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 3. The important elements of typical Federal Register documents.
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Rules and Regulations

Federal Register

Vol. 52, No. 109

Monday, June 8, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department to delegate authority to enter into contracts, grants, cooperative agreements, and cost-reimbursable agreements relating to the conduct of agricultural research.

EFFECTIVE DATE: June 8, 1987.

FOR FURTHER INFORMATION CONTACT:

Robert L. Siegler, Deputy Assistant General Counsel, U.S. Department of Agriculture, Washington, DC (202) 447-6035.

SUPPLEMENTARY INFORMATION:

The delegations of authority of the Department of Agriculture are amended to delegate to the Assistant Secretary for Food and Consumer Services and the Administrator of the Human Nutrition Information Service, the authority to enter into contracts, grants, cooperative agreements, and cost-reimbursable agreements, under sections 1472 and 1473A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by Pub. L. 99-198.

The amended section 1472 (7 U.S.C. 3318) authorizes the use of contracts, grants, and cooperative agreements to further the research programs of the Department and specifically authorizes, notwithstanding the provisions of 31 U.S.C. 6301 through 6308, the use of a cooperative agreement as the legal instrument reflecting a relationship between the Department of Agriculture and any other party, when the objective of the agreement will serve a mutual interest of the parties to the agreement

in agricultural research, and all parties will contribute resources to the accomplishment of those objectives. While the named officials currently are delegated authority to enter into contracts, grants, or cooperative agreements pursuant to 7 U.S.C. 3318, in view of the recent amendment to that section expanding the authority to use cooperative agreements under certain conditions, the expanded authority is hereby delegated by the republication of these delegations. In addition, the current delegations are restricted in their use by requiring that they be exercised in accordance with guidelines issued by the Assistant Secretary for Administration or his designee. Similar delegations made to the Under Secretary for International Affairs and Commodity Programs, the Assistant Secretary for Science and Education, and the Administrators of the Office of International Cooperation and Development, Agricultural Research Service, Cooperative State Research Service, and the Extension Service, and the Director of the National Agricultural Library have not included the limitation on such delegations. Accordingly, to be consistent with such other delegations, the limitation on the respective delegations to the Assistant Secretary for Food and Consumer Services and the Administrator, Human Nutrition Information Service is being removed.

Section 1473A (7 U.S.C. 3319a) authorizes, notwithstanding any other provisions of law, the use of cost-reimbursable agreements with State cooperative institutions without regard to any requirement for competition, for the acquisition of goods or services, including personal services, to carry out agricultural research of mutual interest.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective less than 30 days after publication in the Federal Register.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, and thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

1. The authority for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.15 is amended by revising paragraph (b)(6) and by adding a new paragraph (b)(7) to read as follows:

§ 2.15 Delegations of authority to the Assistant Secretary for Food and Consumer Services.

* * *

(b) * * *

(6) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences (7 U.S.C. 3318).

(7) Enter into cost-reimbursable agreements relating to agricultural research (7 U.S.C. 3319a).

* * *

Subpart L—Delegations of Authority by the Assistant Secretary for Food and Consumer Services

3. Section 2.92 is amended by revising paragraph (a)(6) and by adding a new paragraph (a)(7) to read as follows:

§ 2.92 Administrator, Human Nutrition Information Service.

(a) * * *

(6) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences (7 U.S.C. 3318).

(7) Enter into cost-reimbursable agreements relating to agricultural research (7 U.S.C. 3319a).

For Subpart C.

Richard E. Lyng,
Secretary of Agriculture.
June 2, 1987.

For Subpart L.

John Bode,
Assistant Secretary for Food and Consumer
Services.

[FR Doc. 87-12938 Filed 6-5-87; 8:45 am]

BILLING CODE 3410-01-M

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department to designate the Assistant Secretary of Administration as the Director of Small and Disadvantaged Business Utilization.

EFFECTIVE DATE: June 8, 1987.

FOR FURTHER INFORMATION CONTACT: Samuel Cornelius, Director, Office of Advocacy and Enterprise, U.S. Department of Agriculture, Washington, DC (202) 447-5212.

SUPPLEMENTARY INFORMATION: The delegations of authority of the Department of Agriculture are amended to designate the Assistant Secretary for Administration as the Director for Small and Disadvantaged Business Utilization, in place of the Director, Office of Advocacy and Enterprise, who previously served in that position. This change will provide the Director of Small and Disadvantaged Business Utilization with immediate access to the Department's top policymakers and thus maximize the Director's effectiveness as an advocate for small and disadvantaged business.

The Director, Office of Advocacy and Enterprise will provide support to the Department's Director of Small and Disadvantaged Business Utilization.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the *Federal Register*. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act

and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, except as otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.25 is amended by revising paragraph (i) to read as follows:

(i) *Related to small and disadvantaged business utilization.* In compliance with Pub. L. 95-507, the Assistant Secretary for Administration is designated as the Department's Director of Small and Disadvantaged Business Utilization. The Director of Small and Disadvantaged Business Utilization has specific responsibilities under the Small Business Act, 15 U.S.C. 644(k). These duties include being responsible for the following:

(1) Administering the Department's small and disadvantaged business activities related to procurement contracts, minority bank deposits, and grants and loan activities affecting small and minority business, including women-owned business, Labor Surplus Area concerns, and the small business and small minority business subcontracting programs.

(2) Providing Departmentwide liaison and coordination of activities related to small and disadvantaged business with the Small Business Administration and others in the public and private sector.

(3) Developing policies and procedures required by the applicable provisions of the Small Business Act as amended to include the establishment of goals.

(4) Implementing and administering programs described under sections 8 and 15 of the Small Business Act, as amended.

* * * * *

Subpart J—Delegations of Authority by the Assistant Secretary for Administration

3. Section 2.80 is amended by revising paragraph (a)(19) to read as follows:

§ 2.80 Director, Office of Advocacy and Enterprise.

(a) *Delegations.* * * *

(19) Perform staff work for the Department's Director of Small and Disadvantaged Business Utilization.

* * * * *

For Subpart C.

Dated: June 1, 1987.

Richard E. Lyng,
Secretary of Agriculture.

For Subpart J,

John J. Franke, Jr.,
Assistant Secretary for Administration.

Dated: May 21, 1987.

