appropriate existing systems and subjected to their particular disclosure/safeguarding provisions. In other instances, records (name and telephone number, for example) may be common to the call detail system and other systems.

To help the agencies construct their Privacy Act systems of records, we offer a model system notice in Appendix I.

c. *Disclosing from Call Detail Records Systems under Section (b) of the Privacy Act.* The Privacy Act provides 12 exceptions to its basic requirement that agencies must obtain the written consent of the record subject before disclosing information from a system of records. The following exceptions are the ones most relevant to the proposed Call Detail system of records:

• Section (b)(1). "To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties." This exception does not contemplate unrestricted disclosures within the agency. Intra-agency disclosures of call detail records may be made only when there is an official need to know the information. The following are examples of disclosures that (b)(1) would permit:

—To individual supervisors to determine responsibility for specific telephone calls.
—To employees of the agency to review the call detail lists and identify calls made by the employee. Note that the other option for this kind of disclosure is a routine use (Section (b)(3)). Agencies that are concerned about establishing that employee A has an official, need to know about the calls made from employee B's telephone may wish to adopt a routine use authorizing the disclosures.
—To the employees of the Office of the Inspector General who are conducting investigations into abuse of the long distance telephone system;
—To employees of the Office of Finance and Accounting for processing of reimbursements for personal calls or for processing of administrative offsets of pay pursuant to the provisions of the Debt Collection Act;
—To Freedom of Information Act (FOIA) officers and legal advisers.

Some examples of disclosures that (b)(1) would not authorize are:

—To agency personnel to identify and harass whistleblowers;
—To agency personnel who are merely curious to know who is calling whom.

• Section (b)(2). "Required under section 552 of this title." Information may be disclosed both inside and outside the agency to the extent that the disclosure would be required by the Freedom of Information Act. Prior to the ruling of the Court of Appeals for the D.C. Circuit in *Bartel* v. *FAA*, 725 F.2d 1403 (D.C. Cir. 1984), longstanding agency practices and OMB interpretation treated this section as permitting agencies to initiate disclosure of material that they would be "required" to release under the FOIA. Disclosure under this interpretation did not depend on the existence of a FOIA request for the records; the mere finding that no FOIA exemption could apply and that the agency would therefore have no choice but to disclose, was sufficient. In fact, agencies relied upon this interpretation of the requirements of section (b)(2) to make routine disclosures of many documents, especially those traditionally thought to be in the public domain such as press releases, final orders, telephone books, and the like.

In Bartel, however, the court held that an agency must have received an actual FOIA request before disclosing pursuant to section (b)(2). In that case, the plaintiff, Bartel, brought a Privacy Act action asserting that his supervisor had gratuitously disclosed to three former colleagues the fact that Bartel had improperly obtained copies of their personnel records. The court interpreted the standard for (b)(2) disclosures to be other than a conditional one, i.e., not merely that the agency would have to disclose if such a request were received, but that the agency must have to do so because an actual FOIA request for the records has been made. Under this ruling, agency-initiated requests of FOIA releasable material would be improper.

The court noted, however, that material traditionally held to be in the public domain might constitute an exception to its FOIA-request-in-hand interpretation. In guidance issued in May 1985 (Memorandum from Robert P. Bedell to Senior Agency Officials for Information Resources Management, Subject: Privacy Act Guidance—Update, dated May 24, 1985) OMB suggested (without agreeing with the ruling) that agencies continue to make disclosures of these kinds of records without having received a FOIA request. We cautioned, however, that agencies should be careful about making gratuitous releases of sensitive classes of Privacy Act records without having received a request for them.

Applying the Bartel ruling to call detail information, there appear to be three distinct categories of records which could be considered for release under section (b)(2):

—Records which clearly fall into the "public domain" category. We suggest that these would be releasable either at the agency's initiation or in response to a FOIA request: the former because they are of the "traditionally released" class; the latter, because no FOIA exemption would prevent their disclosure. An example would be the names and office telephone numbers of agency employees. These are generally considered public information (obviously there may be exceptions for investigative and intelligence organizations), and the only applicable FOIA exemption, (b)(6), the personal privacy exemption, would not apply. Thus, disclosures of an employee's name and office telephone number would be appropriate under Privacy Act section (b)(2).
—Records which could be withheld under an applicable FOIA exemption and which, therefore, would not be required to be released. These could be, for example, records which contain sensitive information relating to on-going investigative or personnel matters such as records relating to the investigation of an employee for abuse of the agency's long distance telephone system. Such records could reasonably be withheld under FOIA exemption (b)(7) and, therefore, would not be releasable under section (b)(2) of the Privacy Act. An agency would not release these kinds of records either at its own initiative or in response to a FOIA request. It should be noted, however, that such records might be released under other sections of the Privacy Act, such as (b)(3), "for a routine use," or (b)(7) at the request of the head of an agency for an authorized civil or criminal law enforcement activity.
—Records for which no FOIA exemption applies but which contain sensitive information, e.g., records which reflect the results of official actions taken as a consequence of investigations of abuses of the telephone system. We suggest that agencies should be very cautious about initiating disclosure of these records without receiving a FOIA request since they appear to be of the category of records that concerned the Bartel court. Even with

a request, agencies will have to determine that the interest of the public in having the record clearly outweighs the privacy interest of the record subject in order to overcome the applicability of FOIA exemption (b)(6).

• Section (b)(3). "For a routine use." See the routine use section of the model system notice at Appendix I. A routine use is a disclosure of information that will be used for a purpose that is compatible with the purpose for which the information was originally collected.

The concept of compatibility comprises both functionally equivalent uses:

—For example, routine use (5) in the model notice would authorize disclosure to the Department of Justice to prosecute an egregious abuser of an agency's long distance telecommunications system. This disclosure is functionally compatible since one of the purposes of the system is to identify abusers and subject them to administrative or legal consequences.

As well as other uses that are necessary and proper:

—For example, routine use (2) in the model notice authorizes disclosure to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections pursuant to a specific statutory charter. Their purpose is in no way functionally equivalent to the purpose for which the system was established; it is, however, clearly necessary and proper.

• Section (b)(12). "To a consumer reporting agency." This disclosure exception was added to the original 11 by the Debt Collection Act of 1982. It authorizes agencies to disclose bad debt information to credit bureaus. Before doing so, however, agencies must complete a series of due process steps designed to validate the debt and to offer the individual the chance to repay it (see OMB Guidelines on the Debt Collection Act, published in the Federal Register on April 11, 1983 (48 FR 15556). It is possible that agencies will wish to disclose information, from call detail systems of records documenting an individual's responsibility for unofficial long distance calls as part of the bad debt disclosure. For this reason, the model system notice at Appendix I contains a statement identifying the system as one from which such disclosures can be made.

7. Contact Point for Guidance

Refer any questions about this guidance to Robert N. Veeder, Office of Management and Budget, Office of Information and Regulatory Affairs, 395–4814.

Appendix I—Proposed Model System Notice for Call Detail Records

This is a proposed notice; agencies should modify it as appropriate.

System Name: Telephone Call Detail Records.

System Location: Records are stored at (name of Headquarters Office containing central files) and at (insert component locations).

Categories of Individuals Covered by the System: Individuals (generally agency employees and contractor personnel) who make long distance calls and individuals who received telephone calls placed from or charged to agency telephones.

Categories of Records in the System: Records relating to use of the agency telephones to place long distance calls; records indicating assignment of telephone numbers to employees; records relating to location of telephones. (Note that while few if any agencies will attempt to establish programs to control unofficial local calls, some telecommunications equipment will automatically record local as well as long distance call information. If local calling records are included in this system, they should be cited in the "categories of records" section of the notice.)

Authority for Maintenance of the System: (Cite appropriate agency "housekeeping" statute authorizing the agency head to create, collect and keep such records as are necessary to manage the agency.)

Routine Uses of Records Maintained in the System: Records and data may be disclosed, as is necessary, (1) to Members of Congress to respond to inquiries made on behalf of individual constituents that are record subjects; (2) to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906; (3) in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding; (4) in a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding; (5) in the event that material in this system indicates a violation of law, whether civil or criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order, issued pursuant thereto; (6) to employees of the agency to determine their individual responsibility for telephone calls; (7) to respond to a Federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter; (8) to a telecommunications company providing telecommunications support to permit servicing the account. (Agencies should refrain from automatically applying all of their blanket routine uses to this system.)

Disclosures 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)) or 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 System:

Storage: (Describe agency methods of storage.)

Retrievability: Records are retrieved by employee name or identification number, by name of recipient of telephone call, by telephone number.

Safeguards: (Describe methods for safeguarding.)

Retention and Disposal: Records are disposed of as provided in National Archives and Records Administration General Records Schedule 12.

System Manager(s) and Address(es): (List central system manager and component subsystem managers, if appropriate.)

Notification Procedures: (Explain notification procedures.)

Record Access Procedures: (Explain how individuals may obtain access to their records.)

Record Source Categories: Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

Systems Exempted From Certain Provisions of the Act: None.

James C. Miller III,

Director.

[FR Doc. 87–8771 Filed 4–17–87; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–15682; 811–1331]

Bank Stock Fund, Inc.; Order for Deregistration

April 15, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Bank Stock Fund, Inc.

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application on Form N–8F was filed on January 2, 1987, and amended on April 8, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on May 11, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Lorna A. Schnase, Esq., Davis, Graham & Stubbs, 370 Seventeenth Street, Suite 4700, P.O. Box 185, Denver, Colorado 80201–0185.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272–3037 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant, a Colorado corporation, is registered under the 1940 Act as an open-end, non-diversified, management investment company.

2. On September 19, 1985, Applicant liquidated all securities in its portfolio at the then prevailing market prices, and placed such assets in a money market account with Applicant's custodian, United Bank of Denver. On October 4, 1985, George P. Apostalos ("Mr. Apostolas") died. Mr. Apostalos served as president of Applicant and president and principal shareholder of Applicant's investment adviser, Apostalos Advisors, Ltd, and of Applicant's principal underwriter, Apostalos Securities, Inc. Due to Mr. Apostalos' death and the in ability to secure a new investment adviser, Applicant's Board of Directors passed a resolution on October 9, 1985, recommending a plan of liquidation ("Plan") of Applicant and establishing a reserve a ("Reserve") of $50,000 to pay for liquidation expenses. Any portion of the Reserve remaining at the time Applicant completes the winding up of its affairs will be distributed pro rata to Applicant's securityholders as of October 9, 1985.

3. On February 27, 1986, Applicant's shareholders adopted the Plan. On March 25, 1986, Applicant field a Statement of Intent to Dissolve with the Colorado Secretary of State, thereafter notified its creditors of such filing, and intends to file its Articles of Dissolution upon completion of its liquidation and winding up of its affairs.

4. On July 23, 1986, Applicant made a liquidating distribution to its securityholders as of April 9, 1986, of $184,516.01 (approximately $3.11 per share), which represented Applicant's remaining assets less amounts held in the Reserve.

5. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant. In addition, Applicant is not a party to any litigation or administrative proceeding, and is not now engaged and does not propose to engage in any business activities other than those necessary for winding up its affairs. Furthermore, Applicant is not aware of any remaining liabilities other than fees incurred for legal counsel, accounting, rent and utilities, bank custody, administrative expenses and miscellaneous, which are billed and paid on an on-going basis.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–8827 Filed 4–17–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–15681; 812–6650]

First Trust Foreign Investor U.S. Government Fund, L.P.; Notice of Application

Date: April 14, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: First Trust Foreign Investor U.S. Government Fund, L.P. (the "Applicant" or the "Partnership").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from section 2(a)(19).

Summary of Application: Applicant seeks an order exempting Applicant's Managing General Partners and any successor Managing General Partners which may be elected in the future to the extent they would be deemed interested persons of the Applicant or its investment adviser or principal underwriter solely because they are general partners in the Partnership.

Filing Date: The application was filed on March 13, 1987 and amended on April 10, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on May 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicants, 300 West Washington Street, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Denis R. Molleur, Staff Attorney (202) 272–2363 or H.R. Hallock, Jr., Special Counsel (202) 272–3030 (Division of Investment Management).

Applicant's Representations

1. The Applicant is a diversified, open-end management investment company registered under the 1940 Act. The Applicant is organized as a limited partnership in the State of Delaware and has been designed as a specialized investment vehicle for foreign investors; shares of the Applicant are to be offered exclusively to such foreign investors with the objective of seeking high current return and safety of principal and an exemption from Federal income and withholding taxes.

2. The Applicant will offer a single class of shares registered under the Securities Act of 1933 and the 1940 Act and purchasers will be required to become limited partners (the "Limited Partners") of the Applicant. The Applicant's Limited Partners will have the voting, approval, consent and other rights required under thg 1940 Act but,

consistent with the Delaware Revised Uniform Partnership Act, will not have the right to participate in the control of the Applicant's business.

3. The Applicant intends to include in its contracts a provision limiting the claims of creditors to the Applicant's assets. The Partnership Agreement provides for indemnification out of the Applicant's property for any limited partner held personally liable for any obligation of the Partnership and provides for the Applicant to assume the defense of any claim made against any Limited Partner, for any act or obligation of the Applicant, and satisfaction of any judgment. In addition, the Applicant may carry insurance in such amounts as the Managing General Partners consider reasonable to cover potential liabilities of the Partnership and the Managing General Partners will periodically review the question of the appropriateness of obtaining errors and omissions insurance for the Applicant.

4. The general partners of the Applicant consist of one corporate general partner (the "Non-Managing General Partner"), which will not take any role in management (except temporarily, in extraordinary circumstances) and a number of individual general partners (the "Managing General Partners"), who are expressly charged with the responsibility of managing the Partnership. The primary obligation of the corporate Non-Managing General Partner is to maintain, together with the Managing General Partners, a minimum one percent (1%) investment in Applicant to assure that Applicant will be treated as a partnership under the Internal Revenue Code of 1986, as amended.

5. The Managing General Partners (who must be individuals) will perform the same functions as directors of a corporation or the trustees of a business trust, and will assume all the responsibilities and obligations imposed by the 1940 Act on directors of an investment company. Each new general partner must be approved by at least a majority of the outstanding shares of the Applicant and upon such approval will serve for an indefinite period. However, Limited Partners representing 10% or more of the outstanding shares of the Applicant may also call a meeting of the Limited Partners to remove any or all of the general partners. Applicant intends to elect two or more independent Managing General Partners of each Partnership (functionally equivalent to non-interested directors or trustees) prior to the effective date of the Applicant's registration statement.

6. Clayton Brown Investments, Inc. ("CBI"), an Illinois corporation, is the corporate Non-Managing General Partner of Applicant. Clayton Brown & Associates, Inc., the principal underwriter of the Applicant's shares, owns 100% of the outstanding shares of CBI and owns 80.05% of the outstanding shares of Clayton Brown Advisors, Inc., the Applicant's investment adviser.

7. Clayton F. Brown owns approximately 66.87% of the outstanding shares of Clayton Brown & Associates, Inc. Mr. Brown is a Director of Clayton Brown Advisors, Inc. and is the Chairman of the Board, a Director and the Chief Executive Officer of Clayton Brown & Associates, Inc. Gerald E. Pelzer owns approximately 5.00% of the outstanding shares of Clayton Brown & Associates, Inc. Mr. Pelzer is a Director of Clayton Brown Advisors, Inc. and is the President, Chief Operating Officer and a Director of Clayton Brown & Associates, Inc.

8. The Managing General Partners are "interested persons" of the Applicant and its investment manager and principal underwriter, as defined in section 2(a)(19) of the Act, by virtue of being general partners of the Partnership and co-partners of CBI in the Applicant, which makes them "affiliated persons" of the Applicant. Mr. Pelzer, currently the sole Managing General Partner of the Applicant, would still be an "interested person" of the Applicant and its investment adviser and principal underwriter, notwithstanding the requested exemption, because of his positions as an officer and director and because of his stock ownership, as set forth in Paragraph 7.

9. Applicant requests that the Managing General Partners of the Partnership and any successor Managing General Partners which may be elected in the future be exempted from the provisions of section 2(a)(19) to the extent that they would be deemed to be "interested persons" of the Partnership or its investment adviser or principal underwriter solely because of their status as general partners of the Partnership and co-partners of CBI, the Non-Managing General Partner. Section 2(a)(19) contains a proviso that excludes those individuals who would be interested persons of an investment company solely because they are directors of an investment company. Applicant states that the Partnership has been structured so that the independent Managing General Partners are the functional equivalents of the non-interested directors of an incorporated investment company. Therefore, Applicant believes that granting the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-8828 Filed 4-17-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24332; File No. SR-OCC-87-05]

Self-Regulatory Organizations; Options Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act"), 15 U.S.C. 78(b)(1), notice is hereby given that on March 16, 1987, the options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. The proposal amends OCC rules regarding the calculation of margin on foreign currency settlement obligations that Clearing Members and their customers have elected to settle through OCC's Delivery-versus-Payment ("DVP") system. The proposal also amends OCC rules that authorize OCC to settle certain Clearing Member foreign currency obligations directly with Clearing Member customers, or customers' agents, through the DVP system. The Commission is publishing this notice to solicit comment on the rule change.

Under the proposed rule change, all obligations that a Clearing Member elects to settle through OCC's DVP system, either for itself or on behalf of a customer, will be margined on a per DVP basis.[1] Previously, all obligations that a Clearing Member elected to settle DVP, other than customer-initiated DVPs provided for in OCC Rule 1606A)c)(i),[2] were included in the

[1] *See* OCC Rule 602A(f)(3). The specific margin calculation for DVPs is set out in 602A(f)(3)(A) and (B).

[2] The Commission recently approved revisions to OCC Rule 1606A(c) in Securities Exchange Act Rel. No. 23888 (December 12, 1986), 51 FR 45826 ("Release No. 23888"). As revised, the rule established procedures by which OCC Clearing Members' customers could identify and settle, directly through OCC's DVP system, their gross exercises and assignments in foreign currency options ("selective gross-up" system). These settlement obligations that a customer elected to

Continued

Clearing Member's net obligation for margin purposes; only customer-related DVPs were margined separately. This method of margining left OCC exposed to risk if the in-the-money value of a Clearing Member's Clause (ii) DVP, that passed to the bank initiating the DVP, was unavailable to offset the Clearing Member's out-of-the-money DVP or regular-way settlement obligations.[3] In contrast, under the proposal, that in-the-money value of a Clause (ii) DVP would not be available to offset margin requirements for other Clause (ii) DVPs or regular-way settlement obligations.[4]

In addition, the proposal clarifies the description of the selective gross-up settlement system in Release No. 23888 and amends OCC rule 1606A(c)(i). As amended, rule clarifies that a Clearing Member can submit DVPs on behalf of its customer for all or any part of the customer's gross foreign currency option exercises and assignments or any netted combination thereof. The proposal also clarifies that dollars delivered or received via Clause (i) DVPs need not equal the net exercise price payable or receivable against the net quantity of foreign currency covered by the DVP. A Clearing Member's customer can pay or collect via Clause (i) DVPs, against receipt or delivery of a given quantity of foreign currency, a greater or lesser amount of U.S. dollars than the sum of the exercise prices of the currency covered by the DVP. Any remaining U.S. dollar obligations would be settled by the Clearing Member via Clause (ii) DVPs or regular-way pursuant to Rule 1606.

OCC believes the proposed changes to its margin rules protect OCC against its true risk exposure and accurately describe the method OCC currently is using to calculate margin on foreign currency settlement obligations. Moreover, with respect to the amendment to Rule 1606A(c)(i), OCC represents that if it accepts a netted Clause (i) DVP, under revised Rule 1606A(f)(3), OCC gets the same level of protection that it would have had if the customer's settlement obligation had been netted with the Clearing Member's settlement obligation.

This rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comments within 21 days after notice is published in the **Federal Register**. Please file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Steet, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–87–5 and should be submitted by May 11, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 13, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–8825 Filed 4–17–87; 8:45 am]

BILLING CODE 8010–01–M

settle via DVP were previously referrred to as "gross DVPs" but herein are referred to as "Clause (i) DVPs." Although initiated by the Clearing Member's customer, the DVPs must be submitted by the Clearing Member and the Clearing Member remains liable to OCC for the margin required on those DVPs.

The term "Clause (ii) DVP" refers to a DVP pursuant to Rule 1606A(c)(ii). A Clause (ii) DVP can be used for all or any part of a Clearing Member's net settlement obligation, adjusted to eliminate obligations under exercises and assignments that the Clearing Member has elected to settle via Clause (i) DVPs.

[3] Rule 602A(f)(2) governs margining of regular-way settlement obligations in foreign currency options.

[4] In addition, the proposal amends Rules 602A(f)(2)(A) and (b) to clarify that a Clearing Member's margin obligation with respect to its obligation to deliver or receive a particular foreign currency is calculated on the basis of the Clearing Member's settlement amount for that currency, not for all currencies. Also, a conforming change to Rule 1605(b)(1) merely recognizes that netted settlement obligations exclude all obligations to deliver or receive foreign currency for which OCC has accepted DVPs and all amounts to be paid or collected pursuant to DVPs.

[Release No. 34–24323; File No. SR–Phlx–87–02]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

On February 2, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to ease restrictions imposed on approved persons or member organizations affiliated with options specialists or specialist units. The proposed rule change is intended to facilitate entry into the options specialist business by retail broker-dealers, among others.[3]

The proposal was noticed in Securities Exchange Act Release No. 24117 (February 19, 1987), 52 FR 6256 (March 2, 1987). No comments were received on the proposed rule change.

In its rule filing, the Phlx stated that the purpose of the proposed rule change is to facilitate the entry of diversified retail member organizations with corporate finance retail sales and research departments into the options specialist business. Historically, Exchange rules have imposed restrictions on options specialists, and on various persons affiliated with options specialists, which prevented diversified, well capitalized retail member organizations from acting as options specialists at the Exchange. In general, there rules have prohibited options specialists, their member organizations and their corporate parents, from engaging in business transactions with issuers of specialty securities (or insiders of such issuers), from accepting orders in specialty securities from the issuer, insiders or other parties, from trading in options on their specialty securities and from trading in specialty securities, except pursuant to market making functions. As a result, with some exceptions, such member organizations have avoided the options specialist business since they would be required to curtail or eliminate portions of their present business activities as they relate to specialty securities.[4]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1983)

[3] The Commission previously approved on an accelerated basis a rule change (File No. SR–Phlx–86–44) identical to the one discussed herein for a period up to one year. *See* Securities Exchange Act Release No. 24057 (February 4, 1987), 52 FR 4320. The current proposal will make permanent the changes in SR–Phlx–86–44, and was issued as a companion filing in order to solicit comment on the proposed changes.

[4] The restrictions on specialist organizations were extended to cover approved persons or affiliated upstairs firms of a specialist unit whose business relationship with issuers raised similar conflicts of interest problems, so that they would not be placed in a more advantageous position vis-a-vis other market participants because of their association with the specialist unit.

The Phlx believes that the regulatory and competitive environment has changed significantly since these rules were first adopted, and that in light of the highly sophisticated surveillance techniques in effect at the Exchange and increased competition from other markets, there is no longer a continuing need for these prohibitions as they relate to affiliated upstairs firms. The Phlx believes that the proposed rule change will assist the Exchange in remaining competitive with other markets which recently were granted approval by the Commission to adopt proposed rule changes relaxing their exchanges' restrictions on the activities of affiliated upstairs firms.

The proposal will amend Phlx Rule 1020 to provide an exemption (for the affiliated upstairs firms only) from (1) the trading restrictions pertaining to purchases and sales of speciality securities for the account of an approved person, as specified in Phlx Rule 1020(e); (2) the prohibitions against entering into business transactions with issuers [of specialty securities as specified in Rule 1023(a)] and (3) the prohibition against accepting orders in specialty securities from the issuer, insiders and other parties as specified in Rule 1023(b). This exemption will be available to an approved person or other affiliated upstairs member organization which obtains prior Exchange approval of firm procedures designed to restrict the flow of material non-public information between it and its affiliated specialist, *i.e.*, a "Chinese Wall".[6]

The Chinese Wall is designed to prevent the specialist organization and the affiliated upstairs firm from making material non-public corporate or market information available to each other and to ensure the specialist does no trading while in possession of material non-public information derived for the affiliated upstairs firm from its relationship with the issurer or with knowledge of pending transactions or the upstairs firms' recommendation. The guidelines provide procedures to be used in temporary allocation of the book where a specialist unit becomes "contaminated" following a breach of the Chinese Wall. The guidelines also specify that a firm's procedures should ensure that information regarding securities positions, trading activities and margin financing arrangements between the affiliated upstairs firm and the specialist unit should be available solely to senior management in the upstairs firm exercising general managerial oversight of the specialist unit. Once in place, these procedures will substantially lessen the need for the prohibitions contained in the rules discussed above to the extent they apply to upstairs firms affiliated with specialists. The restrictions themselves would remain in effect as to the specialist organization itself.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[7] and the rules and regulations thereunder. The Commission believes, for the reasons stated in the release approving the American and New York Stock Exchange proposals regarding specialists affiliated with integrated firms, that the Chinese Wall guidelines proposed by the Phlx are adequate to prevent the communication of unpublished price-sensitive information about issuers of publicly held securities to those departments of the firm which might misuse the information for market trading purposes. At the same time, the procedures should facilitate the entry of diversified retail broker-dealers into the specialist business on the Exchange floor and in so doing enhance the depth and liquidity in the equity options market.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: April 10, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-8829 Filed 4-17-87; 8:45 am]

BILLING CODE 8010-01-M

[5] The Commission has previously approved similar proposals by the American and New York Stock Exchanges regarding specialists affiliated with integrated firms. *See* Securities Exchange Act Release No. 23768 (November 3, 1986), 51 FR 41183.

[6] Any firm wishing to obtain an exemption for its non-specialist activities from the restrictions specified in amended Rule 1020 must establish a Chinese Wall in conformity with Exchange guidelines between the specialist unit and its affiliated upstairs member firm. The exemption is voluntary. Any affiliated upstairs firm not wishing to satisfy the Exchange criteria will remain subject to the restrictions discussed above.

[7] 15 U.S.C. 78f (1982).

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12) (1985).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

April 14, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Tandem Computers Incorprated

Common Stock, $.025 Par Value (File No. 7-9876)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 5, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-8830 Filed 4-17-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24334; File Nos. 4-218 and S7-433]

Joint Industry Plan; Notice of Filing and Summary Effectiveness of Amendments to the Consolidated Quotation Plan and Consolidated Transaction Plan Fee Schedules

On March 31, 1987, the participants in the Consolidated Tape Association ("CTA") and Consolidated Quotation Plan ("CQ Plan") submitted amendments[1] to the Plan governing the

[1] The amendments to the CQ and CTA Plans were submitted pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"). The CTA Plan amendments also were submitted pursuant to Rule 11Aa3-1 under the Act.

operation of the consolidated quotation reporting system ("CQS") and the Plan governing the operation of the consolidated transaction reporting plan ("CTA Plan").[2]

I. Description of the Amendments

The purpose of the amendments is to revise Network B[3] fees to accommodate "Other Services" services subscribers offer customers that differ from conventional services;[4] raises the Network B analysis programs charge; and establishes a new combined, lower fee for receipt of Network B last sale and bid-ask data by nonprofessional subscribers. The amendments also make several conforming and technical changes.[5]

First, the amendments incorporate into the CTA and CQ Plans new fees for Other Services that are substantially lower than other professional Network B charges. In effect, the new fees charge the broker-dealer or vendor on the basis of "device equivalency" as if the broker-dealer or vendor were serving its customers by manual interrogation of a last sale data base.

Second, the amendments reduce the monthly fees vendors pay to provide their nonprofessional customers with Network B data. Previously vendors paid $5.00 under the CTA Plan and $4.00 under the CQ Plan. The amendment provides for a single, combined monthly fee of $3.00 for CTA and CQ data.

Finally, the amendments increase the monthly Network B analysis programs charge from $50 to $200. Under the old fee schedule, use of CTA and CQ data for other categories of computer programs (for example, compilation of stock tables and operations control programs) required payment of a monthly fee of $200. Thus, the fee increase merely brings the fee for the analysis program classification in line with similar classifications.

The participants stated that they designed the amendments to permit wider dissemination of market data by making it less expensively available to investors. They believe that the new fees also offer greater flexibility to broker-dealers and vendors in designing new market data services. Finally, the participants stated that they believe the amendments fulfill the national market system objectives of dissemination of last sale information and thus are consistent with Section 11A of Securities Exchange Act of 1934.

II. Summary Effectiveness of the Amendments

Rule 11Aa3–2 provides that the Commission may, upon publication of notice of the amendment, summarily put into effect for 120 days an amendment to a national market system plan. The Commission first must determine, however, that it is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission believes the amendments meet these standards.

First, the fees for "Other Services" already are in effect under experimental authority granted the CQS and CTA.[6] Moreover, making these fees a permanent part of the CTA and CQ Plan fee structure and reducing the non-professional fees will enable a greater number of investors to receive last sale and quotation data and should encourage innovation among broker-dealers and vendors in creating new methods of providing information to customers.

Finally, the Commission believes that the increase in the fee subscribers pay for the program analysis classification also is consistent with the Act. The Commission believes the increase corrects an apparent inequity among the charges for different computer program classifications.

III. Request for Comment

To assist the Commission in determining whether to approve permanently the amendments, interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 11, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 13, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–8826 Filed 4–17–87; 8:45 am]

BILLING CODE 8010–01–M

[2] The participants requested that the proposed amendments be put into effect summarily pursuant to Rule 11Aa3–2 (c)(4). That section empowers the Commission to summarily put into effect on a temporary basis a Plan amendment "if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

[3] "Network B" refers to the consolidated data stream representing transaction and quotation data on eligible securities that are listed on the American Stock Exchange ("Amex") or that are traded on another exchange but substantially meet the Amex listing standards.

[4] Examples of "Other Services" are services that allow customers to: (1) Obtain real-time stock market information over the telephone through an automated process involving a computer-generated voice; (2) obtain real-time stock market information over a leased printer located in their homes or offices; or (3) enter orders from their homes or offices on personal computers.

[5] The Commission recently approved similar changes to the CTA and CQ Plans Network A Fee Schedules. *See* Securities Exchange Act Release No. 24130 (February 20, 1987), 52 FR 6413 (March 3, 1987), approving amendments restructuring the Network A fees for professional subscribers, creating contractual and fee provisions for "Other Services" and establishing a single, lower fee for receipt of Network A data by non-professional subscribers.

[6] *See* Securities Exchange Act Release No. 20216 (September 23, 1986), 48 FR 44299, in which the Commission approved amendments to the CTA and CQ Plans authorizing the Plan administrators (i.e., the New York Stock Exchange and the Amex) to engage in market tests and pilot programs of limited scope and duration without the prior approval of the Operating Committee or, implicitly, the Commission.

DEPARTMENT OF STATE

[Public Notice CM–8/1069]

Secretary of State's Advisory Committee on Private International Law; Meeting

The 40th meeting of the subject Advisory Committee will take place at 10:00 a.m. on Friday, May 8, 1987, in Room 413 of the Federal Mediation and Conciliation Service Building at 2100 K Street, NW., Washington, DC. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the Chairman.

The meeting agenda will include a review of domestic and international developments relevant to international work on private law unification/

harmonization, including the status of the four conventions to the U.S. ratification of which the U.S. Senate gave advice and consent in October, 1986, the status of the 1973 Washington Convention Providing a Uniform Law on the Form of an International Will and the draft Administration-proposed federal legislation transmitted to Congress entitled: "The International Child Abduction Act". In light of the endorsement of the 1984 Hague Convention on the Law Applicable to Trusts and on Their Recognition by three national organizations, the Advisory Committee will be asked to make a recommendation concerning possible U.S. signature and ratification of that Convention. There will be discussion of the American Bar Association's May educational programs in New York, Chicago and Los Angeles on tbe 1980 U.N. Convention on Contracts for the International Sale of Goods, that was ratified by the United States in December, 1986 and will enter into force for the United States and ten other countries on January 1, 1988. (See State Department notice in 52 FR (March 2, 1987) at pp. 6262–80).

Entry to the building at 21st and K Streets is controlled and will be facilitated by advance arrangements. Members of the general public planning to attend should, prior to May 8, notify the Office of the Assistant Legal Adviser for Private International Law (L/PIL), Department of State, Washington, DC 20520 (telephone: (202) 653–9851) of their name, affiliation, address and telephone number.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 87–8726 Filed 4–17–87; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1068]

Legal Panel on International Telecommunications Law of the U.S. Organization for the International Telegraph and Telephone Consultative Committee and International Radio Consultative Committee; Meeting

The Department of State announces the second meeting of the Panel on International Telecommunications Law which is under the auspices and authority of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) and International Radio Consultative Committee (CCIR). The Panel's meeting will convene on Tuesday, May 5, 1987 in Room 1105, Department of State, 2201 C Street NW., Washington, DC.

The meeting will begin at 10:30 a.m.

The agenda will include discussion of committee organization and future work plans.

Members of the general public may attend the meeting and join in the discussion. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of the Deputy U.S. Coordinator for International Communications and Information Policy, Mr. Thomas J. Ramsey, State Department, Washington, DC; telephone (202) 647–5832. All attendees must use the C Street entrance to the building.

Dated: April 8, 1987.

Earl S. Barbely,

Chairman, U.S. CCITT National Committee.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 87–8731 Filed 4–17–87; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending April 10, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44776

Parties: World Airways, Inc., Presidential Airways, Inc. and Key Airlines, Incorporated.

Date Filed: April 6, 1987.

Subject: Application of World Airways, Inc., Presidential Airways, Inc. and Key Airlines, Incorporated, pursuant to sections 401(h), 408 and 416 of the Act, and § 303.54 of the Department's Procedural Regulations request that the Department approve by exemption the proposed acquisition of Key by World.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87–8774 Filed 4–17–87; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended April 10, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44798

Date Filed: April 9, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 7, 1987.

Description: Application of Delta Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to permit Delta to operate one-stop Portlant, Oregon-Seoul, Korea services via Tokyo, Japan.

Docket No. 44802

Date Filed: April 9, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: May 7, 1987.

Description: Application of "B" Airways, Inc. pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations requests permanent authority to engage in foreign charter air transportation and persons and property.

Docket No. 44808

Date Filed: April 10, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: May 8, 1987.

Description: Application for Transwede Airways AB pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to engage in charter foreign air transportation of persons and their accompanying baggage: Between any point or points in Sweden, Norway

or Denmark and any point or points in the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-8775 Filed 4-17-87; 8:45 am]

BILLING CODE 4910-62-M

[Docket 44719]

US Air-Piedmont Acquisition Case; Prehearing Conference

Served: April 16, 1987.

Notice is hereby given that pursuant to Department of Transportation Order 87-4-39 instituting this proceeding a prehearing conference will be held on April 22, 1987, at 10 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC, before the undersigned administrative law judge.

The parties are directed to submit one copy to each other and four copies to the Judge of: (1) Any proposed changes in the procedural schedule contained in the instituting order, (2) proposed stipulations, (3) proposed information requests, (4) any objections or proposed changes to the Evidence Request attached to the instituting order, (5) a statement of issues and specific subissues, (6) a statement of material facts known to be at issue with respect to such issues and subissues indicating their relevance to the applicable law and Departmental standards for consideration of the application, and (7) a statement of position. The above material shall be delivered to the Judge and Washington counsel for all parties, or if none, otherwise served on all parties, by 1:00 p.m., April 21, 1987.

The parties shall also deliver to the Judge *forthwith* two copies of all documents previously filed in this proceeding, including the documents submitted with the application.

Dated at Washington, DC, April 16, 1987.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 87-8893 Filed 4-17-87; 8:45 am]

BILLING CODE 4910-62-M

[Docket 44719]

US Air-Piedmont Acquisition Case; Assignment of Proceeding

Served: April 16, 1987

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Building, 400 Seventh Street, SW., Washington, DC. 20590. Telephone (202) 366-2142.

Dated at Washington, DC., April 16, 1987.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 87-8894 Filed 4-17-87; 8:45 am]

BILLING CODE 4910-62-M

[Docket 44719]

US Air-Piedmont Acquisition Case; Prehearing Conference

Served: April 16, 1987.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on April 22, 1987, at 10:00 a.m. (local time) in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC 20590, before the undersigned administrative law judge.

Dated at Washington, DC, April 16, 1987.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 87-8895 Filed 4-17-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Baltimore County, MD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of the notice of intent.

SUMMARY: This notice rescinds the previous Notice of Intent (issued September 25, 1986 to prepare an environmental impact statement for a proposed highway widening project on I-695 (Baltimore Beltway) between Maryland Route 140 (Resisterstown Road) and U.S. Route 40 (Pulaski Highway).

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Terry, Jr., Field Operations Engineer, Federal Highway Administration, The Rotunda—Suite 220, 711 West 40th Street, Baltimore, Maryland 21211, Telephone: (301) 962-4010 or Mr. Louis Ege, Deputy Director, Project Development Division, Maryland State Highway Administration, 707 North Calveret Street, Room 310, Baltimore, Maryland 21202, Telephone: (301) 333-1130.

SUPPLEMENTARY INFORMATION: Additional environmental analyses have indicated that no significant impacts are anticipated to result from the proposed highway project. Therefore, an environmental impact statement is not now proposed for the widening of I-695 (Baltimore Beltway) from MD Route 140 (Reisterstown Road) to U.S. Route 40 (Pulaski Highway) in Baltimore County, Maryland. An environmental assessment, however, is being prepared and will be made available to the public for review and comment. A public hearing will be scheduled upon completion of the environmental assessment. A public notice will be issued announcing the time and place of the hearing.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program)

Emil Elinsky,

Division Administrator, Baltimore, Maryland.

[FR Doc. 87-8730 Filed 4-17-87; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Approval of Applicant as Trustee; BT Trust Company of California, N.A.

Notice is hereby given that BT Trust Company of California, N.A., with offices at 343 Sansome Street, San Francisco, California, has been approved as Trustee pursuant to Pub. L. 89-346 and 46 CFR 221.21-221.30.

Dated: April 15, 1987.

By order of the Maritime Administrator.

James E. Sari,

Secretary.

[FR Doc. 87-8814 Filed 4-17-87; 8:45 am]

BILLING CODE 4910-81-M

Research and Special Programs Administration

[Docket No. IRA-21]

Inconsistency Ruling No. IR-8; Notice of Decision on Appeal; State of Michigan Rules and Regulations Affecting Radioactive Materials Transportation

AGENCY: Research and Special Programs Administration; DOT.

ACTION: Decision of appeal.

SUMMARY: In response to the appeal of the Michigan State Fire Safety Board and Deprtment of Health from the findings made in Inconsistency Ruling No. IR-8 (49 FR 46637; November 27, 1984), that Inconsistency Ruling is affirmed.

EFFECTIVE DATE: April 20, 1987.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Office of Chief Counsel, Research and Special

Programs Administration, 400 Seventh Street SW., Washington, DC 20590 (Tel. 202/366-4400).

SUPPLEMENTARY INFORMATION:

I. Background

On November 27, 1984, the Department published nine inconsistency rulings (IR-7 through 15; 49 FR 46632 *et seq.*) concerning state and local restrictions on radioactive materials transportation in the states of Michigan, New York and Vermont. Included in this omnibus proceeding was Inconsistency Ruling No. 8 (IR-8) dealing with the regulations of the Michigan State Fire Safety Board (SFSB) and Department of Health (DPH), as codified in two parallel sets of ten rules. The Ruling found that Rules 3 through 6 and sections of Rules 1, 7 and 10 of the SFSB and DPH regulations are inconsistent with the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. app. 1801-1811) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted in accordance with section 112(a) of the HMTA (49 U.S.C. app. 18111(a)).

The procedural regulations governing Departmental issuance of inconsistency rulings are codified in 49 CFR 107.201-107.211. Prior to November 1, 1985, these regulations provided for the issuance of rulings by the Associate Director for Hazardous Materials Regulations (§ 107.209) and the issuance of decisions on appeal from such rulings by the Director of the Materials Transportation Bureau § 107.211). IR-8 was issued in accordance with § 107.209 on November 20, 1984. As required by § 107.211, within 30 days of issuance on IR-8 an appeal was filed by the Michigan Department of Attorney General on behalf of the SFSB and DPH (hereinafter referred to collectively as "Michigan" or, the "State"). Comments opposing the appeal were filed by the Electric Utility Companies' Nuclear Transportation Group.

Under a reorganization plan effective November 1, 1985, the Materials Transportation Bureau was abolished and its hazardous materials responsibiliites were assigned to a new Office of Hazardous Materials Transportation. The functions formerly performed by the Bureau Director were assigned to the Administrator of RSPA. (See 50 FR 45728, November 1, 1985.) Accordingly, this decision on appeal is issued by the Administrator of RSPA.

II. The Appeal: Issues and Decision

A. Introduction

In its appeal, Michigan raises both general and specific arguments against the findings made in IR-8. Michigan also concedes the findings of definitional inconsistency made with respect to Rules 1 and 10 and does not include those findings within the scope of its appeal. I have considered Michigan's arguments in the order presented.