[FR Doc. 87-12939 Filed 6-5-87; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Part 918

[Georgia Peach Reg. 3; Amdt. 4]

Fresh Peaches Grown in Georgia; Change in Size Requirements for 1987 and Subsequent Seasons

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the current minimum size requirements applicable to fresh peaches grown in Georgia. The minimum diameter allowed to be shipped will be increased from 1 1/8 to 1 3/8 inches. This change is intended to provide the market with slightly larger fruit without shorting the market. Because larger peaches have more edible flesh than smaller peaches, the change is expected to improve the image of Georgia peaches, encourage repeat purchases, and result in better industry returns. The maturity requirements, decay tolerance, and undersize tolerance in effect during the 1986 season will remain the same. This change was unanimously recommended by the Georgia Peach Industry Committee, which works with the Department in administering this program. This rule also removes a regulatory section that is no longer applicable.

EFFECTIVE DATE: This rule becomes effective June 8, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief,

Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250-1400; telephone 202-475-3914.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601 through 674), and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 18 handlers of Georgia peaches will be subject to regulation under this marketing order during the coming season. In addition, about 180 producers will be affected. The majority of these handlers and producers may be classified as small entities as defined by the Small Business Administration (SBA). The SBA defines agricultural service firms, which would include handlers, as those whose gross annual receipts are less than \$3.5 million and small agricultural producers as those having average annual gross revenues for the last three years of less than \$100,000 (13 CFR 121.2).

This rule is issued under Marketing Order No. 918 regulating the handling of fresh peaches produced in the State of Georgia. It is based on a unanimous recommendation and information submitted by the Georgia Peach Industry Committee (the Committee) and upon other available information. The Committee and USDA cooperate in administering this marketing order.

A proposed rule inviting comments on this action was published in the May 5, 1987, *Federal Register* (52 FR 16402). Interested persons were given until May 15, 1987, to file written comments. No comments were received.

The Committee recently recommended a change in the minimum size requirements for fresh peaches marketed during the 1987 and

subsequent seasons. The minimum diameter requirement will be increased by $\frac{1}{8}$ inch, from $1\frac{1}{8}$ inches to $1\frac{3}{8}$ inches. The applicable undersize tolerance will remain the same as it was during the 1986 season. In addition, the minimum maturity requirements and the maximum decay tolerance level will also remain the same.

Typically, the first peaches offered in the marketplace each season have a great influence on consumer purchases and the tone of the market for the entire season. This change will provide consumers with slightly larger peaches. Such peaches are more desirable in the marketplace because they have more edible flesh than smaller fruit. This improvement in size is expected to encourage repeat purchases by consumers throughout the season. Increased purchases will provide producers and handlers with higher economic returns. Experience has shown that less desirable fruit in the marketplace drives the price down for all shipments regardless of size or quality.

The Committee's 1986 Annual Report shows that interstate shipments of Georgia peaches during the previous season (May 15 through August 28, 1986) totaled approximately 1.2 million bushel equivalents. Less than two percent of this total consisted of fruit that ranged between $1\frac{1}{8}$ and $1\frac{3}{8}$ inches in diameter. Therefore, an increase of $\frac{1}{8}$ inch in the required minimum diameter to $1\frac{3}{8}$ inches will probably have a negligible effect on total interstate shipments of peaches produced in Georgia. The overall effect of the change will be to provide peaches that are more desirable and appealing to the consumer, and provide greater economic returns to the Georgia peach industry overall.

Exemptions to this size requirement will continue to be available to handlers. Peaches shipped to adjacent markets in bulk will be exempt from maturity, size, decay, and inspection requirements. Also, growers can obtain exemption certificates pursuant to §§ 918.62 and 918.121 to ship, or have shipped, peaches free of quality and size requirements. Finally, peaches shipped for consumption by a charitable institution, for distribution for relief purposes, for distribution by a relief agency, for distribution by non-profit school lunch agencies, for manufacturing, processing, canning, or conversion into byproducts on a commercial scale, peaches shipped by express or parcel post, or peaches included in shipments to any person during any day by any handler if such shipments do not aggregate more than

five (5) bushels are not subject to regulation.

On the basis of the foregoing, the impact of this change on growers and handlers of Georgia peaches is expected to be favorable. Any additional costs incurred by these groups in implementing this change will be outweighed by the benefits of this action.

Section 918.326, Georgia Peach Regulation 3, specifies various handling requirements. However, the requirements in § 918.326 are not applied and should have been removed with the addition of § 918.325 on May 1, 1985 (50 FR 19322; May 8, 1985). Thus, § 918.326 is removed.

Therefore, after consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the committee, and other information, it is hereby found and determined that the amendment, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* (5 U.S.C. 553). The harvest and shipment of these peaches has started. Hence, this action should be made effective as soon as practicable so that the maximum benefits may be derived from its operations. Shipments from Georgia usually end in late August. The provisions in the final rule are the same as those contained in the proposal which was published in the *Federal Register* on May 5, 1987. Handlers are prepared to conduct their operations in accordance with this rule and do not require any additional time for preparation. No useful purpose would be served by delaying the effective date of this action.

List of Subjects in 7 CFR Part 918

Marketing agreements and orders, Peaches, Georgia.

For the reasons set forth in the preamble, 7 CFR Part 918 is amended as follows:

PART 918—FRESH PEACHES GROWN IN GEORGIA

1. The authority citation for 7 CFR Part 918 continues to read as follows:

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

§ 918.326 [Removed]

2. Section 918.326 is removed.

3. Section 918.325 is revised to read as follows:

§ 918.325 Peach Regulation 3; Amendment 4.

(a) On and after June 8, 1987, no handler shall ship peaches unless such peaches are mature as provided in § 918.400, contain no more than one percent decay, and are not smaller than 1 3/4 inches in diameter, except that not more than 10 percent, by count, of such peaches in any lot, and not more than 15 percent, by count, of such peaches in any container in such lot, may be smaller than 1 3/4 inches in diameter: *Provided*, That peaches shipped to adjacent markets in bulk are exempt from such maturity, decay, and size requirements and the inspection requirements in § 918.64 shall not apply.

(b) "Diameter," as used in this section, means the shortest distance measured through the center of the peach at right angles to a line running from the stem to the blossom end.

Dated: June 3, 1987.

Ronald L. Cioffi,

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

[FR Doc. 87-12995 Filed 6-5-87; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-108]

Importation of Psittacine Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations on importation of psittacine birds to increase from 72 hours to 7 days the period of time during which Federal and commercial quarantine facilities must legband or otherwise individually identify imported psittacine birds. We are also deleting a footnote that references a United States Public Health Service "two pet psittacine birds per family" import restriction that was removed by that agency from its regulations in February 1985. These actions are necessary both to clarify the regulations and to relieve restrictions by allowing quarantine facilities enough time to satisfy the bird identification requirement without incurring extensive overtime costs.

DATE: July 8, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. W. H. Ritchie, Import-Export Operations Staff, VS, APHIS, USDA, Room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7835.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR Part 92 (referred to below as the regulations), among other things, regulate the importation of birds into the United States in order to prevent outbreaks of exotic Newcastle disease, forms of avian influenza lethal to poultry, and other communicable diseases of poultry.

On August 4, 1986, we published in the *Federal Register* (51 FR 27871-27872, Docket No. 86-032) a document proposing to amend the regulations by increasing from 72 hours to 7 days the period of time during which Federal and commercial quarantine facilities must legband or otherwise individually identify imported psittacine birds. We also proposed to delete a footnote referencing a United States Public Health Service "two pet psittacine birds per family" import restriction removed by that agency from its regulations in February 1985.

We solicited comments on the proposal for 60 days, ending on October 3, 1986. We received two comments—one in support of the proposal and one opposed. We have carefully considered all of the points raised, and discuss those comments that did not indicate unqualified support for our proposal. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal without change as a final rule.

Increased Illegal Trade

The commenter opposed to the proposal argued that loosening controls by extending the identification period to 7 days would increase the possibility of illegal trade, since, at privately operated commercial bird quarantine facilities, opportunities would increase for unscrupulous importers and biotechnicians to remove or replace illegally imported birds. We disagree with the comment and believe that existing safeguards and procedures at privately operated commercial bird quarantine facilities are sufficient to prevent an increase in illegal trade.

The biotechnicians are employees of the Department, not of privately operated commercial bird quarantine facilities. A biotechnician must be present when a shipment of imported birds arrives at a facility. Moreover, throughout the quarantine period, the facility may be open only when the biotechnician is present. Each time the biotechnician leaves, the facility is locked, official Department seals are placed on the doors, and the alarm system (required by the regulations) is activated. These existing procedures should prevent removal or replacement of imported birds at privately operated

commercial bird quarantine facilities, regardless of whether banding and identification takes place within 72 hours or within 7 days.

Overtime Costs

Our proposal stated our belief that quarantine facilities are often forced to incur extensive overtime costs in order to satisfy the current 72 hour identification requirement. The commenter opposed to the proposal argued that these extra costs could be reduced or eliminated if biotechnicians at privately operated commercial bird quarantine facilities were properly trained in using identification techniques and thus could perform their tasks more efficiently. However, identification tasks are performed by privately operated quarantine facility employees, not Department biotechnicians. The latter are on hand as observers, not as participants, to make certain that all required procedures are followed.

Further, identification of imported birds is a labor-intensive task that is almost always accomplished by banding the birds and recording each band's individual I.D. number. Banding must be done by two persons—one holding and immobilizing the bird, the second carefully closing a stainless steel, numbered band around the bird's leg with pliers. Hurrying this process risks injury to the birds.

Our experience in monitoring privately operated commercial bird quarantine facility operations indicates that compliance with the 72-hour identification requirement has frequently resulted in extensive overtime costs. Psittacine birds often arrive at quarantine facilities in bulk shipments of hundreds of birds. Thus, the 72-hour identification requirement may not provide enough time for banding or otherwise identifying large shipments of birds, within normal working hours, when the shipments arrive on a Thursday or Friday.

Prolonged Stress

The final comment opposing the proposal suggested that lengthening the identification period may prolong stress to certain birds, rather than reducing it. However, the commenter did not specify a particular species, present any data, or cite any research studies.

On the other hand, we know that in fiscal year 1984, roughly 156,000 imported birds died in transit or during the minimum 30-day quarantine required by the regulations. Our biotechnicians in the quarantine stations believed that these losses were primarily caused by

stress resulting from transportation and handling. The additional time provided by increasing the identification period from 72 hours to 7 days will allow newly imported psittacine birds to recover from shipment-related stress before being identified—which itself induces great stress because the birds must be physically seized and immobilized.

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 have an effect on the economy of less than \$100 million; 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 a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Extending the individual bird identification period from 72 hours to 7 days will relieve existing restrictions and will result in reduced costs for quarantine facilities and more healthful conditions for imported birds. Removal of the footnote will have no impact on the importation of birds into the United States, since the referenced importation limitation no longer exists.

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.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1986 (44 U.S.C. 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 requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended to read as follows:

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306, 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.2 [Amended]

2. In § 92.2, footnote number 2a and the references to this footnote in paragraphs (c)(1), (c)(2)(i), and (c)(3) are removed.

§ 92.11 [Amended]

3. Paragraph (e) of § 92.11 is amended by removing "72 hours" and inserting "7 days".

4. Paragraph (f)(3)(ii)(E) of § 92.11 is amended by removing "72 hours" and inserting "7 days".

Done in Washington, DC, this 2nd day of June, 1987.

J. K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-12940 Filed 6-5-87; 8:45 am]

BILLING CODE 3410-34-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Correction

AGENCY: Small Business Administration (SBA).

ACTION: Final rule; Correction.

SUMMARY: This document corrects a final rule revising the SBA's size standards applicable to agricultural industries published September 10, 1986 (51 FR 32197). The revised size standard of \$0.5 million for SICs 0212 to 0291 (except 0211 and 0252) was inadvertently omitted.

FOR FURTHER INFORMATION CONTACT: Harvey D. Bronstein, Acting Director, Size Standards Staff, U.S. Small Business Administration, 1441 'L' Street, NW., Washington, DC 20416, (202) 653-6373.

SUPPLEMENTARY INFORMATION: On September 10, 1986, the Small Business Administration published a Final Regulation (51 FR 32198) to conform with Pub. L. 99-272, the consolidated Omnibus Budget Reconciliation Act.

This act requires that the size standard for Agricultural Production be \$500,000. Accordingly, the following correction is added to FR Doc. 86-20286 in the issue of September 10, 1986.

§ 121.2 [Amended]

The table at the end of § 121.2 Standard industrial classification and size standards is amended for major Group 02—Agricultural Production—Livestock by striking the line item for 0212-0291 and substituting the following:

SIC	Description	Size standards in No. of employees or millions of dollars; Final rule
Division A—Agriculture Major Group 02—Agricultural Production—Livestock		
0212-0291	Agricultural Production—Livestock, Except 0211 and 0252	\$0.5

* * * * *

Dated: May 28, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-12906 Filed 6-5-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-ANE-2; Amdt. 39-5640]

Airworthiness Directives; Avco Lycoming T5313B Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires removal from service of certain turbine disks at lower life limits than originally established. It also establishes life limits on certain rotating turbine spacers that had no previous life limitations. The AD is needed to assure timely removal from service of all affected components to prevent uncontained engine failures.