Michigan's general arguments are that IR-8 is based on NRC (not RSPA) regulations, IR-8 incorrectly assumes that Federal regulations are adequate, and IR-8 fails to utilize a worst-case scenario for analyzing the adequacy of cask rules. I find, respectively, that IR-8 is properly based on RSPA regulations, the adequacy of Federal regulations is irrelevant, and a worse-case scenario analysis is neither required nor relevant.

Michigan's specific arguments challenge IR-8's findings of consistency concerning the State's requirements concerning communications, information, documentation, certification, container testing, written State approval, and incident notification; the State's transportation approval criteria, and the State's incorporation by reference of Federal regulations. I find that the State's arguments are without merit because the provisions at issue exceed the State's authority, conflict with Federal requirements, or have other legal defects described below.

Many of the findings being appealed were discussed exhaustively in IR-8. I have responded only to the specific issues rasied on appeal and generally have not reiterated the Rulings's discussions, with which I concur.

B. Michigan's General Arguments

1. Michigan's first general argument is that IR-8's findings of inconsistency were improperly based on interpretations of another agency's regulations. Michigan argues as follows:

> First, Inconsistency Ruling IR-8, to a large degree, predicates its findings of inconsistency on regulations of the U.S. Nuclear Regulatory Commission (NRC); specifically, 10 CFR Part 71 and 10 CFR Part 73. In so doing, it acknowledges that its rulings result not from *its* own regulations but rather from its interpretation of the regulations of another agency. Whether that agency, the NRC, agrees with these interpretations is rarely if ever disclosed in the Ruling. Assuming, *arguendo*, that the NRC does agree with them, the recourse of the Petitioners to challenge those interpretations would apparently require them to seek an administrative review before the NRC. This Petitioners submit, discloses a fatal weakness in the regulations of the U.S. DOT and/or the MTB, i.e., their failure to independently promulgate their own clear and complete preemptive rules on the shipment of hazardous materials. Under the circumstances, many of the conclusions in the Ruling are unsupported by any regulations of the U.S. DOT on the shipping of hazardous materials.

Although no specific examples are cited, Michigan argues that the Ruling's findings of inconsistency were based on the NRC regulations in 10 CFR Parts 71 and 73. While it is true that IR-8 contains frequent references to the NRC regulations, this is because the HMR specifically incorporate by reference the NRC requirements at issue. Incorporation by reference is an efficient practice specifically recognized in the regulations of the **Federal Register** at 1 CFR Part 51.

In order to discuss the requirements of the HMR, it becomes necessary to turn to the text of the NRC regulations which are cited in the HMR. For example, the HMR at 49 CFR 173.413 state that "(e)ach Type B(U) or Type B(M) package must be designed and constructed to meet the applicable requirements in 10 CFR Part 71." In order to determine whether a state or local requirement is inconsistent with § 173.413 of the HMR, the Department has to refer to the language of the NRC regulations in 10 CFR Part 71. However, the findings of consistency or inconsistency are based on an RSPA regulation, specifically § 173.413 of the HMR.

In summary, despite IR-8's frequent reference to the text of NRC regulations, those regulations have been incoporated by reference in the HMR, and thus Michigan's contention that "many of the conclusions in the Rulings are unsupported by any regulations of the U.S. DOT" is without merit.

2. Michigan's second general argument is that "the Ruling relies on the naive assumption that under the various federal regulations there is an adequate, uniform system of regulation in place throughout the United States" but that "(t)his assumption is subject to much dispute." To support this contention, Michigan cites a 1984 National Academy of Science report entitled *Social and Economic Aspects of Radioactive Waste Disposal*, which stated, *inter alia*, that "redundancies and incompleteness seem to exist in the current NRC/DOT regulations."

Even if one accepts the findings of the cited report, they provide no basis for reversal of IR-8. The findings in IR-8 do not rely on an assumption, naive or otherwise, "that . . . there is an adequate, uniform system of regulation in place throughout the United States."

Rather, the findings in IR–8 are based on the existence of Federal regulations governing specific areas of radioactive materials transportation safety with which Michigan requirements are in conflict. Those rules (known collectively as HM–164) have been judicially determined to provide an adequate level of safety nationwide. See *City of New York v. DOT*, 715 F.2d 732 (1983), *cert. den.* 104 S. Ct. 1403 (1984)

Furthermore, in adopting those rules, the Department was implementing the express Congressional objectives underlying enactment of the HMTA: (1) "To protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce "(49 U.S.C. app. § 1801); and (2)" to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation" (S. Rep. No. 1192, 93d Cong., 2d sess. 37 (1974)).

Michigan appears to take the position that, since the objective of regulatory uniformity has been questioned in a report on radioactive waste disposal, state or local regulations which conflict with what Federal regulations do exist in the Federal scheme should be upheld. This argument must fail. The Congressional purpose in enacting the premption provision in section 112(a) of the HMTA was to achieve regulatory uniformity by overriding inconsistent state or local rules. That Congressional purpose is frustrated when state and local governments adopt requirements like those at issue in this proceeding.

3. Michigan's third general argument seeks to justify the State's issuance of packaging regulations for radioactive materials. The State takes issue with the Ruling's observation (at 49 FR 46642) that Michigan could address the safety issues raised by transportation of hazardous materials across major bridges through designation of alternate preferred routes:

> Michigan does *not* have that option, since the Mackinac Bridge is the only transportation link between our two peninsulas. Adopting packaging regulations for containers that would be necessity have to be transported across that major bridge was the only realistic response Michigan could make, under these circumstances.

Michigan's argument is based on the premise that Federal standards for spent fuel shipping casks are inadequate to deal with the types of accidents which could occur on a "major bridge." Michigan stated in its original response to the application for inconsistency ruling, "(s)uch an accident could occur if a shipping cask were to plummet from a major bridge and strike a concrete pier or pedestal." While conceding the low probability of a worst-case accident, Michigan contended that the consequences would be great if one were to occur and cited a U.S. District Court opinion which criticized the Department for failure to adequately consider the problems posed by low probability/high consequence accidents. *City of New York v. DOT*, 539 F. Supp. 1237 (1982)). However, the decision of the District Court is without relevance to this proceeding, as it was reversed on appeal before IR–8 was issued. (*Ibid.*, 715 F.2d 732 (2d Cir., 1983); *cert. den.*, 104 S.CT. 1403 (1984)).

Michigan's argument relies on consideration of only the possible consequences of a worst-case accident without regard to the probability that such consequences would ever occur. The department, however, expressly rejected exclusive reliance on the worst-case approach to safety analysis when promulgating HM–164 (46 FR at 5300, January 19, 1981):

> It is DOT's opinion that public policy for the routing of radioactive materials should be based not only upon a concern for worst-case accident consequences, but also upon all other factors which contribute to the overall risk involved in transporting large quantity radioactive materials.

The reasonableness of this decision was one of the issues raised by the City of New York in its legal challenge to the validity of HM–164. In its reversal of the District Court opinion cited by Michigan, and specifically in upholding DOT's decision that HM–164 would have no significant impact on the human environment under NEPA, the Court of Appeals for the Second Circuit ruled on the issue as follws:

> Here, DOT considered a rule that might be expected to generate a catastrophic accident approximately once every 300 million years. After receiving advice from all sides, the Department decided that such a remote possibility, even of a serious consequence, did not create a "significant" risk for the human environment. Disquieting as it may be to even contemplate such matters, this decision cannot be said to be an abuse of discretion. (*Ibid.*, 715 F.2d 732, 752.)

For the foregoing reasons, I do not consider the consequences of a worst-case accident such as that postulated by Michigan to be a sufficient basis for creating an exception to the rule of national applicability. Michigan is not the only state to have major bridges or deep waterways. If sufficient grounds existed for amending the Federal safety rules (and the Department is unaware of any such grounds) to resolve the alleged problem of major bridges, then the answer would lie in amending the rule of national applicability, not in creating individual exceptions. The option of filing a petition for rulemaking was stated in IR–8 (49 FR 46642).

C. Michigan's Specific Arguments

1. Rule 4 section R 29.554; DPH section R 325.5804)

Rule 4 prohibits the transportation of radioactive materials in Michigan unless the transport vehicle or an escort vehicle "is equipped with continuous 2-way communications by radiotelephone or other means acceptable to the state fire marshal . . . ." Section 173.22(c) of the HMR requires compliance with the NRC standards on communications capability. Upon comparison, Rule 4 was found to be inconsistent under both the "dual compliance" and the "obstacle" tests. Michigan takes issue with both conclusions.

In IR–8 the Associate Director found that compliance with both the Federal and the state rules was impossible because use of the communications equipment required by the Federal rule could not provide the "continuous" communication required by Michigan due to the existence of radiotelephone dead zones. Michigan argues that the requirement for continuous communications "constitutes an ongoing communication but not an ongoing *uninterrupted* communication." Michigan further argues that the acceptance of radiotelephone dead zones is implicit in the rule. However, the plain English meaning of the word "continuous" (e.g., "marked by uninterrupted extension in space, time, or sequence." (*Webster's New Collegiate Dictionary*, 1977) and "extending or prolonged without interruption or cessation, unceasing" (*American Heritage Dictionary of the English Language*, 1976) is to the contrary. Furthermore, in IR–16 (50 FR 20872, May 20, 1985), which considered a City of Tucson ordinance, the Department found that "[n]ot withstanding the City's explanation of its legislative intent, the actual language of the law must govern." 50 FR at 20877. Likewise, here the plain meaning controls, and the requirement thus is clearly inconsistent.

Michigan's assertion that "continuous" does not mean what dictionaries say it means demonstrates the difficulties which transporters encounter when presented with overlapping state and Federal regulatory schemes. Even if I were to accept the State's interpretation of "continuous," I nevertheless would find its open-ended and vague highway vehicle

communication equipment requirement inconsistent under the "obstacle" test.

Michigan alleges that the IR–8 "obstacle" test finding on this issue was based upon the "unsupported hypothecation" that the Michigan rule necessitates a different means and/or frequency of communication. To the contrary, the Ruling was based on the premise that the Michigan rule *authorizes* the requirement of different means and frequencies of communication.

In a similar vein, Michigan appeals the finding that the requirement that rail vehicles and vessels carrying radioactive materials be "equipped with communications equipment acceptable to the State Fire Marshal" is inconsistent. It argues that the Ruling relied on an erroneous assumption that Rule 4 requires different communications equipment than would be required under the HMTA or the HMR. It further states that "the unconstrained authority of the State Fire Marshal facilitates greater consistency between Rule 4 and the federal rules rather than creating obstacles."

Again, the Ruling was based upon the State Fire Marshal's unfettered discretion under Rule 4 to require different communications equipment. While that official's decisions might be consistent, they could as readily be inconsistent. Thus, I concur with the finding of inconsistency on the basis that a state or local rule which grants an official discretionary authority to set equipment requirements for carriers engaged in interstate commerce impedes the Congressional purposes of increased safety and regulatory uniformity underlying the HMTA. Therefore, I find Rule 4 to be inconsistent with the HMTA or the HMR and thus preempted.

2. Rule 3 (SFSB section R 29.553; DPH section R 325.5803)

Rule 3 (SFSB section R 29.555; DPH section R 325.5805)

Rule 3 provides application procedures for obtaining permission to transport radioactive materials in Michigan, and Rule 5 specifies criteria for approval of such applications. IR–8 found both rules inconsistent as obstacles to the accomplishment and execution of the HMTA and the HMR.

Michigan appeals this decision on several grounds. It advances three general arguments and then addresses specific requirements which were found inconsistent in the Ruling.

General Arguments

First, Michigan contends that these rules must be analyzed in light of the principle that "states share a responsibility and retain individual authority to regulate some aspects of hazardous material transportation." While section 112(a) of the HMTA (49 U.S.C. app. 1811(a)) clearly authorizes state and local regulations which are consistent with the HMTA and the HMR, the Department, through promulgation of 49 CFR 177.825, has established a near total occupation of the field of routing and training requirements relating to the transportation of radioactive materials. Thus, state and local radioactive materials transportation routing and training requirements other than (1) those identical to Federal requirements or (2) state-designated alternate routes under 49 CFR 177.825(b), are very likely to be inconsistent and thus preempted under section 112(a) of the HMTA.

Second, Michigan contends that Rules 3 and 5 do not consititute a routing rule because they were intended to carry out the State's enforcement and emergency response activities and not to route hazardous materials shipments. The State contends:

> What [rules 3 and 5] seek to accomplish is merely to assure the safe passage of materials through the State of Michigan. To conclude that they restrict or delay shipments of hazardous materials it is necessary to assume that the State of Michigan has no duty or role in effectuating the safe shipment of hazardous materials.

The latter statement is a *non-sequitur.* While states do have a role in effectuating the safe transportation of radioactive materials, it does not follow that they have unfettered discretion to take actions which have the effect of restricting or delaying transportation being conducted in compliance with Federal law. In fact, the purpose of DOT's inconsistency ruling process is to provide a forum for resolution, in specific instances, of the extent to which state or local governments, for whatever reason, may restrict, delay or otherwise regulate hazardous materials transportation.

The issue requiring resolution is whether the state or local requirement is inconsistent with the HMTA or the HMR. However, it is the effect, both actual and potential, not the intent of state or local rules which determines their consistency with the HMTA and the HMR. Therefore, I reject Michigan's contention that its requirements cannot be inconsistent because they are intended to enhance safety and facilitate emergency response.

Third, Michigan argues by analogy to a military environment that DOT is going beyond its appropriate role in finding Rules 3 and 5 inconsistent:

> The ruling's conclusion that Rules 3 and 5 fall within the definition of "Routing rule" discloses a failure to distinguish between the functions of strategy and tactics and the different and distinct roles which they play in assuring the safe transportation of hazardous materials. The role of the [OHMT], under the HMTA, is to see that the strategy of Congress is obeyed. The role of the individual states is to devise tactics that will assure the daily or case-by-case compliance with the congressional strategy.
>
> The situation is not unlike that which occurs in the military. A division headquarters determines strategically that an objective should be obtained. The responsibility of achieving that objective is placed upon a line officer, i.e., company commander. His responsibility is to evaluate the terrain and other conditions and employ the necessary means to accomplish the objective.

The State's military analogy fails to appreciate the detailed role which Congress has given to HMTA in the implementation of the HMTA. For example, it overlooks the authority in the HMTA (49 U.S.C. app. 1804(a)) for the DOT to issue regulations governing the transportation of hazardous materials and the specific provision that "Such regulations may govern any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate, including, but not limited to, the packing, repacking, handling, labeling, marking, placarding, and routing . . . of hazardous materials . . ."

In summary, the State's military analogy and the conclusions drawn therefrom are inappropriate for resolving the inconsistency issues at hand. I find unpersuasive the State's general arguments opposing the Ruling's conclusions concerning the inconsistency of Rules 3 and 5 and, therefore, deny the appeals based on these general arguments.

Information Requirements

Michigan appeals the holding in IR–8 that certain information requirements of Rule 3 are inconsistent as obstacles to the accomplishment of the objectives of the HMTA and the HMR.

First, it contends that Rule 3(a)(iv) is not a prohibited obstacle. That rule requires Rule 5 permit applicants to provide:

> The reasons for the choice of the proposed route of travel from the site of origin to the receiver of the radioactive material, including the designation of alternative routes and the reasons for the selection of the proposed route and the rejection of alternative routes.

The State argues that the Ruling erred in concluding that this Rule was intended to facilitate state approvals of

route selections on a shipment-by-shipment basis or to divert hazardous materials shipments away from the Interstate Highway System without proper State designation of an alternative route. It asserts that these conclusions are erroneous, that there is no express authority to approve or disapprove a route selection, that there is no practical alternate route, and that it does not intend to prohibit Interstate Highway System shipments of hazardous materials.

Michigan does not reveal what the purpose of this information requirement is. In any event, the relevant point is that this information requirement is obviously burdensome to transporters of radioactive materials. It requires them to identify alternative routes even when only a single route may be permissible under 49 CFR § 177.825 and then to list the advantages of the selected route and the disadvantages of rejected routes. This requirement, therefore, either is necessary for an inconsistent purpose or is unnecessary but burdensome; in either event, it is an obstacle to the accomplishment of the objectives of the HMTA and the HMR.

Second, Michigan appeals the Ruling's holding that Rule 3(b), which requires information on the proposed means of conveyance, is an inconsistent obstacle. Conceding that this information requirement is redundant with Federal and other state rules, Michigan states that "the burden of the requirement placed on the carrier is so light that the matter is diminimis [sic], i.e., the requirement of Rule 3(b) is insufficient to constitute an obstacle."

There is no *de minimis* exception to the "obstacle" test. Any obstacle, no matter how arguably inconsequential, to the accomplishment and execution of the HMTA or the HMR is inconsistent and thus preempted. In reaching this conclusion, I must consider, in the context of the regulatory scheme of which they are a part, the potential impact of *"de minimis"* information requirements which might be imposed by as many as 50 states and thousands of counties and municipal jurisdictions throughout the United States.

Third, the State appeals the Ruling's holding that Rule 3(e)(iii) is an obstacle and thus inconsistent. That Rule requires a Rule 5 permit applicant to provide an estimated date and time of the departure of the radioactive material from Michigan.

The State argues that Rule 3(e)(iii) is not inconsistent because any burden is *de minimis*, and because the State has as legitimate a concern to know when to expect the hazardous materials to leave the State as it has to know when the hazardous materials will arrive in the State—the latter requirement, the State contends, having been legitimated by the failure of IR–8 to question Rule 3(e)(ii).

As indicated above, there is no *de minimis* exception to the "obstacle" rule. IR–8 *did* consider Rule 3(e)(ii), which requires arrival information, as one of several information requirements it found invalid as redundant with DOT/NRC requirements, not furthering transportation safety and representing the type of multiplicity which Congress sought to preclude by enacting the HMTA.

The primary problem with Rule 3(e)(iii), as with Michigan's other information requirements, is that it is either redundant with existing Federal requirements (and therefore inconsistent for requiring multiple submissions), or requires submission of information DOT has determined in its regulatory notices requirements is not necessary for transportation safety. In either event, it contributes to the type of multiplicity the HMTA was intended to eliminate. Therefore, I find all the information requirements under appeal to be inconsistent with the HMTA or the HMR and thus preempted.

Documentation Requirements

Michigan also appeals the Ruling's holding that three Rule 3 documentation requirements imposed on Rule 5 applicants fail the "obstacle" test and thus are inconsistent with the HMR.

First, Michigan argues that there was no basis in IR–8 for holding that Rule 3(g) is inconsistent. That rule requires submission of "Copies of any required NRC approval of the proposed route of travel and any other NRC licensing action specific to the shipment, such as an import license or a license to transport." The State contends that the Ruling's finding that this requirement will greatly increase the possibility of a compromising disclosure of security information is based solely on conjecture and fear, and that there consequently is no basis for the "obstacle" finding. While the degree of increased security risk is uncertain, there is no dobut that any additional distribution of sensitive documents increases the risk of improper disclosure.

In addition, the Ruling was based on more than one ground. I affirm its conclusion that this requirement adds to the paperwork burden on radioactive materials transportation with no demonstrable safety benefit, subjects applicants to potential liability for violating DOT regulations (which presents a "dual compliance" problem), and increases the security risks involved in such transportation. If the State believes it needs more comprehensive notification than that provided in the NRC regulations (10 CFR 73.21), it should file a rulemaking petition with the NRC.

Second, the State appeals the holding in IR–8 that its Rule 3(h) is an obstacle and thus inconsistent. That rule requires a Rule 5 applicant to provide:

> A copy of the emergency plan for the carrier which describes procedures to be taken in an emergency to eliminate or minimize the radiation exposure of the public. The plan shall include a provision for notification of the state police operations division upon implementation of the plan.

Michigan contends that IR–8, while recognizing that state and local governments must bear the responsibility for the safety and protection of their citizens through emergency planning and preparedness, deprives the state of a valuable emergency response planning tool. It observes an inexplicable dichotomy between the consistency of a "non-burdensome" requirement placed upon carriers to coordinate emergency response with many local agencies and the inconsistency of a "burdensome" requirement upon them to provide an emergency plan to the State, which has responsibility for effective coordinated and comprehensive emergency response.

There is no dichotomy with respect to the IR–8 decision on this issue. Michigan incorrectly asserts that the local coordination requirement was "found to be no burden"; that issue was not and is not before DOT. That requirement is a Federal requirement and as such, its consistency with the HMTA and the HMR is not an issue under section 112(a) of the HMTA.

On the other hand, the issue of whether Michigan's emergency plan requirement is an "obstacle" was decided correctly in IR–8. DOT and NRC have determined what information and documentation requirements are needed for the safe transportation of radioactive materials, and state and local requirements going beyond them create confusion, impose burdens on transporters, are obstacles to the accomplishment of the HMTA's objectives, and thus are inconsistent.

Again, if Michigan believes that it should receive this information from carriers of radioactive materials, it should file a rulemaking petition with the NRC.

Third, the State appeals the IR–8 decision finding inconsistent Rule 3(i), which requires a proposed recovery plan

when transportation is over a major bridge or on a vessel. The appeal rationale is the same as that for Rule 3(h). I deny the appeal for the same reasons as I denied the Rule 3(h) appeal, that is, the Rule 3(i) is an information requirement which goes beyond the DOT/NRC requirements, creates confusion, imposes burdens on transporters and thus is inconsistent.

Therefore, I find all the documentation requirements under appeal to be inconsistent with the HMTA or the HMR and thus preempted.

Certification Requirements

Michigan appeals the determinations in IR–8 that several portions of its Rules 3 and 5 requiring certifications are inconsistent with the HMTA or the HMR.

First, the State appeals the decision that Rules 3(f) and 3(j) are inconsistent. They require a Rule 5 applicant to submit, respectively, an attestation of a safety inspection within the prior six months by a law enforcement agency acceptable to the State Fire Marshal (and evidence thereof to be carried in the vehicle) and a certification that the shipment will be in compliance with the State's rules and all applicable state and Federal statutes, rules and regulations.

Michigan argues that without advance receipt of these documents, it must conduct an in-state inspection of the papers being carried on the vehicle transporting the radioactive materials. It states that if the required attestation or certification is missing or defective, its only enforcement option then would be detention or expulsion of the vehicle carrying the hazardous materials.

The State observes that explusion would not be satisfactory to DOT and says that detention would not be satisfactory to the State. This observation is irrelevant to the issue of consistency; however, detention of the vehicle for resolution of a "paper" violation poses less risk than detention for resolution of a substantive safety violation requiring on-scene repairs.

Having provided no other basis for advance submission of these documents, Michigan thus has failed to justify its requirement for advance certification of information required by Federal regulations to be carried on vehicles (49 CFR Part 396; 49 CFR 172.204). In this connection, I have considered and now reaffirm the position taken in an earlier inconsistency ruling:

> No matter what the form, any State or local requirement that asks for an additional piece of paper that supplies the same information as is required to be on the DOT shipping paper would be inconsistent with the requirements contained in the Hazardous Materials Regulations. (IR–2, 44 FR 75566 at 75571, Dec. 20, 1979).

Thus, I find that Rules 3(f) and 3(j) are redundant, unnecessary, burdensome and inconsistent with the HMR.

In summary, the information, documentation, and certification requirements of Rules 3 and 5 are inconsistent with the HMTA or the HMR. In addition, as indicated in IR–8, DOT has clearly demonstrated its intent to occupy the field of prenotification to the exclusion of requirements adopted by state and local governments. Application of this principle invalidates each of these requirements individually and cumulatively as obstacles to the accomplishment of the goals of, and thus inconsistent with, the HMTA and the HMR.

Rule 5 Provisions

Michigan appeals the determinations in IR–8 that the Rule 5 transportation approval criteria are an obstacle to the accomplishment and execution of the HMTA and the HMR and therefore are inconsistent. It notes that no provision of Rule 5 was found consistent.

First, the State appeals the decision concerning Rule 5(a), which requires the Rule 3 application requirements to be met before transportation of radioactive materials will be approved. It challenges the Ruling's finding that this requirement is an obstacle to the accomplishment of the HMTA's dual purpose of increased safety and national uniformity because it could redirect carriers to other states to avoid the administrative burden and planning delays inherent in complying with Michigan's application procedure. The State says:

> The full impact of this sophistry is that the mere promulgation of rules by any state, irrespective of the fact that each individual rule might be found to be consistent with the HMTA, automatically constitutes an obstacle to the HMTA, because it is a burden on the carrier to comply with all of them. The only way under this theory that a state could avoid creating such an obstacle is to never promulgate any rules.
>
> Such sophistry is an anathema to the fact that ours is a republican form of government, with the power residing originally in the individual states. The ruling on Rule 5(a) must be reversed.

My analysis of this argument begins with Article I of the Constitution of the United States, which states that "Congress shall have power . . . to regulate commerce . . . among the several States. . . ." Article VI of the Constitution further provides:

> This Constitution and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

Pursuant to its Article I "Commerce Clause" authority and in recognition of the Article VI "Supremacy Clause," Congress enacted the HMTA and provided therein for the preemption of state and local requirements inconsistent with the HMTA and regulations issued thereunder (Section 112(a)). One of the long-recognized tests for consistency is whether a state or local requirement is an obstacle to the accomplishment and execution of the objectives of a Federal statute or regulation. *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978). In turn, one of the objectives of the HMTA was "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1192, 93d Cong., 2d Sess. 37 (1974).

State and local requirements that impede (i.e., present an obstacle to) hazardous materials transportation that is being conducted in accordance with the HMTA and the HMR inconsistent prior restraints on such transportation. Transportation carried out within the Federal framework of the HMTA and the HMR is presumptively safe, and additional safe, and additional state or local requirements concerning matters covered by Federal law or regulation are inconsistent and thus preempted. Similarly, where the Department has examined an area otherwise within its authority to adopt regulations and has declined to regulate, state and local requirements in that area may be preempted where they have adverse impacts on the Federal regulatory scheme and the transportation that occurs thereunder.

Through its rulemaking process and related studies, DOT has determined what prenotification (including information, documentation and certification) requirements are necessary for the safe transportation of radioactive materials. In the process of analyzing rulemaking comments and studies it has commissioned or examined, DOT also has determined what prenotification requirements are not necessary. This field has been totally occupied by the HMR. State and local provisions either authorizing less prenotification or requiring greater prenotification than the HMR, therefore, constitute obstacles to the accomplishment and execution of the objectives of the HMTA and the HMR, are inconsistent, and are preempted.

For that reason as discussed above, I denied Michigan's appeal concerning the prenotification requirements of Rule 3 and found them to be inconsistent. Rule 5(a) requires fulfillment of all these inconsistent requirements as a condition precedent to transportation approval. A requirement for compliance with an inconsistent provision is itself inconsistent. Therefore, I find Rule 5(a) inconsistent with the HMTA and the HMR.

Second, Michigan appeals the finding that Rule 5(b) is inconsistent. It contends that the requirement in Rule 5(b) for written approval of the radioactive material transportation application is consistent because "nowhere in the Ruling is there cited any supportable basis for finding that the application requirement of Rule 3 is inconsistent." As I indicated earlier, there are several reasons why Rule 3 constitutes an obstacle to accomplishment and execution of the goals of the HMTA and the HMR and thus is inconsistent. Because I have determined that Rule 3 is inconsistent, it logically follows that Rule 5(b) is inconsistent.

Third, the State appeals IR–8's finding that Rule 5(c) of the SFSB rules (DPH Rule 5(b)) is inconsistent. Those rules require certification of compliance with all Federal and state laws and regulations. Michigan argues that IR–8 found this rule redundant because it repeats a Rule 3(j) requirement, that this rule merely reinforces Rule 3(j) and places no additional burdens on any shipper or carrier, and that the redundancy with DOT's requirements is overcome by the State's earlier discussion on the need for Rule 3(j).

As indicated IR–8, whether set forth as an approval criterion or an application requirement, this certification is an inconsistent redundancy because it requires applicants to provide the same certification required on DOT shipping papers. Thus, for the same reasons as Rule 3(j), Rule 5(c) of the SFSB rules (DPH Rule 5(b)) is inconsistent.

Fourth, Michigan appeals the finding of inconsistency concerning Rule 5(d) of the SFSB rules (DPH Rule 5(c)), which establishes as a criterion for transportation approval the acceptability to the State Fire Marshal and the Department of Health of the Rule 3(h) emergency plan. The state argues that since the Ruling's finding of inconsistency as to Rule 3(h) was erroneous, the finding as to this rule is equally erroneous. For the same reasons I determined Rule 3(h) to be inconsistent, I find Rule 5(d) of the SFSB rules (DPH Rule 5(c)) to be inconsistent.

Fifth, the State appeals IR–8's finding that Rule 5(e) of the SBSB (DPH Rule 5(d)) is inconsistent. That rule requires that the following criterion be met before approval is granted:

> A certificate of compliance for the container has been issued by the NRC, and the container has been tested and approved for hypothetical accident conditions pursuant to the provisions of 10 CFR 71.36 [now § 71.73].

It was found in IR–8 to be inconsistent because it imposes additional packaging standards. The gist of the State's argument follows:

> Quality control of a product is achieved through the process of testing. This is a fundamental procedure that is applied throughout industry, a typical example being that of Michigan's automobile manufacturers. The Petitioners submit that testing of containers is an implicit responsibility of the shipper or carrier to assure compliance with the NRC requirements on containers and that Rule 5(e) of the SFSB (Rule 5(d) of the DPH) is only intended to verify that compliance.
>
> On the other hand, this does not mean that each container must be tested. As required by 10 CFR 71.73 (previously in 10 CFR 71.36) and the associated Appendix B, the testing involves only a showing that the container can survive hypothetical accident conditions. Actual testing is unnecessary.
>
> For these reasons, Petitioners assert that this Rule is neither an obstacle nor inconsistent with the requirements of the NRC.

This sheds little light on the meaning and proposed operation of Rule 5(e). This Rule falls within the scope of the prohibition enunciated in IR–2 that: "State and local governments may not issue requirements that differ from or add to Federal ones with regard to packaging design, construction and equipment for hazardous materials shipments subject to Federal Regulations." 44 FR 75566 at 75568.

Therefore, I find Rule 5(e) of the SFSB (DPH Rule 5(d)) to be inconsistent with the HMTA and the HMR.

Sixth, Michigan appeals the finding in IR–8 that Rules 5 (f) and (g) of the SFSB (Rules 5 (e) and (f) of the DPH) are inconsistent. These rules impose container testing standards which exceed those of the NRC, which are incorporated in the HMR (49 CFR 173.416). The State justifies them on the basis of its unique geographical situation, its dependence on very high major bridges, its busy inland waterway system, and the depth of the Great Lakes. It contends that these conditions justify more stringent container standards to assure container integrity in the event of an accident.

While these conditions *might* provide a basis for a rulemaking petition or for a 49 CFR 107.215 application for waiver of preemption, they do not provide a justification for overriding the complete Federal preemption of packaging design, construction and equipment requirements for hazardous materials transportation. Thus, I find Rules 5 (e) and (f) of the SFSB (DPH Rules 5 (e) and (f)) to be inconsistent.

In summary, therefore, I find all the appealed Rule 3 and Rule 5 provisions to be inconsistent with the HMTA or the HMR.

3. Rule 6 (SFSB section R29.556; DPH section R325.5806)

Michigan appeals the finding that Rule 6 is inconsistent. That rule states:

> Upon granting approval to transport, the state fire marshal shall notify the applicant, in writing, before the shipment of the radioactive material and shall include any conditions or limitations to the approval as determined necessary by the state fire marshal and the department of public health.

The State contends that Rule 6 merely prescribes procedures for notification to the applicant of the state's approval of the shipment and, as such, represents neither an obstacle nor an inconsistency.

Having found the application requirements of Rule 3 and the approval criteria of Rule 5 inconsistent, IR–8 discussed Rule 6 in the context of whether the approval process itself is inconsistent. That approach was appropriate since Rule 6 appears to prohibit shipments of radioactive material without prior written state approval, and appears to authorize the establishment of conditions and limitations at the discretion of state officials. Whether Rule 6 is interpreted as constituting a portion of the State's substantive permit requirements or construed as merely facilitating execution of the substantive permit requirements of Rules 3 and 5, it is inconsistent.

I specifically adopt the following analysis contained in IR–8:

> In the instant case, Michigan has imposed a requirement to obtain State approval in writing (in effect, a permit) which applies only to those parties wishing to transport highway route controlled quantity radioactive material in Michigan. This requirement is based on a presumption that Michigan has the authority to control, and ultimately, to prohibit this form of interstate commerce.
>
> Michigan asserts that this authority stems from the State's public safety power; that radioactive materials transportation poses higher risks in Michigan than elsewhere; and that the State has a duty to protect the public from those risks. This argument fails to

recognize that, in enacting the HMTA, Congress granted to the Secretary of Transportation, and not to the States, the authority to designate as hazardous those materials whose transportation poses an unreasonable risk and to issue regulations to protect the Nation adequately against those risks. Generally, in the absence of Departmental involvement in a safety issue, States and, to the extent authorized by State law, local governments may regulate to protect the public safety. Where, as here, the issue has been thoroughly addressed through rulemaking, the State role is much more circumscribed. The HMR address all aspects of radioactive materials transportation. Increasingly stringent requirements are imposed on the basis of increasing degree of risk. Under the authority of the HMTA, Federal regulation of radioactive materials transportation safety has been so detailed and so pervasive as to preclude independent State or local action. The extent to which State and local government may regulate the interstate transportation of radioactive materials is limited to: (1) Traffic control or emergency restrictions which affect all transportation without regard to cargo; (2) designation of alternate preferred routes in accordance with 49 CFR 177.825; (3) adoption of Federal regulations or consistent State/local regulations; and (4) enforcement of consistent regulations or those for which a waiver of preemption has been granted pursuant to 49 CFR 107.221. Thus, in the absence of an express waiver of preemption, no authority exists, for a State or local government to impose a permit requirement on shipments of radioactive materials which applies because of the hazardous nature of the cargo. (49 FR at 46643)

Therefore, I find that Rule 6 itself, and in conjunction with Rules 3 and 5, constitutes an obstacle to the accomplishment and execution of the HMTA and the HMR, thus is inconsistent with them, and, therefore, preempted.

4. Rule 7 (SFSB section R29.557; DH section R325.5807)

Michigan appeals the finding in IR–8 that Rules 7 (b) and (c) are inconsistent. Rule 7 requires the carrier of radioactive materials to notify Michigan state police in the event of: (a) any schedule change of more than six hours, (b) any incident causing a delay in transport, and (c) any implementation of the required emergency plan.

The State says Rules 7 (a) and (b) may prove identical to Federal rules in some situations but that they "prescribe that the carrier exercise a greater duty of immediacy and thereby provide for earlier warning to the state to facilitate changes in arrangements for emergency response." Therefore, the State contends that they are not inconsistent. As to Rule 7(c), the State contends that its consistency is tied to the consistency of Rule 3(h) and that both are consistent.

Rule 7(a) is identical to 10 CFR 73.37(f)(4) and was properly found consistent in IR–8. Rule 7(b), however, contains undefined terms ("incident" and "delay") which make its meaning unclear, and constitutes purported state action in a field (incident notification) totally occupied by Federal regulation (10 CFR 73.37(f)(4); 49 CFR 171.15 and 171.16)). As such, Rule 7(b) is inconsistent. Finally, Rule 7(c) also is inconsistent since its validity depends upon that of Rule 3(h), which I previously have determined to be inconsistent.

Thus, Rules 7 (b) and (c) are inconsistent and preempted because they pose obstacles to the accomplishment and execution of the goals of the HMTA and the HMR.

5. Rule 10 (SFSB section R29.560; DPH section R325.5810)

Michigan states that Rule 10's incorporation by reference of Federal regulatory provisions is redundant and that deeming them inconsistent would not have an adverse impact on its rules. Rule 10(1) incorporates by reference the following sections of the Code of Federal Regulations:

(a) 10 CFR 71.36;

(b) 49 CFR 172.203(d), and

(c) 49 CFR 173.389(b).

IR–8 found Rule 10(1)(c) inconsistent because the cited rule had been deleted. Similarly, 10 CFR 71.36 has been deleted. Therefore, I find both Rules 10(1) (a) and (c) are inconsistent with the HMTA and the HMR.

III. Conclusion

For the reasons indicated above and for the reasons set forth in IR–8 itself, I affirm the determination of the Associate Director of the Materials Transportation Bureau in IR–8 that the Michigan State Fire Safety Board Rules 3, 4, 5, 6, 7 (b) and (c), and 10(1)(c) and Department of Public Health Rules 3, 4, 5, 6, 7 (b) and (c), and 10(1)(c) are inconsistent with the HMTA and the HMR. In addition, I find Rule 10(1)(a) to be inconsistent with the HMTA and HMR.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued in Washington, DC, on April 13, 1987.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 87–8832 Filed 4–17–87; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 14, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Financial Management Service

OMB Number: New
Form Number: TFS 3881
Type of Review: New
Title: Payment Information Form, ACH Vendor Payment System
Description: The information is being requested as a technological requirement. Treasury will use the information to electronically transmit payment to vendor's financial institution. The affected public consists of large for-profit businesses. This information would result in vendors receiving payment in a more timely and efficient method
Respondents: Businesses
Estimated Burden: 25,000 hours
Clearance Officer: Douglas C. Lewis, (202) 436–5300, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Internal Revenue Service

OMB Number: 1545–0928
Form Number: 8390
Type of Review: Revision
Title: Information Return for Determination of Life Insurance Company Earnings Rate Under Section 809
Description: Life insurance companies are required to provide data so the Secretary of Treasury can compute the: (1) Stock earnings rate of the 50 largest stock companies; and (2) average mutual earnings rate. These factors are used to compute the differential earnings rate which will determine the tax liability for mutual life insurance companies.

Respondents: Businesses
Estimated Burden: 1,964 hours
OMB Number: 1545–0301
Form Number: Letter 1117(c), Notices 633 and 634
Type of Review: Extension
Title: Confirmation Letter
Description: To fully satisfy some audit objectives, it is necessary to directly communicate with taxpayers and/or other knowledgeable parties to obtain verification of information such as correct amount of tax due, all required returns filed, etc. Response information is used to determine the accuracy of tax and general ledger accounts, etc.
Respondents: Individuals, State or local governments, Farms, Businesses, Federal agencies or employees, Non-profit institutions
Estimated Burden: 799 hours
Clearance Officer: Garrick Shear, (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington DC 20503.

U.S. Customs Service

OMB Number: 1515–0060
Form Number: CF–1300
Type of Review: Extension
Title: Master's Oath of Vessel in Foreign Trade
Description: The form is used by the master of the vessel to attest to the truthfulness of all other forms associated with the manifest, such as certificates for Safety of Life at Sea (SOLAS), water pollution, etc. The form also serves to record information on tonnage tax payments in order to prevent overpayments of that tax.
Respondents: Businesses
Estimated Burden: 18,326 hours
Clearance Officer: B.J. Simpson, (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Wasington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 87–8777 Filed 4–17–87; 8:45 am]
BILLING CODE 4810–25–M

Internal Revenue Service

[Delegation Order No. 225]

Delegation of Authority; District Directors, et al.

AGENCY: Internal Revenue Service, Treasury.
ACTION: Delegation of Authority.

SUMMARY: District Directors, Service Center Directors, and Compliance Center Director and/or their delegates are authorized to execute, Forms 870–AD, Offer of Waiver or Restriction on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, or Form 906, Closing Agreement on Final Determination Covering Specific Matters. These forms may be executed only for commodity issues arising from commodity straddles entered into and disposed of prior to January 1, 1982 and other tax shelter initiative issues claimed on tax returns for years ended prior to January 1, 1983.

EFFECTIVE DATE: April 6, 1987.

FOR FURTHER INFORMATION CONTACT: Melvin L. Chambless, OP:EX:C:T, Room 2518, 1111 Constitution Ave., NW., Washington, DC 20224 (202) 566–6441.

Ralph Shilling,
Deputy, Assistant Commissioner (Examination).

Order No. 225.
Effective Date: April 6, 1987.