DATES: Effective—July 20, 1987.

Compliance Schedule: As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England

Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD requiring reduction of the service cyclic life for the gas producer turbine (GPT) disk and for the power turbine (PT) second stage disk, and to establish a cyclic life limit on the GPT and PT spacers that had no previous cyclic life limitations, was published in the *Federal Register* on October 22, 1986 (51 FR 37413).

The proposal was prompted by recalculation of the component's low cycle fatigue (LCF) life using improved analytical procedures and re-evaluated fatigue test data. This new analysis showed that a reduction of the service cyclic life of the affected components, and the establishment of a service cyclic life limitation on components which were not previously life limited, were necessary.

Since this condition is likely to exist in other engines of the same type design, the AD requires removal and retirement from service of the affected components upon reaching the new or reduced life limits.

Interested persons have been afforded the opportunity to participate in the making of this amendment. No comments were received, accordingly the proposal is adopted without change.

Conclusion

The FAA has determined that this regulation involves approximately 313 engines at an approximate total cost of 2.5 million dollars. It has also been determined that less than 11 small entities within the meaning of the Regulatory Flexibility Act will be affected. Therefore, I certify that this action (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) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation

Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Avco Lycoming: Applies to Avco Lycoming T5313B turboshaft engines.

Compliance is required as indicated, unless already accomplished.

To prevent an uncontained engine failure, remove gas producer turbine (GPT) and power turbine (PT) disks and spacers from service, and replace with serviceable parts, in accordance with the following schedules:

(a) GPT disk, Part Number (P/N) 1-100-133-01:

(1) Within the next 250 hours in service (HIS) or 100 cycles in service (CIS) after the effective date of this AD, whichever occurs first, for those disks that have accumulated a total service life in excess of 24,750 HIS or 9,900 CIS since new on the effective date of this AD.

(2) Prior to accumulating 25,000 HIS or 10,000 CIS since new, whichever occurs first, for those disks that have accumulated a total service life equal to or less than 24,750 HIS or 9,900 CIS since new on the effective date of this AD.

(b) PT disk, P/N 1-140-272-01:

(1) Within the next 100 HIS or 50 CIS after the effective date of this AD, whichever occurs first, for those disks that have accumulated a total service life in excess of 9,000 HIS or 4,550 CIS since new on the effective date of this AD.

(2) Prior to accumulating 9,100 HIS or 4,600 CIS since new, whichever occurs first, for those disks that have accumulated a total service life equal to or less than 9,000 HIS or 4,550 CIS since new on the effective date of this AD.

(c) GPT spacer, P/N 1-100-294-03:

(1) Within the next 250 HIS or CIS, after the effective date of this AD, whichever occurs first, for those spacers that have accumulated a total service life in excess of 24,750 HIS or CIS since new on the effective date of this AD.

(2) Within the next 12,500 HIS or CIS, after the effective date of this AD, whichever occurs first, for those spacers on which the total service life is not known on the effective date of this AD.

(3) Prior to accumulating 25,000 HIS or CIS since new, whichever occurs first, for those spacers that have accumulated a total service life equal to or less than 24,750 HIS or CIS since new on the effective date of this AD.

(d) PT spacer, P/N 1-140-169-03:

(1) Within the next 250 HIS or 100 CIS, after the effective date of this AD, whichever occurs first, for those spacers that have accumulated a total service life in excess of

24,750 HIS or 9,900 CIS since new on the effective date of this AD.

(2) At the next PT second stage disk removal, after the effective date of this AD, for those spacers on which the service life is not known on the effective date of this AD.

(3) Prior to accumulating 25,000 HIS or 10,000 CIS since new, whichever occurs first, for those spacers that have accumulated a total service life equal to or less than 24,750 HIS or 9,900 CIS since new on the effective date of this AD.

(e) PT spacer, P/N 1-140-169-04:

(1) Within the next 250 HIS or CIS after the effective date of this AD, whichever occurs first, for those spacers that have accumulated a total service life in excess of 24,750 HIS or CIS since new on the effective date of this AD.

(2) Within the next 12,500 HIS or CIS after the effective date of this AD, whichever occurs first, for those spacers on which the total service life is not known on the effective date of this AD.

(3) Prior to accumulating 25,000 HIS or CIS since new, whichever occurs first, for those spacers that have accumulated a total service life equal to or less than 24,750 HIS or CIS since new on the effective date of this AD.

Note.—Avco Lycoming Service Bulletin Number 0020, Revision 2, dated January 3, 1986, reflects the new lives specified in this AD, and provides instruction for computing and recording part life.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD may be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance times specified in this AD.

This amendment becomes effective on July 20, 1987.

Issued in Burlington, Massachusetts, on June 1, 1987.

Robert E. Whittington,
Director, New England Region.

[FR Doc. 87-12900 Filed 6-5-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWP-10]

Establishment of Control Zone and Transition Area at Kapalua, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: A new airport has been constructed at lat. 20°57'58" N., long. 156°40'38" W., Kapalua, Maui, Hawaii, to serve the West Maui area. This action establishes a control zone and transition area at Kapalua, Hawaii, which will provide controlled airspace for instrument flight rules (IFR) arrivals and departures. A special instrument approach procedure has been approved for IFR arrivals. Communication lines and weather reporting services will be provided by Hawaiian Airlines. The control zone will be effective only when weather information is available.

EFFECTIVE DATE: 0901 UTC, July 30, 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

On April 2, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a control zone and transition area at Kapalua, Hawaii (52 FR 10582). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 and § 17.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a control zone and transition area at Kapalua, Hawaii. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 25, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition area.

Adoption of the Amendment

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

PART 71—[AMENDED]

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. Section 71.171 is amended as follows:

Kapalua, Hawaii [NEW]

Within a 5-mile radius of Kapalua West Airport (lat. 20°57'58" N., long. 156°40'38" W.). This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Pacific Chart Supplement.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Kapalua, Hawaii [NEW]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Kapalua West Airport (lat. 20°57'58" N., long. 156°40'38" W.).

Issued in Los Angeles, California, on May 28, 1987.

James A. Holweger,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87-12895 Filed 6-5-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 73

[Airspace Docket No. 87-AWP-8]

Revocation of Restricted Areas; Lompoc and Santa Maria, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These actions revoke Restricted Areas R-2539A, B, C and D located near Lompoc and Santa Maria, CA. These actions are necessary since the National Aeronautics and Space Administration (NASA) has no plans in the near future to utilize this airspace for its original intended purposes. These

actions restore for public use previously restricted airspace. If it is determined that NASA will resume their planned operations within 2 years of the effective date of this rule, the restricted areas will be reestablished to meet NASA's training and operational requirements on 6 months advance notice, provided no additional operational constraints are imposed upon the flying public.

EFFECTIVE DATE: 0901 UTC, July 30, 1987.

FOR FURTHER INFORMATION CONTACT:

Andrew B. Oltmanns, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9254.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations revoke Restricted Areas R-2539A, B, C and D located near Lompoc and Santa Maria, CA. These restricted areas are also removed from the Continental Control Area. These actions are necessary since NASA has no plans in the immediate future to use the airspace for space shuttle vehicle launch, recovery and flight training operations. If it is determined that NASA will resume their planned operations within 2 years and upon 6 months advance notice, the restricted areas will be reestablished to meet NASA's training and operational requirements provided no additional operational constraints are imposed upon the flying public. Because these areas will not be required for their intended purposes for an extended period and because these actions would simply restore the airspace to public use, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because these actions are minor technical amendments in which the public would not be particularly interested. Sections 71.151 and 73.25 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

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 economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area and Restricted areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

PART 71—[AMENDED]

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.

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R-2539A USAF Space Shuttle Operations, Vandenberg AFB, CA [Removed]

R-2539B USAF Space Shuttle Operations, Vandenberg AFB, CA [Removed]

R-2539C USAF Space Shuttle Operations, Vandenberg AFB, CA [Removed]

R-2539D USAF Space Shuttle Operations, Vandenberg AFB, CA [Removed]

PART 73—[AMENDED]

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522, E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.25 [Amended]

4. Section 73.25 is amended as follows:

R-2539A USAF Space Shuttle Operations, Vandenberg AFB, CA [Removed]

R-2539B USAF Space Shuttle Operations, Vandenberg AFB, CA [Removed]

R-2539C USAF Space Shuttle Operations, Vandenberg AFB, CA [Removed]

R-2539D USAF Space Shuttle Operations, Vandenberg AFB, CA [Removed]

Issued in Washington, DC, on May 28, 1987.

Daniel J. Peterson,
Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-12897 Filed 6-5-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25288; Amdt. No. 1348]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

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

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

For Examination—

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

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

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

For Purchase—

Individual SIAP copies may be obtained from:

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

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

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

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

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

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

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

effective date at least 30 days after publication is provided.

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

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

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC on May 29, 1987.

William T. Brennan,

Acting Director of Flight Standards.

Adoption of the Amendment

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

PART 97—[AMENDED]

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

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

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME;

§ 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

... Effective July 30, 1987

Gustavus, AK—Gustavus, VOR/DME-B, Amdt. 3
Yakutat, AK—Yakutat, LOC/DME BC RWY 29, Amdt. 1
Athens, GA—Athens Muni, RNAV RWY 9, Amdt. 1
Athens, GA—Athens Muni, RNAV RWY 20, Amdt. 2
Kahului, HI—Kahului, VOR/DME or TACAN-A, Amdt. 6
Kahului, HI—Kahului, VOR or TACAN RWY 2, Amdt. 7
Kahului, HI—Kahului, VOR RWY 20, Amdt. 10
Kahului, HI—Kahului, VOR/DME or TACAN, RWY 20, Amdt. 6
Kahului, HI—Kahului, LOC/DME (BC) RWY 20, Amdt. 10
Kahului, HI—Kahului, NDB RWY 20, Amdt. 7
Kahului, HI—Kahului, ILS RWY 2, Amdt. 19
Sheridan, IN—Sheridan, VOR/DME-A, Amdt. 5
Burlington, IA—Burlington Muni, VOR/DME RWY 12, Amdt. 3
Burlington, IA—Burlington Muni, VOR RWY 30, Amdt. 10
Burlington, IA—Burlington Muni, NDB RWY 36, Amdt. 7
Burlington, IA—Burlington Muni, ILS RWY 36, Amdt. 7
Chatham, MA—Chatham Muni, VOR-A, Amdt. 9
Hyannis, MA—Barnstable Muni-Boardman/Polando Field, VOR RWY 6, Amdt. 1
Lakeville, MN—Airlake, RNAV RWY 29, Amdt. 2 *Cancelled*
Mankato, MN—Mankato Muni, LOC RWY 33, Amdt. 2
Minneapolis, MN—Flying Cloud, VOR RWY 9R, Amdt. 5
Minneapolis, MN—Flying Cloud, VOR RWY 36, Amdt. 10
Minneapolis, MN—Flying Cloud, LOC RWY 9R, Amdt. 1
Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain/, LOC BC RWY 11L, Amdt. 7
Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain/, NDB RWY 4, Amdt. 16
Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain/, NDB RWY 29L, Amdt. 22
Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain/, NDB RWY 29R, Amdt. 10
Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain/, ILS RWY 4, Amdt. 22

Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain/, ILS RWY 11R, Amdt. 3

Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain/, ILS RWY 22, Amdt. 3

Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain/, ILS RWY 29L, Amdt. 39

Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain/, RADAR-1, Amdt. 29

Kansas City, MO—Kansas City Downtown, ILS RWY 19, Amdt. 20

Lancaster, OH—Fairfield County, RNAV RWY 10, Amdt. 7

Indiana, PA—Indiana County/Jimmy Stewart Fld/, LOC-B, Amdt. 2

Indiana, PA—Indiana County/Jimmy Stewart Fld/, NDB-A, Amdt. 5

Aiken, SC—Aiken Muni, NDB RWY 24, Amdt. 7

Graham, TX—Graham Muni, NDB RWY 17, Amdt. 2, *Cancelled*

... Effective July 2, 1987

Santa Ana, CA—John Wayne Airport-Orange County, NDB RWY 1L, Orig.

Santa Ana, CA—John Wayne Airport-Orange County, NDB RWY 19R, Orig.