Authority of Examination Managers and Supervisors GM–13 and GM–14 in Pre-1983 Non-TEFRA Tax Shelter Cases

[Supplements Delegation Order Nos. 60 and 66 and amends and supplements Delegation Order No. 97 (as revised)]

The authority vested in the Commissioner of Internal Revenue by 26 CFR 301.6020–1, 26 CFR 301.6201–1, 26 CFR 301.7121–1(a), 26 CFR 301.7701–9, and Treasury Department Order No. 150–07, Treasury Department Order No. 150–09, and Treasury Department Order No. 150–10, as revised, is hereby delegated as follows:

1. The Associate Commissioner (Operations), Assistant Commissioners (Examination) and (International), Regional Commissioners, Assistant Regional Commissioners (Examination), District Directors, Service Center Directors, and Compliance Center Director, Chiefs, Examination Division, and Examination Managers and Supervisors GM–13 and GM–14 in Districts, Service Centers and Compliance Center are hereby authorized in cases under their jurisdiction to enter into and approve a written agreement with any person relating to the Internal Revenue liability, of such person (or of the person or estate for whom he/she acts) to close pre-ERTA tax shelter commodity issues, based on the Servicewide administrative positions developed by Appeals, Chief Counsel, and Examination, and other tax shelter initiative issues based on settlement positions reached by Chief Counsel or Appeals on the specific shelter where the initial investment was made prior to January 1, 1983. These agreements will be executed on Form 870–AD, Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, and Form 906, Closing Agreement on Final Disposition Covering Specific Matters. The authority delegated herein extends only to tax shelter issues, including penalties or related statutory issues that must be adjusted due to settlement of the tax shelter issues. This authority, also extends to tax shelter issues on subsequent year returns where benefits from pre-1983 tax shelters are claimed.

2. The authorities contained in this order are intended to supplement the authorities contained in Delegation Order No. 60 (as revised), Delegation Order No. 66 (as revised), and amends and supplements Delegation Order No. 97 (as revised). The delegation of authority granted herein may not be redelegated.

Dated: April 6, 1987.
Approved:
James I. Owens,
Deputy Commissioner.
[FR Doc. 87–8809 Filed 4–17–87; 8:45 am]
BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Television Telecommunications Advisory Committee

The Television Telecommunications Advisory Committee has scheduled a meeting for May 13, 1987, at the United States Information Agency, 301 Fourth Street SW., Room 800, Washington, DC.

The meeting will commence at 10:30 a.m., and will adjourn at 2:00 p.m.

Members of the public wishing to attend the meeting should contact Ms. Louise Wheeler at (202) 485–8890 for further information.

Dated: April 13, 1987.
Charles N. Canestro,
Federal Register Liaison.
[FR Doc. 87–8725 Filed 4–17–87; 8:45 am]
BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 75
Monday, April 20, 1987

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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., May 1, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–8863 Filed 4–16–87; 11:58 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., May 8, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–8864 Filed 4–16–87; 11:58 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., May 15, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–8865 Filed 4–16–87; 11:58 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., May 22, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–8866 Filed 4–16–87; 11:58 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., May 29, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–8867 Filed 4–16–87; 11:58 am]

BILLING CODE 6351–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 pm (Eastern Time) Monday, April 27, 1987.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Flood of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, DC, 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 634–6748 at all times for information on these meetings.) **CONTACT PERSON FOR MORE INFORMATION:** Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated and issued: April 15, 1987.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 87–8846 Filed 4–16–87; 10:19 am]

BILLING CODE 6750–06–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, April 14, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required that the application of Hastings City Bank, Hastings, Michigan, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Bellevue, Michigan, and Nashville, Michigan, branches of Comerica Bank—Battle Creek, Battle Creek, Michigan, and for consent to establish those two branches of Comerica Bank—Battle Creek as branches of Hastings City Bank, be moved from the agenda for consideration at the closed meeting to the agenda for consideration at the open meeting.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: April 15, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–8868 Filed 4–16–87; 11:59 am]

BILLING CODE 6714–01–M

TENNESSEE VALLEY AUTHORITY

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUCEMENT: To be published April 17, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2 p.m. (EDT), Tuesday, April 21, 1987.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA Chattanooga Office Complex, Missionary Ridge Building, 1101 Market Street, Chattanooga, Tennessee.

STATUS: Open.

ADDITIONAL MATTERS: The following items are added to the previously announced agenda:

F. UNCLASSIFIED

2. Conflict-of-Interest Guidelines Implemenation Plan.[1]

3. Proposal to Authorize Use of TVA Vehicles for Transportation between Home and Work for Canine Handlers in the Public Safety Service

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615–632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–245–0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting be changed to include the additional items shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

Dated: April 15, 1987.

Approved:

C.H. Deah, Jr.,

Director and Chairman.

John B. Waters,

Director.

[FR Doc. 87–8838 Filed 4–16–87; 9:20 am]

BILLING CODE 8120–01–M

[1] This item was approved by individual Board members. This would give formal ratification to the Board's action.

Corrections

Federal Register
Vol. 52, No. 75
Monday, April 20, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-037]

Drycleaning Machinery From West Germany; Final Results of Antidumping Duty Administrative Review

Correction

In notice document 87-7813 beginning on page 11299 in the issue of Wednesday, April 8, 1987, make the following correction:

On page 11300, in the last column, in the third column of the table under "Margin (percent)", the last entry "0.84" should read "0.48".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HSQ-143-PN]

Medicare Program; End Stage Renal Disease Program; Revised Network Area Designations

Correction

In notice document 87-7927 beginning on page 11550 in the issue of Thursday, April 9, 1987, make the following corrections:

1. On page 11553, in the second column, in the second complete paragraph, in the ninth line, "22 the" should read "22 with the".

2. On page 11554, in the first column, under "Network Area #15", under the entry for "Colorado" insert "Nevada".

BILLING CODE 1505-01-D

POSTAL SERVICE

39 CFR Part 447

Code of Ethical Conduct for Postal Employees; Proposed Amendment To Allow Attendance at Group Functions

Correction

In proposed rule document 87-8424 beginning on page 12196 in the issue of Wednesday, April 15, 1987, make the following correction:

§ 447.24 [Corrected]

On page 12197, in the third column, in § 447.24(b)(7), Example (2), in the eighth line, "may authorize" should read "may not authorize".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CCGD3 87-08]

Regatta; Children's Liver Foundation Trophy Race, Barnegat Bay, Near Toms River, NJ

Correction

In proposed rule document 87-7299 beginning on page 10594 in the issue of Thursday, April 2, 1987, make the following correction:

On page 10595, in the first column, under **FOR FURTHER INFORMATION CONTACT**, the telephone number should read "(212) 668-7974".

BILLING CODE 1505-01-D

federal register

Monday
April 20, 1987

Part II

Department of Health and Human Services

Social Security Administration

20 CFR Parts 404 and 416

Standards for Consultative Examinations and Existing Medical Evidence; Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

Standards for Consultative Examinations and Existing Medical Evidence

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: Section 9 of Pub. L. 98–460 requires that the Secretary issue regulations to establish standards for consultative examinations. These regulations must include standards for determining when to obtain a consultative examination, the type of consultative examination to be purchased, and monitoring procedures for both the purchase process and the consultative examination reports. Every reasonable effort must be made to obtain from the claimant's medical sources the medical evidence necessary to make a determination before evaluating medical evidence obtained from another source on a consultative basis. Section 9 also requires consideration of all evidence available in a claimant's case record, and development of a complete medical history covering at least the preceding 12 months in any case where a decision is made that the individual is not under a disability. We understand this provision to mean that a 12-month medical history is not required if the disability is alleged to have begun less than 12 months before application. In such cases, no purpose would be served in developing a 12-month medical history.

These proposed rules reflect the statutory requirements.

DATE: We will consider your comments if we receive them no later than June 19, 1987.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Sevices, P.O. Box 1585, Baltimore, Maryland 21203, or deliver them to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301–594–7415.

SUPPLEMENTARY INFORMATION:

Evidence From Medical Sources

One of the factors required to establish that an individual is disabled is a medically determinable severe impairment. This severity and the individual's residual functional capacity (i.e., what the individual can still do despite limitations) are established through medical evidence. Objective and complete medical evidence produces quality determinations and prompt decisions. We consider all material facts in the individual's record to determine whether the individual is disabled.

We request and make every reasonable effort to obtain medical evidence from the sources who have treated the individual for the impairment(s) since the alleged disability onset date when the individual is applying for benefits, and during the preceding 12 months when the case of an individual receiving benefits is undergoing review.

The quality of medical examinations has a major impact on the quality of our decisionmaking. We try to make decisions based on evidence from treating sources because of the continuing relationship between the claimant and physician. When the available evidence of record is not sufficient for making a disability decision, a consultative examination is purchased, at government expense, from the treating source whenever possible. Since basing a decision on evidence from a treating or other medical source is not always possible for a variety of reasons, it may be necessary to purchase a consultative examination from an independent source at government expense. In some instances we may order a consultative examination from an independent source while awaiting receipt of treating or other medical source evidence, but the report will not be evaluated until that evidence is received or every reasonable effort has been made to obtain it.

Program Integrity

Since the enactment of the Medicare/Medicaid anti-fraud and abuse amendments of 1977, an escalation in the prosecution of medical service providers for fraud and abuses in those programs has raised the issue of the propriety of using these and other offenders in SSA's disability programs. We are, therefore, proposing rules in §§ 404.1503a and 416.903a barring our use of any individual or entity, for example, as a medical consultant, review physician, consultative examination provider or diagnostic test facility, found guilty of professional misconduct.

Consultative Examinations

Consultative examinations are medical examinations purchased by the State agency from physicians and other qualified health professionals outside the agency.

If an individual's treating or other medical sources cannot provide us with sufficient medical evidence about his or her impairment(s) for us to determine whether the individual is disabled or blind, we may ask the individual to have one or more physical or mental examinations or tests. We will pay for those examinations that we arrange. When we arrange the examination or test, we will give the individual reasonable notice of the date, time, and place the examination or test will be given, indicate the type of examination or test that will be given, and the name of the person who will do it. We will also give the examiner any necessary background information about the individual's condition when the individual's own physician will not be doing the examination or test.

If an individual is applying for benefits and does not have a good reason for failing or refusing to take part in a consultative examination or test which we arrange to get information to determine disability or blindness, we may find that the individual is not disabled or blind. If the individual is already receiving benefits and does not have a good reason for failing or refusing to take part in a consultative examination or test that we have arranged, we may determine that the disability or blindness has stopped.

Standards for Consultative Examinations

While SSA has gone a long way toward stronger management of the consultative examination process, Congress, in enacting section 9 of Pub. L. 98–460, made clear that SSA should reflect this stronger management in regulations. *See* H. Rep. No. 98–618, 98th Cong., 2d Sess. 19–20 (1984).

Under existing regulations, consultative examinations may be obtained to secure additional information necessary to make a disability determination or to resolve conflicting information. Evidence

obtained through a consultative examination is considered in conjunction with all other medical and nonmedical evidence submitted in connection with a disability claim. Until passage of section 9 of Pub. L. 98–460, there was no statutory requirement for regulatory standards specifying particular cases in which consultative examinations would be purchased, identifying the types of consultative examinations to be purchased, or requiring any standard procedures to be followed in establishing and monitoring purchase policies.

Because consultative examinations are purchased at government expense, we have had guidelines which cover the standards to be used in purchasing and monitoring such examinations. For some time, we have had in place in our operating manuals these internal guidelines for managing every aspect of the consultative examination process from deciding when to purchase an examination, to guidance to be provided to the person performing the consultative examination, to monitoring the actual consultative examination delivery process and the reports which it produces. In the House report on section 9 (cited above), Congress expressed satisfaction over our success in better management of the consultative examination process, but believed that our standards should be reflected in regulations. These regulations are being issued to comply with the congressional mandate.

In addition to incorporating our existing operating procedures into this regulation, we are adding further provisions in three areas. First, we have identified certain time periods which we think can serve as a frame of reference for scheduling a consultative examination. These minimum scheduling times are intended to emphasize our intent that sufficient time be made available for thoroughly examining the claimant to obtain a complete picture of the claim. They are meant to ensure sufficient time for a full consultative examination including development of case history. They are not meant as inflexible rules to be applied mechanically and thereby preventing appropriate judgment on the part of the State and professional individuals. Second, standards are included to ensure that laboratory fees paid to consultative examination providers for services are reasonable and do not represent excessive mark-up by the source. Third, we emphasize that State rules must be followed regarding minimum qualification levels for physicians' and psychologists' assistants.

The minimum scheduling times for consultative examinations were developed by a panel of regional office and State agencies physicians and administrators convened to assist us in the preparation of these regulations (among other things). Since many State agencies currently have such standards (some based on the duration of the examination, others on the numbers of patients who can be scheduled for consultative examinations per hour), we are interested in establishing national norms to assure that all claimants receive equitable treatment when attending a consultative examination. We are particularly interested in the reaction of the public and the medical community to these recommendations and encourage widespread comment from interested parties during the period of public comment on the Notice of Proposed Rulemaking.

The proposed policy will carry out the intent of section 9 of Pub. L. 98–460 by including in the regulations all major guidelines contained in existing instructional issuances. This provides better access for the public to SSA standards used for consultative examinations in disability claims.

The regulated consultative examination material will be that which falls under the categories mandated by Congress. Those categories are:

(1) Standards to be utilized by State and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations.

(2) Standards for the type of referral to be made.

(3) Procedures to monitor the referral process used.

(4) Procedures to monitor the product of health professionals to whom cases are referred.

These standards are being included in Subpart P of Part 404 and Subpart I of Part 416. We are adding new §§ 404.1519 through 404.1519u and new §§ 416.919 through 416.919u. We are also updating the Table of sections for Subpart P and Subpart I.

Definitions

We are proposing to revise §§ 404.1502 and 416.902 to define what we mean by "medical source," "treating source," and "source of record".

The 12-Months Medical History

We are proposing changes in paragraph (b) of 20 CFR 404.1512 and 416.912, and 20 CFR 404.1593 and 416.993, to indicate that we will develop a complete medical history covering at least the preceding 12 months in any case where an unfavorable determination is made, unless the disability is alleged to have begun less than 12 months before application. *See* Sen. Rep. No. 98–466, 98th Cong., 2d Sess., 26 (1984). We are also indicating that we will make every reasonable effort to obtain from the individual's treating and other medical sources the evidence necessary to make a determination before evaluating medical evidence obtained from another source on a consultative basis. Reasonable effort is defined to mean an initial request and, if the evidence is not received within 10 days, one followup request to the treating source for medical evidence. The source will have 20 days from the followup to reply (unless experience indicates a longer period is advisable in a particular case) before we evaluate the evidence that may be obtained on a consultative basis. In some instances we may order a consultative examination while awaiting receipt of treating or other medical source evidence.

In addition, we are proposing to amend paragraph (a) of 20 CFR 404.1520 and 416.920 to more clearly state that we consider all evidence available in the individual's case record when we make a determination. (These regulations pertaining to "Multiple Impairments" were published in the **Federal Register** on March 5, 1985, and appear in their current form at 50 FR 8726.)

We are proposing to revise 20 CFR 404.1593 and 416.993 to recognize that development of medical evidence in continuing disability review cases will be guided by the special requirements of the medical improvement review standard and to affirm that consultative examinations are purchased with only one purpose, to provide information necessary to reach a decision in a case.

Medical Assessment Requirement

We are also proposing to revise §§ 404.1513 (b)(6) and (c), 404.1545(a) and 404.1546 as well as §§ 416.913 (b)(6) and (c), 416.945(a) and 416.946 to delete references to medical assessments and to refer instead to medical source statements as to what a person can still do despite his or her impairment(s). These revisions accomplish two things: they remove all reference to the term "medical assessment," which was not clearly defined and was thus open to various interpretations; and they indicate that we will consider all of the medical and other evidence in determining whether a person is disabled, including medical source statements as to what a person can still

do despite impairment, and that medical source statements alone are not determinative of whether or not the person is disabled. We believe these are important changes. There has been confusion among adjudicators as to what constitutes a "medical assessment." This has resulted in special requests being made to elicit information which was already at hand but not labeled "medical assessment." We have revised the regulations by deleting the term "medical assessment" and indicating what we mean, i.e., medical source statements as to what the person can still do despite impairment(s).

Treating Source Opinions

The Senate Finance Committee, in its consideration of the provision that became section 9, indicated in its report that it did not intend to alter in any way the relative weight that the Secretary places on reports received from treating physicians and from physicians who perform consultative examinations. (S. Rep. No. 466, 98th Cong., 2d. Sess. 26 (1984).) Accordingly, to clarify our existing policy with respect to the weight which we place on opinions of treating sources and in response to certain Federal Circuit Court of Appeals decisions and other statements regarding our policy, we are setting forth our policy with respect to opinions of treating sources. Therefore, we are proposing to revise §§ 404.1527 and 416.927 to clearly indicate those instances when a treating source opinion will be conclusive, when it will be given preference, and when neither conclusiveness nor preference will be granted.

Regulatory Procedures

Executive Order 12291. These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major rule. The cost of implementing this disability provision of Pub. L. 98–460 (section 9) is negligible. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act. We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they only affect a small number of disability claimants under title II and title XVI of the Social Security Act.

Paperwork Reduction Act. These proposed regulations contain information collection requirements in §§ 404.1512(b), 404.1513 (b) and (c), 404.1519n(c), 404.1593 (b) and (c), 416.912(b), 416.913 (b), and (c), 416.919n(c), and 416.993 (b) and (c).

As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on these information collections should direct them to the Commissioner of Social Security and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, DC 20503, Attention: Desk Officer for HHS.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: February 3, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approval: March 13, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950)

For the reasons set out in the preamble, Part 404, Subpart P, Chapter III of Title 20, Code of Federal Regulations is amended as set forth below.

1. The authority citation for Subpart P is revised to read as follows, and all other authority citations which appear throughout Subpart P are removed.

Authority: Secs. 202, 205, 216, 221, 222, 223, 225 and 1102 of the Social Security Act, as amended; 42 U.S.C. 402, 405, 416, 421, 422, 423, 425 and 1302; Sec. 505 (a) and (c) of Pub. L. 96–265, 94 Stat. 473.

2. The Table of Contents for Subpart P is amended by adding an entry for § 404.1503a, and by adding the following center headings and §§ 404.1519–404.1519u, to follow § 404.1518, to read as follows:

Subpart P—Determining Disability and Blindness

Sec.

* * * * *

404.1503a Program integrity.

* * * * *

Standards To Be Used in Determining When a Consultative Examination Will Be Obtained in Connection With Disability Determinations

404.1519 The consultative examination.
404.1519a When we will purchase a consultative examination and how we will use it.
404.1519b When we will not purchase a consultative examination.
404.1519e Purchase of the consultative examinations at the reconsideration level.
404.1519f Securing medical evidence at the ALJ hearing level.

Standards for the Type of Referral and for Report Content

404.1519g Type of purchased examinations and selection of source.
404.1519h Your treating physician or psychologist.
404.1519i Other sources for consultative examinations
404.1519j Objections to the designated physician or psychologist.
404.1519k Purchase of medical examinations, laboratory tests, and other services.
404.1519l Requesting examination by a specific physician, psychologist or institution—ALJ hearing level.
404.1519m Diagnostic surgical procedures.
404.1519n Informing the examining physician or psychologist of examination scheduling and/or duration, report content and signature requirements.
404.1519o When a properly signed consultative examination report has not been received.
404.1519p Reviewing reports of consultative examinations.
404.1519q Conflict of interest.

Authorizing and Monitoring the Referral Process Used

404.1519s Authorizing and monitoring consultative examinations.

Procedures to Monitor the Consultative Examination

404.1519t Consultative examination oversight.
404.1519u Direct purchase of medical services across State lines.

* * * * *

3. Section 404.1502 is revised to read as follows:

§ 404.1502 General definitions and terms for this subpart.

As used in the subpart—

"Secretary" means the Secretary of Health and Human Services.

"State agency" means that agency of a State which has been designated by

the State to carry out the disability determination function.

"Treating source" means your own physician or psychologist who has provided you with medical treatment or evaluation and who has an ongoing treatment relationship with you. "Source of record" means a hospital, clinic or other source that has provided you with medical treatment or evaluation, as well as a physician or psychologist who has treated or evaluated you but does not have an ongoing treatment relationship with you. "Medical sources" refers to both treating sources and sources of record.

"We" or "us" refers to either the Social Security Administration or the State agency making the disability or blindness determination.

"You" refers to the person who has applied for benefits or for a period of disability or is receiving benefits based on disability or blindness.

4. Section 404.1503a is added to read as follows:

§ 404.1503a Program integrity.

We will not use in our program any individual or entity who is excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or any other Federal or Federally-assisted program; who has been convicted, under Federal or State law, in connection with the delivery of health care services, of fraud, theft, embezzlement, breach of fiduciary responsibility or financial abuse; who has been convicted under Federal or State law of unlawful manufacture, distribution, prescription, or dispensing of a controlled substance; whose license to provide health care services is revoked or suspended by any State licensing authority for reasons bearing on professional competence, professional conduct, or financial integrity; who has surrendered such a license while formal disciplinary proceedings involving professional conduct were pending; or who has had a civil monetary assessment or penalty imposed on such individual or entity for any activity described in this section or as a result of formal disciplinary proceedings. Also see §§ 404.1519(a) and 404.1519g(b).

§ 404.1508 [Amended]

5. Section 404.1508 is amended by adding the cross-reference "(see § 404.1527)." at the end of the penultimate sentence.

6. Section 404.1512 is amended by revising paragraph (b) to read as follows:

§ 404.1512 Your responsibility to submit evidence.

* * * * *

(b) *Kind of evidence.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. We will consider only impairment(s) you say you have or about which we receive evidence. Before deciding that you are not disabled, we will develop your complete medical history (i.e., evidence from the records of your medical sources) covering at least the preceding 12 months, unless you say that your disability began less than 12 months before you filed your application. We will make every reasonable effort to help you in getting medical reports from your own medical sources when you give us permission to request them. Every reasonable effort means that we will make an initial request and, after 10 days, one followup request to your medical source to obtain the medical evidence necessary to make a determination before we evaluate medical evidence obtained from another source on a consultative basis. The medical source will have 20 days from the followup to reply (unless experience indicates that a longer period is advisable in a particular case). In some instances we may order a consultative examination while awaiting receipt of medical source evidence. If we ask you to do so, you must contact your medical sources to help us get the medical reports. If we ask you, you must also provide evidence about your—

(1) Age;

(2) Education and training;

(3) Work experience;

(4) Daily activities both before and after the date you say that you became disabled;

(5) Efforts to work; and

(6) Any other evidence showing how your impairment(s) affects your ability to work. (In §§ 404.1560 through 404.1569, we discuss in more detail the evidence we need when we consider vocational factors.)

7. Section 404.1513 is amended by revising paragraph (b)(6) and paragraph (c) to read as follows. The heading of paragraph (b) and (b) introductory text are republished.

§ 404.1513 Medical evidence of your impairment.

* * * * *

(b) *Medical reports.* Medical reports should include—

* * * * *

(6) Statements about what you can still do despite your impairment(s) based on the medical source's findings on the factors under paragraph (b) (1) through (5) of this section (except in statutory blindness claims, and disability claims for widows, widowers, and surviving divorced spouses). (See § 404.1527.)

(c) *Statements about what you can still do.* Statements about what you can still do (based on the medical source's findings on the factors under paragraph (b) (1) through (5) of this section) should describe—

(1) The medical source's opinion about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, moving about, lifting, carrying, handling objects, hearing, speaking, and traveling; and

(2) In cases of mental impairment(s), the medical source's opinion about your ability to reason or make occupational, personal, or social adjustments. (See § 404.1527.)

* * * * *

8. The following center headings and new §§ 404.1519 through 404.1519u are added immediately after § 404.1518 to read as follows:

Standards To Be Used in Determining When a Consultative Examination Will Be Obtained in Connection With Disability Determinations

§ 404.1519 The consultative examination.

(a) *General.* A consultative examination is a physical or mental examination or test purchased for you at our request and expense from a treating physician or psychologist, another source of record, or an independent source. The decision to purchase a consultative examination will be made on an individual case basis in accordance with the provisions of § 404.1519a through § 404.1519f. Selection of the source for the examination will be consistent with the provisions of § 404.1503a.

(b) *Recontacting medical sources.* When evidence received from your treating physician or other medical sources is inadequate to allow us to determine whether you are disabled, additional information may be readily available from your treating physician or other medical sources in your record (that is, your case file) and must be obtained when significant to the disability determination. Whenever possible, this contact will be made by a physician since a direct doctor-to-doctor contact is very productive. Before purchasing an examination, therefore, every consideration will be given to whether the additional information needed is readily available from the

records of your medical treatment sources. (See § 404.1517(b) for reasons why more evidence may be needed and § 404.1593 for your obligation to have a consultative examination when we request it.)

§ 404.1519a When we will purchase a consultative examination and how we will use it.

(a)(1) *General.* The decision to purchase a consultative examination for you will be made after full consideration is given to whether the additional information needed (e.g., clinical findings, laboratory tests, diagnosis, and prognosis, etc.) is readily available from the records of your medical sources. We will seek clarification from a medical source who has provided a report when that report contains a conflict or ambiguity, or does not contain all necessary information or when the information supplied is not based on objective evidence. We will not, however, seek clarification from a medical source when it is clear that the source either cannot or will not provide the necessary findings, or cannot reconcile a conflict or ambiguity in the findings provided from the source's records. Therefore, before purchasing a consultative examination, we will consider not only existing medical reports, but also the background report containing your allegations and information about your vocational background, as well as other pertinent evidence in your file.

(2) When we purchase a consultative examination, we will use the report from the consultative examination to try to resolve a conflict or ambiguity if one exists. We will do this by comparing the persuasiveness and value of the evidence. We will also use a consultative examination to secure needed medical evidence the file does not contain such as clinical findings, laboratory tests, a diagnosis or prognosis necessary for decision.

(b) *Situations requiring a consultative examination.* A consultative examination may be purchased when the evidence as a whole, both medical and nonmedical, is not sufficient to support a decision on your claim. In addition, other situations, such as one or more of the following, will normally require a consultative examination (these situations are not all-inclusive):

(1) The specific additional evidence needed for adjudication has been pinpointed and high probability exists for obtaining it through purchase.

(2) The additional evidence needed is not contained in the records of your treating sources.

(3) Evidence that may be needed from your treating or other medical sources cannot be obtained for reasons beyond your control, such as death or noncooperation of the medical source.

(4) Highly technical or specialized medical evidence which is needed is not available from your treating sources.

(5) A conflict, inconsistency, ambiguity or insufficiency in the evidence must be resolved.

(6) There is an indication of a change in your condition that is likely to affect your ability to function, but current severity is not documented.

(7) Information provided by any source appears not to be supported by objective evidence.

§ 404.1519b When we will not purchase a consultative examination.

A consultative examination will not be purchased in the following situations (these situations are not all-inclusive):

(a) In disability insurance benefit claims, when you do not meet the insured status requirement in the calendar quarter you allege you became disabled or later and there is no possibility of establishing an earlier onset.

(b) In disabled widow(er) benefit claims, when the alleged month of disability is after the end of the 7-year period specified in § 404.335(c)(1) and there is no possibility of establishing an earlier onset, or when the 7-year period expired in the past and all the medical evidence in your file establishes that you were not disabled on or before the expiration date.

(c) In disability insurance benefit claims, when insured status expired in the past and the medical evidence in your file establishes that you were not disabled on or before the expiration date.

(d) When any issues about the actual performance of substantial gainful activity or gainful activity have not been resolved.

(e) In childhood disability claims, when it is determined that your alleged childhood disability did not begin before the month of attainment of age 22. In this situation, you could not be entitled to benefits as a disabled child unless found disabled before age 22.

(f) When, on the basis of your allegations and all available medical reports in your case file, it is apparent that you do not have an impairment(s) which will have more than a minimal effect on your capacity to work.

(g) When you either have no medical source or your medical source refuses to provide a medical report and, in the adjudicator's judgment based on your allegations and observations, there is no reasonable likelihood of disability.

(h) Childhood disability claims filed concurrently with the number holder's claim and entitlement cannot be established for the number holder.

(i) Survivors childhood disability claims where entitlement is precluded based on nondisability factors.

§ 404.1519e Purchase of consultative examinations at the reconsideration level.

(a) When you request a review of our initial determination at the reconsideration level of review, consultative medical examinations will be obtained when needed, but not routinely. A consultative examination will not, if possible, be performed by the same physician or psychologist used in the initial claim.

(b) Where the evidence tends to substantiate an affirmation of the initial denial but you state that the treating physician or psychologist considers you disabled, we will consider obtaining a consultative examination from your physician or psychologist. This is to ensure that all relevant evidence has been obtained and that we have thoroughly reconsidered your claim.

§ 404.1519f Securing medical evidence at the ALJ hearing level.

(a) Where there is a conflict in the medical evidence at the hearing level of review before an administrative law judge (ALJ), the ALJ will try to resolve it by comparing the persuasiveness and value of the conflicting evidence. The ALJ's reasoning will be explained in the decision rationale. Where such resolution is not possible, the ALJ will secure additional medical evidence (e.g., clinical findings, laboratory tests, diagnosis, prognosis, etc.) to resolve the conflict. Even in the absence of a conflict, the ALJ will also secure additional medical evidence when the file does not contain clinical findings, laboratory tests, a diagnosis, or a prognosis necessary for a decision.

(b) Before requesting a consultative examination, the ALJ will ascertain whether the information is available as a result of a recent examination by any of your medical sources. If it is, the ALJ will request the evidence from that medical practitioner. If contact with the medical source is not productive for any reason, or if there is no recent examination by a medical source, the ALJ will obtain a consultative examination.

Standards for the Type of Referral and for Report Content

§ 404.1519g Type of purchased examinations and selection of source.

(a) The types of examinations and tests we purchase depend upon the additional evidence needed for the disability determination. We will purchase only the specific evidence needed. For example, if special tests (such as X-rays, blood studies, or EKG) will furnish the additional evidence needed for the disability determination, a more comprehensive medical examination will not be authorized.

(b) The physician or psychologist selected to do the examination or test must be qualified. The physician's or psychologist's qualifications must indicate that the physician or psychologist is currently licensed in the State and has the training and experience to perform the type of examination or test requested. The physician or psychologist may use support staff to help perform the examination. Any such support staff must meet appropriate licensing or certification requirements of the State. See also § 404.1503a.

§ 404.1519h Your treating physician or psychologist.

When in our judgment your treating physician or psychologist is qualified, equipped, and willing to perform the additional examination or tests for the fee schedule payment, and furnishes complete and timely reports, your treating physician or psychologist will be selected to do the purchased examination. Even if only a supplemental test is required, your treating physician or psychologist is ordinarily the preferred source.

§ 404.1519i Other sources for consultative examinations.

In the following situations, a source other than your treating physician or psychologist will be used for a purchased examination or test (these situations are not all-inclusive):

(a) Your treating physician or psychologist prefers not to perform such an examination or does not have the equipment to provide the specific data needed, e.g., ventilatory studies are needed, and your physician does not wish to make arrangements to obtain these tests.

(b) There are conflicts or inconsistencies in your file which cannot be resolved by going back to your treating physician or psychologist.

(c) You prefer a source other than your treating physician or psychologist and have a good reason for your preference.

(d) We know from experience through previous purchase of evidence that your treating physician or psychologist may not be a productive source, e.g., does not provide complete or timely reports.

§ 404.1519j Objections to the designated physician or psychologist.

You or your representative may object to your being examined by a designated physician or psychologist. If there is a good reason for the objection, we will schedule the examination with another physician or psychologist. A good reason may be where the consultative examination physician or psychologist had previously represented an interest adverse to you. For example, the physician or psychologist may have represented your employer in a workers' compensation case or may have been involved in an insurance claim or legal action adverse to you. Other things we will consider are: language barrier, office location of consultative examination physician or psychologist (2nd floor, no elevator, etc.), travel restrictions, and examination by the physician or psychologist in connection with a previous unfavorable determination. If the objection is because a physician or psychologist allegedly "lacks objectivity" (in general, but not in relation to you personally) we will review the allegations (see § 404.1519s). To avoid a delay in processing your claim, the consultative examination in your case will be changed to another physician or psychologist while a review is being conducted. Any objection to use of the substitute physician or psychologist will be handled in the same manner. However, if we previously conducted such a review and found that the reports of the consultative physician or psychologist in question conform to our guidelines, then we will not change your examination.

§ 404.1519k Purchase of medical examinations, laboratory tests, and other services.

We may purchase medical examinations, X-rays and laboratory tests (including specialized tests such as pulmonary functions, EKGs, stress tests, etc.) from a licensed physician or psychologist, hospital or clinic. Psychiatric evaluations and psychological evaluations and tests are also included in this category.

(a) The rates of payment to be used for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or other agencies in the State for the same or similar types of service. The State will determine the rates of payment to be used for purchasing such services. The amount of reimbursement to the physician provider will be the amount billed for the services or the rates of payment which the State uses for purchasing such services, whichever is lower.

(b) If a physician's bill, or a request for payment for a physician's services includes a charge for a laboratory test for which payment may be made under this part, the amount payable with respect to the test shall be determined as follows:

(1) If the bill or request for payment indicates that the test was personally performed or supervised by the physician who submitted the bill (or for whose services the request for payment was made) or by another physician with whom that physician shares his or her practice, the payment will be based on the physician's usual and customary charge for the test or the rates of payment which the State uses for purchasing such services, whichever is the lesser amount.

(2) If the bill or request for payment indicates that the test was performed by an independent laboratory, the amount of reimbursement will not exceed the billed cost of the service or the rates of payment which the State uses for purchasing such services, whichever is the lesser amount. A nominal payment may be made to the physician for collecting, handling and shipping the specimen to the laboratory if the physician bills for such a service. The total reimbursement may not exceed the rates of payment which the State uses for purchasing such services.

(c) The State will assure that it can support the rates of payment it uses. The State shall also be responsible for monitoring and overseeing the rates of payment it uses to ensure compliance with paragraphs (a) and (b) of this section.

§ 404.1519l Requesting examination by a specific physician, psychologist or institution—ALJ hearing level.

In an unusual case, an ALJ may have reason to request an examination by a particular physician, psychologist or institution. Some examples include the following:

(a) Conflicts in the existing medical evidence require resolution by a recognized authority in a particular specialty;

(b) The impairment requires hospitalization for diagnostic purposes; or

(c) Your treating physician or psychologist is in the best position to submit a meaningful report.

§ 404.1519m Diagnostic surgical procedures.

We will not order diagnostic surgical procedures such as myelograms and arteriograms for the evaluation of disability under the Social Security program. In addition, we will not order procedures such as cardiac catheterization and surgical biopsy. However, if any of these procedures have been performed as part of a workup by your treating physician or other medical source, the results may be secured and used to help evaluate an impairment(s)'s severity.

§ 404.1519n Informing the examining physician or psychologist of examination scheduling and/or duration, report content and signature requirements.

The physicians or psychologists who perform consultative examinations will have a good understanding of the Social Security disability program and their evidentiary role. They will be made fully aware of their responsibilities and obligations regarding confidentiality as described in § 401.105(e). Consulting physicians or psychologists will be fully informed at the time we first contact them, and at subsequent appropriate intervals, of the following obligations:

(a) In scheduling full consultative examinations, sufficient time should be allowed to permit the examining physician to take a case history and perform the examination (including any needed tests). The following scheduling intervals should be applied for examinations.

(1) General medical examination—at least 20 minutes;

(2) Comprehensive general medical examination—at least 30 minutes;

(3) Comprehensive musculoskeletal or neurological examination—at least 20 minutes;

(4) Comprehensive psychiatric examination—at least 40 minutes;

(5) Psychological examination—at least 60 minutes (Additional time may be required depending on types of psychological tests administered); and

(6) All others—at least 30 minutes or in accordance with accepted medical practices.

We recognize that actual practice will dictate that some examinations may be scheduled with greater or less frequency, depending on the circumstances in a particular situation. The purpose of these scheduling time frames is to ensure that such examinations are complete and that sufficient time is made available to obtain the information needed to make an accurate determination in your case. State agencies will monitor the scheduling of examinations to ensure that any overscheduling is avoided, as overscheduling may lead to examinations of so short a duration as to preclude the possibility of a thorough examination.

(b) *Report content.* The reported results of your medical history, examination, pertinent requested laboratory findings, discussions and conclusions must conform to accepted professional standards and practices in the medical field for a complete and competent examination. The facts in a particular case and the information and findings already reported in the medical and other evidence of record will dictate the extent of detail needed in the consultative examination report for that case. Thus, the detail and format for reporting the results of a purchased examination will vary depending upon the type of examination or testing requested. The reporting of information will differ from one type of examination to another when the requested examination relates to the performance of tests such as ventilatory function tests, treadmill exercise tests, or audiological tests. The medical report must be complete enough to help us determine the nature, severity, duration of the impairment and residual functional capacity. Pertinent points in your medical history, such as a description of chest pain, will reflect your statements of your symptoms, not simply the physician's or psychologist's statements or conclusions. The examining physician's or psychologist's report of the consultative examination will include the objective medical facts.

(c) *Elements of a complete examination.* A complete examination is one which involves all the elements of a standard examination in the applicable medical specialty. When a complete examination is involved, the report will include the following elements:

(1) Your major or chief complaint(s).

(2) A detailed description, within the area of specialty of the examination, of the history of your major complaint(s).

(3) A description, and disposition, of pertinent "positive," as well as "negative," detailed findings based on the history, examination and laboratory test related to the major complaint(s) and any other abnormalities reported or found during examination or laboratory testing.

(4) The results of laboratory and other tests (e.g., x-rays) performed according to the requirements stated in the Listing of Impairments (see Appendix 1 of this Subpart P).

(5) The diagnosis and prognosis for your impairment(s).

(6) A statement as to what you can still do despite your impairment(s) (except in statutory blindness claims, and disability claims for widows, widowers, and surviving divorced spouses). This statement must describe the consultative physician's or psychologist's opinion concerning your ability, despite your impairment(s), to do basic work activities such as sitting, standing, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the consultative physician's or psychologist's opinion as to your ability to reason or make occupational, personal, or social adjustments.

(i) In addition, the consultative physician or psychologist will consider, and provide some explanation or comment on, the major complaint(s) and any other abnormalities found during the history and examination or reported from the laboratory tests. The history, examination, evaluation of laboratory test results, and the conclusions will represent the information provided by the physician or psychologist who signs the report.

(ii) When less than a complete examination is required (for example, a specific test or study is needed), not every element is required.

(d) *Signature requirements.* All consultative examination reports will be personally reviewed and signed by the physician or psychologist who actually performed the examination. This attests to the fact that the physician or psychologist doing the examination or testing is solely responsible for the report contents and for the conclusions, explanations or comments provided with respect to the history, examination and evaluation of laboratory test results. The examining physician's or psychologist's signature on a report annotated "not proofed" or "dictated but not read" is not acceptable. The physician's or psychologist's rubber stamp signature or the physician's or psychologist's signature entered by any other person is not acceptable.

§ 404.1519o When a properly signed consultative examination report has not been received.

The following explains what adjudicative action we take if a consultative examination report is received unsigned or improperly signed.

(a) *Adjudication without a properly signed report.* Cases involving only the types of determinations specified in paragraphs (a) (1) and (2) of this section will be adjudicated without waiting for a properly signed consultative examination report. A properly signed consultative examination report will be obtained after the disability

determination is made by us and included in the file. However, if the signature of the physician or psychologist who performed the original examination cannot be obtained because that physician or psychologist is deceased, the consultative examination will be rescheduled with another physician or psychologist.

(1) Continuous period of disability allowance with an onset date as alleged or earlier than alleged; or

(2) Continuance of disability.

(b) *Adjudication with a properly signed report.* We will not use an unsigned or improperly signed consultative examination report to make the types of determinations specified in paragraphs (b) (1), (2), (3), and (4) of this section. When needed for adjudication, a properly signed consultative examination report (including any supplement) must be obtained. If the signature of the physician or psychologist who performed the original examination cannot be obtained because that physician or psychologist is out of the country for an extended period of time, on an extended vacation, seriously ill, deceased, or cannot be contacted for any other reason, the consultative examination will be rescheduled with another physician or psychologist.

(1) Denial; or

(2) Cessation; or

(3) Period of disability allowance which has ended; or

(4) Allowance with an onset date later than alleged.

§ 404.1519p Reviewing reports of consultative examinations.

(a) We will review the report of the consultative examination to determine whether the specific information requested has been furnished. We will consider these factors in reviewing the report:

(1) Whether the report provides evidence which serves as an adequate basis for decisionmaking in terms of the impairment it assesses.

(2) Whether the report is internally consistent. Whether all the diseases, impairments and complaints described in the history are adequately assessed and reported in the physical findings. Whether the conclusions correlate the findings from your medical history, physical examination and laboratory tests and explain all abnormalities.

(3) Whether the report is consistent with the other information available to us within the specialty of the examination requested. Whether the report fails to mention an important or relevant complaint within that specialty that is noted on other evidence in the file (e.g., your blindness in one eye, amputations, flail limbs or claw hands, etc.).

(4) Whether this is an adequate report of examination as compared to standards set out in the course of a medical education.

(5) Whether the report is properly signed.

(b) If the report is inadequate or incomplete, we will contact the examining consultative physician or psychologist, give an explanation of our evidentiary needs, and ask that the physician or psychologist furnish the missing information or prepare a revised report.

(c) Where the examination discloses new diagnostic information or test results which are significant to your treatment, we will consider referral of the consultative examination report to your treating physician or psychologist.