McCook NE—McCook Muni, VOR RWY 12, Amdt. 9

McCook NE—McCook Muni, VOR RWY 21, Amdt. 2

McCook NE—McCook Muni, VOR RWY 30, Amdt. 8

McCook NE—McCook Muni, VOR/DME RWY 30, Amdt. 1, *Cancelled*

McCook NE—McCook Muni, RNAV RWY 12, Amdt. 3, *Cancelled*

... Effective June 4, 1987

Detroit, MI—Detroit Metropolitan Wayne County, RADAR-1, Amdt. 18

... Effective May 28, 1987

Walla Walla, WA—Walla Walla City County, ILS RWY 20, Amdt. 6

... Effective May 20, 1987

Waxhaw, NC—Jaars-Townsend, RNAV RWY 4, Amdt. 2

... Effective May 8, 1987

Okolona, MS—Okolona Muni-Richard Stovall Field, VOR-DME RWY 18, Amdt. 3

[FR Doc. 87-12898 Filed 6-5-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 159

[Docket No. 25123; Amdt. No. 159-30]

Carriage of Weapons and Other Dangerous Objects at Washington National Airport and Washington Dulles International Airport; Restricted Areas**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule; clarification.

SUMMARY: This final rule clarifies the rule governing the carriage of weapons and other dangerous objects on Washington National Airport and Washington Dulles International Airport. It also clarifies the rule governing restricted areas on the Airports. The revisions are intended to make the rules more closely conform to Federal Aviation Regulations governing aviation security. They are necessary to preserve airport security, as well as to make it easier for the traveling public to comply with the airports' rules without compromising airport security.

DATE: Effective date of this amendment is June 5, 1987.

FOR FURTHER INFORMATION CONTACT: Edward S. Faggen, or Jana M. Phillips, Legal Counsel, AMA-7, Hanger 9, Washington National Airport, Washington, DC 20001, Telephone: (703) 557-8123.

SUPPLEMENTARY INFORMATION:**Background**

On November 13, 1986, FAA requested comments on a proposal to change the regulation governing the carriage of weapons at the Metropolitan Washington Airports (Notice 86-18, 51 FR 41290; November 13, 1986). All interested persons were given an opportunity to participate in the rulemaking and consideration has been given to all of the matters presented by the commenters.

Washington National Airport and Washington Dulles International Airport (the "airports") are owned and presently operated by the Federal Government. The Secretary of Transportation has control over and responsibility for the care, operation, maintenance, and protection of the airports, and has the authority to promulgate rules and regulations necessary for this purpose. This authority has been delegated to the Administrator of the Federal Aviation Administration.

On October 18, 1986, the Metropolitan Washington Airports Act of 1986, Title VI of Pub. L. 99-591 ("the Act") was enacted. The Act authorized the long-term lease of the Airports from the

Government to a regional authority, the Metropolitan Washington Airports Authority. The Act provides that the regulations of the FAA shall become the regulations of the new Airports Authority when the transfer is effective. The Authority may amend these rules and adopt new ones. The FAA has concluded that the existing airport rule on the carriage of weapons should not be continued for the reasons stated herein and that it is, therefore, appropriate to complete the instant rulemaking despite the impending transfer of the airports. The final rule as adopted by FAA will transfer to the new Authority when its lease becomes effective on or about June 7, 1987.

The existing FAA regulation for National and Dulles Airports, 14 CFR 159.79(a), prohibits any person, except a Peace Officer, an authorized post office, Airport, or air carrier employee, or a member of an Armed Force on official duty, from carrying any weapon, explosive or inflammable material on or about his person, openly or concealed, on the airports without the written permission of the airport manager. This regulation was designed to assist airport law enforcement and security efforts by maintaining tight control over the presence of weapons and other dangerous objects on the airports.

The existing regulation has created confusion among persons who are carrying weapons on the airport for the lawful purpose of checking these weapons with their baggage or who are carrying them after retrieving them from lawfully checked baggage. The Federal Aviation Regulations (FAR's) in 14 CFR Parts 107 and 108, which are generally applicable to all air carrier airports, forbid the carriage of weapons on or about an individual's person or accessible property when that person enters the sterile area of an airport (§ 107.21), the area behind the security screening point. The regulations, however, to allow air carriers to develop their own rules permitting passengers to ship unloaded weapons aboard the aircraft. Among other requirements, the weapons must be carried in a container deemed by the carrier to be appropriate for air transportation and the weapons must be placed in an area of the aircraft that is inaccessible to passengers (§ 108.11(d)). Many passengers, although aware of these generally applicable security regulations, are unaware that under the particular regulation at National and Dulles Airports they may be prosecuted if they fail to have the airport manager's permission to carry weapons onto the airport, even weapons securely packed in baggage, for the purpose of checking them in an

inaccessible part of the aircraft. The FAA therefore, has determined that the existing airport regulation needs to be clarified.

This amendment will permit persons to bring weapons onto these airports without prior permission of the manager, but only if the weapons are unloaded or deactivated to the extent possible, and are packed in a secure container for shipment. Persons carrying weapons properly prepared for air transportation do not pose a threat to the security of the airport because their weapons are unloaded and carried in containers which are suitable for air transportation. This rule will control the presence of weapons on the airports, but will not unduly interfere with the legitimate shipment of weapons or law enforcement. Further, once a person, other than law enforcement officers and certain other persons specifically authorized under the final rule, reaches a security screening point or enters a sterile area, however, there is no legitimate reason to carry a weapon. Therefore, with limited exceptions, all persons will be prohibited by the airport's regulation as well as generally applicable Federal Aviation Regulations from carrying even unloaded, securely packaged weapons when an inspection has begun before entering a sterile area or while in a sterile area of the airport. The adopted regulation applies to both unconcealed and concealed weapons.

Comments

Four comments were received from the Airline Pilots Association (ALPA), the National Rifle Association (NRA), the Department of the Army and Air Atlanta. ALPA and the NRA generally supported the proposed rule while the Department of the Army and Air Atlanta limited their comments to specific portions of the proposal.

Paragraph (a)(1) of the Proposed Rule. One commenter suggested that the word "about" in paragraph (a)(1) of the proposed rule be defined to mean "readily accessible for immediate use." The FAA believes that this portion of the rule is sufficiently clear as written and that adding such a definition could create confusion concerning the scope of the phrase "accessible for immediate use." The FAA considers a weapon to be carried on or "about" his or her person or accessible property if it is carried on the body or within or on luggage, handbags, carry-on baggage or any other property from which the person may retrieve the weapon.