(d) We will perform ongoing special management studies on the quality of consultative examinations purchased from major medical sources and the appropriateness of the examinations authorized.

(e) We will take steps to ensure that consultative examinations are scheduled only with medical sources who have the equipment required to provide an adequate assessment and record of the level of severity of your alleged impairments.

§ 404.1519q Conflict of interest.

All implications of possible conflict of interest between SSA medical consultants and their medical practices will be avoided. SSA medical consultants are not only those who work for us directly but also those who do review and adjudication work for us in the State agencies that make disability decisions for us. Our review physicians and psychologists will not perform consultative examinations for the Social Security disability programs without prior approval. In addition, they will not acquire or maintain, directly or indirectly, including any member of their families, any financial interest in a medical partnership or similar relationship in which consultative examinations are provided. Sometimes one of our review physicians or psychologists will have prior knowledge of a case (e.g., the claimant was a patient). Where this is so, the physician or psychologist will not participate in the review or determination of the case. This does not preclude the physician or psychologist from submitting medical evidence based on prior treatment or examination of the claimant.

Authorizing and Monitoring the Referral Process Used

§ 404.1519s Authorizing and monitoring consultative examinations.

We will ensure that referral for consultative examinations and the purchase of consultative examinations are made in accordance with our policies. We will also monitor both the referral process and the product of the consultative examinations obtained. This monitoring will include reviews by independent medical specialists under direct contract with SSA. The following rules apply:

(a) Day-to-day responsibility for the consultative examination process rests with the State agencies that make disability determinations for us.

(b) The State agency will maintain a good working relationship with the medical community in order to recruit sufficient physicians and other providers of medical services to ensure ready availability of consultative examination providers.

(c) The State agency administrator will work consistent with Federal and State laws to achieve appropriate rates of payment for purchased medical services.

Procedures To Monitor the Consultative Examination

§ 404.1519t Consultative examination oversight.

(a) Each State agency will be responsible for comprehensive oversight management of its consultative examination program with special emphasis on key providers.

(b) A key consultative examination provider is a provider meeting at least one of the following conditions:

(1) Any consultative examination provider with an estimated annual billing to the Social Security disability programs of at least $100,000; or

(2) Any consultative examination provider where the practice of medicine (or osteopathy) is primarily directed towards evaluation examinations rather than the treatment of patients; or

(3) Any consultative examination provider that does not meet the above criteria, but is one of the top five consultative examination providers, by dollar volume, in the State as evidenced by prior year data.

(c) State agencies have flexibility in managing their consultative examination programs but at a minimum will provide:

(1) An ongoing active recruitment program for consultative examination providers;

(2) A process for orientation, training, and review of new consultative examination providers:

(3) Procedures for control of scheduling consultative examinations;

(4) Procedures to ensure that close attention is given to specific evaluation issues involved in each case. Medical or supervisory approval will be required for the authorization or purchase of a consultative examination. The agency will encourage active participation by physicians in the consultative examination oversight program;

(5) Procedures to ensure that only required examination and tests are authorized in accordance with the standards set forth in this subpart. No open-ended authorizations will be issued. Additional tests or studies at the request of the consulting physician must be authorized in the same way as described in paragraph (c)(4) of this section;

(6) Ongoing review of consultative examination results to ensure that written guidelines are met;

(7) Procedures for handling complaints;

(8) A systematic onsite review program of key providers that will include annual onsite reviews of such providers when claimants are present for examinations. This provision does not contemplate that such reviews will involve participation in the actual examination but rather offer an opportunity to talk with claimants at the provider's site before and after the examination and review the provider's overall on-line operation;

(9) Procedures for evaluating claimant reactions to key providers;

(d) We, through our regional offices, will undertake at least one comprehensive review of each State agency annually to evaluate the State's management of the consultative examination process. The review team will include our regional medical advisor or his regional physician delegate. The review will involve visits to key providers, with State staff participating, including a program physician when the visit will deal with medical techniques, judgment, or factors that go to the core of medical professionalism;

(e) The State agencies will cooperate with us and our regional offices when we conduct monitoring activities in connection with their oversight management of their consultative examination programs.

§ 404.1519u Direct purchase of medical services across State lines.

Where necessary, a State agency may use a medical source in a neighboring State for a consultative examination. In such cases, the State agency will notify the neighboring State agency. The State agency requesting the examination will use its fee schedule in determining the fee to be paid to the source unless the neighboring State agency objects. Where such situations arise, the State agency desiring the examination will ask the neighboring State agency to make the arrangements using the fee schedule of the neighboring State agency.

9. Section 404.1520 is amended by revising paragraph (a) to read as follows:

§ 404.1520 Evaluation of disability in general.

(a) *Steps in evaluating disability.* We consider all evidence in your case record when we make a determination whether you are disabled. When you file a claim for disability benefits, we use the following evaluation process. If you are doing substantial gainful activity, we will determine that you are not disabled. If you are not doing substantial gainful activity, we will first consider your physical or mental impairment(s). Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review further. Finally, it is possible for you to be found disabled for a period of time in the past although you are not now disabled. (Once you have been found eligible to receive disability benefits, we follow a somewhat different order of evaluation to determine whether your eligibility continues, as explained in § 404.1594(f)(6).)

* * * * *

10. Section 404.1527 is revised to read as follows:

§ 404.1527 Medical opinions about your impairment or disability by physicians, psychologists or other acceptable medical sources.

(a) *General.* Under the statute, we are responsible for making the decision about whether you meet the statutory definition of disability. You can only be found disabled if you are unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. (See § 404.1505.) Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. (See § 404.1508.) Except in cases of widows, widowers, and surviving divorced spouses, the decision as to whether you are disabled may involve more than medical considerations and we may have to consider such factors as age, education, and past work experience. Such vocational factors are not within the expertise of medical sources.

(b) *Medical opinions that are conclusive.* A medical opinion by a treating source will be conclusive as to the medical issues of the nature and severity of your impairment(s) where we find that (1) it is fully supported by medically acceptable clinical and laboratory diagnostic techniques and (2) it is not inconsistent with the other substantial medical evidence of record. A medical opinion that is not fully supported will not be conclusive.

(c) *Medical opinions that are not fully supported.* If an opinion by a treating source(s) is not fully supported, we will make every reasonable effort (i.e., an initial request and, after 10 days, one followup request) to obtain from your treating source(s) the relevant evidence that supports the medical opinion(s) before we make a determination as to whether you are disabled.

(d) *Inconsistent medical opinions.* Where we find that the opinion of a treating source regarding medical issues is inconsistent with the evidence of record including opinions of other sources that are supported by medically acceptable clinical and laboratory diagnostic techniques, we must resolve the inconsistency. If necessary to resolve the inconsistency, we will secure additional independent evidence and/or further interpretation or explanation from the treating source(s) and/or the consultative physician or psychologist. Our determination will be based on all the evidence in your case record, including the opinions of the medical sources. In resolving an inconsistency, we will give some extra weight to the treating source's supported opinion(s) which interprets the medical findings about the nature and severity of the impairment(s).

Example.—In a case involving arthritis of the shoulder, where the X-rays confirm bony destruction, the examinations indicate minimal swelling and inflammation, but the treating source supplies evidence of greater restriction in the range of motion than found by the consultative physician, we will ask the treating source for further interpretation of

the range of motion studies. If the treating source supplies a reasonable explanation, e.g., that the individual's condition is subject to periods of exacerbation, the treating source's explanation will be given some extra weight over that of the consultative physician.

(e) *Medical opinions that will not be considered conclusive nor given extra weight.* We will not consider as conclusive nor give extra weight to medical opinions which are not in accord with the statutory or regulatory standards for establishing disability. Thus, opinions that the individual's impairment meets the Listing of Impairments in Appendix 1 of this Subpart, where the medical findings which are the basis for that conclusion would not meet the specific criteria applicable to the particular impairment as set out in the Listing, will not be conclusive nor given extra weight. Likewise, an opinion(s) as to the individual's residual functional capacity which is not in accord with regulatory requirements set forth in §§ 404.1545 and 404.1546 will not be conclusive nor given extra weight.

Example 1.—A medical opinion that an impairment meets listing 2.02, but the medical findings show that the individual's visual acuity in the better eye after best correction is 20/100, would not be conclusive nor would it be given extra weight since listing 2.02 requires that the remaining vision in the better eye after best correction be 20/200 or less.

Example 2. A medical opinion that the individual is limited to light work when the evidence shows that he or she can lift a maximum of 50 pounds and lift 25 pounds frequently will not be considered as conclusive nor given extra weight. This is because the individual's exertional capacity exceeds the criteria set forth in the regulations for light work.

11. Section 404.1545 is amended by revising paragraph (a) to read as follows:

§ 404.1545 Your residual functional capacity.

(a) *General.* Your impairments may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations. If you have more than one impairment, we will consider all of your impairments of which we are aware. We consider your capacity for various functions as described in the following paragraphs: (b) physical abilities; (c) mental impairments, and (d) other impairments. A residual functional capacity assessment may include descriptions (even your own) of limitations that go beyond the symptoms that are important in the diagnosis and treatment of your medical condition. Observations of your work limitations in addition to those usually made during formal medical examinations may also be used. These descriptions and observations, when used, must be considered along with the rest of your medical record to enable us to decide to what extent your impairment(s) keeps you from performing particular work activities. This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s). Then, using the guidelines in §§ 404.1560 through 404.1569, your vocational background is considered along with your residual functional capacity in arriving at a disability decision. In deciding whether disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement you have experienced is related to your ability to work as discussed in § 404.1594.

* * * * *

12. Section 404.1546 is revised to read as follows:

§ 404.1546 Responsibility for assessing and determining residual functional capacity.

The State agency medical consultants or other medical consultants designated by the Secretary are responsible for ensuring that the agency makes a decision about your residual functional capacity. In cases where the State agency makes the disability determination, a State agency medical consultant must assess residual functional capacity where it is required. This assessment is based on all of the evidence we have, including any statements regarding what you can still do that have been provided by treating or examining physicians, consultative physicians, or any other medical consultant designated by the Secretary (see § 404.1545). For cases in the disability hearing process, the responsibility for deciding your residual functional capacity rests with either the disability hearing officer or, if the disability hearing officer's reconsidered determination is changed under § 404.918, with the Director of the Office of Disability Hearings or his or her delegate. For cases at the Administrative Law Judge hearing or Appeals Council level, the responsibility for deciding your residual functional capacity rests with the Administrative Law Judge or Appeals Council.

13. Section 404.1593 is revised to read as follows:

§ 404.1593 Medical evidence in continuing disability review cases.

(a) *General.* If you are entitled to cash benefits or if a period of disability has been established for you because you are disabled, we will have your case file with the supporting medical evidence previously used to establish or continue your entitlement. Generally, therefore, the medical evidence needed will be that required to make a current determination as to whether you are still disabled, as defined under the medical improvement review standard (see §§ 404.1579 and 404.1594).

(b) *Obtaining evidence from your medical sources.* You must give us reports from your physician, psychologist, or others who have treated or evaluated you, as well as any other evidence that will help us determine if you are still disabled (see § 404.1512). You must have a good reason for not giving us this information or we may find that your disability has ended (see § 404.1594(e)(2)). If we ask you, you must contact your medical sources to help us get the medical reports. We will make every reasonable effort to help you in getting medical reports when you give us permission to request them from your physician, psychologist, or other medical sources. Every reasonable effort means that we will make an initial request and, after 10 days, one followup request to your medical source to obtain the medical evidence necessary to make a determination before we evaluate medical evidence obtained from another source on a consultative basis. The medical source will have 20 days from the followup to reply (unless experience indicates that a longer period is advisable in a particular case). In some instances we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the preceding 12 months (see § 404.1512(b)).

(c) *When we will purchase a consultative examination.* A consultative examination may be purchased when we need additional evidence to determine whether or not your disability continues. As a result, we may ask you, upon our request and reasonable notice, to undergo consultative examinations and tests to help us determine if you are still disabled (see § 404.1517). We will decide whether or not to purchase a consultative examination in accordance with the standards in §§ 404 1519a through 404 1519f.

PART 416—[AMENDED]

For the reasons set out in the preamble, Part 416, Subpart I, Chapter III of Title 20, Code of Federal Regulations, is amended as set forth below.

1. The authority citation for Subpart I is revised to read as follows, and all other authority citations which appear throughout Subpart I are removed.

Authority: Secs. 1102, 1614, and 1631, of the Social Security Act, as amended, 42 U.S.C. 1302, 1382c, and 1383.

2. The Table of Contents for Subpart I is amended by adding an entry for § 416.903a, and by adding the following center headings and §§ 416.919 through 416.919u, to follow: § 416.918, to read as follows:

Subpart I—Determining Disability and Blindness

Sec.

* * * * *

416.903a Program integrity.

* * * * *

Standards to be Used in Determining when a Consultative Examination will be obtained in Connection with Disability Determinations

416.919 The consultative examination.
416.919a When we will purchase a consultative examination and how we will use it.
416.919b When we will not purchase a consultative examination.
416.919c Purchase of title XVI slight impairment examinations.
416.919e Purchase of the consultative examinations at the reconsideration level.
416.919f Securing medical evidence at the ALJ hearing level.

Standards For the Type of Referral and For Report Content

416.919g Type of purchased examinations and selection of source.
416.919h Your treating physician or psychologist.
416.919i Other sources for consultative examinations
416.919j Objections to the designated physician or psychologist.
416.919k Purchase of medical examinations, laboratory tests, and other services.
416.919l Requesting examination by a specific physician, psychologist or institution—ALJ hearing level.
416.919m Diagnostic surgical procedures.
416.919n Informing the examining physician or psychologist of examination scheduling and/or duration, report content and signature requirements.
416.919o When a properly signed consultative examination report has not been received.
416.919p Reviewing reports of consultative examinations.
416.919q Conflict of interest.

Authorizing and Monitoring the Referral Process Used

416.919s Authorizing and monitoring consultative examinations.

Procedures to Monitor the Consultative Examination

416.919t Consultative examination oversight.
416.919u Direct purchase of medical services across State lines.

* * * * *

3. Section 416.902 is revised to read as follows:

§ 416.902 General definitions and terms for this subpart.

As used in the subpart—

"Secretary" means the Secretary of Health and Human Services.

"State agency" means that agency of a State which has been designated by the State to carry out the disability determination function.

"Treating source" means your own physician or psychologist who has provided you with medical treatment or evaluation and who has an ongoing treatment relationship with you. "Source or record" means a hospital, clinic or other source that has provided you with medical treatment or evaluation, as well as a physician or psychologist who has treated or evaluated you but does not have an ongoing treatment relationship with you. "Medical sources" refers to both treating sources and sources of record.

"We" or "us" refers to either the Social Security Administration or the State agency making the disability or blindness determination.

"You" refers to the person who has applied for benefits or is receiving benefits based on disability or blindness.

4. Section 416.903a is added to read as follows:

§ 416.903a Program integrity.

We will not use in our program any individual or entity who is excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or any other Federal or Federally-assisted program; who has been convicted, under Federal or State law, in connection with the delivery of health care services, of fraud, theft, embezzlement, breach of fiduciary responsibility or financial abuse; who has been convicted under Federal or State law of unlawful manufacture, distribution, prescription, or dispensing of a controlled substance; whose license to provide health care services is revoked or suspended by any State licensing authority for reasons bearing on professional competence, professional conduct, or financial integrity; who has surrendered such a license while formal disciplinary proceedings involving professional conduct were pending; or who has had a civil monetary assessment or penalty imposed on such individual or entity for any activity described in this section or as a result of formal disciplinary proceedings. Also see §§ 416.919(a) and 416.919g(b).

§ 416.908 [Amended]

5. Section 416.908 is amended by adding the cross-reference "(see § 416.927)". at the end of the penultimate sentence.

6. Section 416.912 is amended by revising paragraph (b) to read as follows:

§ 416.912 Your responsibility to submit evidence.

* * * * *

(b) *Kind of evidence.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. We will consider only impairment(s) you say you have or about which we receive evidence. Before deciding that you are not disabled, we will develop your complete medical history (i.e., evidence from the records of your medical sources) covering at least the preceding 12 months, unless you say that your disability began less than 12 months before you filed your application. We will make every reasonable effort to help you in getting medical reports from your own medical sources when you give us permission to request them. Every reasonable effort means that we will make an initial request and, after 10 days, one followup request to your medical source to obtain the medical evidence necessary to make a determination before we evaluate medical evidence obtained from another source on a consultative basis. The medical source will have 20 days from the followup to reply (unless experience indicates that a longer period is advisable in a particular case). In some instances we may order a consultative examination while awaiting receipt of medical source evidence. If we ask you to do so, you must contact your medical sources to help us get the medical reports. If we ask you, you must also provide evidence about your—

(1) Age;

(2) Education and training;

(3) Work experience;

(4) Daily activities both before and after the date you say that you became disabled;

(5) Efforts to work; and

(6) Any other evidence showing how your impairment(s) affects your ability to work. (In §§ 416.960 through 416.969, we discuss in more detail the evidence we need when we consider vocational factors.)

7. Section 416.913 is amended by revising paragraph (b)(6) and paragraph (c) to read as follows the heading of paragraph (b) and (b) introductory text are republished.

§ 416.913 Medical evidence of your impairment.

* * * * *

(b) *Medical reports.* Medical reports should include—

* * * * *

(6) Statements about what you can still do despite your impairment(s) based on the medical source's findings on the factors under paragraph (b) (1) through (5) of this section (except in statutory blindness claims). (See § 416.927.)

(c) *Statements about what you can still do.* Statements about what you can still do (based on the medical source's findings on the factors under paragraph (b) (1) through (5) of this section) should describe—

(1) The medical source's opinion about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, moving about, lifting, carrying, handling objects, hearing, speaking, and traveling; and

(2) In cases of mental impairment(s), the medical source's opinion about your ability to reason or make occupational, personal, or social adjustments. (See § 416.927.)

* * * * *

8. The following center headings and new §§ 416.919 through 416.919u are added immediately after § 416.918, to read as follows:

Standards to be Used in Determining When a Consultative Examination Will be Obtained in Connection with Disability Determinations

§ 416.919 The consultative examination.

(a) *General.* A consultative examination is a physical or mental examination or test purchased for you at our request and expense from a treating physician or psychologist, another source of record, or an independent source. The decision to purchase a consultative examination will be made on an individual case basis in accordance with the provisions of § 416.919a through § 416.919f. Selection of the source for the examination will be consistent with the provisions of § 416.903a.

(b) *Recontacting medical sources.* When evidence received from your treating physician or other medical sources is inadequate to allow us to determine whether you are disabled, additional information may be readily available from your treating physician or other medical sources in your record (that is, your case file) and must be obtained when significant to the disability determination. Whenever possible this contact will be made by a physician since a direct doctor-to-doctor contact is very productive. Before purchasing an examination, therefore, every consideration will be given to whether the additional information needed is readily available from the records of your medical sources. (See § 416.917(b) for reasons why more evidence may be needed and § 416.993 for your obligation to have a consultative examination when we request it.)

§ 416.919a When we will purchase a consultative examination and how we will use it.

(a) *General.* (1) The decision to purchase a consultative examination for you will be made after full consideration is given to whether the additional information needed (e.g., clinical findings, laboratory tests, diagnosis, and prognosis, etc.) is readily available from the records of your medical sources. We will seek clarification from a medical source who has provided a report when that report contains a conflict or ambiguity, or does not contain all necessary information or when the information supplied is not based on objective evidence. We will not, however, seek clarification from a medical source when it is clear that the source either cannot or will not provide the necessary findings, or cannot reconcile a conflict or ambiguity in the findings provided from the source's records. Therefore, before purchasing a consultative examination, we will consider not only existing medical reports, but also the background report containing your allegations and information about your vocational background, as well as other pertinent evidence in your file.

(2) When we purchase a consultative examination, we will use the report from the consultative examination to try to resolve a conflict or ambiguity if one exists. We will do this by comparing the persuasiveness and value of the evidence. We will also use a consultative examination to secure needed medical evidence the file does not contain such as clinical findings, laboratory tests, a diagnosis or prognosis necessary for decision.

(b) *Situations requiring a consultative examination.* A consultative examination may be purchased when the evidence as a whole, both medical and nonmedical, is not sufficient to support a decision on your claim. In addition, other situations, such as one or more of the following, will normally require a consultative examination (these situations are not all-inclusive):

(1) The specific additional evidence needed for adjudication has been pinpointed and high probability exists for obtaining it through purchase.

(2) The additional evidence needed is not contained in the records of your treating sources.

(3) Evidence that may be needed from your treating or other medical sources cannot be obtained for reasons beyond your control such as death or noncooperation of the medial source.

(4) Highly technical or specialized medical evidence which is needed is not available from your treating sources.

(5) A conflict, inconsistency, ambiguity or insufficiency in the evidence must be resolved.

(6) There is an indication of a change in your condition that is likely to affect your ability to function, but current severity is not documented.

(7) Information provided by any source appears not to be supported by objective evidence.

§ 416.919b When we will not purchase a consultative examination.

A consultative examination will not be purchased in the following situations (these situations are not all-inclusive):

(a) When any issues about the actual performance of substantial gainful activity have not been resolved.

(b) When, on the basis of your allegations and all available medical reports in your case file, it is apparent that you do not have an impairment(s) which will have more than a minimal effect on your capacity to work.

(c) When you do not meet all of the nondisability requirements.

§ 416.919c Purchase of title XVI slight impairment examinations.

(a) You may have filed a title XVI disability claim even though there is no history of medical treatment and the alleged impairment is apparently slight. This situation may occur, for example, where a State or local welfare agency requires you to obtain a formal title XVI determination before it will authorize welfare payments to you. The procedures that follow may be applied by us in the development of such a case. The method of obtaining medical

evidence described in this section will be used by us only when:

(1) You have no history of medical examination or treatment or there is some existing medical evidence but it is not relevant; and

(2) Your impairment appears to be slight, based on the nature of the allegations and the observations of record.

(b) The absence of a medical examination or treatment is not, of itself, evidence of a slight impairment. An objective of this procedure, therefore, is to assure that you are given an opportunity to submit medical evidence at no personal expense. (Any doubt as to whether the impairment is slight will be resolved in favor of doing the usual development.) Alternatively, we will contact you for supplemental information before proceeding with the development.

(c) Essentially, we will ask you to have an appropriate medical examination (at our expense) and to have the report of the examination sent to us.

(d) You will be advised that:

(1) An examination is necessary in order to evaluate your current condition;

(2) We must receive evidence of this examination; and

(3) We will pay the costs involved.

(e) We will not ordinarily make an appointment for this examination. Rather, we will ask you to make arrangements for a medical examination. If we can furnish the names of physicians or psychologists near your residence who can be expected to give a relatively prompt appointment, we will do so. If you request assistance in making the appointment, we will make the necessary arrangements. Additionally, if you appear to be unable to prosecute your claim, we will help you.

(f) When we notify you that an examination is necessary, we will enclose with the notice a medical report form, a form for you to authorize release of the medical report to us, and a letter to the provider. The letter to the provider will explain the reason for the examination and provide your allegations as to complaints and symptoms. However, the alleged impairment will not be specified as that may direct the examination at a specific impairment. The letter to the provider will also point out that the report of the examination should contain adequate medical history and a physical examination to permit an independent determination by us concerning the nature, severity, and duration of your impairment. It may also be necessary to preauthorize certain minimal laboratory testing such as hematocrit, white blood cell and differential, and urinalysis. The provider will be advised to request, by telephone, authorization for additional laboratory tests he or she deems necessary. Finally, the letter will state the approximate fee we will pay for the examination. If only a slight impairment is involved, the report of such an examination will provide the evidence needed to make a determination.

(g) *Action after evidence is requested.* If we ask you to have an examination, you will be presumed able to obtain it unless there is evidence to the contrary. If we do not receive a report within a reasonable time, and there is no indication that you did not receive the request for evidence, we will decide the case on the evidence in file. Your claim may be denied at any point if you are uncooperative (see § 416.916) and there is no indication that you are unable, rather than unwilling, to provide the requested information.

§ 416.919e Purchase of consultative examinations at the reconsideration level.

(a) When you request a review of our initial denial determination at the reconsideration level of review, consultative medical examinations will be obtained when needed, but not routinely. A consultative examination will not, if possible, be performed by the same physician or psychologist used in the initial claim.

(b) Where the evidence tends to substantiate an affirmation of the initial denial but you state that the treating physician or psychologist considers you disabled, we will consider obtaining a consultative examination from your physician (or psychologist). This is to ensure that all relevant evidence has been obtained and that we have thoroughly reconsidered your claim.

§ 416.919f Securing medical evidence at the ALJ hearing level.

(a) Where there is a conflict in the medical evidence at the hearing level of review before an administrative law judge (ALJ), the ALJ will try to resolve it by comparing the persuasiveness and value of the conflicting evidence. The ALJ's reasoning will be explained in the decision rationale. Where such resolution is not possible, the ALJ will secure additional medical evidence (e.g., clinical findings, laboratory tests, diagnosis, prognosis, etc.) to resolve the conflict. Even in the absence of a conflict, the ALJ will also secure additional medical evidence when the file does not contain clinical findings, laboratory tests, a diagnosis, or a prognosis necessary for a decision.

(b) Before requesting a consultative examination, the ALJ will ascertain whether the information is available as a result of a recent examination by any of your medical sources. If it is, the ALJ will request the evidence from that medical practitioner. If contact with the medical source is not productive for any reason, or if there is no recent examination by a medical source, the ALJ will obtain a consultative examination.

Standards for the Type of Referral and for Report Content

§ 416.919g Type of purchased examinations and selection of source.

(a) The types of examinations and tests we purchase depend upon the additional evidence needed for the disability determination. We will purchase only the specific evidence needed. For example, if special tests (such as X-ray, blood studies, or EKG) will furnish the additional evidence needed for the disability determination, a more comprehensive medical examination will not be authorized.

(b) The physician or psychologist selected to do the examination or test must be qualified. The physician's or psychologist's qualifications must indicate that the physician or psychologist is currently licensed in the State and has the training and experience to perform the type of examination or test requested. The physician or psychologist may use support staff to help perform the examination. Any such support staff must meet appropriate licensing or certification requirements of the State. See also § 416.903a.

§ 416.919h Your treating physician or psychologist.

When in our judgment your treating physician or psychologist is qualified, equipped, and willing to perform the additional examination or tests for the fee schedule payment, and furnishes complete and timely reports, your treating physician or psychologist will be selected to do the purchased examination. Even if only a supplemental test is required, your treating physician or psychologist is ordinarily the preferred source.

§ 416.919i Other sources for consultative examinations.

In the following situations, a source other than your treating physician or psychologist will be used for a purchased examination or test (these situations are not all-inclusive):

(a) Your treating physician or psychologist prefers not to perform such

an examination or does not have the equipment to provide the specific data needed, e.g., ventilatory studies are needed, and your physician does not wish to make arrangements to obtain these tests.

(b) There are conflicts or inconsistencies in your file which cannot be resolved by going back to your treating physician or psychologist.

(c) You prefer a source other than your treating physician or psychologist and have a good reason for your preference.

(d) We know from experience through previous purchase of evidence that your treating physician or psychologist may not be a productive source, e.g., does not provide complete or timely reports.

§ 416.919j Objections to the designated physician or psychologist.

You or your representative may object to your being examined by a designated physician or psychologist. If there is a good reason for the objection, we will schedule the examination with another physician or psychologist. A good reason may be where the consultative examination physician or psychologist had previously represented an interest adverse to you. For example, the physician or psychologist may have represented your employer in a workers' compensation case or may have been involved in an insurance claim or legal action adverse to you. Other things we will consider are: language barrier, office location of consultative examination physician or psychologist (2nd floor, no elevator, etc.), travel restrictions, and examination by the physician or psychologist in connection with a previous unfavorable determination. If the objection is because a physician or psychologist allegedly "lacks objectivity" (in general, but not in relation to you personnally) we will review the allegations (see § 416.919s). To avoid a delay in processing your claim, the consultative examination in your case will be changed to another physician or psychologist while a review is being conducted. Any objection to use of the substitute physician or psychologist will be handled in the same manner. However, if we previously conducted such a review and found that the reports of the consultative physician or psychologist in question conform to our guidelines, then we will not change your examination.

§ 416.919k Purchase of medical examinations, laboratory tests and other services.

We may purchase medical examinations, X-rays and laboratory tests (including specialized tests such as pulmonary functions, EKGs, stress tests, etc.) from a licensed physician or psychologist, hospital or clinic. Psychiatric evaluations and psychological evaluations and tests are also included in this category.

(a) The rates of payment to be used for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or other agencies in the State for the same or similar types of service. The State will determine the rates of payment to be used for purchasing such services. The amount of reimbursement to the physician provider will be the amount billed for the services or the rates of payment which the State uses for purchasing such services, whichever is lower.

(b) If a physician's bill, or a request for payment for a physician's services includes a charge for a laboratory test for which payment may be made under this part, the amount payable with respect to the test shall be determined as follows:

(1) If the bill or request for payment indicates that the test was personally performed or supervised by the physician who submitted the bill (or for whose services the request for payment was made) or by another physician with whom that physician shares his or her practice, the payment will be based on the physician's usual and customary charge for the test or the rates of payment which the State uses for purchasing such services, whichever is the lesser amount.

(2) If the bill or request for payment indicates that the test was performed by an independent laboratory, the amount of reimbursement will not exceed the billed cost of the service or the rates of payment which the State uses for purchasing such services, whichever is the lesser amount. A nominal payment may be made to the physician for collecting, handling and shipping the specimen to the laboratory if the physician bills for such a service. The total reimbursement may not exceed the rates of payment which the State uses for purchasing such services.

(c) The State will assure that it can support the rates of payment it uses. The State shall also be responsible for monitoring and overseeing the rates of payment it uses to ensure compliance with paragraphs (a) and (b) of this section.

§ 416.919l Requesting examination by a specific physician, psychologist or institution—ALJ hearing level.

(a) In an unusual case, an ALJ may have reason to request an examination by a particular physician, psychologist or institution. Some examples include the following:

(1) Conflicts in the existing medical evidence require resolution by a recognized authority in a particular specialty;

(2) The impairment requires hospitalization for diagnostic purposes; or

(3) Your treating physician or psychologist is in the best position to submit a meaningful report.

§ 416.919m Diagnostic surgical procedures.

We will not order diagnostic surgical procedures such as myelograms and arteriograms for the evaluation of disability under the Social Security program. In addition, we will not order procedures such as cardiac catheterization and surgical biopsy. However, if any of these procedures have been performed as part of a workup by your treating physician or other medical source, the results may be secured and used to help evaluate an impairment(s)'s severity.

§ 416.919n Informing the examining physician or psychologist of examination scheduling and/or duration, report content and signature requirements.

The physicians or psychologists who perform consultative examinations will have a good understanding of the Social Security disability programs and their evidentiary role. They will be made fully aware of their responsibilities and obligations regarding confidentiality as described in § 401.105(e). Consulting physicians or psychologists will be fully informed at the time we first contact them, and at subsequent appropriate intervals, of the following obligations:

(a) In scheduling full consultative examinations, sufficient time should be allowed to permit the examining physician to take a case history and perform the examination (including any needed tests). The following scheduling intervals should be applied for examinations.

(1) General medical examination, at least 20 minutes;

(2) Comprehensive general medical examination, at least 30 minutes;

(3) Comprehensive musculoskeletal or neurological examination, at least 20 minutes;

(4) Comprehensive psychiatric examination, at least 40 minutes;

(5) Psychological examination, at least 60 minutes (Additional time may be required depending on types of psychological tests administered); and

(6) All others, at least 30 minutes or in accordance with accepted medical practices.

We recognize that actual practice will dictate that some examinations may be scheduled with greater or less frequency, depending on the circumstances in a particular situation. The purpose of these scheduling time frames is to ensure that such examinations are complete and that sufficient time is made available to obtain the information needed to make an accurate determination in your case. State agencies will monitor the scheduling of examinations to ensure that any overscheduling is avoided, as overscheduling may lead to examinations of so short a duration as to preclude the possibility of a thorough examination.

(b) *Report content.* The reported results of your medical history, examination, pertinent requested laboratory findings, discussions and conclusions must conform to accepted professional standards and practices in the medical field for a complete and competent examination. The facts in a particular case and the information and findings already reported in the medical and other evidence of record will dictate the extent of detail needed in the consultative examination report for that case. Thus, the detail and format for reporting the results of a purchased examination will vary depending upon the type of examination or testing requested. The reporting of information will differ from one type of examination to another when the requested examination relates to the performance of tests such as ventilatory function tests, treadmill exercise tests, or audiological tests. The medical report must be complete enough to help us determine the nature, severity, duration of the impairment and residual functional capacity. Pertinent points in your medical history, such as a description of chest pain, will reflect your statements of your symptoms, not simply the physician's or psychologist's statements or conclusions. The examining physician's or psychologist's report of the consultative examination will include the objective medical facts.

(c) *Elements of a complete examination.* A complete examination is one which involves all the elements of a standard examination in the applicable medical specialty. When a complete examination is involved, the report will include the following elements:

(1) Your major or chief complaint(s).

(2) A detailed description, within the area of specialty of the examination, of the history of your major complaint(s).

(3) A description, and disposition, of pertinent "positive," as well as "negative," detailed findings based on the history, examination and laboratory tests related to the major complaint(s) and any other abnormalities reported or found during examination or laboratory testing.

(4) The results of laboratory and other tests (e.g., X-rays) performed according to the requirements stated in the Listing of Impairments (see Appendix 1 of Subpart P of Part 404).

(5) The diagnosis and prognosis for your impairment(s).

(6) A statement as to what you can still do despite your impairment(s) (except in statutory blindness claims). This statement must describe the consultative physician's or psychologist's opinion concerning your ability, despite your impairment(s), to do basic work activities such as sitting, standing, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the consultative physician's or psychologist's opinion as to your ability to reason or make occupational, personal, or social adjustments.

(i) In addition, the consultative physician or psychologist will consider, and provide some explanation or comment on, the major complaint(s) and any other abnormalities found during the history and examination or reported from the laboratory tests. The history, examination, evaluation of laboratory test results, and the conclusions will represent the information provided by the physician or psychologist who signs the report.

(ii) When less than a complete examination is required (for example, a specific test or study is needed), not every element is required.

(d) *Signature requirements.* All consultative examination reports will be personally reviewed and signed by the physician or psychologist who actually performed the examination. This attests to the fact that the physician or psychologist doing the examination or testing is solely responsible for the report contents and for the conclusions, explanations or comments provided with respect to the history, examination and evaluation of laboratory tests results. The examining physician's or psychologist's signature on a report annotated "not proofed" or "dictated but not read" is not acceptable. The physician's or psychologist's rubber stamp signature or the physician's or psychologist's signature entered by any other person is not acceptable.

§ 416.919o When a properly signed consultative examination report has not been received.

The following explains what adjudicative action we take if a consultative examination report is received unsigned or improperly signed.

(a) *Adjudication without a properly signed report.* Cases involving only the types of determinations specified in paragraphs (a) (1) and (2) of this section will be adjudicated without waiting for a properly signed consultative examination report. A properly signed consultative examination report will be obtained after the disability determination is made by us and included in the file. However, if the signature of the physician or psychologist who performed the original examination cannot be obtained because that physician or psychologist is deceased, the consultative examination will be rescheduled with another physician or psychologist.

(1) Continuous period of disability allowance with an onset date as the filing date or earlier than the filing date; or

(2) Continuance of disability.

(b) *Adjudication with a properly signed report.* We will not use an unsigned or improperly signed consultative examination report to make the types of determinations specified in paragraphs (b) (1), (2), (3), and (4) of this section. When needed for adjudication, a properly signed consultative examination report (including any supplement) must be obtained. If the signature of the physician or psychologist who performed the original examination cannot be obtained because that physician or psychologist is out of the country for an extended period of time, on an extended vacation, seriously ill, deceased, or cannot be contacted for any other reason, the consultative examination will be rescheduled with another physician or psychologist.

(1) Denial; or

(2) Cessation; or

(3) Period of disability allowance which has ended; or

(4) Allowance with an onset date later than the filing date.

§ 416.919p Reviewing reports of consultative examinations.

(a) We will review the report of the consultative examination to determine whether the specific information requested has been furnished. We will consider these factors in reviewing the report:

(1) Whether the report provides evidence which serves as an adequate

basis for decisionmaking in terms of the impairment it assesses.

(2) Whether the report is internally consistent. Whether all the diseases, impairments and complaints described in the history are adequately assessed and reported in the physical findings. Whether the conclusions correlate the findings from your medical history, physical examination and laboratory tests and explain all abnormalities.

(3) Whether the report is consistent with the other information available to us within the specialty of the examination requested. Whether the report fails to mention an important or relevant complaint within that specialty that is noted on other evidence in the file (e.g., your blindness in one eye, amputations, flail limbs or claw hands, etc.).

(4) Whether this is an adequate report of examination as compared to standards set out in the course of a medical education.

(5) Whether the report is properly signed.

(b) If the report is inadequate or incomplete, we will contact the examining consultative physician or psychologist, give an explanation of our evidentiary needs, and ask that the physician or psychologist furnish the missing information or prepare a revised report.

(c) Where the examination discloses new diagnostic information or test results which are significant to your treatment, we will consider referral of the consultative examination report to your treating physician or psychologist.

(d) We will perform ongoing special management studies on the quality of consultative examinations purchased from major medical sources and the appropriateness of the examinations authorized.

(e) We will take steps to ensure that consultative examinations are scheduled only with medical sources who have the equipment required to provide an adequate assessment and record of the level of severity of your alleged impairments.

§ 416.919q Conflict of interest.

All implications of possible conflict of interest between SSA medical consultants and their medical practices will be avoided. SSA medical consultants are not only those who work for us directly but also those who do review and adjudication work for us in the State agencies that make disability decisions for us. Our review physicians and psychologists will not perform consultative examinations for the Social Security disability programs without prior approval. In addition, they will not acquire or maintain, directly or indirectly, including any member of their families, any financial interest in a medical partnership or similar relationship in which consultative examinations are provided. Sometimes one of our review physicians or psychologists will have prior knowledge of a case (e.g., the claimant was a patient). Where this is so, the physician or psychologist will not participate in the review or determination of the case. This does not preclude the physician or psychologist from submitting medical evidence based on prior treatment or examination of the claimant.

Authorizing and Monitoring the Referral Process Used

§ 416.919s Authorizing and monitoring consultative examinations.

We will ensure that referral for consultative examinations and the purchase of consultative examinations are made in accordance with our policies. We will also monitor both the referral process and the product of the consultative examinations obtained. This monitoring will include reviews by independent medical specialists under direct contract with SSA. The following rules apply:

(a) Day-to-day responsibility for the consultative examination process rests with the State agencies that make disability determinations for us.

(b) The State agency will maintain a good working relationship with the medical community in order to recruit sufficient physicians and other providers of medical services to ensure ready availability of consultative examination providers.

(c) The State agency administrator will work consistent with Federal and State laws to achieve appropriate rates of payment for purchased medical services.

Procedures To Monitor the Consultative Examination

§ 416.919t Consultative examination oversight.

(a) Each State agency will be responsible for comprehensive oversight management of its consultative examination program with special emphasis on key providers.

(b) A key consultative examination provider is a provider meeting at least one of the following conditions:

(1) Any consultative examination provider with an estimated annual billing to the Social Security disability programs of at least $100,000; or

(2) Any consultative examination provider where the practice of medicine (or osteopathy) is primarily directed towards evaluation examinations rather than the treatment of patients; or

(3) Any consultative examination provider that does not meet the above criteria, but is one of the top five consultative examination providers, by dollar volume, in the State as evidenced by prior year data.

(c) State agencies have flexibility in managing their consultative examination programs but at a minimum will provide:

(1) An ongoing active recruitment program for consultative examination providers;

(2) A process for orientation, training, and review of new consultative examination providers;

(3) Procedures for control of scheduling consultative examinations;

(4) Procedures to ensure that close attention is given to specific evaluation issues involved in each case. Medical or supervisory approval will be required for the authorization or purchase of a consultative examination. The agency will encourage active participation by physicians in the consultative examination oversight program;

(5) Procedures to ensure that only required examination and tests are authorized in accordance with the standards set forth in this subpart. No open-ended authorizations will be issued. Additional tests or studies at the request of the consulting physician must be authorized in the same way as described in paragraph (c)(4) of this section;

(6) Ongoing review of consultative examination results to ensure that written guidelines are met;

(7) Procedures for handling complaints;

(8) A systematic onsite review program of key providers that will include annual onsite reviews of such providers when claimants are present for examinations. This provision does not contemplate that such reviews will involve participation in the actual examination but rather offer an opportunity to talk with claimants at the provider's site before and after the examination and review the provider's overall on-line operation;

(9) Procedures for evaluating claimant reactions to key providers;

(d) We, through our regional offices, will undertake at least one comprehensive review of each State agency annually to evaluate the State's management of the consultative examination process. The review team will include our regional medical advisor or his regional physician delegate. The review will involve visits to key providers, with State staff

participating, including a program physician when the visit will deal with medical techniques, judgment, or factors that go to the core of medical professionalism;

(e) The State agencies will cooperate with us and our regional offices when we conduct monitoring activities in connection with their oversight management of their consultative examination programs.

§ 416.919u Direct purchase of medical services across State lines.

Where necessary, a State agency may use a medical source in a neighboring State for a consultative examination. In such cases, the State agency will notify the neighboring State agency. The State agency requesting the examination will use its fee schedule in determining the fee to be paid to the source unless the neighboring State agency objects. Where such situations arise, the State agency desiring the examination will ask the neighboring State agency to make the arrangements using the fee schedule of the neighboring State agency.

9. Section 416.920 is amended by revising paragraph (a) to read as follows:

§ 416.920 Evaluation of disability in general.

(a) *Steps in evaluating disability.* We consider all evidence in your case record when we make a determination whether you are disabled. When you file a claim for disability benefits we use the following evaluation process. If you are doing substantial gainful activity, we will determine that you are not disabled. If you are not doing substantial gainful activity, we will first consider your physical or mental impairment(s). Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review further. (Once you have been found eligible to receive disability or blindness benefits, we follow a somewhat different order of evaluation to determine whether your eligibility continues as explained in §§ 416.986 and 416.994.)

* * * * *

10. Section 416.927 is revised to read as follows:

§ 416.927 Medical opinions about your impairment or disability or blindness by physicians, psychologists or other acceptable medical sources.

(a) *General.* Under the statute, we are responsible for making the decision about whether you meet the statutory definition of disability. You can only be found disabled if you are unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. (See § 416.905). Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. (See § 416.908). Except in cases of children, the decision as to whether you are disabled may involve more than medical considerations and we may have to consider such factors as age, education, and past work experience. Such vocational factors are not within the expertise of medical sources. Also, you can only be found blind if you meet the statutory definition of blindness (see §§ 416.981 through 416.986).

(b) *Medical opinions that are conclusive.* A medical opinion by a treating source will be conclusive as to the medical issues of the nature and severity of your impairment(s) where we find that: (1) It is fully supported by medically acceptable clinical and laboratory diagnostic techniques and (2) it is not inconsistent with the other substantial medical evidence of record. A medical opinion that is not fully supported will not be conclusive.

(c) *Medical opinions that are not fully supported.* If an opinion by a treating source(s) is not fully supported, we will make every reasonable effort (i.e., an initial request and, after 10 days, one followup request) to obtain from your treating source(s) the relevant evidence that supports the medical opinion(s) before we make a determination as to whether you are disabled.

(d) *Inconsistent medical opinions.* Where we find that the opinion of a treating source regarding medical issues is inconsistent with the evidence of record including opinions of other sources that are supported by medically acceptable clinical and laboratory diagnostic techniques, we must resolve the inconsistency. If necessary to resolve the inconsistency, we will secure additional independent evidence and/or further interpretation or explanation from the treating source(s) and/or the consultative physician or psychologist. Our determination will be based on all the evidence in your case record, including the opinions of the medical sources. In resolving an inconsistency, we will give some extra weight to the treating source's supported opinion(s) which interprets the medical findings about the nature and severity of the impairment(s).

Example.—In a case involving arthritis of the shoulder, where the X-rays confirm bony destruction, the examinations indicate minimal swelling and inflammation, but the treating source supplies evidence of greater restriction in the range of motion than found by the consultative physician, we will ask the treating source for further interpretation of the range of motion studies. If the treating source supplies a reasonable explanation, e.g., that the individual's condition is subject to periods of exacerbation, the treating source's explanation will be given some extra weight over that of the consultative physician.

(e) *Medical opinions that will not be considered conclusive nor given extra weight.* We will not consider as conclusive nor give extra weight to medical opinions which are not in accord with the statutory or regulatory standards for establishing disability. Thus, opinions that the individual's impairment meets the Listing of Impairments in Appendix 1 of Subpart P of Part 404 of this chapter, where the medical findings which are the basis for that conclusion would not meet the specific criteria applicable to the particular impairment as set out in the Listing, will not be conclusive nor given extra weight. Likewise, an opinion(s) as to the individual's residual functional capacity which is not in accord with regulatory requirements set forth in §§ 416.945 and 416.946 will not be conclusive nor given extra weight.

Example 1.—A medical opinion that an impairment meets listing 2.02, but the medical findings show that the individual's visual acuity in the better eye after best correction is 20/100, would not be conclusive nor would it be given extra weight since listing 2.02 requires that the remaining vision in the better eye after best correction be 20/200 or less.

Example 2.—A medical opinion that the individual is limited to light work when the evidence shows that he or she can lift a maximum of 50 pounds and lift 25 pounds frequently will not be considered as conclusive nor given extra weight. This is because the individual's exertional capacity exceeds the criteria set forth in the regulations for light work.

11. Section 416.945 is amended by revising paragraph (a) to read as follows:

§ 416.945 Your residual functional capacity.

(a) *General.* Your impairments may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations. If you have more than one impairment, we will consider all of your impairments of which we are aware. We consider your capacity for various functions as described in the following paragraphs; (b) physical abilities; (c) mental impairments, and (d) other impairments. A residual functional capacity assessment may include descriptions (even your own) of limitations that go beyond the symptoms that are important in the diagnosis and treatment of your medical condition. Observations of your work limitations in addition to those usually made during formal medical examinations may also be used. These descriptions and observations, when used, must be considered along with the rest of your medical record to enable us to decide to what extent your impairment(s) keeps you from performing particular work activities.

This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s). Then, using the guidelines in §§ 416.960 through 416.969, your vocational background is considered along with your residual functional capacity in arriving at a disability decision. In deciding whether disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement you have experienced is related to your ability to work as discussed in § 416.994(b).

* * * * *

12. Section 416.946 is revised to read as follows:

§ 416.946 Responsibility for assessing and determining residual functional capacity.

The State agency medical consultants or other medical consultants designated by the Secretary are responsible for ensuring that the agency makes a decision about your residual functional capacity. In cases where the State agency makes the disability determination, a State agency medical consultant must assess residual functional capacity where it is required. This assessment is based on all of the evidence we have, including any statements regarding what you can still do, that have been provided by treating or examining physicians, consultative physicians, or any other medical consultant designated by the Secretary (see § 416.945). For cases in the disability hearing process, the responsibility for deciding your residual functional capacity rests with either the disability hearing officer, or, if the disability hearing officer's reconsidered determination is changed under § 416.1418, with the Director of the Office of Disability Hearings or his or her delegate. For cases at the Administrative Law Judge hearing or Appeals Council level, the responsibility for deciding your residual functional capacity rests with the Administrative Law Judge or Appeals Council.

13. Section 416.993 is revised to read as follows:

§ 416.993 Medical evidence in continuing disability review cases.

(a) *General.* If you are entitled to payments because you are disabled or blind, we will have your case file with the supporting medical evidence previously used to establish or continue your entitlement. Generally, therefore, the medical evidence needed will be that required to make a current determination as to whether you are still disabled, as defined under the medical improvement review standard (see § 416.994), or blind (see §§ 416.981 and 416.986).

(b) *Obtaining evidence from your medical sources.* You must give us reports from your physician, psychologist, or others who have evaluated you, as well as any other evidence that will help us determine if you are still disabled (see § 416.912). You must have a good reason for not giving us this information or we may find that your disability has ended (see § 416.994(b)(4)(ii)). If we ask you, you must contact your medical sources to help us get the reports. We will make every reasonable effort to help you in getting medical reports when you give us permission to request them from your physician, psychologist, or other medical sources. Every reasonable effort means that we will make an initial request and, after 10 days, one followup request to your medical source to obtain the medical evidence necessary to make a determination before we evaluate medical evidence obtained from another source on a consultative basis. The medical source will have 20 days from the followup to reply (unless experience indicates that a longer period is advisable in a particular case). In some instances we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability or blindness has ended, we will develop a complete medical history covering at least the preceding 12 months (see § 416.912(b)).

(c) *When we will purchase a consultative examination.* A consultative examination may be purchased when we need additional evidence to determine whether or not your disability or blindness continues. As a result, we may ask you, upon our request and reasonable notice, to undergo consultative examinations and tests to help us determine if you are still disabled or blind (see § 416.917). We will decide whether or not to purchase a consultative examination in accordance with the standards in §§ 416.919a through 416.919f.

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Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107, et al.

Transportation of Hazardous Materials; Miscellaneous Amendments; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 174, 176, 177, 178, and 179

[Docket No. HM-166U; Amdt. No. 107-16, 171-93, 172-109, 173-201, 174-63, 172-26, 177-70, 178-88, and 179-40]

Transportation of Hazardous Materials; Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This action is being taken to incorporate into the Department's Hazardous Materials Regulations a number of changes based on petitions from industry and initiation within the Department. This action is necessary to update the regulations, to eliminate the need for DOT approvals, and to reduce RSPA's backlog of rulemaking petitions.

The amendments in this rulemaking are intended primarily to reduce government regulations and paperwork, and to clarify existing regulations.

EFFECTIVE DATE: This amendment is effective May 18, 1987, except for § 172.519(b)(2) and (b)(4) which will be effective May 18, 1988. However, compliance with the regulations as amended herein, is authorized as of April 20, 1987. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 18, 1987.

FOR FURTHER INFORMATION CONTACT: Darrell L. Raines, Chief, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Washington, DC 20590, (202) 366-4488.

SUPPLEMENTARY INFORMATION: On June 3, 1986, the RSPA published a Notice of Proposed Rulemaking, Docket No. HM-166U; Notice No. 86-3 (51 FR 19866), which proposed a number of miscellaneous amendments to the Hazardous Materials Regulations. Notice 86-3 included a brief statement regarding each proposal and invited public comment prior to the closing date of July 31, 1986. On July 30, 1986 the RSPA published a notice (51 FR 27223) which extended the deadline date for filing comments to September 4, 1986.

The RSPA received sixty comments regarding the proposed rulemaking. The majority of commenters expressed support for the proposals. A few commenters suggested certain changes for improving specific aspects of the rulemaking. Four commenters offered certain changes. Listed below is a section by section summary of the amendments along with a summary of the comments and RSPA's comments why the recommended changes were or were not adopted:

A. Part 107

In appendix A to Subpart B, the address under "Motor Carriers" is changed because effective October 1, 1986, the Bureau of Motor Carrier Safety (BMCS) was disbanded and reorganized under the Associate Administrator for Motor Carriers. For this reason, the reference to BMCS is changed to the new title in Part 173 and Part 177.

B. Part 171

1. In § 171.7, paragraph (c)(1) is revised to update the latest ASME Code Reference.

2. Paragraph (d)(2) is amended by changing "1982" to read "1985".

3. Paragraph (d)(3)(ii) is amended by changing "1975" to read "1984".

4. Paragraph (d)(3)(iii) is amended by changing the title and "1971" to read "1983".

5. Paragraph (d)(3)(iv) is amended by changing "1972" to read "1985".

6. Paragraph (d)(3)(ix) is amended by changing "1977" to read "1985".

7. Paragraph (d)(1) is revised and paragraphs (d)(3)(x), (d)(3)(xi) and (d)(3)(xii) are added based on a petition from the Compressed Gas Association. These changes were not included in the notice of proposed rulemaking. However, since these changes are only updating the regulation, public notice is not considered necessary.

8. Four commenters responded to the proposed change to § 171.7(d)(5) and § 171.8 regarding ASTM D 4359-84 "Standard Test Method for Determining Whether A Material is a Liquid or a Solid". Although there were no serious objections to the proposed change there was concern that ASTM D 4359-84 may not be a suitable guide for determining whether a material meets the definition of a liquid or a solid. One commenter was concerned that they may find themselves in a position of having to try and comply with three different methods for determining if a material should be treated as a liquid or solid. RSPA believes that the proposed changes should be added as proposed. We believe that any problems that arise as a result of specifying this method will be outweighed by the benefits of its adoption. For this reason, paragraph (d)(5)(xxxiv) has been added as proposed.

In § 171.12, the introductory text of paragraph (a) is amended by changing the reference to "§ 173.12(a)" to read "§ 171.12a".

C. Part 172

In § 172.101 the Table is amended as follows:

1. The entry *"1-Bromo-3-nitrobenzene (unstable at 56°C)"* has been removed.

2. The entry "Compound, water treatment, liquid. *See* Water treatment, liquid" is removed.

3. The entry "Ethylene dibromide (RQ-1000/454) is revised by changing the hazard class, label, and packaging section references.

4. An entry for "Ethyl phosphonothioic dichloride, anhydrous" is reinstated.

5. The hazard class for "Ethylene glycol diethyl ether (diethyl cellosolve)" is changed from "Combustible liquid" to "Flammable liquid".

6. The entry "Gasohol (*gasoline mixed with ethyl alcohol*) *See* Gasoline" is revised to read "Gasohol (*gasoline mixed with ethyl alcohol containing 20% maximum alcohol) See* Gasoline". Also, § 172.336 (c)(4) and (c)(5) are revised as proposed.

7. The ID number of "Ink", Combustible liquid, is changed from "UN2867" to "UN1210".

8. The entry "Air, refrigerated liquid (cryogenic liquid)" has been added as proposed.

9. The proposed entry for "Aluminum alkyl" and "Aluminum alkyl halide" is not included in this rulemaking as proposed. On July 15, 1986, RSPA pubished an emergency final rule (51 FR 25639) which added paragraph (a)(1) to § 172.102. In view of that action, the proposed change for these two entries has been withdrawn.

10. Paragraph (a)(4) in § 172.202 is revised to require the unit of measure to be identified on the shipping paper. To be consistent with this revision, § 172.202(c)(1) has also been revised.

11. Footnote 8 of Table 2 in § 172.504 is amended to authorize the use of an Oxygen placard in order to eliminate the need for dual placarding.

12. Six commenters responded to the proposed change to § 172.519(b)(2) and (b)(4). One commenter recommended that the proposed weight of 200 pounds per ream be reduced to 165 (175 nominal) pounds per ream based on comparative studies of different placards. Two commenters supported the proposal and two recommended the matter be handled in a separate rulemaking. Upon further consideration of the matter, including an inquiry made to a supplier of placards, RSPA believes the proposed weight should be adjusted based on satisfactory experience with waterproofed placards having a weight

less than 200 pounds per ream. A 175 minimum weight is being adopted with credit for the weight of waterproofing materials included. Placard manufacturers may produce placards from stock having a weight per ream below 175 pounds if they determine the weight per sheet would be 175 pounds with the waterproofing material added. RSPA does not agree that this matter requires a separate rulemaking action and will monitor the performance of placards produced according to this rule to determine if further action is needed.

D. Part 173

1. Paragraph (b)(4) of § 173.11 is revised, as proposed, to require a shipper to identify the type of packaging on the registration statement.

2. Paragraph (b)(2) of § 173.12 is revised to require the open-head polyethylene drum to pass the same drop test as specified for the fiber drum.

3. The California Highway Patrol recommended that the introductory text of § 173.25(c) which reads "Hazardous materials classed Poison B" be changed to be consistent with § 177.841(e). RSPA agrees with this commenter and has revised the introductory text to read "Hazardous materials which are required to be labeled Poison".

4. In § 173.31, Retest Table 2 is amended by adding DOT Specification 110A600–W multi-unit tank car tanks.

5. Eleven commenters raised questions regarding portable tanks and the proposed amendments to §§ 173.32(a) and 173.32c. Several of the commenters raised questions which will require RSPA to spend a considerable amount of time in order to reach a decision. Since this rulemaking is already several weeks behind its anticipated publication date, RSPA has withdrawn the proposed changes to § 173.32(a) and § 172.32c from this rulemaking and will include them in a separate rulemaking in the near future.

6. In § 173.33, paragraph (d)(13) has been amended by changing "Director, Regional Motor Carrier Safety Office" to read "Regional Director of Motor Carrier Safety".

7. Included in this rulemaking, but not included in the notice, is an amendment in § 173.34(e)(8) to increase the number of pounds of water capacity from ten to twelve. This amendment is necessary in order to bring the maximum size in line with the 4B240ET specification.

8. Paragraph (g) in § 173.51 is amended to include a reference to 14 CFR 108.11.

9. Paragraph (b) in § 173.57 is removed as proposed.

10. An editorial correction is made in § 173.81(b) in order for the package marking to coincide with the § 172.101 Table.

11. Seven commenters supported the proposed change to § 173.86(h) and (i) which would eliminate costly and redundant data accumulation and testing of a material which represents a minimal hazard.

12. The introductory text of § 173.87 is revised to provide an exception to the Department of Defense (DOD) for shipments made under the provisions of § 173.7(a).

13. One commenter supported the proposed change to § 173.93(a)(2) which will eliminate some of the burden on shippers of smokeless powder for small arms.

14. Editorial corrections are made in § 173.104(c) to make the making requirements the same as the proper shipping name listed in the § 172.101 Table.

15. The use of DOT Specification 17C metal drums in § 173.122(a)(4) for the packaging of acrolein, inhibited is removed as proposed.

16. In § 173.164(a)(2), Specification 17C drums is added for the packaging of chromic acid or chromic acid mixture, dry.

17. RSPA received two comments regarding the co-mingling of inside boxes of smokeless powder under the provisions of § 173.197a. One commenter recommended that the net weight of smokeless powder in one box be increased from 16 pounds to 32 pounds. The commenter suggested this increase based on shipping experience under a Bureau of Explosives approval and a DOT exemption. RSPA does not agree that the net weight should be increased because the proposed change is to authorize the co-mingling of inside boxes without further approval. The B of E approval and the DOT exemption were not issued to provide for mixing different powders in one outside package.

18. The proposed change to § 173.220 to authorize the use of fiberboard boxes with inside polyethylene bags for packaging magnesium or zirconium scrap consisting of borings, shavings, or turnings is adopted as proposed.

19. The proposed change for "§173.245(a)" Note 2 should have read "§ 173.245a" Note 2. Although the proposed change was based on an AAR petition they have stated that the proposed amendment still does not authorize the presence of cobalt. Based upon their comments and upon further consideration, RSPA has revised the last sentence of Note 2 to reference ASTM B162–80 which counts cobalt as nickel. The same change has been made in §§173.253(a)(7); 173.271(a)(9); 173.294(a)(2), (a)(3) and (b): 179.202–8; 179.202–11 and 179.202–16 and will not be repeated in each of these referenced sections.

20. In § 173.262(b)(4) reference to "§ 178.353–5" is corrected to read "§ 178.343–5".

21. In § 173.266, paragraph (f)(2) is revised to provide for the proper identification plate marking for stainless steel cargo tanks.

22. Paragraph (d)(1) in § 173.277 has been removed.

23. The proposed amendment to § 173.300(a) to clarify that a cryogenic liquid is subject to regulation without regard to the pressure in the container is withdrawn. Two commenters stated that the proposed amendment would present a hardship to distributors of atmospheric cryogenic liquids and cryogenic helium, at pressures below 25.3 psig. Upon further consideration, RSPA agrees with these commenters and withdraws the proposed amendment.

24. The proposed change to § 173.301(k) to not require the outside packaging to provide valve protection if the cylinder has a protective collar or neck ring is adopted.

25. Paragraph § 173.302(a)(5)(iv) is revised by removing the restriction of a maximum 3000 psi marked service pressure on 3AL cylinders used in oxygen service.

26. The Table in § 173.304(a)(2) is amended by authorizing the use of (1) DOT–3AL1800 cylinders for carbon dioxide and (2) DOT–4BW225 for the transportation of sulfur dioxide.

27. In Note 6 of § 173.314(c) the figure "¾" is changed to read "82.5".

28. In § 173.315 paragraph (c) is revised to correct an omission that was made in Docket HM–115 on June 16, 1983.

29. In § 173.316, the Table in paragraph (c)(2) is revised to provide filling limits for "air, refrigerated liquid".

30. In § 173.318, paragraph (b) is revised to require the use of a primary and a secondary system of pressure relief devices on cargo tanks used in certain cryogenic service. With the exception of paragraphs (b)(3) and (b)(5), all of paragraph (b) is revised and rearranged for clarity. Paragraphs (b)(3) and (b)(5) are now paragraphs (b)(9) and (b)(10), respectively. Paragraphs (f)(2) and (f)(3) have been amended to provide filling limits for "air, refrigerated liquid" and to increase the filling limit authorized for "hydrogen" when transported in cargo tanks.

31. Except for minor editorial changes, the proposed changes to § 173.320 is adopted.

32. Section 173.965 *Cotton and other fibers,* is added as proposed.

E. Part 174

The proposed change in § 174.9(b) regarding whether heater coil inlet and outlet pipes "must" or "may" be left open for drainage is withdrawn. Based upon the data from the Federal Railroad Administration, RSPA agrees that the pipes "must" be left open for drainage and for airing out which helps to prevent rusting within the coils.

F. Part 176

In § 176.76, paragraph (g)(2) is added to authorize small passenger vessels of 100 gross tons, or less, to carry a hazardous material in a portable tank under certain conditions.

G. Part 177

1. In § 177.814, paragraph (b) is amended by changing "Director, Regional Motor Carrier Safety Office" and "Director of Regional Motor Carrier Safety Office" to read "Regional Director of Motor Carrier Safety". Also, a similar change is made in § 177.824(f) and § 177.824(f)(2).

2. Nineteen commenters supported the removal of paragraph (k) in § 177.834 which pertains to access to mixed ladings. The paragraphs is removed as proposed, and references to it in §§ 177.835, 177.837, 177.838, 177.839, 177.840 and 177.841 are corrected.

3. Five commenters supported the proposed change to § 177.841(e) to prohibit a motor carrier from carrying poisons or irritating materials in the passenger compartment of a motor vehicle. One commenter suggested that the wording be amended to include sleeper berth. RSPA agrees with this commenter and has revised the sentence accordingly.

4. One commenter agreed with the proposed change in § 177.848(b). However, he also suggested that a new paragraph be added in § 172.203(m) to require additional information to be added on the shipping paper. RSPA believes that this suggested change goes beyond the scope of this rulemaking. Also, the suggested wording may be controversial. For these reasons, the commenters suggestion is not adopted.

H. Part 178

1. A change to § 178.38–10(c) is included in this final rule to eliminate confusion due to the fact that there are optional test pressures authorized in the hydrostatic test prescribed in § 178.38–14. Good design and performance is assured by using two times the service pressure in the formula instead of three times the service pressure.

2. In § 178.42–14, the introductory text of paragraph (a) is revised to specifically state the location where the marking requirements must be on a DOT Specification 3E cylinder.

3. The proposed changes to correct and update the DOT–3AL Specification (§ 178.46) are incorporated, as proposed.

4. In § 178.51–10(d) and § 178.61–10(b) the ratio of tangential length to outside diameter is revised to read "4.1" instead of "4.0".

5. A correction is made in § 178.53–9(a) by changing "0.40" to read "0.04".

6. Section 178.54 for 4B240–FLW cylinders is removed from Part 178. Part 173 will continue to authorize the use of these cylinders.

7. In § 178.245–1, the introductory text of paragraph (a) is revised to bring the specification for DOT–51 tanks in line with the MC 331 and MC 338 specifications.

8. Docket HM–166T changed the words "tank motor vehicle" to read "cargo tank" in several sections in Part 178. However, as pointed out by the California Highway Patrol, the words "tank motor vehicle" makes better sense in § 178.337–1(d) and § 178.337–13(b). RSPA agrees and these two sections are revised accordingly.

I. Part 179

1. An editorial change is made in § 179.100–13(a) by removing the word "directly" in the second sentence.

2. The proposed changes regarding bottom outlets and fittings in § 179.100–14(a)(1) and § 179.100–14(a)(3) are adopted, as proposed.

3. The proposed change in § 179.102–2(a)(3) to allow the use of a new insulation package for chlorine tank cars is adopted.

4. The proposed revision to § 179.102–13 has been withdrawn as requested by the petitioner. The AAR stated that they believe the requirements for hydrogen fluoride tank cars now are adequately covered by the AAR's Specification for Tank Cars, § 2.1.7. Since the time the AAR submitted its petition, they have worked wth the CMA on improving the proposed specification and § 2.1.7 incorporates the improvements.

5. The proposed revisions to § 179.103–5(b)(1) and (b)(4) were based on a petition by the AAR. RSPA proposed in the last sentence of § 179.103–5(b)(1) that the permanent attachment of supplementary exterior fittings be approved by the Director, Office of Hazardous Materials Transportation. RSPA is well aware of the approval authority by the AAR Committee on Tank Cars in Part 179 of 49 CFR. Requiring RSPA approval in this particular section was an error on our part and § 179.103–5(b)(1) has been amended by changing "approved by the Director, Office of Hazardous Materials Transportation" to read "approved by the AAR Committee on Tank Cars".

6. No objections were received regarding the proposal to clarify the heading in each of the Tables in § 179.200–7. However, the AAR requested that the same change be made in § 179.220–7. RSPA agrees with this commenter and has revised § 179.220–7 accordingly.

7. The proposed revision of § 179.200–13 was intended to clarify the present discrepancies in the nozzle-to-tank joints between pressure tank car tanks and non-pressure tank car tanks. The AAR, upon further consideration, has requested a few editorial changes. RSPA has revised § 179.200–13 as requested.

8. The proposed changes to § 179.200–17 were suggested by the AAR and were intended to clarify the present wording. RSPA changed the wording in the last sentence of paragraph (a)(1) by requiring approval by the Director, Office of Hazardous Materials Transportation. Again, our reason for proposing approval by the Director, OHMT was not intended and "approval by the AAR Committee on Tank Cars" appears in the final rule.

9. Except for minor changes, sections 179.202–8, 179.202–11, 179.202–16, 179.202–18, 179.220–19, 179.221–1, 179.222 and 179.301 are revised as proposed in the notice. In § 179.220–7 the Tables are changed as discussed in § 179.200–7.

Based on limited information available concerning size and nature of entities likely to be affected, I certify that this regulation will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Also, in view of the type of changes, the RSPA has further determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation is not considered necessary because the anticipated impact is minimal

The following list of **Federal Register** Thesaurus of Indexing Terms apply to this rulemaking:

List of Subjects

49 CFR Part 107

Hazardous materials transportation, Emergency exemptions.

49 CFR Part 171

Hazardous materials transportation, Definitions, Incorporation by Reference.

49 CFR Part 172

Hazardous materials transportation, Labeling, Packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 174

Hazardous materials transportation, Railroad Safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers.

49 CFR Part 177

Hazardous materials transportation, Motor carriers.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

49 CFR Part 179

Hazardous materials transportation, Railroad safety.

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for Part 107 continues to read as follows:

Authority: 49 U.S.C. 1421(c); 49 U.S.C. 1802, 1806, 1808–1811; 49 CFR 1.45 and 1.53 and App. A of Part 1, Pub. L. 89–670 (49 U.S.C. 1653(d), 1655).

2. In Appendix A to Subpart B, the address and telephone number for "Motor Carriers" is revised to read as follows:

Appendix A to Subpart B—List of Department of Transportation Officials Through Whom Application for Exemptions Seeking Priority Treatment of the Basis of Existing Emergencies May be Initiated by Telephone

* * * * *

Motor Carriers

Chief, Standards Development Division, Office of Motor Carrier Standards, Federal Highway Administration, Department of Transportation, Washington, DC 20590. Day 202–366–2981 and Night 202–267–2100.

* * * * *

PART 171—GENERAL INFORMATION REGULATIONS, AND DEFINITIONS

3. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

4. In § 171.7, paragraphs (d)(1), (d)(2), (d)(3)(ii), (d)(3)(iii), (d)(3)(iv), and (d)(3)(ix) are revised; paragraphs (d)(3)(x), (d)(3)(xi), (d)(3)(xii), and (d)(5)(xxxiv) are added to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(1) ASME Code means Sections II (Parts A and B), V, VIII (Division I), and IX of the 1986 edition of the "American Society of Mechanical Engineers Boiler and Pressure Vessel Code" and addenda thereto through June 30, 1985".

(2) AAR Specifications for Tank Cars means the 1985 edition of the "Association of American Railroads Specifications for Tank Cars, Specification M–1002".

(3) Compressed Gas Association:

* * * * *

(ii) CGA Pamphlet C–6, is titled, "Standards for Visual Inspection of Steel Compressed Gas Cylinders", 1984 edition.

(iii) CGA Pamphlet C–7 is titled, "Guide to the Preparation of Precautionary Labeling and Marking of Compressed Gas Containers", 1983 edition including Appendix A issued April 15, 1983.

(iv) CGA Pamphlet C–8, is titled, "Standard for Requalification of DOT–3HT Seamless Steel Cylinders", 1985 edition.

* * * * *

(ix) CGA Pamphlet G–4.1 is titled, "Cleaning Equipment for Oxygen Service", 1985 edition.

(x) CGA Pamphlet G–2.2 is titled, "Guideline Method for Determining Minimum of 0.2% Water in Anhydrous Ammonia", 1985 edition.

(xi) CGA Technical Bulletin TB–2 is titled, "Guidelines for Inspection and Repair of MC–330 and MC–331 Cargo Tanks", 1980 edition.

(xii) CGA Pamphlet C–6.1 is titled, "Standards for Visual Inspection of Aluminum Compressed Gas Cylinders", 1984 edition.

* * * * *

(5) American Society for Testing and Materials:

* * * * *

(xxxiv) ASTM D 4359–84 is titled, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid", 1984 edition.

* * * * *

5–6. In § 171.8, a definition for "Liquid" and "Solid" is added in their proper alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

"Liquid" means a material that has a vertical flow of over 2 inches (50 mm) within a three minute period, or a material having one gram (lg) or more liquid separation, when determined in accordance with the procedures specified in ASTM D 4359–84, "Standard Test Method for Determining whether a Material is a Liquid or Solid", 1984 edition.

* * * * *

"Solid" means a material which has a vertical flow of two inches (50 mm) or less within a three-minute period, or a separation of one gram (lg) or less of liquid when determined in accordance with the procedures specified in ASTM D 4359–84 "Standard Test Method for Determining Whether a Material is a Liquid or Solid", 1984 edition.

* * * * *

§ 171.12 [Amended]

7. Paragraph 171.12(a) is amended by replacing the section reference "§ 173.12a" with the section reference "§ 171.12a".

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

8. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1, unless otherwise noted.

9. In § 172.101, the Hazardous Materials Table is amended by removing, adding, or revising the following entries.

§ 172.101 Hazardous materials table.

*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quality in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo aircraft only	Cargo vessel	Passenger vessel	Other requirements
(1)	(2)	(3)	3(a)	(4)	5(a)	5(b)	6(a)	6(b)	7(a)	7(b)	7(c)
	REMOVE										
	1-Bromo-3-Nitrobenzene (unstable at 56° C).	Forbidden									
	Compound, water treatment, liquid. *See* Water treatment, liquid.										
	REVISE										
	Ethylene dibromide	Poison B	UN 1605	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	Stow away from living quarters.
	Ethylene glycol diethyl ether (*diethyl Cellosolve*).	Flammable liquid	UN 1153	Flammable	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Gasohol (*gasoline mixed with ethyl alcohol containing 20% maximum alcohol*). *See* Gasoline.										
	Ink	Combustible Liquid	UN 1210	None	173.118a	None	No limit	No limit	1,2	1,2	
	ADD										
	Air, refrigerated liquid (cryogenic liquid).	Nonflammable Gas	UN 1003	Nonflammable Gas	173.320	173.318	Forbidden	300 pounds	1,2	1,2	Stow separate from flammables. Do not overstow with other cargo.
	Ethyl phosphonothioic dichloride, anhydrous.	Corrosive material	NA 1760	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	

10. In § 172.202, paragraphs (a)(4) and (c)(1) are revised to read as follows:

§ 172.202 Description of hazardous materials on shipping papers.

(a) * * *

(4) Except for empty packagings, cylinders for compressed gases, and packagings of greater than 110 gallons capacity, the total quantity by weight (net or gross as appropriate) or volume, including the unit of measure, of the hazardous material covered by the description. For example: "800 lbs", "55 gal".

* * * * *

(c) * * *

(1) Abbreviations may be used to specify the type of packaging and unit of measurement for total quantity. For example: "10 ctns. Paint, Flammable liquid, UN1263, 500 lbs".

* * * * *

11. In § 172.336, paragraphs (c)(4) and (c)(5) are revised to read as follows:

§ 172.336 Identification numbers; special provisions and exceptions.

* * * * *

(c) * * *

(4) For each of the different liquid petroleum distillate fuels, including gasoline and gasohol in a compartmented cargo tank or tank car, if the identification number is displayed for the distillate fuel having the lowest flash point.

(5) For each of the different liquid petroleum distillate fuels, including gasoline and gasohol transported in a cargo tank, if the identification number is displayed for the liquid petroleum distillate fuel having the lowest flash point.

* * * * *

12. In § 172.504, footnote 8 in Table 2 is revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(d) * * *

[8] A NON-FLAMMABLE GAS placard is not required on a motor vehicle displaying a FLAMMABLE GAS placard or an OXYGEN placard.

* * * * *

13. In § 172.519, paragraphs (b)(2) and (b)(4) are revised to read as follows:

§ 172.519 General specifications for placards.

* * * * *

(b) * * *

(2) A weight of 175 pounds per ream of 24 by 36-inch sheets (waterproofing materials included);

* * * * *

(4) Been treated with plastic or other waterproofing material that will give it the ability to withstand open weather exposure (including rain) for 30 days without a substantial reduction in effectiveness.

PART 173—SHIPPERS-GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

14. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

15. In § 173.11, paragraph (b)(4) is revised to read as follows:

§ 173.11 Shipper's registration statement; flammable cryogenic liquids.

* * * * *

(b) * * *

(4) The type of packaging and the serial number or vehicle identification number of each portable tank and cargo tank, and the reporting mark and number of each tank car, owned, leased, or otherwise controlled by the shipper and used to offer a flammable cryogenic liquid for transportation.

* * * * *

16. In § 173.12, paragraph (b)(2) is revised to read as follows:

§ 173.12 Exception for shipment of waste material.

* * * * *

(b) * * *

(2) A four foot drop test as specified in § 178.224–2(b).

* * * * *

17. In § 173.25, the introductory text of paragraph (c) is revised to read as follows:

§ 173.25 Authorized packages and overpacks.

* * * * *

(c) Hazardous materials which are required to be labeled Poison, may be transported in the same motor vehicle with material that is marked or known to be foodstuffs, feed or any edible material intended for consumption by humans or animals provided the Poison B material is marked, labeled, and packaged in accordance with this subchapter, conforms to the requirements of paragraph (a) of this section and is overpacked as specified in § 177.841(e) or is in an overpack meeting the following requirements:

* * * * *

18. In § 173.31, Retest Table 2 following paragraph (d)(6) is amended by adding Specification 110A600–W in its proper numerical sequence to read as follows:

§ 173.31 Qualification, maintenance, and use of tank cars.

* * * * *

(d) * * *

RETEST TABLE 2

Specification	Retest interval—years		Retest pressure p.s.i.		Safety relief valve pressure-p.s.i.	
	Tank	Safety relief devices[4]	Tank hydrostatic expansion[6]	Tank air test	Start-to-discharge	Vapor tight
* * * *						
110A600–W	5	2	600	100	450	360
* * * *						

* * * * *

19. In § 173.33, paragraph (d)(13) is amended by revising the last sentence to read as follows:

§ 173.33 Qualification, maintenance, and use of cargo tanks.

* * * * *

(d) * * *

(13) * * * However, upon a written request to, and with the approval of the Regional Director of Motor Carrier Safety, for the region in which a motor carrier has its principal place of business, the carrier may maintain the reports at a regional or terminal office.

* * * * *

§ 173.34 [Amended]

20. In § 173.34, in paragraph (e)(8) is amended by replacing the words "not over ten pounds" with the words "not over twelve pounds".

21. In § 173.51, paragraph (g) is revised to read as follows:

§ 173.51 Forbidden explosives.

* * * * *

(g) Loaded firearms (except as provided in 14 CFR 108.11).

* * * * *

22. In § 173.57, paragraph (b) is removed and reserved as follows:

§ 173.57 Rocket ammunition.

(a) * * *

(b) [Reserved]

23. In § 173.58, paragraph (b) is removed and reserved as follows:

§ 173.58 Ammunition for small arms.

(a) * * *

(b) [Reserved]

24. In § 173.81, the heading and paragraph (b) are revised to read as follows:

§ 173.81 Cord, detonating.

* * * * *

(b) Each outside packaging shall be plainly marked "CORD, DETONATING-HANDLE CAREFULLY".

* * * * *

25. In § 173.86, paragraph (a)(2) is revised and paragraphs (h) and (i) are added to read as follows:

§ 173.86 New explosives definitions; approval and notification.

(a) * * *

(2) Has previously produced the explosive compound, mixture or device, but has made a change in the formulation, design, process or production equipment. An explosive compound mixture or device will not be considered a "new explosive" if an agency listed in paragraph (b) of this section has determined and confirmed in writing that there are no significant differences in hazard characteristics from the explosive compound, mixture or device previously approved. The written determination must be submitted to and approved by, the Director, OHMT before the explosive is offered for transportation.

* * * * *

(h) The requirements of this section do not apply to small arms ammunition which is:

(1) Not a forbidden explosive under § 173.51;

(2) Ammunition for rifle, pistol, or shotgun;

(3) Ammunition with inert projectile or blank ammunition; and

(4) Ammunition not exceeding 50 caliber for rifle or pistol cartridges or 8 gauge for shotshells.

(i) If experience or other data indicate that the hazard of a material (device) containing an explosive composition is greater or less than indicated according to the definition and criteria specified in §§ 173.53, 173.86, and 173.100 of this Part, the Director, OHMT may, following examination in accordance with paragraph (b) of this section, revise its classification or except the material (device) from the requirements of this subchapter.

26. In § 173.87, the first sentence is amended to read as follows:

§ 173.87 Explosives in mixed packaging.

Unless specifically authorized in this subchapter, explosives may not be packaged in the same outside packaging with other articles unless packaged by the DOD in accordance with § 173.7(a).

* * *

27. In § 173.93, paragraph (a)(2) is added to read as follows:

§ 173.93 Propellant explosives (solid) for cannon, small arms, rockets, guided missiles, or other devices, and propellant explosives (liquid).

(a) * * *

(2) Smokeless powder for small arms may be shipped as Class B explosives in packagings approved in accordance with § 173.197a.

* * * * *

28. In § 173.104, the heading and paragraph (c) are revised to read as follows:

§ 173.104 Cord, detonating; fuse, mild detonating, metal clad; or flexible linear shaped charge, metal clad.

* * * * *

(c) Cord, detonating *flexible;* fuse, mild detonating, metal clad and flexible linear shaped charges, metal clad shall be packed in wooden or fiberboard boxes. Each package shall be marked "CORD, DETONATING-HANDLE CAREFULLY" or "FLEXIBLE LINEAR SHAPED CHARGES, METAL CLAD-HANDLE CAREFULLY", as appropriate.

29. In § 173.122, paragraph (a)(4) is removed and reserved to read as follows:

§ 173.122 Acrolein, inhibited.

(a) * * *

(4) [Reserved]

* * * * *

30. In § 173.164, paragraph (a)(2) is revised to read as follows:

§ 173.164 chromic acid or chromic acid mixture, dry.

(a) * * *

(2) Specification 17C, 17H, or 37A (§§ 178 115, 178.118, 178.131 of this subchapter) metal drums. Spec. 37A metal drums constructed from 22-gauge steel throughout are authorized for a gross weight of 490 pounds or less when shipped in a carload or truckload lot.

* * * * *

31. In § 173.197a, the section is revised to read as follows:

§ 173.197a Smokeless powder for small arms.

Smokeless powder for small arms in quantities not exceeding 100 pounds net weight transported in one rail car or motor vehicle may be classed as a flammable solid when examined for this classification by the Bureau of Explosives or the Bureau of Mines and approved by the Director, OHMT. Maximum quantity in any inside packaging may not exceed 8 pounds. Inside packagings must be arranged and protected to prevent simultaneous ignition of the contents. The complete package must be a type examined by the Bureau of Explosives or the Bureau of Mines and approved by the Director, OHMT. In addition, inside packages which have been examined by the Bureau of Explosives or the Bureau of Mines and approved by the Director, OHMT, may be overpacked in DOT–12A65, 12B65, or 12H65 fiberboard boxes provided all inside containers are firmly packed to prevent movement and the net weight of smokeless powder in any one box does not exceed 16 pounds. Each outside package must bear a FLAMMABLE SOLID label.

32. In § 173.220, the introductory text of paragraph (a) is revised and paragraph (a)(3) is added to read as follows:

§ 173.220 Magnesium or zirconium scrap consisting of borings, clippings, shavings, sheets, turnings, or scalpings, and magnesium metallic (other than scrap), powder, pellets, turnings, or ribbon; magnesium aluminum.