It was also suggested that the proposed regulation should read "on or about his or her person or within his or

her accessible property." The rewording suggested in the comment would cause enforcement difficulties, particularly if a person were carrying a weapon on the outside of his accessible property. The FAA believes that this portion of the proposed rule is sufficiently clear as written. The phrase "on or about his or her person or accessible property" encompasses weapons carried within luggage, carry-on baggage or any other accessible property.

A comment concerning paragraph (a)(1)(i) suggested that the word "deactivated" creates confusion because some of the weapons listed, such as a black jack and metal knuckles, cannot be deactivated. This paragraph is sufficiently clear as written because it states that if the weapon is not a firearm, it must be deactivated "to the extent possible." The rule clearly does not require deactivation where it is not possible to do so.

Another comment suggested that the term "pellet pistol or rifle" be inserted after the word "firearm" in paragraph (a)(1)(i). This is appropriate because pellet pistols or rifles, while not technically firearms, are capable of being loaded and unloaded. This suggestion has been incorporated into the final rule.

Paragraphs (a)(2) and (a)(3). One commenter suggested that the terms "explosive" and "incendiary" are too vague and that the phrase "bomb or similar explosive or incendiary device" be used instead. The FAA agrees that the phrase "incendiary" is too broad for airport-wide application and has included the suggested phrase in the final rule.

Paragraph (c). The comments received on the definition of the term "weapon" used in the proposed rule objected to the use of the word "knife" as being too broad, because it could apply to dinner knives and small pocket knives. The comments point out that most state laws define weapons as including switchblade knives, daggers, razors, stilettos, or knives with blades longer than three inches. The FAA has modified the final rule for airport purposes to enumerate the types of knives prohibited by the regulation.

The comments also suggested deleting pellet guns and bows and arrows from the rule because these articles may be innocently carried by young travelers or other persons on the airports. The FAA concludes that it is necessary to include these within the scope of the rule because these articles are dangerous weapons that may inflict serious bodily harm, even if carried by "innocent" persons. The rule does not apply to toy

guns and other toys that resemble weapons.

One commenter also suggested that the phrase "includes, but is not limited to" be replaced with "or any weapon of like kind." The FAA agrees that the suggested phrase is clearer and gives better notice of what may be prohibited under the rule.

One commenter suggested that a "sling shot" is not a weapon and that the correct term for the weapon is "slung shot." However, sling shots can inflict serious bodily harm. Therefore, they are considered dangerous weapons under this rule. A "slung shot" appears to be a different type of dangerous weapon. In order to be as comprehensive as possible, the FAA has included both types of weapons in the final rule.

Paragraph (d). The Department of the Army has requested that the rule specifically state that members of the Armed Forces on official duty may carry weapons on the airports. It acknowledges that the rule's reference to 14 CFR 108.11 permits an "official or employee of the United States * * * to carry weapons on the airport if the person is authorized by his or her agency to have the weapon," but says that laymen would not consider military personnel to be employees of the United States. The FAA disagrees. Airport police officers are aware that military personnel are employees or officials of the United States and will be advised that such personnel may carry weapons on the airports if authorized to do so by the agency employing them and if they possess authorizing credentials bearing a full face picture of themselves, their signature, and the signature of the authorizing official or the official seal of the authorizing organization. A badge, shield or similar device will not be acceptable as the sole means of identification.

Another comment concerning this paragraph criticizes the regulation for eliminating authorized air carrier employees and Post Office employees from carrying any kind of personal protection equipment when apprehending thieves, drunks or addicts on the airport property. The FAA notes that the final rule does not change the existing situation with respect to air carrier personnel or Post Office employees. It is not necessary to add language to the rule permitting Post Office employees or authorized air carrier employees to carry weapons on the airports. Post Office personnel authorized by the United States Postal Service to carry weapons are considered officials of the United States and may, therefore, carry weapons on the airport subject to the conditions of 14 CFR

108.11. Moreover, under § 108.11, air carriers may authorize certain employees to carry weapons.

Paragraph (e). One comment suggested that the definition of "unloaded" be expanded to state that, in the case of a pellet pistol or rifle, "unloaded" means that it contains no pellet in the chamber with compressed gas or compressed and latched spring. This has been incorporated into the amendment in order to make this paragraph consistent with the modifications made to paragraph (a)(1)(i).

Clarification of "Restricted Area"

Existing 14 CFR 159.89(a) prohibits persons from entering any restricted area on the airport that is posted as closed to the public unless otherwise authorized by the airport manager. The term "restricted area" is not defined in Part 159. "Restricted area" in the Federal Aviation Regulations generally refers to airspace restrictions. See 14 CFR 1.1. The FAA therefore finds it necessary to state the definition of the term "restricted area" that is applicable to § 159.89. This amendment is consistent with the FAA's longstanding practice on the airports and it is not considered to be a substantive addition to the rule. This amendment clarifies 14 CFR 159.89, and, therefore, notice and public procedure on this amendment are unnecessary. Publication for prior comment would not reasonably be expected to result in the receipt of useful information on this minor change.

Regulatory Evaluation

The final rule is not expected to have any significant impact because it will not impose any significant additional requirements on persons carrying dangerous objects on the airports and will not require any significant changes in the airports' security enforcement procedures or restricted area procedures. A minimal economic benefit would accrue to those who previously would have sought written permission to legitimately carry weapons on the airports. The rule is not expected to affect most passengers and other persons on the airports who do not have a reason to bring a weapon onto the airport. For this reason, it has been determined that the expected economic impact of this amendment is so minimal that a full Regulatory Evaluation is not warranted.

The various regulations in the final rule will have no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the U.S.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure, among other things, that small entities are not disproportionately affected by government regulations. The final rule will have only a minimal cost impact on affected persons. Therefore, the FAA has determined that, under the criteria of the RFA, the final rule will not have a significant economic impact on a substantial number of small entities.

Conclusions

The final rule is not expected to impose any significant economic impact because it will not impose significant additional requirements on persons complying with the rules and will not impose any major changes in the activities it addresses. Therefore, the FAA has determined that this proposed amendment involves a regulation which is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures. (44 FR 1034; February 26, 1979). For the same reasons, it is certified that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because the cost of this amendment is so minimal it does not warrant a full regulatory evaluation.

Reason for Immediate Adoption

The Administrative Procedure Act allows a rule to be made effective immediately for good cause. The Metropolitan Washington Airports Act of 1986 requires the authority to adopt the Airports' regulations upon the date of transfer of the Airports to the Authority (June 7, 1987). Because these modifications to the existing Airports' weapons regulation are necessary to eliminate confusion and enhance the enforceability of the regulation, and because this regulation must be made effective prior to June 7, 1987, in order to be adopted by the Authority, good cause exists for making this regulation effective in less than 30 days.