(a) Magnesium or zirconium scrap consisting of borings, shavings, or turnings, must be packed in closed metal barrels or drums, wooden barrels, metal pails, fiber drums, fiberboard boxes with inside polyethylene bags or liner, or four-ply paper bags. Fiberboard boxes with inside polyethylene bags or liner or paper bags are not authorized for less-than-carload or less-than-truckload shipments.

* * * * *

(3) When transported by vessel, magnesium scrap may not be carried in paper bags and zirconium scrap may only be packaged in an hermetically sealed metal drum not exceeding 80 pounds net weight.

* * * * *

33. In § 173.245a, footnote 2 following the Table in paragraph (a) is revised to read as follows:

§ 173.245a Corrosive liquids, n.o.s. shipped in bulk.

(a) * * *

[2] Specification 103ANW tank car tanks must be fabricated of solid nickel at least 95 percent pure and containing not more than 1 percent iron. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of approximately 96.7 percent. Specification 103A tank car tanks must be lead-lined steel or must be made of steel with at least 10 percent nickel cladding. Specification 103AW, 111A100F2, or 111A100W2 tanks must be lead-lined steel or made of steel with a minimum nickel cladding of 1/16 inch thickness. Nickel cladding in tanks must be low carbon nickel in accordance with ASTM B162–80.

* * * * *

34. In § 173.253, paragraphs (a)(7) and (a)(8) are revised to read as follows:

§ 173.253 Chloroacetyl chloride.

(a) * * *

(7) Specification 103AW, 111A60W2, or 111A100F2 (§§ 179.200, 179.201 of this subchapter). Tanks cars. Tanks must have a nickel cladding of 1/16 inch minimum thickness. Nickel cladding in tanks must be low carbon nickel in accordance with ASTM B162–80.

(8) Specification 103ANW (§§ 179.200 and 179.201 of this subchapter). Tank cars. Tanks must be fabricated of solid nickel at least 95 percent pure and containing not more than 1 percent iron. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of approximately 96.7 percent.

* * * * *

§ 173.262 [Amended]

35. In § 173.262, in paragraph (b)(4) is amended by replacing the reference "§ 178.353–5" with the reference "178.343–5" in the last sentence.

36. In § 173.266, the eight sentence in paragraph (f)(2) is revised to read as follows:

§ 173.266 Hydrogen peroxide solution in water.

* * * * *

(f) * * *

(2) * * * The tank metal identification plate required shall be marked "DOT MC 310–H_2O_2" or "DOT MC 312–AL–H_2O_2" or "DOT MC 312–SS–H_2O_2", as appropriate, and in addition, the cargo tank shall be clearly marked in letters not less than one inch high "FOR HYDROGEN PEROXIDE ONLY". * * *

37. In § 173.271, paragraphs (a)(7), (a)(8)(iv), and (a)(9) are revised to read as follows:

§ 173.271 Methyl phosphonic dichloride, phosphorus oxybromide, phosphorus oxychloride, phosphorus tricloride, and thiosphosphoryl phosphorus chloride.

(a) * * *

(7) Speification 103ANW (§§ 179.200, 179.201 of this chapter). Tank cars. Tanks must be fabricated of solid nickel at least 95 percent pure and containing not more than 1 percent iron. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of approximately 96.7 percent.

(8) * * *

(iv) Specification MC 311 or MC 312 cargo tanks. Tanks must be fabricated of solid nickel at least 95 percent pure and not more than 1 percent iron. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of approximately 96.7 percent. Authorized only for phosphorus oxychloride and phosphorus trichloride.

(9) Specification 103A [1], 103AW, 111A60W2, or 111A00F2 (§§ 179.200, 179.201 of this subchapter). Tank cars. Specification 103A [1], tanks must be lead-lined steel or made of steel with nickel cladding of at least 10 percent of the shell thickness. Specification 103AW, 111A60W2, or 111A100F2 tanks must be lead-lined steel or made of steel with nickel cladding with a minimum thickness of 1/16 inch. Nickel cladding in tanks must be low carbon nickel in accordance with ASTM B162–80.

* * * * *

38. In § 173.277, paragraph (d)(1) is removed and reserved as follows:

§ 173.277 Hypochlorite solutions.

* * * * *

(d) * * *

(1) Reserved]

* * * * *

39. In § 173.294, the heading, paragraphs (a)(2), (a)(3), and (b) are revised to read as follows:

§ 173.294 Chloroacetic acid, liquid or solution.

(a) * * *

(2) Specification 103ANW, 103AW, 111A60W2, or 111A100F2 (§§ 179.200, 179.201 of this subchapter). Tank cars. Specification 103AW, 111A60W2, or 111A100F2 tanks cars must be nickel clad with a nickel thickness of at least 20 percent of the shell thickness. Nickel cladding in tanks must be low carbon nickel in accordance with ASTM B162–80.

(3) Specification MC 310, MC 311, or MC 312 (§ 178.343 of this chapter). Cargo tanks. Tanks must be fabricated of solid nickel at least 95 percent pure and containing not more than 1 percent iron, Type 304 of 316 stainless steel or be suitably lined. Nickel metal test coupons for welding procedures qualification must contain no more than 1 percent iron.

* * * * *

(b) Chloroacetic acid, anhydrous, when shipped as a liquid must be shipped in Specification 103ANW tank cars fabricated of nickel containing not more than 1 percent iron or in Specification 103AW or 111A60W2 tank car tanks with nickel cladding of at least 20 percent of the shell thickness or be provided with a suitable corrosive resistant coating or lining. Nickel cladding in tanks must be low carbon nickel in accordance with ASTM B162–80.

40. In § 173.301, paragraph (k)(1) is revised to read as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders.[1]

* * * * *

(k) *Outside packagings.* * * *

(1) Outside packaging must provide protection for the cylinder. Unless the cylinder has a protective collar or neck ring, the outside packaging must provide protection to the valve against accidental functioning and damage.

* * * * *

41. In § 173.302, paragraph (a)(5)(iv) is revised to read as follows:

§ 173.302 Charging of cylinders with nonliquefied compressed gases.

(a) * * *

(5) * * *

(iv) The pressure in the cylinder may not exceed 3,000 psig at 70° F.

* * * * *

42. In § 173.304, the Table in paragraph (a)(2) is amended by revising the entries for carbon dioxide and sulfur dioxide as follows:

§ 173.304 Charging of cylinders with liquefied compressed gas.

(a) * * *

(2) * * *

Kind of gas	Maximum permitted filing density (percent) (see note 1)	Containers marked as shown in this column or of the same type with higher service pressure must be used except as provided in §§ 173.34(a), (b), and 173.301(j) (see notes following table)
*	*	*
Carbon dioxide (see notes 4, 7, and 8).	68	DOT-3A1800; DOT-3AX1800; DOT-3AA1800; DOT-3AAX1800; DOT-3; DOT-3E1800; DOT-311800; DOT-3HT2000; DOT-39; DOT-3AL1800
*	*	*
Sulfur dioxide (see note 8).	125	DOT-3A225; DOT-3AA225; DOT-3B225; DOT-4A225; DOT-4B225; DOT-4BA225; DOT-4BW225; DOT-4B240ET; DOT-3; DOT-4; DOT-25; DOT-26-150; DOT-38; DOT-39; DOT-3E1800; and DOT-3AL225
*	*	*

43. In § 173.314, the third sentence of Note 6 following the Table in paragraph (c) is revised to read as follows:

§ 173.314 Requirements for compressed gases in tank cars.

* * *

(c) * * *

Note 6: * * * The discharge capacity of each of these safety relief devices must be sufficient to prevent building up of pressure in the tank in excess of 82.5 precent of the tank test pressure. * * *

* * * * *

44. In § 173.315, the introductory text of paragraph (c) is revised to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(c) Except as otherwise provided, the loading of a liquefied gas into a cargo tank or portable tank shall be determined by weight or by a suitable liquid level gauging device. The vapor pressure (psig) at 115°F. must not exceed the design pressure of the cargo tank or portable tank container. The liquid portion of the gas shall not fill the tank at 105°F. if the tank is insulated, or at 115°F. if the tank is uninsulated, except that this requirement shall not apply to:

* * * * *

45. In § 173.316, the Table in paragraph (c)(2) is revised to read as follows:

§ 173.316 Cryogenic liquids in cylinders.

* * * * *

(c) * * *

(2) * * *

Pressure control valve setting (maximum start-to-discharge pressure psig)	Maximum permitted filling density (percent by weight)					
	Air	Argon	Nitrogen	Oxygen	Helium	Neon
45	82.5	133	76	108	12.5	109
75	80.3	130	74	105	12.5	104
105	78.4	127	72	103	12.5	100
170	76.2	122	70	100	12.5	92
230	75.1	119	69	98	12.5	85
295	73.3	115	68	96	12.5	77
360	70.7	113	65	93	12.5	.....
450	65.9	111	61	91	12.5	.....
540	62.9	107	58	88	12.5	.....
625	60.1	104	55	86	12.5	.....
Design service temperature (°F.)	−320	−320	−320	−320	−452	−411

* * * * *

46. In § 173.318, paragraphs (b), (f)(2), and (f)(3) are revised to read as follows:

§ 173.318 Cryogenic liquids in cargo tanks.

* * * * *

(b) *Pressure relief systems and pressure control valves.*—(1) *Types of pressure relief systems.*—(i) *Tanks in oxygen and flammable cryogenic liquid service.* Except as otherwise provided in this paragraph, each tank in oxygen and flammable cryogenic liquid service must be protected by two independent pressure relief systems which are not connected in series, namely:

(A) A primary system of one or more pressure relief valves; and

(B) A secondary system of one of more frangible discs or pressure relief valves. For a tank in carbon monoxide service, the secondary system must be pressure relief valves only.

(ii) *Tanks in helium and atmospheric gas (except oxygen) cryogenic liquid service.* For a tank used in helium and atmospheric gas (except oxygen) cryogenic liquid service, the tank must be protected by at least one pressure relief system consisting of:

(A) One of more pressure relief valves; or

(B) A combination of one or more pressure relief valves and one or more frangible discs.

(2) *Capacities of pressure relief systems.*—(i) *Tanks in oxygen or flammable cryogenic liquid service.* For tanks in oxygen or flammable cryogenic liquid service, the primary system and the secondary system of pressure relief devices must each have a flow capacity equal to or greater than that calculated by the applicable formula in paragraph 5.3.2 or paragraph 5.3.3 of CGA Pamphlet S–1.2. In addition:

(A) The primary pressure relief system must have his total flow capacity at a pressure not exceeding 120 percent of the tank's design pressure.

(B) The secondary pressure relief system must have this total flow capacity at a pressure not exceeding 150 percent of the tank's design pressure.

(ii) *Tanks in helium and atmospheric gas (except oxygen) cryogenic liquid service.* For tanks in helium and atmospheric gas (except oxygen) cryogenic liquid service, the pressure relief system must have a flow capacity equal to or greater than that calculated by the applicable formula in paragraphs 5.3.2 or 5.3.3 of CGA Pamphlet S–1.2. If the pressure relief system consists of a combination of pressure relief valves and frangible discs, the pressure relief valves must have a total venting capacity equal to or greater than that calculated by the applicable formula in paragraph 4.1.10.1.1 of CGA Pamphlet S–1.2. The pressure relief system must have this total flow capacity at a pressure not exceeding 150 percent of the tank's design pressure.

(3) *Type and construction of pressure relief devices.*—(i) Each pressure relief device must be designed and constructed for a pressure equal to or exceeding the tank's design pressure at the coldest temperature reasonably expected to be encountered.

(ii) Pressure relief devices must be either spring-loaded pressure relief valves of frangible discs. Pressure relief valves must be of a type that automatically open and close at predetermined pressures.

(4) *Setting of pressure relief devices.*—(i) On a tank used in oxygen or flammable cryogenic liquid service, the pressure relief devices must perform as follows.

(A) Each pressure relief valve in the primary relief system must be set-to-discharge at a pressure no higher than 110 percent of the tank's design pressure.

(B) Each pressure relief device in the secondary pressure relief system must be designed to commence functioning at a pressure no lower than 130 percent and no higher than 150 percent of the tank's design pressure.

(ii) On a tank used in helium and atmospheric gas (except oxygen) cryogenic liquid service, the pressure relief devices in the pressure relief system must be designed to commence functioning at no higher than 150 percent of the tank's design pressure.

(5) *Optional pressure relief devices and pressure control valves.* In addition to the required pressure relief devices, a cargo tank in cryogenic liquid (except carbon monoxide) service may be equipped with one or both of the following:

(i) One or more pressure control valves set at a pressure below the tank's design pressure.

(ii) One or more frangible discs set to function at a pressure not less than one and one-half times or more than two times the tank's design pressure.

(6) *Maximum filling rate.* (i) For a tank used in oxygen and flammable cryogenic liquid service, the maximum rate at which the tank is filled must not exceed the liquid flow capacity of the primary pressure relief system rated at a pressure not exceeding 120 percent of the tank's design pressure.

(ii) On tanks used in helium and atmospheric gas (except oxygen) cryogenic liquid service, the maximum rate at which the tank is filled must not exceed the liquid flow capacity of the pressure relief valves rated at 150 percent of the tank's design pressure.

(7) *Arrangement and location of pressure relief devices.* (i) The discharge from any pressure relief system must be directed upward and be unobstructed to the outside of the protective housing in such a manner as to prevent impingement of gas upon the jacket or any structural part of the vehicle.

(ii) Each pressure relief valve must be arranged or protected to prevent the accumulation of foreign material between the relief valve and the atmospheric discharge opening in any relief piping. The arrangement must not impede flow through the device.

(iii) Each pressure relief valve must be designed and located to minimize the possibility of tampering. If the pressure setting or adjustment is external to the valve, the valve adjustment must be sealed.

(iv) Each pressure relief device must have direct communication with the vapor space of the tank at the midlength of the top centerline.

(v) Each pressure relief device must be installed and located so that the cooling effect of the contents during venting will not prevent the effective operation of the device.

(8) *Connections.* (i) Each connection to a pressure relief device must be of sufficient size to allow the required rate of discharge through the pressure relief device. The inlet connection must be not less than one-half inch nominal pipe size.

(ii) A shut-off valve may be installed in a pressure relief system only when the required relief capacity is provided at all times.

(9) *Pressure relief devices for piping hose and vacuum-insulated jackets.* (i) Each portion of connected liquid piping or hose that can be closed at both ends must be provided with either a hydrostatic pressure relief valve without an intervening shut-off valve, or a check valve permitting flow from the pipe or hose into the tank. If used, the relief valve must be located so as to prevent its discharge from impinging on the tank, piping, or operating personnel.

(ii) On a vacuum-insulated cargo tank the jacket must be protected by a suitable relief device to release internal pressure. The discharge area of this device must be at least 0.00024 square inch per pound of water capacity of the tank. This relief device must function at a pressure not exceeding the internal design pressure of the jacket, calculated in accordance with the ASME Code, or 25 psig, whichever is less.

(10) *Tank inlet, outlet, pressure relief device and pressure control valve markings.* (i) Each tank inlet and outlet, except pressure relief devices and pressure control valves, must be permanently marked to indicate whether it communicates with "vapor" or "liquid" when the tank is filled to the maximum permitted filling density.

(ii) Each pressure relief valve must be plainly and permanently marked with the pressure, in psig, at which it is set-to-discharge, the discharge rate of the device in SCF per minute (SCFM) of free air, and the manufacturer's name or trade name and catalog number. The marked set-to-discharge pressure valve must be visible with the valve in its installed position. The rated discharge capacity of the device must be determined at a pressure of 120 percent of the design pressure of the tank.

(iii) Each pressure control valve must be plainly and permanently marked with the pressure, in psig, at which it is set-to-discharge.

(f) * * *

(2) *Air, argon, helium, nitrogen, and oxygen, cryogenic liquids* must be loaded and shipped in accordance with the following table:

PRESSURE CONTROL VALVE SETTING OR RELIEF VALVE SETTING

Maximum set-to-discharge pressure (psig)	Maximum permitted filling density (percent by weight)				
	Air	Argon	Helium	Nitrogen	Oxygen
26			12.5		
30	80.3	129	12.5	74	105
40	79.2		12.5		
50	78.0		12.5		
55	77.3	125	12.5	71	102
60	76.9		12.5		
80	75.3		12.5		
85	75.1	121	12.5		99
100	73.0		12.5		
105	73.7		12.5	67	
120	72.2		12.5		
140	71.4		12.5		
145	70.9	115	12.5	64	94
180	68.3		12.5		
200	67.3	110	12.5	61	91
250	63.3	106	12.5	57	87
275	62.3	105	12.5	56	86
325	59.4	101		53	83
Design service temperature.	−320°F	−320°F	−452°F	−320°F	−320°F

(3) *Carbon monoxide, hydrogen (minimum 95 percent para-hydrogen), ethylene, and methane or natural gas, cryogenic liquids* must be loaded and shipped in accordance with the following table:

PRESSURE CONTROL VALVE SETTING OR RELIEF VALVE SETTING

Maximum set-to-discharge pressure (psig)	Maximum permitted filling density (percent by weight)			
	Carbon monoxide	Ethylene	Hydrogen	Methane or natural gas
13			6.6	
15	75.0		6.6	40.5
17	74.0		6.6	
20		53.5		40.0
25	73.0			
30	72.0	52.7	6.3	39.1
35				
40		52.0		38.6
45	71.5			
50		51.4	6.0	38.2
55				
60		50.8		
70		50.2	5.7	37.5
90		49.2		
95				
100		48.4	5.4	36.6
115		48.2		
125			5.0	
150			4.5	
175	62.5	45.8		
285	56.0			
Design service temperature.	−320°F	−155°F	−423°F	−260°F

* * * * *

47. Section 173.320 is revised to read as follows:

§ 173.320 Cryogenic liquids; exceptions.

(a) Atmospheric gases and helium, cryogenic liquids, in Dewar flasks, insulated cylinders, insulated portable tanks, insulated cargo tanks, and insulated tank cars, designed and constructed so that the pressure in such packagings will not exceed 25.3 psig under ambient temperature conditions during transportation are not subject to the requirements of this subchapter when transported by motor vehicle or railcar except as specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(1) Sections 171.15 and 171.16 of this subchapter pertaining to the reporting of incidents, not including a release that is the result of venting through a pressure control valve, or the neck of the Dewar flask.

(2) Subparts A, B, C, and D of Part 172, (§§ 174.24 for rail and 177.817 for highway) and in addition, Part 172 in its entirety for oxygen.

(3) Subparts A and B of Part 173, and §§ 174.1 and 177.800, 177.804, 177.807, and 177.823 of this subchapter.

(b) The requirements of this subchapter do not apply to atmospheric gases and helium:

(1) During loading and unloading operations (pressure rises may exceed 25.3 psig); or

(2) When used in operation of a process system; such as a refrigeration system (pressure may exceed 25.3 psig).

(c) For transportation aboard aircraft, see § 171.11 of this subchapter.

48. Section 173.965 is added to read as follows:

§ 173.965 Cotton and other fibers.

Cotton and the fibers jute, hemp, flax, sisal, coir, kapok, or similar vegetable fibers, when offered for transportation by water, must be packaged in bales, securely and tightly bound with rope, wire, or other similar means.

PART 176—CARRIAGE BY VESSEL

49. The authority citation for Part 176 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806(b), 1808; 49 CFR Part 1, unless otherwise noted.

50. In § 176.76, paragraph (g)(2) is added to read as follows:

§ 176.76 Highway vehicles, railroad vehicles, freight containers, and portable tanks containing hazardous materials.

* * * * *

(g) * * *

(2) Small passenger vessels of 100 gross tons, or less, may carry a hazardous material in a portable tank only when 16 or less passengers are on board and only when specifically authorized by the Officer-in-Charge, Marine Inspection, by endorsement of the vessel's Certificate of Inspection.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

51. The authority citation for Part 177 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805; 49 CFR Part 1, unless otherwise noted.

52. In § 177.814, paragraph (b) is revised to read as follows:

§ 177.814 Retention of manufacturer's certificate and retest reports.

* * * * *

(b) Upon a written request to, and with the approval of, the Regional Director of Motor Carrier Safety, for the region in which a motor carrier has his principal place of business, a motor carrier may retain the certificate and other data specified in paragraph (a) of this section at a regional or terminal office. The address and jurisdictions of the Regional Directors of Motor Carrier

Safety are shown in § 390.40 of Chapter III of this title.

* * * * *

53. In § 177.824, the introductory text of paragraph (f) and the last sentence of paragraph (f)(2) are revised to read as follows:

§ 177.824 Retesting and inspection of cargo tanks.

* * * * *

(f) *Reporting requirements.* Each motor carrier shall file with the Chief, Standards Development Division, Office of Motor Carrier Standards, Federal Highway Administration, Department of Transportation, Washington, DC 20590, a written listing of all MC 330 and MC 331 cargo tanks he has in service. Each motor carrier, upon placing in service or withdrawing from service any MC 330 and MC 331 cargo tank (other than a cargo tank used in interchange service which is reported upon by another carrier), shall file a supplemental report with the Office of Motor Carrier Standards.

* * * * *

(2) * * * However, upon a written request to, and with the approval of the Regional Director of Motor Carrier Safety, for the region in which a motor carrier has his principal place of business, the carrier may maintain the reports at a regional or terminal office.

* * * * *

54. In § 177.834, paragraph (k) is removed and reserved to read as follows:

§ 177.834 General requirements.

* * * * *

(k) [Reserved]

* * * * *

55. In §§ 177.835, 177.837, 177.838, 177.839 and 177.840 the first line following each of the section headings is revised and paragraph (g) in § 177.838 is revised to read as follows:

§ 177.835 Explosives.

(See also §§ 177.834 (a) to (j).)

* * * * *

§ 177.837 Flammable liquids.

(See also §§ 177.834 (a) to (j).)

* * * * *

§ 177.838 Flammable solids and oxidizing materials.

(See also §§ 177.834 (a) to (j).)

* * * * *

(g) Smokless powder for small arms in quantities not exceeding 100 pounds net weight transported in one rail car or motor vehicle may be classed as a flammable solid when examined for this classification by the Bureau of Explosives or the Bureau of Mines and approved by the Director, OHMT. Maximum quantity in any inside packaging may not exceed 8 pounds. Inside packagings must be arranged and protected to prevent simultaneous ignition of the contents. The complete package must be a type examined by the Bureau of Explosives or the Bureau of Mines and approved by the Director, OHMT. In addition, inside packages which have been examined by the Bureau of Explosives or the Bureau of Mines and approved by the Director, OHMT, may be overpacked in DOT-12A65, 12B65, or 12H65 fiberboard boxes provided all insider containers are firmly packed to prevent movement and the net weight of smokeless powder in any one box does not exceed 16 pounds. Each outside package must bear a FLAMMABLE SOLID label.

§ 177.839 Corrosive liquids.

(See also §§ 177.834 (a) to (j).)

* * * * *

§ 177.840 Compressed gases, including cryogenic liquids.

(See also §§ 177.834 (a) to (j).)

* * * * *

56. In § 177.841, the first line following the section heading is revised and paragraph (e) is amended by adding a sentence at the end to read as follows:

§ 177.841 Poisons.

(See also §§ 177.834 (a) to (j).)

* * * * *

(e) * * * No motor carrier may transport a packaging containing a material which is required to be labeled "Poison", "Poison gas", or "Irritant" in the driver's compartment (including a sleeper berth) of a motor vehicle.

57. In § 177.848, paragraph (b) is revised to read as follows:

§ 177.848 Segregation and separation chart of hazardous materials.

* * * * *

(b) Cyanides or cyanide mixtures must not be loaded or stored with acids or any other acidic materials which could release hydrocyanic acid from cyanides.

* * * * *

PART 178—SHIPPING CONTAINER SPECIFICATIONS

58. The authority citation for Part 178 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR Part 1, unless otherwise noted.

59. In § 178.38, § 178.38–10, paragraph (b) is amended by revising the formula to read as follows:

§ 178.38 Specification 3B; seamless steel cylinders.

§ 178.38–10 Wall thickness.

* * * * *

(b) * * * P=at least two times service pressure or 450 pounds per square inch, whichever is the greater; * * *.

60. In § 178.42, § 178.42–14, the introductory text of paragraph (a) is revised to read as follows:

§ 178.42 Specification 3E; seamless steel cylinders.

§ 178.42–14 Marking.

(a) Marking on each cylinder by stamping plainly and permanently on the shoulder, top head, neck or sidewall as follows;

* * * * *.

61. In § 178.46, § 178.46–4(a), § 178.46–5(d)(1) and footnote 1 of (d)(2), § 178.46–6(c), and § 178.46–8(e) are revised to read as follows:

§ 178.46 Specification 3AL; seamless cylinders made of definitely prescribed aluminum alloys.

§ 178.46–4 Duties of the inspector.

(a) The inspector shall determine that all materials are in compliance with the requirements of this specification.

* * * * *

§ 178.46–5 Authorized material and identification of material.

* * * * *

(d) * * *

(1) CHEMICAL COMPOSITION LIMITS [1]

[Chemical Composition (in weight percent)]

Aluminum Assoc. alloy designation No.	Si	Fe	Cu	Mn	Mg	Cr	Zn	Ti	Pb	Bi	Other [2]		Al
											Each	Total	
6351	0.7–1.3	0.50	0.10	0.40–0.80	0.40–0.80	.....	0.20	0.20	0.01	0.01	0.05	0.15	Remainder.
6061	0.40–0.80	0.70	0.15–0.40	0.15	0.80–1.20	0.04–0.35	0.25	0.15	0.01	0.01	0.05	0.15	Do.

[1] ASTM B 221–76 Standard Specification for Aluminum-Alloy Extruded Bars, Rods, Shapes, and Tubes, Table 1 Chemical Composition Limits, except for Pb and Bi. Limits are in percent maximum unless otherwise indicated.

[2] Analysis is regularly made only for the elements for which specific limits are shown, except for unalloyed aluminum. If however, the presence of other elements is suspected to be, or in the course of routine analysis is indicated to be in excess of specified limits, further analysis is made to determine that these other elements are not in excess of the amount specified. (Aluminum Association Standards and Data/Sixth Edition 1979).

(2) *Mechanical Property Limits.*

* * * * *

[1] "D" represents specimen diameters. When the cylinder wall is greater than 3/16 inch thick, a retest without reheat treatment using the 4D size specimen is authorized if the test using the 2 inch size specimen fails to meet elongation requirements.

* * * * *

§ 178.46–6 Manufacture.

* * * * *

(c) Thickness of the cylinder base may not be less than the prescribed minimum wall thickness of the cylindrical shell. The cylinder base must have a basic torispherical, hemispherical, or ellipsoidal interior base configuration where the dish radius is no greater than 1.2 times the inside diameter of the shell. The knuckle radius may not be less than 12 percent of the inside diameter of the shell. The interior base contour may deviate from the true torispherical, hemispherical or ellipsoidal configuration provided that—

(1) Any areas of deviation are accompanied by an increase in base thickness;

(2) All radii of merging surfaces are equal to or greater than the knuckle radius;

(3) Each design has been qualified by successfully passing the cycling tests in § 178.46–6(f); and

(4) Detailed specifications of the base design are available to the inspector.

* * * * *

§ 178.46–8 Openings.

* * * * *

(e) All openings must be threaded. Threads must comply with the following:

(1) Each thread must be clean cut, even, without checks, and to gauge.

(2) Taper threads, when used, must conform to one of the following:

(i) American Standard Pipe Thread (NPT) type, conforming to the requirements of Federal Standard H–28 (1978), Section 7;

(ii) National Gas Taper Thread (NGT) type, conforming to the requirements of Federal Standard H–28 (1978), Sections 7 and 9; or

(iii) Other taper threads conforming to other standards may be used provided the length is not less than that specified for NPT threads.

(3) Straight threads, when used, must conform to one of the following:

(i) National Gas Straight Thread (NGS) type, conforming to the requirements of Federal Standard H–28, (1978), Sections 7 and 9;

(ii) Unified Thread (UN) type, conforming to the requirements of Federal Standard H–28, (1978), Section 2;

(iii) Controlled Radius Root Thread (UNJ) type, conforming to the requirements of Federal Standard H–28 (1978), Section 4.

(iv) Other straight threads conforming to other recognized standards may be used provided that the requirements in subparagraph (e)(4) of this section are met.

(4) All straight threads must have at least 6 engaged threads, a tight fit, and a factor of safety in shear of at least 10 at the test pressure of the cylinder. Shear stress must be calculated by using the appropriate thread shear area in accordance with Federal Standard H–28 (1978), Appendix A5, Section 3.

62. In § 178.51, § 178.51–10, paragraph (d), is revised to read as follows:

§ 178.51 Specification 4BA; welded or brazed steel cylinders made of definitely prescribed steels.

§ 178.51.–10 Wall thickness.

* * * * *

(d) For a cylinder with a wall thickness less than 0.100 inch, the ratio of tangential length to outside diameter may not exceed 4.1.

§ 178.53–9 [Amended]

Paragraph (a) of § 178.53–9 is amended by replacing the number "0.40" with the number "0.04".

§ 178.54 [Removed and Reserved]

63. Section 178.54 is removed and reserved.

64. In § 178.61, §178.61–10, paragraph (b) is revised to read as follows:

§ 178.61 Specification 4BW; welded steel cylinders made of definitely prescribed steels with electric-arc welded longitudinal seam.

§ 178.61–10 Wall thickness.

* * * * *

(b) For a cylinder with a wall thickness less than 0.100 inch, the ratio of tangential length to outside diameter may not exceed 4.1.

65. In §178.245–1, the introductory text of paragraph (a) is revised to read as follows:

§ 178.245 Specifications 51; steel portable tanks.

(a) Tanks must be seamless or welded steel construction or combination of both and have a water capacity in excess of 1,000 pounds. Fusion welded tanks must be postweld heat treated and radiographed as prescribed in the ASME Code except that each tank constructed in accordance with Part UHT of the ASME Code must be postweld heat treated. Where postweld heat treatment is required, the tank must be treated as a unit after completion of all the welds in and/or to the shell and heads. The method must be as prescribed in the ASME Code. Welded attachments to pads may be made after postweld heat treatment is made. A tank used for anhydrous ammonia must be postweld heat treated. The postweld heat treatment must be as prescribed in the ASME Code, but in no event at less than 1050°F. tank metal temperature. Additionally, tanks constructed in

accordance with Part UHT of the ASME Code must conform to the following requirements:

* * * * *

§ 178.337-1 [Amended]

66. Paragraph (d) of § 178.337-1 is amended by replacing the words "cargo tanks" with the words "tank motor vehicle".

§ 178.337-13 [Amended]

67. Paragraph (b) of § 178.337-13 is amended by replacing the second and third words "cargo tanks" with the words "tank motor vehicle".

PART 179—SPECIFICATIONS FOR TANK CARS

68. The authority citation for Part 179 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR Part 1, unless otherwise noted.

69. In § 179.100, § 179.100-13(a), § 179.100-14(a)(1) and (a)(3) are revised to read as follows:

§ 179.100 General specifications applicable to pressure tank car tanks.

§ 179.100-13 Venting, loading and unloading valves, measuring and sampling devices.

(a) Venting, loading and unloading valves must be of approved design, made of metal not subject to rapid deterioration by the lading, and must withstand the tank test pressure without leakage. The valves shall be bolted to seatings on the manway cover, except as provided in § 179.103. Valve outlets shall be closed with approved screw plugs or other closures fastened to prevent misplacement.

* * * * * *

§ 179.100-14 Bottom outlets.

(a) * * *

(1) The extreme projection of the bottom washout equipment may not be more than that allowed by Appendix E of the AAR Specifications for Tank Cars.

* * * * * *

(3) If the bottom washout nozzle extends 6 inches or more from shell of tank, a V-shaped breakage groove shall be cut (not cast) in the upper part of the outlet nozzle at a point immediately below the lowest part of the inside closure seat or plug. In no case may the nozzle wall thickness at the root of the "V" be more than ¼-inch. Where the nozzle is not a single piece, provision shall be made for the equivalent of the breakage groove. The nozzle must be of a thickness to insure that accidental breakage will occur at or below the "V" groove or its equivalent. On cars without continuous center sills, the breakage groove or its equivalent may not be more than 15 inches below the tank shell. On cars with continuous center sills, the breakage groove or its equivalent must be above the bottom of the center sill construction.

* * * * * *

70. In § 179.102, § 179.102-2, paragraph (a)(3) is revised to read as follows:

§ 179.102 Special commodity requirements for pressure tank car tanks.

§ 179.102-2 Chlorine.

(a) * * *

(3) Insulation must be 4 inches minimum thickness of corkboard or of polyurethane foam or must be 2 inches minimum thickness of 4 pounds per cubic foot minimum density ceramic fiber covered by 2 inches minimum thickness of glass fiber.

* * * * * *

71. In § 179.103, § 179.103-5, paragraphs (b)(1) and (b)(4) are revised to read as follows:

§ 179.103 Special requirements for class 114A * * * tank car tanks.

§ 179.103-5 Bottom outlets.

* * * * * *

(b) * * *

(1) The extreme projection of the bottom outlet equipment may not be more than allowed by Appendix E of the AAR Specifications for Tank Cars. All bottom outlet reducers and closures and their attachments shall be secured to car by at least ⅜-inch chain, or its equivalent, except that bottom outlet closure plugs may be attached by ¼-inch chain. When the bottom outlet closure is of the combination cap and value type, the pipe connection to the valve shall be closed by a plug, cap, or approved quick coupling device. The bottom outlet equipment should include only the valve, reducers and closures that are necessary for the attachment of unloading fixtures. The permanent attachment of supplementary exterior fittings must be approved by the AAR Committee on Tank Cars.

* * * * * *

(4) If the outlet nozzle extends 6 inches or more from shell of tank, a V-shaped breakage groove shall be cut (not cast) in the upper part to the outlet nozzle at a point immediately below the lowest part of value closest to the tank. In no case may the nozzle wall thickness at the roof of the "V" be more than ¼-inch. On cars without continous center sills, the breakage groove or its equivalent may not be more than 15 inches below the tank shell. On cars with continous center sills, the breakage groove or its equivalent must be above the bottom of the center sill construction.

* * * * * *

72. In § 179.200, § 179.200-7, paragraphs (b), (c), (d), (e), and (f) are amended by changing the heading in each Table; § 179.200-13 is revised, and in § 179.200-17, paragraphs (a)(1), (a)(6), (a)(7), (b)(1), and (b)(3) are revised to read as follows:

§ 179.200 General specifications applicable to non-pressure tank car tanks

§ 179.200-7 Materials.

(a) * * *

(b) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition [1]	Minimum elongation in 2 inches (percent) weld metal (longitudinal)

* * * * *

(c) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition [3] [6]	Minimum elongation in 2 inches (percent) 0 temper weld metal (longitudinal)

* * * * *

(d) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition [1]	Minimum elongation in 2 inches (percent) weld metal (longitudinal)

* * * * *

(e) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition [1]	Minimum elongation in 2 inches (percent) weld metal (longitudinal)

* * * * *

(f) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition [1]	Minimum elongation in 2 inches (percent) weld metal (longitudinal)

* * * * *

§ 179.200–13 Manway ring or flange, safety relief device flange, bottom outlet nozzle flange, bottom washout nozzle flange and other attachments and openings.

(a) These attachments shall be fusion welded to the tank and reinforced in an approved manner in compliance with the requirements of Appendix E, figure 10, of the AAR Specifications for Tank Cars.

(b) The opening in the manway ring must be at least 16 inches in diameter except that acid resistant lined manways must be at least 18 inches in diameter before lining.

(c) The manway ring or flange, shall be made of cast, forged or fabricated metal. The metal of the dome, tank, or nozzle must be compatible with the manway ring or flange, so that they may be welded together.

(d) The openings for the manway or other fittings shall be reinforced in an approved manner.

§ 179.200–17 Bottom outlets.

(a) * * *

(1) The extreme projection of the bottom outlet equipment may not be more than that allowed by Appendix E of the AAR Specifications for Tank Cars. All bottom outlet reducers and closures and their attachments shall be secured to the car by at least ⅜-inch chain, or its equivalent, except that the bottom outlet closure plugs may be attached by ¼-inch chain. When the bottom outlet closure is of the combination cap and valve type, the pipe connection to the valve shall be closed by a plug, cap, or approved quick coupling device. The bottom outlet equipment should include only the valve, reducers and closures that are necessary for the attachment of unloading fixtures. The permanent attachment of supplementary exterior fittings shall be approved by the AAR Committee on Tank Cars.

* * * * *

(6) To provide for the attachment of unloading connections, the discharge end of the bottom outlet nozzle or reducer, the valve body of the exterior valve, or some fixed attachment thereto, shall be provided with one of the following arrangements or an approved modification thereof. (See Appendix E. Fig. E17 of the AAR Specifications for Tank Cars for illustrations of some of the possible arrangements.)

(i) A bolted flange closure arrangement including a minimum 1-inch NPT pipe plug (see Fig. E17.1) or including an auxiliary valve with a threaded closure.

(ii) A threaded cap closure arrangement including a minimum 1-inch NPT pipe plug (see Fig. E17.2) or including an auxiliary valve with a threaded closure.

(iii) A quick-coupling device using a threaded plug closure of at least 1-inch NPT or having a threaded cap closure with a minimum 1-inch NPT pipe plug (see Fig. E17.3 through E17.5). A minimum 1-inch auxiliary test valve with a threaded closure may be substituted for the 1-inch pipe plug (see Fig. E17.6). If the threaded cap closure does not have a pipe plug or integral auxiliary test valve, a minimum 1-inch NPT pipe plug shall be installed in the outlet nozzle above the closure (see Fig. E17.7).

(iv) A two-piece quick-coupling device using a clamped dust cap must include an in-line auxiliary valve, either integral with the quick-coupling device or located between the primary bottom outlet valve and the quick-coupling device. The quick-coupling device closure dust cap or outlet nozzle shall be fitted with a minimum 1-inch NPT closure (see Fig. E17.8 and E17.9).

(7) If the outlet nozzle extends 6 inches or more from the shell of the tank, a V-shaped breakage groove shall be cut (not cast) in the upper part of the outlet nozzle at a point immediately below the lowest part of valve closest to the tank. In no case may the nozzle wall thickness at the root of the "V" be more than ¼ inch. The outlet nozzle on interior valves or the valve body on exterior valves may be steam jacketed, in which case the breakage groove or its equivalent must be below the steam chamber but above the bottom of center sill construction. If the outlet nozzle is not a single piece, or if exterior valves are applied, provisions shall be made for the equivalent of the breakage groove. On cars without continuous center sills, the breakage groove or its equivalent must be no more than 15 inches below the tank shell. On cars with continuous center sills, the breakage groove or its equivalent must be above the bottom of the center sill construction.

* * * * *

(b) * * *

(1) The extreme projection of the bottom washout equipment may not be more than that allowed by Appendix E of the AAR Specifications for Tank Cars.

* * * * *

(3) If the washout nozzle extends 6 inches or more from the shell of the tank, a V-shaped breakage groove shall be cut (not cast) in the upper part of the nozzle at a point immediately below the lowest part of the inside closure seat or plug. In no case may the nozzle wall thickness at the root of the "V" be more than ¼ inch. Where the nozzle is not a single piece, provisions shall be made for the equivalent of the breakage groove. The nozzle must be of a thickness to insure that accidental breakage will occur at or below the "V" groove or its equivalent. On cars without continuous center sills, the breakage groove or its equivalent may not be more than 15 inches below the outer shell. On cars with continuous center sills, the breakage groove or its equivalent must be above the bottom of the center sill construction.

73. In § 179.202, § 179.202–8, § 179.202–11, and § 179.202–16 are revised to read as follows:

§ 179.202 Special commodity requirements for non-pressure tank car tanks.

§ 179.202–8 Chloracetyl chloride.

Tank cars used to transport chloracetyl chloride must have a nickel cladding with a minimum thickness of 1/16 inch. Nickel cladding in tanks must be low carbon nickel in accordance with ASTM B162–80. Specification DOT–103ANW tank car tanks used to transport chloracetyl chloride shall be fabricated or solid nickel at least 95 percent pure and containing not more than 1 percent iron. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of 96.7 percent.

§ 179.202–11 Phosphorus oxybromide, phosphorus oxychloride, phosphorus trichloride, and thiophosphoryl chloride.

Specification 103ANW tank cars used to transport phosphorus oxybromide, phosphorus oxychloride, phosphorus trichloride, and thiophosphoryl chloride, shall be fabricated of solid nickel at least 95 percent pure and containing not more than 1 percent iron. Metal test coupon for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of approximately 96.7 percent. Specification 103A tank cars used to transport phosphorus oxybromide, phosphorus oxychloride, thiophosphoryl

chloride must be lead-lined steel, or made of steel with a nickel cladding of at least 10 percent of the shell thickness. Specifications 103AW, 111A100F2, or 111A60W2 tank cars used to transport phosphorus oxybromide, phosphorus oxychloride, thiophosphoryl chloride must be lead-lined steel or made of steel with a minimum thickness of nickel cladding of 1/16-inch. Nickel cladding must be low carbon nickel in accordance with ASTM B162–80. Specification 103EW tank cars used to transport phosphorus trichloride and thiophosphoryl chloride must have tanks fabricated from Type 316 stainless steel. Unlined Specification 103A, 103AW, 111A100F2, or 111A100W2 tank cars are authorized for phosphorus trichloride only.

§ 179.202–16 Chloroacetic acid, liquid.

(a) Tank cars used to transport chloroacetic acid, liquid, must have tanks with nickel cladding of at least 20 percent of the shell thickness. Nickel cladding in tanks must be low carbon nickel in accordance with ASTM B162–80.

(b) Chloroacetic acid, anhydrous, when shipped as a liquid, shall be shipped in Specification 103ANW tank car tanks fabricated of nickel containing not more than 1 percent iron, or in Specification 103AW or 111A60W2 tank car tanks with nickel cladding of at least 20 percent of the shell thickness, or be provided with a suitable corrosion resistant coating or lining. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. Nickel cladding in tanks must be low carbon nickel in accordance with ASTM B162–80.

74. In § 179.220, § 179.220–1 is revised; § 179.220–7 paragraphs (b), (c), (d), and (e) are amended by changing the heading in each Table; § 179.220–18, paragraphs (a)(1), (a)(6), (b)(1), and (b)(3) are revised and in § 179.220–19, the last sentence of paragraph (c) is revised to read as follows:

§ 179.220 General specifications applicable to nonpressure tank car tanks consisting of an inner container supported within an outer shell (Class DOT–115).

§ 179.220–1 Tanks built under these specifications must meet the requirements of § 179.220, § 179.221, and § 179.222.

§ 179.220–7 Materials.

* * * * *

(b) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition[1]	Minimum elongation in 2 inches (percent) weld metal (longitudinal)

* * * * *

(c) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition[3] [6]	Minimum elongation in 2 inches (percent) weld metal (longitudinal)

* * * * *

(d) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition[1]	Minimum elongation in 2 inches (percent) weld metal (longitudinal)

* * * * *

(e) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition[1]	Minimum elongation in 2 inches (percent) weld metal (longitudinal)

* * * * *

§ 179.220–18 Bottom outlets.

(a) * * *

(1) The extreme projection of the bottom outlet equipment may not be more than that allowed by Appendix E of the AAR Specifications for Tank Cars. All bottom outlet reducers and closures and their attachments shall be secured to car by at at least 3/8-inch chain, or its equivalent, except that bottom outlet closure plugs may be attached by 1/4-inch chain. When the bottom outlet closure is of the combination cap and valve type, the pipe connection to the valve shall be closed by a plug, or cap. The bottom outlet equipment should include only the valve, reducers and closures that are necessary for the attachment of unloading fixtures. The permanent attachment of supplementary exterior fittings shall be approved by the AAR Committee on Tank Cars.

* * * * *

(6) If outlet nozzle and its closure extends below the bottom of the outer shell, a V-shaped breakage groove shall be cut (not cast) in the upper part of the outlet nozzle at a point immediately below the lowest part of the valve closest to the tank. In no case may the nozzle wall thickness at the root of the "V" be more than 1/4-inch. The outlet nozzle or the valve body may be steam jacketed, in which case the breakage groove or its equivalent must be below the steam chamber but above the bottom of the center sill construction. If the outlet nozzle is not a single piece or its exterior valves are applied, provision shall be made for the equivalent of the breakage groove. On cars without continuous center sills, the breakage groove or its equivalent may not be more than 15 inches below the outer shell. On cars with continuous center sills, the breakage groove or its equivalent must be above the bottom of the center sill construction.

* * * * *

(b) * * *

(1) The extreme projection of the bottom washout equipment may not be more than that allowed by Appendix E of the AAR Specifications for Tank Cars.

* * * * *

(3) If washout nozzle extends below the bottom of the outer shell, a V-shaped breakage groove shall be cut (not cast) in the upper part of the nozzle at a point immediately below the lowest part of the inside closure seat or plug. In no case may the nozzle wall thickness at the root of the "V" be more than 1/4-inch. Where the nozzle is not a single piece, provisions shall be made for the equivalent of the breakage groove. The nozzle must be of a thickness to insure that accidental breakage will occur at or below the "V" groove or its equivalent. On cars without a continuous center sill, the breakage groove or its equivalent may not be more than 15 inches below the outer shell. On cars with continuous center sills, the breakage groove or its equivalent must be above the bottom of the center sill construction.

* * * * *

§ 179.220–19 Safety relief devices.

* * * * *

(c) * * * Except for tanks for

chloroprene (see § 179.222–1), tanks equipped with vents shall be stenciled "Not for flammable liquids".

75. In § 179.221–1, is amended by adding an entry at the end of the Table to read as follows:

§ 179.221 Individual specification requirements applicable to tank car tanks consisting of an inner container supported within an outer shell.

§ 179.221–1 Individual specification requirements.

* * * * *

Specification	115A60W1	115A60ALW	115A60W6
* * * * *			
Special reference	§ 179.222–1		§ 179.222–1

76. Sections 179.222 and 179.222–1 are added to read as follows:

§ 179.222 Special commodity requirements for DOT 115A tank car tanks.

In addition to § 179.220 and § 179.221 the following requirements are applicable.

§ 179.222 Chloroprene.

DOT 115A tank car tanks used to transport chloroprene shall be equipped with a safety vent of a diameter not less than 12 inches complying with § 179.221–1 instead of a safety relief valve. The outer shell shall be stenciled "CHLOROPRENE" on both sides in letters not less than four inches high.

77. In § 179.301 and Table in paragraph (a) is revised to read as follows:

§ 179.301 Individual specification requirements for multi-unit tank car tanks.

(a) * * *

DOT specification	106A500–X	106A800–X	110A500–W	110A600–W	110A800–W	110A1000–W
Bursting pressure, p.s.i. (see § 179.300–5)	[1]	[1]	1250	1500	2000	2500
Minimum thickness shell, inches	13/32	11/16	11/32	3/8	15/32	19/32
Test pressure, p.s.i. (see § 179.300–16)	500	800	500	600	800	1000
Safety relief devices, p.s.i. (see § 179.300–15)						
Start-to-discharge, or burst maximum, p.s.i.	375	600	375	450	600	700
Vapor-tight, minimum p.s.i	300	480	300	360	480	650

[1] None specified.

Issued in Washington, DC, on April 3, 1987 under authority delegated in 49 CFR 1.53.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

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Part IV

Environmental Protection Agency

Protest Appeals of Recipients' Procurement Actions Under Federal Assistance Agreements; Subject Index List of EPA Regional Administrator Protest Appeal Determinations Issued During 1986; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3189-6]

Protest Appeals of Recipients' Procurement Actions Under Federal Assistance Agreements; Subject Index List of EPA Regional Administrator Protest Appeal Determinations Issued During 1986

This notice publishes the subject index list of bid protest appeal decisions issued by EPA Regional Administrators during 1986. These determinations were made pursuant to the EPA protest procedures set forth at 40 CFR 35.939 (assistance awarded prior to May 12, 1982), 40 CFR Part 33, May 12, 1982 Interim Final Rules (assistance awarded between May 12, 1982 and March 28, 1983) and 40 CFR Part 33, March 28, 1983 Final Rules (assistance awarded after March 28, 1983).

This is the Ninth EPA subject index which lists only the decisions issued in the year stated. The first index, listing Regional Administrator protest appeal determinations issued during the period 1974 through 1977, was published at 43 FR 29086–95 (July 5, 1978). This was supplemented by the index of 1978 determinations published at 44 FR 25812–18 (May 2, 1979), the index of 1979 determination published at 45 FR 58770–74 (September 4, 1980), the index of 1980 determination published at 46 FR 30476–80 (June 8, 1981), the index of 1981 and 1982 determinations published at 49 FR 36004–15 (September 13, 1984), the index of 1983 decisions published at 50 FR 4148–54 (January 29, 1985), the index of 1984 decisions published at 50 FR 23061–68 (May 30, 1985) and the index of 1985 decisions published at 51 FR 32038–46 (September 8, 1986).

The index lists 40 appeal determinations and 3 reconsideration request determinations issued by the EPA Regional Administration in 1986.

The determinations are cited informally with the names of the assistance receipients and protesters shortened and abbreviated for administrative convenience. Each entry begins by identifying the year the appeal was decided and the sequential determination number for the year. This number is not part of the preferred citation which should state the following: Grantee, State, (EPA Region _____, date of determination) (Protest of _____).

The issues have been divided into two major subject headings and then alphabetized. Procedural protest issues are listed under the heading "Protest Appeals;" substantive procurement issues are listed under the heading "Procurement."

Copies of specific protest appeal determinations may be examined at or obtained from the EPA Offices of Regional Counsel or from the Office of General Counsel in EPA headquarters.

FOR FURTHER INFORMATION CONTACT: Anthony F. Guadagno: Grants, Contracts, and General Law Division (LE–132G), Office of General Counsel, United States Environmental Protection Agency, Washington, DC 20460; (202) 382–5313.

Dated: April 3, 1987.

Francis S. Blake,

General Counsel (LE–130).

Bid Protest Appeals—Procedural Matters

A/E Judgment

86:03 Alice, TX (VI, 1–15–86) (*W.T. Young Const. Co.*) (EPA examines the factors on which grantee bases a procurement decision to determine if materially incomplete or erroneous) (where rational basis is lacking but causes no harm to competition, EPA will not reverse grantee decision).

86:05 Southbridge, MA (I, I–24–86) (*Vulcan Ind., Inc.*) (EPA defers to A/E judgment concerning minimum performance needs unless it lacks a rational basis) (finding that engineer's judgment has a rational basis does not mean that EPA believes the specifications reflect the best engineering judgment. No opinion is offered by EPA regarding the relative merits of one product to another or their suitability for particular applications).

86:11 Struthers, OH (V, 2–27–86) (*Air-O-Lator*) (failure to demonstrate basis for rejecting equipment).

86:18 St. Louis, MO (VII, 4–8–86) (*John Fabic Tractor Co.*) (grantee demonstrated performance based reasons for technical criteria of engines).

86:30 Wappingers Falls, NY (II, 7–14–86) (*Myerco, Inc.*) (equipment rejected because it could not interface with previously installed equipment).

85:54 Anne Arundel County, MD (III, 7–18–86) (*Roberts Filter Manuf. Co.*) (*Reconsideration*) (a bid which fails to meet a material term of the specifications must be rejected as nonresponsive—a material term cannot be waived after bid opening in order to accept a low bid).

Burden of Proof

85:55 Little Blue Valley, MO (VII, 1–13–86) (*Roots-Dresser Ind.*) (*Reconsideration*) (protester alleging restrictive specifications must show it was excluded—grantee must then show that specifications were based on minimum project needs and that there was a rational basis for excluding protester's equipment—burden then shifts to protester to show that the specifications were not based on minimum performance requirements or that there was no rational basis).

86:18 St. Louis, MO (VII, 4–8–86) (*John Fabic Tractor Co.*) (protest concerning specifications—protester must refute grantee's prima facie showing of rational basis).

86:25 Huntington, WV (III, 5–23–86) (*RAM Engineering, Inc.*) (where protester failed to prove equipment was excluded by specifications it could not challenge the specifications as unduly restrictive).

86:38 South Valley, UT (VIII, 10–28–86) (*Western Road Machinery Co.*) (unsupported and groundless claims rejected as frivolous).

Exhaustion of Administrative Remedy

86:10 Cheyenne, WY (VIII, 2–26–86) (*Roscoe Brown, Inc.*) (late protest asserting Buy American violation raises matter of contract administration. EPA will not order grantee to undo existing contract; relief is limited to allowability of costs).

86:29 Kankakee, IL (V, 7–7–86) (*Global Const. Co.*) (appeal dismissed as premature where it was filed with EPA before grantee issued determination).

Jurisdiction

86:08 Woodbridge, NJ (II, 2–6–86) (*Metcalf & Eddy, Inc.*) (post-contract award matters are not protestable) (EPA will not consider appeal involving matter currently in court).

86:17 Mattabassett-Cromwell, CT (I, 3–28–86) (*Crouse Combustion Systems and Komline-Sanderson*) (post-contract award decisions concerning subcontract equipment are not protestable by prime).

86:39 Columbus, OH (V, 10–29–86) (*Ingersoll-Rand*) (EPA regulations and protest appeal procedures do not apply to procurements that are not EPA funded).

86:40 Michigan City, IN (V, 11–4–86) (*Tenco Hydro, Inc.*) (subcontractor substitution is a matter of contract administration and not protestable).

Procedures

86:07 Clay Township, IN (V, 1–29–86) (*Iacobelli Const., Inc.*) (protester who did not appeal dismissal of its protest cannot reassert issues related to original procurement during a new protest following rebidding).

86:08 Woodbridge, NJ (II, 2–6–86) (*Metcalf & Eddy, Inc.*) (EPA will not consider appeal involving matter currently in State court).

86:09 Newberg, OR (X, 2–10–86) (*Metal Dynamics Int'l Corp.*) (appeal filed with wrong office at EPA and was consequently untimely).

86:10 Cheyenne, WY (VIII, 2–26–86) (*Roscoe Brown, Inc.*) (protest improperly submitted to State instead of to grantee).

86:14 Anne Arundel County, MD (III, 3–7–86) (*Amocams Telemetry Systems, Inc*) (protest appeal improperly filed with EPA Headquarters instead of with Regional Counsel's office) (notification that contract is being awarded to competitor can reasonably be considered a final determination of a bid protest).

86:29 Kankakee, IL (V, 7–7–86) (*Global Const. Co.*) (protest must be filed with grantee and determination made before appeal can be filed with EPA).

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (nominal error in addressing protest to City instead of to the municipal authority which was the grantee was insufficient grounds for dismissing protest).

Rational Basis Test

86:03 Alice, TX (VI, 1–15–86) (*W.T. Young Const. Co.*) (EPA examines the factors on which grantee bases a procurement decision to determine if materially incomplete or erroneous) (where rational basis is lacking but causes no harm to competition, EPA will not reverse decision).

86:05 Southbridge, MA (I, 1–24–86) (*Vulcan Ind., Inc.*) (EPA defers to A/E judgment concerning minimum performance needs unless it lacks a rational basis) (finding that engineer's judgment has a rational basis does not mean that EPA believes the specifications reflect the best engineering judgment. No opinion is offered by EPA regarding the relative merits of one product to another or their suitability for particular applications).

86:11 Struthers, OH (V, 2–27–86) (*Air-O-Lator*) (failure to demonstrate basis for rejecting equipment).

86:18 St. Louis, MO (VII, 4–8–86) (*John Fabic Tractor Co.*) (grantee demonstrated performance based reasons for technical criteria of engines) (EPA will not substitute its technical judgment for that of the grantee's consulting engineer if the grantee presents a rational engineering basis in support of its actions).

85:54 Anne Arundel County, MD (III, 7–18–86) (*Roberts Filter Manuf. Co.*) (*Reconsideration*) (by finding a rational basis for specifications, EPA does not give an opinion that the specifications reflect the best, or only, rational engineering judgment concerning a product or its suitability for a particular use).

86:37 Newberg, OR (X, 10–3–86) (*Envirex, Inc.*) (grantee demonstrated performance reasons for design requirements).

Recipient Determination

86:14 Anne Arundel County, MD (III, 3–7–86) (*Amocams Telemetry Systems, Inc.*) (protest appeal improperly filed with EPA Headquarters instead of with Regional Counsel's office) (notification that contract is being awarded to competitor can reasonably be considered final determination of a bid protest).

86:08 Woodbridge, NJ (II, 2–6–86) (*Metcalf & Eddy, Inc.*) (award to a competitor gives protester notice its protest was denied) (protester's burden to demonstrate timeliness).

Reconsideration

85:55 Little Blue Valley, MO (VII, 1–13–86) (*Roots-Dresser Ind.*) (*Reconsideration*) (EPA authority) (same test as used for judicial review, *i.e.*, there must be clear showing of material factual mistake, newly discovered evidence, or substantial legal error) (denied where no showing of factual mistake, new evidence or error of law).

85:48 Frederick, MD (III, 1–24–86) (RDP Co.) (*Reconsideration*) (the standard of reconsideration of bid protests is limited to whether the original determination was clearly erroneous as a matter of law or fact) (reconsideration denied where facts raised to clarify party's argument could have been presented during original appeal).

86:05 Southbridge, MA (I, 5–13–86) (*Vulcan Ind., Inc.*) (*Reconsideration*) (inherent authority of EPA to reconsider will only be used where there is newly discovered evidence or clear error of law or fact in original determination).

86:17 Mattabassett-Cromwell, CT (I, 5–22–86) (*Crouse Combustion and Komline-Sanderson*) (*Reconsideration*) (denied because no showing of material factual mistake, newly discovered evidence, or substantial legal error) (parties cannot reargue points previously discussed).

85:54 Anne Arundel County, MD (III, 7–18–86) (*Roberts Filter Manuf. Co.*) (*Reconsideration*) (in the absence of a clear showing of material factual mistake, newly discovered evidence, or substantial legal error, EPA will not reconsider a protest appeal determination).

Regulations

86:23 Decatur, IL (V, 5–16–86) (*Paul A. Laurence Co.*) (Section 33.1120(b)(2) limits protest review to issues of federal law or regulation. Violations of State or local law are not subject to EPA review).

86:25 Huntington, WV (III, 5–23–86) (*RAM Engineering, Inc.*) (for grant awarded prior to 1983, grantee has option whether to follow Part 33 instead of Part 35 regulation).

Remedy

86:10 Cheyenne, WY (VIII, 2–26–86) (*Roscoe Brown, Inc.*) (potential Buy American violation is a matter of contract administration. EPA will not order grantee to undo existing contract. Relief is limited to allowability of costs under the grant).

85:55 Little Blue Valley, MO (VII, 1–13–86) (*Roots-Dresser Inc.*) (a contract already awarded under a defective IFB will not necessarily be disturbed by EPA since the harm caused by the IFB deficiencies cannot usually be rectified after contract award without substantial project delay. The potential gain achieved by rewriting the IFB would not overcome the harm caused to the project and other bidders due to delay and expense of rebidding).

Review

Authority and Scope of Review

85:54 Anne Arundel County, MD (III, 7–18–86) (*Roberts Filter Manuf. Co.*) (*Reconsideration*) (EPA may review a grant recipient's procurement action independent of a protest appeal and when a procurement action is protested, may look beyond the recipient's written protest determination).

Sua Sponte Review

85:55 Little Blue Valley, MO (VII, 1–13–86) (*Roots-Dresser Ind.*) (a contract already awarded under a defective IFB will not necessarily be disturbed by EPA since the harm caused by the IFB deficiencies cannot usually be rectified after contract award without substantial project delay. The potential gain achieved be rewriting the IFB would not overcome the harm caused to the project and other bidders due to delay and expense of rebidding).

86:42 Columbus, OH (V, 11–18–86) (*Kokosing Const. Co.*) (where appeal dismissed because of untimely protest, EPA nevertheless reviewed the merits).

Standing

86:05 Southbridge, MA (I, 1–24–86) (*Vulcan Ind., Inc.*) (supplier may protest specifications).

86:07 Clay Township, IN (V, 1–29–86) (*Iacobelli Const., Inc.*) (non-bidder lacks standing to protest contract awarded on

rebid even though he bid on initial procurement).

86:09 Newberg, OR (X, 2–10–86) (*Metal Dynamics Int'l Corp.*) (subcontractor lacks standing to protest equipment evaluation).

86:17 Mattabassett-Cromwell, CT (I, 3–28–86) (*Crouse Combustion Systems and Komline-Sanderson*) (subcontractor has standing to protest restrictive application of specifications. Prime contractor cannot protest post-contract award decisions concerning subcontract equipment).

86:28 La Plata, CO (VIII, 6–25–86) (*Mendez Excavation Co.*) (potential MBE subcontractor has standing to protect MBE efforts made by prime contract bidder).

86:30 Wappingers Falls, NY (II, 7–14–86) (*Myerco, Inc.*) (potential supplier may protest unduly restrictive specifications but cannot protest evaluation of its equipment by the engineer).

86:34 Manchester, NH (I, 8–6–86) (*New England Concrete Pipe Corp.*) (subcontractor supplier cannot protest award of subcontract on grounds that prime contractor selected equipment not meeting specifications).

86:35 Eureka Springs, AR (VI, 8–12–86) (*Hardison Fluid Equipment, Inc.*) (without addressing the issue of standing, EPA Region VI allowed a subcontractor supplier to protest rejection of its equipment based on criteria not specified in the IFB).

86:36 Caledonia, MN (V, 9–10–86) (*Austgen Biojet and Fluidyne Corp.*) (subcontractor supplier may not challenge responsiveness of competitor's equipment or grantee's evaluation of competitor's equipment).

86:37 Newberg, OR (X, 10–3–86) (*Envirex, Inc.*) (subcontractor equipment supplier was permitted to protest rejection of its equipment claiming unduly restrictive application of specifications). (Note: Compare Manchester, NH (I, 8–6–86) and New York, NY (II, 3–3–84) denying standing).

86:38 South Valley, UT (VIII, 10–28–86) (*Western Road Machinery Co.*) (nonresponsive bidder lacks standing to protest grantee's rejection of all bids) (where third low bidder is not next in line to receive award, it lacks standing to protest).

86:40 Michigan City, IN (V, 11–4–86) (*Tenco Hydro, Inc.*) (subcontractor substitution may not be protested).

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (where specifications exclude a supplier's equipment, the supplier may protest the prequalification process without first submitting its equipment for evaluation).

Summary Disposition

86:29 Kankakee, IL (V, 7–7–86) (*Global Const. Co.*) (dismissal for failure to exhaust administrative remedies).

Time Limitations

86:01 St. Andrews, GA (IV, 1–10–86) (*Marley Pump Co.*) (protest that brand name or equal specifications are unduly restrictive must be filed before bid opening).

86:55 Little Blue Valley, MO (VII, 1–13–86) (*Roots-Dresser Ind.*) (*Reconsideration*) (protest challenging application of specifications must be filed prior to bid opening where specifications are applied as written) (this decision explains significant changes from Part 35 to Part 33 regulation).

86:04 Tappahanock, VA (III, 1–17–86) (*Envirodyne Systems, Inc.*) (protest alleging proprietary specifications must be filed before bid opening) (the purpose of EPA's regulation is to prevent the serious delay of a project and to protect the competitive bidding process. A supplier has ample time to file protest prior to bid opening, and if he fails to object to the specifications he waives any right to later raise this issue).

86:05 Southbridge, MA (I, 1–24–86) (*Vulcan Ind., Inc.*) (protest challenging technical design features of brand name or equal specification is untimely when filed after bid opening).

86:08 Woodbridge, NJ (II, 2–6–86) (*Metcalf & Eddy, Inc.*) (award to a competitor gives protester notice its protest was denied) (protester's burden to demonstrate timeliness).

86:10 Cheyenne, WY (VIII, 2–26–86) (*Roscoe Brown, Inc.*) (protest that contractor's selection of equipment violated Buy American provision must be filed by supplier within 7 days of knowing contractor's decision) (time limitation requirement necessary in order to maintain construction schedule).

86:09 Newberg, OR (X, 2–10–86) (*Metal Dynamics Int'l Corp.*) (where appeal filed within 7 days but at wrong office at EPA—it was late).

86:14 Anne Arundel County, MD (III, 3–7–86) (*Amocams Telemetry Systems, Inc.*) (notification that contract was being awarded to protester's competitor was reasonable notice of rejection of the protest and started the appeal clock).

86:05 Southbridge, MA (I, 5–13–86) (*Vulcan Ind., Inc.*) (*Reconsideration*) (protest challenging brand name or equal specification must be filed before bid opening).

86:22 Brunswick, MO (VII, 5–15–86) (*Jay Shartran Co.*) (supplier/manufacturer's protest challenging application of brand name or equal specifications cannot be filed after prime bid opening where the specification itself gave notice of basis for protest).

86:25 Huntington, WV (III, 5–23–86) (*RAM Engineering, Inc.*) (where prequalification was denied, offeror timely protested within 7 days of adverse evaluation—Note: the 7 day time limit applied because evaluation rather than specifications was being challenged).

86:27 Chelan, WA (X, 6–24–86) (*Marley Pump. Co.*) (a protest by an equipment supplier challenging specifications as unduly restrictive must be filed before the prime contract bid opening date. The requirement that protests be filed within 7 days of knowledge of the basis of protest, which is applicable to other types of protests, does not apply to protests concerning unduly restrictive specifications).

86:30 Wappingers Falls, NY (II, 7–14–86) (*Myerco, Inc.*) (where specifications exclude supplier, a protest must be filed before bid opening, not after equipment evaluation and rejection) (equipment supplier's protest was late where it was filed more than 7 days after alleged restrictive application of specifications).

86:54 Anne Arundel County, MD (III, 7–18–86) (*Roberts Filter Manuf. Co.*) (*Reconsideration*) (protest alleging that technical or design features of the specifications are unduly restrictive must be filed before bid opening, where the specifications, as written, give notice of the basis for the protest).

86:35 Eureka Springs, AR (VI, 8–12–86) (*Hardison Fluid Equipment, Inc.*) (where prime contractor is told by grantee that proposed subcontract equipment is rejected, the time for subcontractor to protest may begin to run on or about the date the prime contractor received notice).

86:36 Caledonia, MN (V, 9–10–86) (*Austgen Biojet and Fluidyne Corp.*) (protest alleging unduly restrictive specifications was dismissed for failure to file prior to bid opening).

86:42 Columbia, OH (V, 11–18–86) (*Kokosing Const. Co.*) (where unsuccessful bidder had ability to examine successful bidder's bid at time of bid opening, it had burden of discovering basis for protecting responsiveness of that bid and filing a protest in less than the 15 days taken).

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (where protest was filed untimely but grantee rebid the contract and the protest was still active, there was sufficient time for grantee to revise restrictive specifications and the protest was deemed timely).

86:05 Southbridge, MA (I, 5–13–86) (*Vulcan Ind., Inc.*) *(Reconsideration)* (protest based on improprieties in solicitation clearly apparent before bid opening must be filed before bid opening) (an offeror of "or equal" equipment that does not meet specifications cannot wait until equipment rejection to file protest).

Procurement

A/E Services

86:27 Chelan, WA (X, 6–24–86) (*Marley Pump Co.*) (a recipient is expected to evaluate equipment submittals, including "or equal" items, and may not separately charge a prime contract bidder for evaluating equipment listed in its bid as "or equals").

Bid Shopping

86:12 Mokena, IL (V, 3–3–86) (*Modern Builders Ind. Concrete Co.*) (EPA does not prohibit bid shopping).

Bidders & Offerors

No entries.

Bids

Acceptance Period

No entries.

Addendum

No entries.

Alternates

No entries.

Ambiguity

86:32 Coleraine-Bovey-Taconite, MN (V, 7–25–86) (*Kenko, Inc.*) (where it was unclear from bid whether unit prices were included for certain items, bid was ambiguous and nonresponsive).

Base Bids

86:26 Huntington, WV (III, 5–27–86) (*Crouse Combustion Systems, Inc.*) (IFB required bidders to base its bid on brand name equipment and it was unclear how "or equal" prices would be evaluated).

86:27 Chelan, WA (X, 6–24–86) (*Marley Pump Co.*) (the single base bid method of soliciation and evaluation for equipment may not be used to determine the low responsive bidder and, further, a bid evaluation method which favors the naming of brand name items to the exclusion of "or equals" violates this fundamental principle).

Cancellation of Solicitation

No entries.

Evaluation

86:03 Alice, TX (VI, 1–15–86) (*W.T. Young Const. Co.*) (as contract award criterion, "available funds" need not be available on day of bid opening).

86:04 Tappahanock, VA (III, 1–17–86) (*Envirodyne Systems, Inc.*) (engineer's opinion concerning enhanced performance reliability and maintenance accomplished by requiring certain design features deferred to by EPA).

86:17 Mattabassett-Cromwell, CT (I, 3–28–86) (*Crouse Combustion Systems and Komline-Sanderson*) (period for allowing performance tests can be limited by grantee, otherwise costs and delay could be excessive).

86:18 St. Louis, MO (VII, 4–8–86) (*John Fabic Tractor Co.*) (on prequalification submittals, A/E judgment concerning capital costs, life cycle costs and maintenance and operation costs is given deference).

86:21 Chelan, WA (X, 5–9–86) (*Lyco, Inc.*) (different manufacturers treated differently—grantee improperly waived requirements for one manufacturer while rigidly enforcing similar requirements against another manufacturer).

86:27 Chelan, WA (X, 6–24–86) (*Marley Pump Co.*) (a recipient is expected to evaluate equipment submittals, including "or equal" items, and may not separately charge a prime contract bidder for evaluating equipment listed in its bid as "or equals").

86:30 Wappingers Falls, NY (II, 7–14–86) (*Myerco, Inc.*) (subcontractor supplier cannot protest improper evaluation of its equipment).

86:35 Eureka Springs, AR (VI, 8–12–86) (*Hardison Fluid Equipment, Inc.*) (grantee improperly rejected equipment meeting terms of its specification on basis of undisclosed criteria).

Late

86:06 Weslaco, TX (VI, 1–28–86) (*Nunn & Schumway Const. Co., Inc.*) (bid delivered to wrong office but nevertheless in exclusive possession of contracting authority prior to bid submission deadline and of actual bid opening may not be rejected as late).

Mistake

86:13 South Burlington, VT (I, 3–5–86) (*Pizzagalli, Const. Co.*) (where bidder presented clear and convincing evidence of bid mistake, its nature, how it occurred, and the intended price, bid correction is allowable) (where no bid displacement, evidence outside the bidding documents may be considered in determining whether bidder has met clear and convincing evidence standard).

86:15 Dupont, PA (III, 3–7–86) (*Marona Const. Co.*) (correction resulting in bid displacement permitted where mistake and intended bid clear on the face of bid) (words-over-numbers reconciliation clause not controlling).

86:16 Cecil County, MD (III, 3–11–86) (*Cecil Const. Corp.*) (where bid is significantly below A/E estimate and other bids, and grantee has reason to suspect mistake, grantee must ask bidder to verify bid, calling attention to the suspected error) (where mistake was clear and intended amount was evident from worksheets, bid correction must be permitted where there is no bid displacement).

86:23 Decatur, IL (V, 5–16–86) (*Paul A. Laurence Co.*) (words-over-numbers reconciliation clause should not be mechanically applied where it results in bizarre result clearly unintended by the bidder. Correction of unit prices is permitted where the mistake and intended bid are clearly apparent from the face of the bid).

Preparation Costs

No entries.

Qualified

No entries.

Rejection of All Bids

86:38 South Valley, UT (VIII, 10–28–86) (*Western Road Machinery Co.*) (where grantee discovered its specifications eliminated equipment which could meet its performance needs, it had good cause to reject all bids and resolicit).

86:45 Hudson County, NJ (II, 12–31–86) (*James L. Horan, Inc.*) (where only tow bids received, both far exceeding engineer's estimate, grantee has reasonable basis for rejecting all bids).

Signature

86:15 Dupont, PA (III, 3–7–86) (*Marona Const. Co.*) (failure to execute Bid Security Form waived as a minor irregularity where bidder otherwise committed to its bid).

86:23 Decatur, IL (V, 5–16–86) (*Paul A. Laurence Co.*) (failure to sign bid in one place did not render bid nonresponsive since bid was signed elsewhere and clearly evidenced bidder's intent to be bound).

Time to Prepare

No entries.

Unbalanced

No entries.

Unit Pricing

No entries.

Bonds

86:15 Dupont, PA (III, 3–7–86) (*Marona Const. Co.*) (failure to execute

Bid Security Form waived as a minor irregularity where bidder otherwise committed to its bid).

86:31 Orange, TX (VI, 7–15–86) (*Baytown Const. Co.*) (where bid bond was made payable to an entity other than the grantee, the grantee determined it was nevertheless enforceable under State law—EPA affirmed).

86:36 Caledonia, MN (V, 9–10–86) (*Austgen Biojet and Fluidyne Corp.*) (in the absence of clear IFB language, performance warranty bond requirements are matters of responsibility).

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (150% bond warranty equipment for 5 years was found to be inordinately high and unduly burdensome).

Buy American Act

86:01 St. Andrews, GA (IV, 1–10–86) (*Marley Pump Co.*) (question of Buy American Act violation will not be reached unless domestic product is shown to meet the minimum performance requirements).

85:55 Little Blue Valley, MO (VII, 1–13–86) (*Roots-Dresser Ind.*) (*Reconsideration*) (listing a foreign supplier in a "brand name or equal" clause does not give that supplier a preference and does not violate the Buy American Act).

86:10 Cheyenne, WY (VIII, 2–26–86) (*Roscoe Brown, Inc.*) (product found to be 50% domestic) (matter of contract administration).

86:22 Brunswick, MO (VII, 5–15–86) (*Jay Shartran Co.*) (domestic materials comprised 73% of the pump equipment so a comparison of costs was therefore unnecessary).

86:27 Chelan, WA (X, 6–24–86) (*Marley Pump Co.*) (a foreign manufacturer may be specified as a brand name under a "brand name or equal" specification) (where equipment is procured by subcontract, compliance with Buy American provisions of the Clean Water Act is generally a matter of contract administration, not protestable to EPA).

Competitive Negotiation

No entries.

Conflict of Interest

No entires.

Engineering Judgment

86:04 Town of Tappahanock, VA (III, 1–17–86) (*Envirodyne Systems, Inc.*) (EPA deferred to opinion concerning technical adequacy and compliance of proposed equipment—also deferred to decision to require certain design features to enhance performance reliability and maintenance).

86:17 Mattabassett-Cromwell, CT (I, 3–28–86) (*Crouse Combustion Systems and Komline-Sanderson*) (deference to performance based reasons for design criteria).

86:25 Huntington, WV (III, 5–23–86) (*RAM Engineering, Inc.*) (exercise of judgment in the design of incineration equipment and technical adequacy and compliance of proposed equipment given deference by EPA where rational basis for decision).

86:26 Huntington, WV (III, 5–27–86) (*Crouse Combustion Systems, Inc.*) (where rational basis for engineer's decision, EPA would not substitute its opinion for that of engineer concerning the technical adequacy or compliance of proposed equipment).

85:54 Anne Arundel County, MD (III, 7–18–86) (*Roberts Filter Manuf. Co.*) (Reconsideration) (by finding a rational basis for specifications, EPA does not give an opinion that the specifications reflect the best, or only, rational engineering judgment concerning a product or its suitability for a particular use).

86:37 Newberg, OR (X, 10–3–86) (*Envirex, Inc.*) (rational basis for determining certain design criteria to be necessary for performance needs) (EPA does not decide whether specifications reflect best judgment and EPA decision does not reflect an opinion regarding relative merits of one supplier's equipment versus another).

Experience Requirements

86:11 Struthers, OH (V, 2–27–86) (*Air-O-Lator*) (EPA reversed grantee decision which found supplier did not meet the specified experience) (no rational basis for rejecting equipment and grantee failed to justify need for requirement).

Invitation for Bids (IFB)

Alternate

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (design specifications to be met by alternate equipment must be clearly identified in the IFB).

Defective

86:32 Coleraine-Bovey-Taconite, MN (V, 7–25–86) (*Kenko, Inc.*) (where IFB received by bidder was missing two pages, bidder was responsible for learning of the clearly apparent omission and submitting the unit prices included on missing pages with its bid).

Jurisdiction

86:23 Decatur, IL (V, 5–16–86) (*Paul A. Laurence Co.*) (violation of State law is not protestable unless the action also violates federal law or regulation).

License Requirement

No entries.

Listing

86:12 Mokena, IL (V, 3–3–86) (*Modern Builders Ind. Concrete Co.*) (incomplete list could be completed after bid opening where it was matter of responsibility).

86:23 Decatur, IL (V, 5–16–86) (*Paul A. Laurence Co.*) (bid shopping does not violate EPA regulation but rather is a matter exclusively of State or local law. Where IFB did not expressly state that listing subcontractors was a matter of responsiveness, the failure to provide such information with the bid was correctly waived as non-material deficiency).

Minority Business and Women's Business Enterprise (MBE/WBE)

86:02 San Bernardino, CA (IX, 1–15–86) (*MCI Constructors, Inc.*) (grantee determination findings bidders nonresponsible for failing to meet positive efforts requirements given deference by EPA).

86:06 Weslaco, TX (VI, 1–28–86) (*Nunn & Schumway Const. Co., Inc.*) (goals are not quotas and a contract may not be deemed nonresponsible merely for failure to attain the goal. Where, as here, contractor met the goal, he is presumed to have made positive efforts).

86:19 Anne Arundel County, MD (III, 4–28–86) (*Ferguson Trenching Co., Inc.*) (grantee's determination that bidder is nonresponsible failing to demonstrate good faith efforts is upheld by EPA where it has a rational basis).

86:23 Decatur, IL (V, 5–16–86) (*Paul A. Laurence Co.*) (where bidder certifies it will meet the MBE/WBE goals, the failure to document positive efforts is a matter of responsibility even if the IFB states it is a matter of responsiveness).

86:25 Huntington, WV (III, 5–23–86) (*RAM Engineering, Inc.*) (fact that a firm is a MBE does not excuse it from meeting the technical specifications).

86:28 La Plata, CO (VIII, 6–25–86) (*Mendez Excavation Co.*) (compliance with MBE/WBE requirements is generally a matter of responsibility and defects may be cured after bid opening).

86:33 Elyria, OH (V, 7–30–86) (*Wilson Bennett, Inc.*) (where IFB did not clearly make MBE/WBE requirements matters of responsiveness, grantee improperly rejected bid as nonresponsive. Bid rejection was affirmed, however, because post-bid submissions of MBE/WBE requirements failed to demonstrate bidder "responsibility") (grantee required that only MBEs certified by grantee be used).

Prequalification

86:18 St. Louis, MO (VII, 4–8–86) (*John Fabic Tractor Co.*) (supplier may protest specifications after being rejected if it is before prime contract bids are opened).

86:21 Chelan, WA (X, 5–9–86) (*Lyco, Inc.*) (challenge to the specifications and equipment evaluation demonstrated the specification eliminated competition and created unjustified sole source).

86:25 Huntington, WV (III, 5–23–86) (*RAM Engineering, Inc.*) (functional equivalent of direct procurements subject to EPA review) (submittal rejected as nonresponsive for failure to meet material terms of bidding documents. Grantee had rational basis for rejecting equipment as technically inadequate where offer failed to submit information needed for evaluation).

86:26 Huntington, WV (III, 5–27–86) (*Crouse Combustion Systems, Inc.*) (rational basis for rejecting submittal which substantially deviated from specifications where grantee demonstrated the specifications were performance related).

86:41 Corry, PA (II, 11–18–86) (*Lyco, Inc.*) (where specifications exclude a supplier's equipment, the supplier may protest the prequalification process without first submitting its equipment for evaluation) (prequalification process does not excuse offerors from meeting material specifications).

Responsibility

86:02 San Bernardino, CA (IX, 1–15–86) (*MCI Constructors, Inc.*) (grantee's determination finding bidders nonresponsible for failing to meet MBE positive efforts requirements given deference by EPA).

86:06 Weslaco, TX (VI, 1–28–86) (*Nunn & Schumway Const. Co., Inc.*) (bid may not be deemed nonresponsible merely for failure to attain MBE goal; where contractor met goal, it is assumed to have made positive efforts).

86:19 Anne Arundel, MD (III, 4–28–86) (*Ferguson Trenching Co., Inc.*) (grantee's determination finding bidder nonresponsible for failing to demonstrate good faith efforts is upheld by EPA where it has a rational basis) (failure to meet definitive MBE responsibility criteria rendered bid nonresponsible).

86:24 Sidney, NB (VII, 5–20–86) (*Nuncon Const. Corp.*) (where low bidder failed to submit financial information within 10 days of bid opening, he was properly rejected as nonresponsible) (EPA defers to grantee determination of nonresponsibility in absence of bad faith or evidence of no rational basis) (grantee acted reasonably in limiting its review to information provided within the normal review period for determining a bid protest and EPA will not cause grantee to reopen decision based on information made available only during appeal).

86:28 La Plata, CO (VIII, 6–25–86) (*Mendez Excavation Co.*) (where post-bid opening MBE compliance efforts were considered by grantee, EPA deferred to affirmative findings of responsibility) (grantee exercised reasonable discretion in the amount of time it permitted responsibility defects to be cured).

86:31 Orange, TX (VI, 7–15–86) (*Baytown Const. Co.*) (EPA will not reverse a rationally based grantee decision affirmatively finding bidder responsible).

86:33 Elyria, OH (V, 7–30–86) (*Wilson Bennett, Inc.*) (where IFB did not clearly make MBE/WBE requirements matters of responsiveness, grantee improperly rejected bid as nonresponsive. Bid rejection was affirmed, however, because post-bid submissions of MBE/WBE requirements failed to demonstrate bidder "responsibility") (grantee required that only MBEs certified by grantee be used).

86:36 Caledonia, MN (V, 9–10–86) (*Austgen Biojet and Fluidyne Corp.*) (bid could not be rejected as nonresponsive for failure to provide performance bond) (post bid opening information must be considered by grantee).

Responsiveness

85:55 Little Blue Valley, MO (VII, 1–13–86) (*Roots-Dresser Ind.*) (*Reconsideration*) (under "brand name or equal" specifications, equipment which meets performance requirements but fails to meet specified design features is nonresponsive and cannot be accepted even if grantee concludes it meets the project needs).

86:04 Tappahanock, VA (III, 1–17–86) (*Envirodyne Systems, Inc.*) (EPA will defer to engineer's rationally based decision concerning technical adequacy or compliance of proposed equipment).

86:12 Mokena, IL (3–3–86) (*Modern Builders Ind. Concrete Co.*) (bid may not be rejected for failure to submit subcontractor list where IFB did not make it matter of responsiveness).

86:15 Dupont, PA (III, 3–7–86) (*Marona Const. Co.*) (failure to execute Bid Security Form waived as a minor irregularity where bidder otherwise committed to its bid).

86:24 Sidney, NB (VII, 5–20–86) (*Nuncon Const. Corp.*) (finding of nonresponsiveness due to failure to submit financial information after bid opening was in error).

86:25 Huntington, WV (III, 5–23–86) (*RAM Engineering, Inc.*) (prequalification submittal rejected as nonresponsive for failure to submit information needed for evaluation).

86:31 Orange, TX (VI, 7–15–86) (*Baytown Const. Co.*) (where bid bond was made payable to wrong legal entity it was nevertheless enforceable under State law and the bid was therefore responsive).

86:54 Anne Arundel County, MD (III, 7–18–86) (*Roberts Filter Manuf. Co.*) (*Reconsideration*) (a bid which fails to meet a material term of the specifications must be rejected as nonresponsive—a material term cannot be waived after bid opening in order to accept a low bid).

86:32 Coleraine-Bovey-Taconite, MN (V, 7–25–86) (*Kenko, Inc.*) (where bid failed to include unit prices for items on the pages that were missing from the IFB given to the bidder, the bid was nonresponsive. Bidder should have realized the IFB was missing pages).

86:36 Caledonia, MN (V, 9–10–86) (*Austgen Biojet and Fluidyne Corp.*) (grantee improperly rejected subcontractor supplier as nonresponsive for failing to satisfy performance bond requirements; EPA required grantee to evaluate responsibility of suppliers) (where prime contract bidder is responsive, grantee may award contract and require substitution of subcontractor equipment to meet specifications).

86:38 South Valley, UT (VIII, 10–28–86) (*Western Road Machinery Co.*) (where equipment was determined to be adequate for performance needs but it did not meet specified physical characteristics, the bid was nonresponsive and grantee properly rejected all bids and readvertised).

86:42 Columbus, OH (V, 11–18–86) (*Kokosing Const. Co.*) (submittal of alternative construction sequence with bid does not render bid nonresponsive where the submission does not materially deviate from the sequence stated in the IFB, even though the submittal was not made in accordance with procedures set forth in IFB).

Specifications

Brand Name or Equal

85:55 Little Blue Valley, MO (VII, 1–13–86) (*Roots-Dresser Ind.*) (*Reconsideration*) (when recipient does not specifically identify salient features but specifies detailed technical features, each feature is deemed a necessary requirement of the equipment which must be met by offeror in order to be responsive. Equipment must not merely

meet performance needs but must meet all specified design features).

86:05 Southbridge, MA (I, 1–24–86) (*Vulcan Ind., Inc.*) (equipment must meet technical design features specified in order to be "equal." Performance equivalence does not make it "equal").

86:26 Huntington, WV (III, 5–27–86) (*Crouse Combustion Systems, Inc.*) (IFB ambiguously mixed the terms "brand name of equal" and "alternate equipment proposals") (IFB improperly stated that equipment which "substantially" met the specifications could be accepted) (IFB was unclear on how "or equal" equipment prices would be evaluated—may be similar to single base bidding) (IFB must permit bids to be based on "or equal" items which will be evaluated after contract award).

86:27 Chelan, WA (X, 6–24–86) (*Marley Pump Co.*) (where "brand name or equal" specifications are used, bidders for the prime contract who commit to meeting the specifications must be permitted to base their bids on "or equal" equipment items without risk of being rejected as nonresponsive because one of their equipment items is determined to be unacceptable after bid opening) (bidder commits to meeting the specifications in the IFB and if it is determined by the grantee that the equipment fails to meet the specification, the contractor may be required to substitute conforming equipment and must do so at no additional cost to the grantee).

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (use of "or equal" specification does not eliminate undue restrictiveness of design specifications based on a proprietary product) (where specifications describe unique system and recite detailed design specifications, those salient features cannot be disregarded by grantee).

Design (See also Unduly Restrictive Specifications)

No entries.

Local Preference

No entries.

Minimum Need (See also Unduly Restrictive Specifications)

No entries.

Oral Statements

86:04 Tappahanock, VA (III, 1–17–86) (*Envirodyne Systems, Inc.*) (design features intended to enhance performance reliability and maintenance supported by rational performance basis).

Performance

86:07 Clay Township, IN (V, 1–29–86) (*Iacobelli Const., Inc.*) (unreasonable for bidder to rely on oral statements of grantee).

86:17 Mattabassett-Cromwell, CT (I, 3–28–86) (*Crouse Combustion Systems and Komline-Sanderson*) (equipment performance test period can be limited to avoid excessive cost and delay).

86:37 Newberg, OR (X, 10–3–86) (*Envirex, Inc.*) (where design criteria were stated as operational performance requirements such as producing 16% cake solids, grantee had rational performance reasons for the requirements).

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (coupling performance and design specifications does not unduly restrict design criteria which every bidder must meet regardless of equipment performance).

Restrictive (See Unduly Restrictive)

Unduly Restrictive

86:18 St. Louis, MO (VII, 4–8–86) (*John Fabic Tractor Co.*) (specification is not unduly restrictive where it is reasonably based on performance needs).

86:21 Chelan, WA (X, 5–9–86) (*Lyco, Inc.*) (specifications copied from one manufacturer's catalog which eliminated all competition created *de facto* sole source procurement) (where a particular manufacturer's specification is used by A/E as starting point for writing project specifications, it must be opened to eliminate unnecessary design features and to permit competition) (improper to require all manufacturers to perform difficult test developed by competitor which is not a national standard).

86:25 Huntington, WV (III, 5–23–86) (*RAM Engineering, Inc.*) (where protester failed to prove equipment was excluded by specifications it could not challenge the specifications as unduly restrictive).

86:27 Chelan, WA (X, 6–24–86) (*Marley Pump Co.*) (only those characteristics and features of a brand name equipment item which are essential to the minimum performance needs of a project may be specified as salient characteristics).

86:35 Eureka Springs, AR (VI, 8–12–86) (*Hardison Fluid Equipment, Inc.*) (where grantee rejection of equipment was not based on specified salient characteristics but on an unstated interpretation which it failed to describe in IFB, rejection was improper).

86:37 Newberg, OR (X, 10–3–86) (*Envirex, Inc.*) (grantee met burden of demonstrating specification was performance related and reflective of the project's minimum performance needs; design criteria were stated in terms of operational performance and efficiency levels rather than physical characteristics).

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (where specifications unduly restrict competition, the problem is not cured by permitting alternate equipment bids, since alternate can be rejected at the will of the grantee) (specification requiring suppliers to copy a competitor's design placed suppliers at disadvantage in violation of Clean Water Act).

Salient Requirements

No entries.

Sole Source

86:18 St. Louis, MO (VII, 4–8–86) (*John Fabric Tractor Co.*) (where only one manufacturer was listed on prequalified equipment list, it was not sole source procurement because two suppliers were prequalified and several others were capable of competing)

86:21 Chelan, WA (X, 5–9–86) (*Lyco, Inc.*) (specifications based on manufacturer's catalog eliminated all competition and created *de facto* sole source).

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (where specifications permit only one manufacturer of equipment, it creates impermissible sole source procurement, in the absence of performance justification for confining procurement to the equipment).

State and Local Law

86:03 Alice, TX (VI, 1–15–86) (*W.T. Young Const. Co.*) (EPA will not consider issues of State law in absence of overriding federal requirements.).

86:08 Woodbridge, NJ (II, 2–6–86) (*Metcalf & Eddy, Inc.*) (EPA will defer to a State court's determination unless overriding federal requirement).

86:31 Orange, TX (VI, 7–15–86) (*Baytown Const. Co.*) (EPA accorded deference to grantee legal opinion that under State law a bid bond made out to the wrong term would nevertheless be enforceable).

Subcontract Award

86:17 Mattabassett-Cromwell, CT (I, 3–28–86) (*Crouse Combustion Systems and Komline-Sanderson*) (grantee decision rejecting subcontract equipment is a matter of contract administration and not protestable).

86:30 Wappingers Falls, NY (II, 7–14–86) (*Myerco, Inc.*), (potential supplier lacks standing to protest the grantee's adverse evaluation of its equipment).

86:34 Manchester, NH (I, 8–6–86) (*New England Concrete Pipe Corp.*) (subcontractor supplier cannot protest award of subcontract on grounds that prime contractor selected equipment not meeting specifications).

86:36 Caledonia, MN (V, 9–10–86) (*Austgen Biojet and Fluidyne Corp.*) (grantee may award contract to prime contract bidder and require substitution of subcontractor equipment to meet specifications).

86:40 Michigan City, IN (V, 11–4–86) (*Tenco Hydro, Inc.*) (substitution of a listed subcontractor is an issue of contract administration and not protestable).

Subcontractor Listing (See Listing Requirements) Waiver

86:15 Dupont, PA (III, 3–7–86) (*Marona Const. Co.*) (failure to execute Bid Security Form waived as a minor irregularity where bidder otherwise committed to its bid and grantee properly protested).

86:42 Columbus, OH (V, 11–18–86) (*Kokosing Const. Co.*) (immaterial deviation from IFB instructions was properly waived where IFB did not clearly make it a matter of responsiveness and no prejudice resulted to other bidders).

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April 20, 1987

Part V

Department of Transportation

Research and Special Programs Administration

State of Vermont Rules for Transportation of Irradiated Reactor Fuel and Nuclear Waste; Decision on Appeal; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-30]

Inconsistency Ruling No. IR-15; Decision on Appeal; Vermont Rules for Transportation of Irradiated Reactor Fuel and Nuclear Waste

AGENCY: Research and Special Programs Administration; DOT.

ACTION: Decision on Appeal.

SUMMARY: In response to the appeal of the Vermont Agency of Transportation from the findings made in Inconsistency Ruling No. IR-15 (49 FR 46660; November 27, 1984), that inconsistency Ruling is affirmed.

EFFECTIVE DATE: April 20, 1987.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Office of Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590 (Tel: 202/366-4400).

SUPPLEMENTARY INFORMATION:

I. Background

On November 27, 1984, the Department of Transportation (DOT) published nine inconsistency rulings (IR-7 through 15; 49 FR 46632 *et seq.*) concerning state and local restrictions on radioactive materials transportation in the states of Michigan, New York and Vermont. Included in this omnibus proceeding was Inconsistency Ruling No. 15 (IR-15) dealing with regulations of the Vermont Agency of Transportation (hereinafter "Vermont" or "the State"). The Ruling found that Rules I(e), III(D)(3-4), III(E-L) and IV through VIII are inconsistent with the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. app. 1801-1811) or the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted in accordance with § 112(a) of the HMTA (49 U.S.C. app. 1811(a)).

The procedural regulations governing Departmental issuance of inconsistency rulings are codified in 49 CFR 107.201-107.211. Prior to November 1, 1985, these provided for the issuance of rulings by the Associate Director for Hazardous Materials Regulation (§ 107.209) and the issuance of decisions on appeal from such rulings by the Director of the Materials Transportation Bureau (§ 107.211). IR-15 was issued in accordance with § 107.209 on November 20, 1984. As required by § 107.211, Vermont filed an appeal within 30 days of issuance of IR-15. Comments opposing the appeal were filed by the Electric Utility Companies' Nuclear Transportation Group.

Effective November 1, 1985, the Research and Special Programs Administration (RSPA) underwent a reorganization in which the Materials Transportation Bureau was abolished and its hazardous materials responsibilities were assigned to the Office of Hazardous Materials Transportation. The functions formerly performed by the Bureau Director were assigned to the Administrator of RSPA. (See 50 FR 45728, November 1, 1985.) Accordingly, this decision on appeal is issued by the Administrator of RSPA.

II. The Appeal

A. Introduction

Vermont has appealed IR-15 only with respect to its Rules III(G), III(J), III(K), V and VII. Therefore, I will consider and discuss only those rules.

Many of the findings being appealed were discussed exhaustively in IR-15. I will respond only to the specific issues raised on appeal and generally will not reiterate the Ruling's discussions, with which I fully concur. As my decision demonstrates, DOT has almost totally occupied the field of radioactive hazardous materials transportation safety, and thus most state and local regulation in that field will be found inconsistent and thus preempted.

B. Rule III(G)

Vermont appeals the finding in IR-15 that its Rule III(G) is inconsistent with the HMR. Rule III(G) requires carrier submission of an emergency plan before shipment of irradiated reactor fuel or radioactive wastes which are highway route controlled quantities under 49 CFR 173.403 (referred to as "RADWAS" in the Vermont regulations). The specific requirement is for:

> (G) A copy of an emergency plan which describes procedures to be taken by the carrier in an emergency to eliminate or minimize the radiation exposure of the public.

Vermont contends that there are good reasons why this Rule goes beyond the driver training requirements of 49 CFR 177.825. It says that the usefulness of the Federal requirements would be severely compromised in many accidents where the driver would be killed or rendered unconscious: The State concludes by stating:

> Vermont submits that Rule III-G fills a disturbing lacuna in the Federal regulatory scheme. Given, on the one hand, the slight additional burden imposed on carriers by Rule III-G, and, on the other, the paralysis that all too easily might result from the ignorance of law enforcement and rescue personnel who arrive on accident scene and find a dead or unconscious driver, the validity of Rule III-G should be upheld.

Vermont mistakenly implies that DOT's driver training requirements in 49 CFR 177.825(d) are the only means whereby emergency response to radioactive materials incidents has been addressed in the HMR. However, 49 CFR 173.22(c) requires shippers of irradiated reactor fuel to comply with Nuclear Regulatory Commission (NRC) requirements for a physical protection plan. The NRC regulations (10 CFR 73.37(b)) include a requirement for licensees to make advance arrangements with local law enforcement agencies along shipment routes for their response to an emergency or a call for assistance. Also, 10 CFR 73.21(c) authorizes access to licensees' "safeguards information" regarding such shipments by state and local law enforcement authorities responsible for emergency response.

It is clear that DOT and NRC have determined what information and documentation requirements should be imposed on carriers for the safe transportation of radioactive materials, including information needed for emergency response. Therefore, state and local requirements applicable to carriers going beyond the Federal requirements create confusion for transporters, are obstacles to the accomplishment of the objectives of the HMTA and the HMR, and thus are inconsistent with them. (IR-2 (44 FR 75566, Dec. 20, 1979); IR-6 (48 FR 760, Jan. 6, 1983); IR-8 (49 FR 46637, Nov. 27, 1984). Thus, I affirm the finding in IR-15 that Vermont's Rule III(G) is inconsistent.

Rule III(J)

Vermont appeals the finding in IR-15 that Rule III(J) is inconsistent with the HMTA. That Rule requires carriers of highway route controlled quantities of radioactive materials to provide—

> (J) A certificate that a bond or insurance *acceptable to the Secretary* [of the Vermont Agency of Transportation] has been posted to cover all types of damages caused by release of the shipped RADWAS materials, and in no event shall such bond or insurance be for less than Five Million Dollars ($5,000,000) total damages. (Emphasis added.)

Vermont contends that IR-15 found an inconsistency between the State's $5,000,000 requirement and the amount required by a Federal Highway Administration regulation, in effect prior to January 1, 1985, incorporated in the HMR (49 CFR 177.804). However, the State contends that any inconsistency ceased on January 1, 1985, when the

Federal requirement increased to $5,000,000.

Vermont's argument that Rule III(J) is saved simply because the Federal indemnification level and the State's level are both $5,000,000 must fail. In fact, the State's requirement for a bond or insurance "acceptable to the Secretary" (with $5,000,000 being the minimum acceptable amount) is at variance with the Federal limit. A Vermont official has apparent authority to increase the liability coverage required by the HMR. IR–15 correctly stated that "State adoption of higher insurance coverage requirements can operate as barriers to transportation." 49 FR 46664. A similar New York State Thruway Authority (NYSTA) indemnification requirement was addressed in IR–10 (49 FR 46645, Nov. 17, 1984):

> By denying the use of the Thruway to any radioactive materials shipment not offering what the NYSTA considers to be proper indemnification, the NYSTA rule directly results in the diversion of such shipments into other jurisdictions and the increase of overall time in transit. In other words, the overall exposure to the risks of radioactive materials transportation is increased and exported. For this reason, the NYSTA rule necessarily poses an obstacle to the accomplishment of the Congressional objective of enhancing hazardous materials transportation safety. 49 FR 46646.

The indemnification level established through the HMR, coupled with the indemnification provisions of the Price-Anderson Act (42 U.S.C. 2210), provides the exclusive standard for radioactive materials transportation indemnification. They have totally occupied that field, and any state or local bond, insurance or indemnification requirement not identical to the HMR requirement is an obstacle to the accomplishment of the objectives of the HMTA and the HMR. Therefore, I affirm the finding in IR–15 that Rule III(J) is inconsistent with the HMTA.

Rule III(K)

Vermont appeals the finding in IR–15 that its Rule III(K) is inconsistent with the HMTA and the HMR.

That Rule requires carriers of highway route controlled quantities of radioactive materials to file—

> (K) A certificate giving the point of origin and point of destination of the shipment and stating that the route to be used is the shortest and most direct, or if not so, then stating the explicit reason(s) that the proposed route was chosen.

Vermont contends that IR–15 incorrectly characterized this requirement as imposing an inconsistent route selection criterion. It argues that Rule III(K) is a reporting requirement, not a route selection requirement, and that it does not interfere with carriers' compliance with the route selection criteria of 49 CFR 177.825(a).

The State says that this requirement is needed for Vermont to keep itself apprised of developments affecting route selection, i.e., state and local requirements elsewhere which may operate to direct traffic to Vermont. Upon learning of improper regulatory obstacles elsewhere, the State contends, it could then apply for an inconsistency ruling or institute judicial proceedings.

Even if not used by the State as a routing criterion, Rule III(K) nevertheless must withstand analysis as a possibly inconsistent information requirement. To the extent that Vermont desires information on origin and destination of shipments passing through Vermont, it already receives that information under an NRC regulation (incorporated in the HMR by general reference in §§ 173.22 and 177.825) requiring notification to governors of spent fuel shipments (10 CFR 73.37(f)). As indicated above, DOT and NRC have totally occupied the field of information requirements relating to transportation of radioactive materials. Thus, information requirements different from or in addition to them create an unjustifiable obstacle to accomplishment of the goals of the HMTA and the HMR. IR–2, IR–6, IR–8 (all *supra*).

Therefore, I affirm the finding in IR–15 that Rule III(K) is inconsistent with the HMTA and the HMR.

Rule V

Vermont appeals the finding in IR–15 that its Rule V is inconsistent with the HMTA and the HMR.

Vermont's Rule V provides:

V. Approval notification.

> Upon the Secretary granting approval to transport, the applicant shall be notified in writing, not less than 48 hours before the scheduled shipment and the Secretary shall indicate any conditions or limitations to the approval, including but not limited to: operation of highway vehicles or railcars at reduced speed over High Level Bridge(s) or other locales deemed of risk, and prohibition or interruption of transport due to inclement weather or other adverse conditions.

Although expressly noting that it is not appealing the IR–15 finding of inconsistency as to Vermont's Rule IV prohibiting transport of radioactive wastes in Vermont without the Secretary's prior written approval, the State argues that Rule V is not inconsistent. It contends that IR–15 improperly intepreted Rule V as imposing some additional burden on carriers.

The gist of the State's argument follows:

> By its own terms, Rule V should be a boon to carriers in that it protects them against summary or capricious administrative action by requiring the Secretary to make known to them, in writing at least 48 hours in advance, his position on approval of the proposed shipment, together with any conditions or limitations attached to the approval. The requirement that the Secretary afford adequate advance written notice should be particularly helpful to carriers in fulfilling their federally mandated obligation to "consider available information" before applying route selection criteria. *See* 49 C.F.R. 177.825(a)(1983).

The State goes on to list the following types of route-related matters about which carriers will have information by virtue of this rule: interstate highway repaving projects, civil disobedience threats, special events causing traffic congestion, bridge failures, rock slides, and washouts.

By its very terms, however, Vermont's Rule V is more than an administrative provision specifying which State official will provide what notice to carriers concerning road conditions in Vermont. It speaks of "the Secretary granting approval to transport" and indicating "any conditions or limitations to the approval".

In light of the virtually total occupation of the field of radioactive materials transportation by the HMTA and the HMR, State or local provisions requiring approval or authorizing conditions to be established for the transportation of radioactive materials (other than compliance with Federal regulations) constitute unauthorized prior restraints on shipments that are presumptively safe based on their compliance with Federal regulations and are inconsistent with the HMTA and the HMR. IR–8 (49 FR 46637), IR–10 (49 FR 46645), IR–11 (49 FR 46647), IR–12 (49 FR 46650), IR–13 (49 FR 46653) (all Nov. 27, 1984). Vermont's Rule V purports to authorize state approvals, conditions, and limitations in this field and thus is inconsistent. Furthermore, it is inconsistent because of its inextricable link with the basic prior approval provisions in Vermont's Rule IV (which the State is not appealing).

Therefore, I affirm the finding in IR–15 that Rule V is inconsistent with the HMTA and the HMR.

Rules VII(A)–(B)

Vermont appeals the findings in IR–15 that its Rules VIII (A) and (B) are inconsistent with the HMTA to the extent that they impose an obligation to

act upon transporters of radioactive materials.

Those provisions state:

(A) Each motor vehicle shipment of RADWAS shall be monitored by:

(1) a leading State Police vehicle occupied by at least one law enforcement officer;

(2) a vehicle occupied by State Monitoring Team personnel; and

(3) a trailing State Police vehicle occupied by at least one law enforcement officer.

(4) Each shipment by railcar or barge through or in the State shall be accompanied as directed by the Secretary.

The State asserts that IR–15 incorrectly speculated that these provisions might require a carrier to wait at a State border until monitoring personnel arrived. It says that there are no "explicit" requirements placed on carriers although "[s]ome minimal degree of cooperation is implicit"—similar, it says, to a carrier's compliance with speed limits, traffic laws, etc. The state sets forth several practical reasons for state monitoring, including inadequate resources of towns along the route, bad weather, and long emergency response times.

Section 173.22(c) of the HMR requires shippers of irradiated reactor fuel to provide physical protection under a plan established under NRC requirements. The latter provide, in 10 CFR 73.37(c), that a transport vehicle carrying spent nuclear fuel must:

(1) In a heavily populated area, be either:

(i) Occupied by at least two persons and escorted by an armed member of the local law enforcement agency in a mobile unit of such agency, or

(2) In any other area, either:

(i) Be occupied by at least two people,

(ii) Be escorted by a separate vehicle containing at least two persons, or

(iii) Meet one of the heavily populated area criteria.

These provisions evince a clear intent of DOT and NRC to fully occupy the field of escorts for transportation of radioactive materials. Thus, although escort requirements identical to the DOT/NRC requirements (IR–14, 49 FR 46656 (Nov. 27, 1984)) or notice requirements facilitating compliance with such escort requirements (IR–17, 51 FR 20925 (June 9, 1986)) may be consistent, requirements for other additional or special escorts for radioactive transportation are inconsistent. IR–11, 49 FR 46647 (Nov. 27, 1984); IR–13, 49 FR 46653 (Nov. 27, 1984).

Thus, IR–15 was correct in finding Rules VII (A) and (B) inconsistent insofar as they impose an obligation upon transporters because they provide escort standards different from those in the HMR. To the extent they merely indicate the nature of escorts the State will provide, they are not "requirements" subject to preemption under 49 USC app. § 1811(a). However, the State has foregone the opportunity to specifically deny that these rules require a carrier to wait at its borders for escorts other than those required by the HMR. Thus, these rules may constitute a requirement upon carriers and, to the extent that they do, they are inconsistent with the HMTA and the HMR. Therefore, I affirm the finding in IR–15 to that effect.

Rule VII(C)

Finally, Vermont appeals the finding in IR–15 that its Rule VII(C) is inconsistent. That rule provides:

(C) The ranking State police officer accompanying the shipment shall be the authority to modify the conditions of the approval in response to weather, accident or exigent circumstances which may affect the safety of the shipment. Any modification which will result in a delay of more than two hours in the time of departure of the shipment from Vermont shall be appoved by the Secretary or his designee.

As it did with respect to its Rule V, the State argues that its Rule VII(C) approval modification procedures place a burden on the State rather than on carriers of radioactive materials. It contends that this Rule contains an explicitly limited delegation of authority, should assist carriers in complying with the "emergency conditions" provisions of 49 CFR 177.825(b)(2)(i), and thus is consistent with the HMR.

Section 177.825(b)(2)(i) authorizes the carrier to deviate from a preferred route when justified by "emergency conditions". State or local governments have authority to provide notice of such conditions and to restrict or suspend all traffic operations when road, weather, traffic or other hazardous conditions or circumstances warrant. IR–3, 46 FR 18918 (Mar. 26, 1981); *American Trucking Assn.* v. *City of Boston*, C.A. 81–628–MA (D. Mass. 1981); *National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp 509 (R.I. 1982), *aff'd* 698 F. 2d 559 (1st Cir. 1983). However, Vermont has not provided sufficient justification for its decision to single out radioactive materials traffic for different types of control than hazardous materials generally.

Rule VII(C) says that the ranking State police officer "shall be the authority to modify the conditions of the approval" and states that significant modifications "shall be approved by the Secretary or his designee." These are inconsistent with the carrier discretion and responsibility provided by the HMR and demonstrate the correctness of the finding in IR–15 that Rule VII(c) is an inconsistent element of an inconsistent state approval system. That rule is inconsistent on its own terms and also inconsistent because of its inextricable link with the basic prior approval provisions in Vermont's Rule IV. I affirm the finding of inconsistency.

III. Conclusion

For the reasons indicated above and for the reasons set forth in IR–8 itself, I affirm the determination by the Associate Director of the Materials Transportation Bureau in IR–8 that Vermont Agency of Transportation Rules III(G), III(J), III(K), V and VII are inconsistent with the HMTA and the HMR.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued in Washington, DC, on April 13, 1987.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 87–8833 Filed 4–17–87; 8:45 am]

BILLING CODE 4910–60–M

federal register

Monday
April 20, 1987

Part VI

National Railroad Passenger Corporation

49 CFR Part 701

Freedom of Information Act; Schedule of Fees and Other Administrative Changes; Proposed Rule

NATIONAL RAILROAD PASSENGER CORPORATION

49 CFR Part 701

Freedom of Information Act; Schedule of Fees and Other Administrative Changes

AGENCY: National Railroad Passenger Corporation (Amtrak, or the Corporation).

ACTION: Proposed rules and request for public comments.

SUMMARY: The National Railroad Passenger Corporation (NRPC), also known as Amtrak, proposes to amend its rules concerning the Freedom of Information Act (FOIA) to incorporate recent changes to the Act regarding the establishment of fees charged for the search, review, and duplication of records in response to FOIA requests. These proposed rules follow the guidelines established by the Office of Management and Budget (OMB) and the Department of Justice. In addition, NRPC proposes to amend its FOIA regulations to reflect certain administrative changes within the Corporation.

DATES: Comments are due on or before April 22, 1987 so that NRPC can meet statutory requirements to publish revised FOIA fee regulations in final form no later than April 25, 1987. A further discussion of the comment period is found in **SUPPLEMENTARY INFORMATION.**

ADDRESS: Address comments to the Freedom of Information Office, National Railroad Passenger Corporation, 400 North Capitol Street, NW., Washington, DC 20001.

Comments received will be available for public inspection at the above address from 8:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Medaris Oliveri, FOIA Officer, (202) 383–3991.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Reform Act) requires the Office of Management and Budget to promulgate guidelines containing a uniform schedule of FOIA fees that are applicable to all agencies. On January 16, 1987, OMB published a notice of proposed guidelines on the establishment of fees under the Freedom of Information Act in the **Federal Register**, 52 FR 1992. On March 27, 1987, OMB published final guidelines regarding the implementation of certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99–570). The final guidelines incorporated changes deemed appropriate as a result of public comments received. The purpose of this notice is to issue proposed implementing regulations in conformance with OMB's final guidelines to fulfill the mandate of the Reform Act requiring that regulations be issued in final form no later than April 25, 1987. NRPC would normally provide a 60-day public comment period. However, the NRPC has determined that a shorter comment period is appropriate in light of the fact that NRPC regulations directly follow, almost verbatim, the OMB final guidelines and otherwise reflect only changes in administrative detail. The affected public received notice through OMB's proposed guidelines that agencies would be required to issue implementing regulations based on OMB's proposed guidelines. OMB provided a 30-day public comment period to address specific issues raised in their proposed guidelines. Comments received were considered prior to publication of OMB's final guidelines.

Lists of Subjects in 49 CFR Part 701

Organization and Function (government agencies) Freedom of Information.

For reasons set forth in the preamble, it is proposed to amend 49 CFR Part 701 as set forth below:

PART 701—[AMENDED]

1. The authority citation for Parts 700 and 701 is revised to read as follows:

Authority: 5 U.S.C. 552 as amended by sections 1801–1804 of the Omnibus Anti-Drug Abuse Act of 1986 (Pub. L. 99–570) which contains the Freedom of Information Reform Act of 1986 and Sec. 306(g) Rail Passenger Service Act, 45 U.S.C. 546(g).

§ 701.2 [Amended]

2. In § 701.2, the definition of "President" in paragraph (b) is revised to read as follows: "President means the President of the Corporation or his delegee."

§ 701.3 [Amended]

3. In § 701.3(a), remove the expression "the Freedom of Information Act" and Substitute in its place the word "law."

4. In § 701.3, paragraph (b) is revised to read as follows: "(b) A requested record of the Corporation may be withheld from disclosure if it comes within one or more of the exemptions in 5 U.S.C. 552(b) or is otherwise exempted by law."

§ 701.4 [Amended]

5. In § 701.4, paragraph (a)(4) is revised to read as follows: "(4) The request shall be addressed to the Freedom of Information Officer, National Railroad Passenger Corporation, 400 North Capitol Street, NW., Washington, DC 20001."

6. In § 701.4, paragraph (c), remove the expression "employee handling the request" and substitute in its place the expression "Freedom of Information Officer."

7. In § 701.4, paragraph (d) is revised to read as follows: "(d) The submission of a FOIA request constitutes an agreement by the requester to pay the fees specified in § 701.7 unless the requester is entitled to a fee waiver or specifies in the request a different amount to which the Corporation agrees in writing."

8. In § 701.4, a new paragraph (e) is added to read as follows: "(e) Searches will be made for requested records in order of receipt. Each so-called "continuing request" will be treated as a one-time request."

9. Section 701.7 is revised to read as follows:

§ 701.7 Fees.

(a) *Categories of requesters.* There are four categories of FOIA requesters: commercial use requesters; representatives of news media; educational and noncommercial scientific institutions; and all other requesters. The time limits for processing requests shall begin upon receipt of a proper request by the Freedom of Information Office which reasonably describes the records sought and which identifies the specific category of the requester. The Freedom of Information Reform Act of 1986 prescribes specific levels of fees for each of these categories.

(1) *Commercial use requesters*— When records are requested for commercial use, the fee policy of NRPC is to levy full allowable direct costs for search, review for release, and duplication of records sought. Commercial users are not entitled to two hours of free search time nor 100 free pages of reproduction of documents nor waiver or reduction of fees based on an assertion that disclosure would be in the public interest. Commercial use is defined as use that furthers the commercial, trade or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester falls within the commercial use category, NRPC shall first look to the use to which a requester will put the documents requested. Where a requester does not explain the use or where explanation is insufficient, NRPC may draw reasonable inferences

from the requester's identity and charge fees accordingly.

(2) *Representatives of the news media*—When records are requested by representatives of the news media, the fee policy of NRPC is to levy reproduction charges only, excluding charges for the first 100 pages. The term "representatives of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subcription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through an organization, even though not actually employed by that entity. To be eligible for inclusion in this category, requesters must meet the criteria specified in this section, and the request must not be made for commercial use as this term is defined under paragraph (a)(1) of this section.

(3) *Educational and noncommercial scientific institution requesters*— When records are requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, the fee policy of NRPC is to levy reproduction charges only, excluding charges for the first 100 pages. Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research. Noncommercial scientific institution refers to an institution that is not operated on a commercial basis as defined under paragraph (a)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use or to further an individual goal, but are sought in furtherance of scholarly or scientific research.

(4) *All other requesters*—For other requesters who do not come under the purview of paragraphs (a)(1) through (3) of this section, the fee policy of NRPC is to levy full reasonable direct cost of search for and duplication of records sought, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

(b) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, in order to avoid payment of fees. When NRPC believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, NRPC may aggregate any such requests and charge accordingly. Before aggregating requests from more than one requester, NRPC must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may NRPC aggregate multiple requests on unrelated subjects from one requester.

(c) *Waiver of reduction of fees.* (1) NRPC may waive all fees or levy a reduced fee when disclosure of the information is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.

(2) In determining whether disclosure is in the public interest, the following factors may be considered:

(i) The relation of the records to the operations or activities of the government;

(ii) The informative value of the information to be disclosed;

(iii) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(iv) The significance of the contribution to the public understanding of the subject;

(v) the nature of the requester's personal interest, if any, in the information requested; and

(vi) Whether the disclosure would be primarily in the requester's commercial interest.

(3) *Burden of proof*—In all cases, the burden shall be on the requester to present evidence or information in support of a request for a waiver of fees.

(d) *Advance payment.* (1) When NRPC estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250, NRPC may require a requester to make an advance payment of the entire fee before continuing to process the request.

(2) When a requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing), NRPC may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (g) and make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(3) When NRPC acts under paragraph (d)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from the receipt of initial requests and 20 working days from receipt of appeals from intial denial plus permissible extensions of these time limits) will begin only after NRPC has received fee payments under paragraph (d)(1) or (2) of this section

(e) *Fee schedule*—(1) *Manual searches for records.* NRPC will charge $27 per hour for the salary and fringe benefits of personnel conducting the search. NRPC may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(2) *Computer Searches for Records.* For each request, NRPC will change the actual direct cost of providing this service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to search for records responsive to the request and operator/programmer salary apportionable to the search. NRPC may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(3) *Duplication Costs.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ x 14 inches, the charges will be $.25 per page.

(ii) The fee for reproducing copies of records over 8½ × 14 inches or whose physical characteristics do not permit

reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through NRPC or commercial sources.

(iii) For copies prepared by computer such as tapes or printouts, NRPC shall charge the actual cost, including operator time, of production of the tape or printout.

(4) *Other forms of duplication.* For other methods of reproduction or duplication, NRPC shall charge the actual direct costs of producing the document(s).

(f) *Restrictions in accessing fees.* (1) In accordance with section (4)(A)(iv) of the Freedom of Information Act, as amended, with the exception of requesters seeking documents for a commercial use, NRPC shall provide the first 100 pages of duplication and the first two hours of search time without charge.

(2) NRPC shall not charge fees to any requester, including commercial-use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(3) With the exception of requesters seeking documents for a commercial use, NRPC shall not charge fees for computer search until the cost of the search equals the equivalent dollar amount of two hours of the salary of the operator performing the search.

(h) *Payment procedures.* (1) A request will not be deemed to have been received by the Freedom of Information Office until the requester has agreed to pay the anticipated fees and has made an advance deposit if one is required.

(2) Remittances shall be in the form of either a personal check or bank draft drawn on a bank in the United States, or a money order.

(3) Remittances shall be made payable to National Railroad Passenger Corporation and mailed to the Freedom of Information Office.

(i) *Late charges.* Interest may be charged those requesters who fail to pay fees charged. NRPC may begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(j) *Other procedures.* NRPC shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. NRPC may choose to contract with outside services to locate, reproduce and disseminate records in response to FOIA requests when deemed the most efficient and least costly method. When documents responsive to a request are maintained for distribution by government agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, NRPC will inform requesters of the steps necessary to obtain records from those sources.

Stephen C. Rogers,

Acting Vice President-Law.

[FR Doc. 87-8874 Filed 4-17-87; 11:20 am]

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0-199	29.00	Jan. 1, 1987
*200-399	13.00	Jan. 1, 1987
400-499	14.00	Jan. 1, 1987
500-End	23.00	Jan. 1, 1986
11	7.00	Jan. 1, 1986
12 Parts:		
1-199	11.00	Jan. 1, 1987
200-299	22.00	Jan. 1, 1986
300-499	13.00	Jan. 1, 1987
500-End	26.00	Jan. 1, 1986
13	19.00	Jan. 1, 1987
14 Parts:		
1-59	20.00	Jan. 1, 1986
60-139	19.00	Jan. 1, 1986
*140-199	9.50	Jan. 1, 1987
200-1199	14.00	Jan. 1, 1986
1200-End	11.00	Jan. 1, 1987
15 Parts:		
0-299	10.00	Jan. 1, 1987
300-399	20.00	Jan. 1, 1986
400-End	14.00	Jan. 1, 1987
16 Parts:		
0-149	12.00	Jan. 1, 1987
150-999	10.00	Jan. 1, 1986
1000-End	19.00	Jan. 1, 1987
17 Parts:		
1-239	26.00	Apr. 1, 1986
240-End	19.00	Apr. 1, 1986
18 Parts:		
1-149	15.00	Apr. 1, 1986
150-399	25.00	Apr. 1, 1986
400-End	6.50	Apr. 1, 1986
19	29.00	Apr. 1, 1986
20 Parts:		
1-399	10.00	Apr. 1, 1986
400-499	22.00	Apr. 1, 1986
500-End	23.00	Apr. 1, 1986
21 Parts:		
1-99	12.00	Apr. 1, 1986
100-169	14.00	Apr. 1, 1986
170-199	16.00	Apr. 1, 1986
200-299	6.00	Apr. 1, 1986
300-499	25.00	Apr. 1, 1986
500-599	21.00	Apr. 1, 1986
600-799	7.50	Apr. 1, 1986
800-1299	13.00	Apr. 1, 1986
1300-End	6.50	Apr. 1, 1986
22	28.00	Apr. 1, 1986
23	17.00	Apr. 1, 1986
24 Parts:		
0-199	15.00	Apr. 1, 1986
200-499	24.00	Apr. 1, 1986
500-699	8.50	Apr. 1, 1986
700-1699	17.00	Apr. 1, 1986
1700-End	12.00	Apr. 1, 1986
25	24.00	Apr. 1, 1986
26 Parts:		
§§ 1.0-1.169	29.00	Apr. 1, 1986
§§ 1.170-1.300	16.00	Apr. 1, 1986
§§ 1.301-1.400	13.00	Apr. 1, 1986
§§ 1.401-1.500	20.00	Apr. 1, 1986
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§§ 1.641-1.850	16.00	Apr. 1, 1986
§§ 1.851-1.1200	29.00	Apr. 1, 1986
§§ 1.1201-End	29.00	Apr. 1, 1986
2-29	19.00	Apr. 1, 1986
30-39	13.00	Apr. 1, 1986
40-299	25.00	Apr. 1, 1986
300-499	14.00	Apr. 1, 1986
500-599	8.00	[2] Apr. 1, 1980
600-End	4.75	Apr. 1, 1986
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Title	Price	Revision Date
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

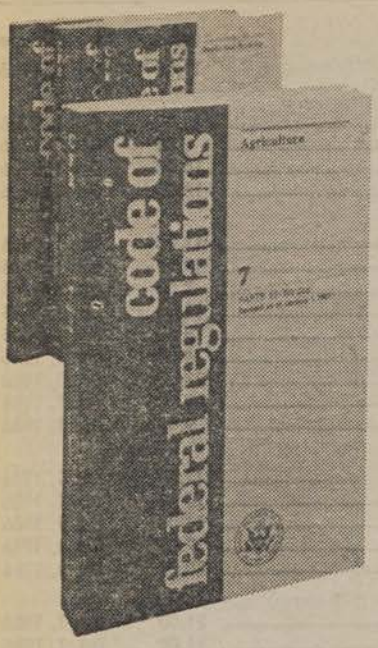
[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[7] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.



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