List of Subjects in 14 CFR Part 159

Weapons.

The Amendment

Accordingly, Part 159 of the Federal Aviation Regulations (14 CFR Part 159) is amended as follows:

PART 159—(AMENDED)

1. By revising the authority citation for Part 159 to read as follows:

Authority: 49 U.S.C. 2402, 2404, 2424 and 2428.

2. By revising § 159.79 of this chapter of the Code of Federal Regulations to read as follows:

§ 159.79 Weapons, explosives and incendiaries.

(a) Except as provided in paragraph (d) of this section, no person may—

(1) Carry on the airport any deadly or dangerous weapon, concealed or unconcealed, on or about his or her person or accessible property on the airport unless the weapon—

(i) If a firearm, or a pellet pistol or pellet rifle, is unloaded or, if another type or weapon, is deactivated to the extent possible; and

(ii) Is packaged for shipment in a container that is locked or otherwise secure;

(2) Carry any bomb or similar explosive or incendiary device, concealed or unconcealed, on or about his or her person or accessible property on the airport; or

(3) Carry any bomb, or similar explosive or incendiary device, or deadly or dangerous weapon on or about his or her person or accessible property—

(i) When performance has begun of the inspection of the individual's person or accessible property before entering the sterile area; or

(ii) When entering or in a sterile area.

(b) No person may furnish, give, sell, or trade a weapon on the airport.

(c) For the purposes of this section, a weapon includes a firearm, pellet pistol or rifle, dagger, razor, stiletto, knife with a blade longer than three inches, blackjack, bow and arrow, sling shot, slung shot, metal knuckles, or any object of a like kind.

(d) Paragraph (a) of this section does not apply to Special Agents and Security Officers of the Department of Transportation, persons authorized to carry a weapon aboard an aircraft as described in §§ 107.21, 108.11 and 129.27 of this chapter of the Code of Federal Regulations or to a law enforcement officer on official duty. Paragraph (a)(1) of this section does not apply to any person who has received the written permission of the airport manager to carry a weapon on the airport. Paragraph (a)(2) of this section does not apply to any person who has received the written permission of the airport manager to carry an explosive or incendiary device on the airport.

(e) For the purpose of this section, "unloaded" means the firearm has no live round of ammunition, cartridge, detonator or powder in the chamber or in a clip, magazine or cylinder inserted in it, or, in the case of a pellet pistol or rifle, contains no pellet in the chamber with compressed gas or compressed and latched spring.

(f) For the purpose of this section, "sterile area" means "sterile area" as defined in § 107.1 of this chapter.

3. By amending § 159.89 by revising paragraph (a) and adding new paragraph (c) to read as follows:

§ 159.89 Restricted areas.

(a) Except as otherwise provided in this part, no person, may, without the written permission of the airport manager, enter any restricted area on the airport.

(c) "Restricted area" under this section means an area of the airport where entry is prohibited or limited to certain persons by means of a barrier, a sign, or a verbal statement of an airport security agent, operations officer, or law enforcement officer.

Issued in Washington, DC, on May 29, 1987.
Donald D. Engen,
Administrator.

[FR Doc. 87-12774 Filed 6-5-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 379

[Docket No. 70468-7068]

Export of Software "Fixes" Under General License GTDR; Interim Rule With Request for Comments

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Export Administration Regulations to make it easier for exporters to ship "fixes" for software previously exported under an individual validated license. "Fixes" are software updates that are intended for and are limited to correction of errors, are exported to the same consignee, and do not enhance the functional capabilities of the initial software package.

Until now, an exporter could ship "fixes" for software exported under a validated license for no more than one year from the date of the initial shipment under that license. After one year, the exporter had to apply for a license extension or for a new validated license.

This rule amends Part 379, "Technical Data," of the Export Administration Regulations to allow "fixes" for software, including software previously

exported under a validated license, to be exported under General License GTDR if the "fixes" are being exported to the same consignee and do not change the basic performance characteristics of the software.

DATES: This rule is effective June 8, 1987. Comments must be received by August 7, 1987.

ADDRESSES: Written comments (six copies when possible) should be sent to: Vincent Greenwald, Office of Technology and Policy Analysis, P.O. Box 273, Export Administration, U.S. Department of Commerce, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377-2440. For questions of a technical nature regarding exports of software "fixes," call Rajendra Dheer, Computer Systems Technology Center, Export Administration, Telephone: (202) 377-0706.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements and Invitation to Comment

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of the Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule involves a collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* This collection of information has been approved by the Office of Management and Budget under control number 0625-0001.

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections

603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in developing final regulations.

Accordingly, interested persons who wish to comment are encouraged to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close August 7, 1987. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations.

All public comments on this regulation will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning this regulation will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4104, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

List of Subjects in 15 CFR Part 379 Exports, Science and technology.

PART 379—[AMENDED]

Accordingly, Part 379 of the Export Administration Regulations (15 CFR Parts 368 through 399) is amended as follows:

1. The authority citation for Part 379 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36661, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 (October 2, 1986); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. Section 379.4 is amended by adding a paragraph (b)(5) to read as follows:

§ 379.4 General License GTDR; Technical Data Under Restriction.

* * * * *

(b) *Restrictions applicable to Country Groups Q, W, Y, T and V, Afghanistan, and the People's Republic of China.* * * *

(5) Software updates that are intended for and are limited to correction of errors ("fixes" to "bugs" that have been identified) qualify for export under General License GTDR without written assurances to Country Groups Q, W, Y, T and V, Afghanistan, and the People's Republic of China, provided that the updates are being exported to the same consignee and do not enhance the functional capabilities of the initial software package.

* * * * *

Dated: June 3, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-12903 Filed 6-5-87; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, 82, and 201

[Docket Nos. 86C-0192 and 76N-0366]

FD&C Yellow No. 6; Permanent Listing for Use in Food, Drugs, and Cosmetics; Confirmation of Effective Date and Further Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date and further amendment.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date for the permanent listing

of FD&C Yellow No. 6 for use generally in food, drugs, and cosmetics. The agency has reviewed objections and comments received on the final rule that published in the *Federal Register* of November 19, 1986 (51 FR 41765), and the agency has decided to continue the requirement for labeling with some modifications, but it has extended the effective date for complying with the labeling requirement. A final order amending the manufacturing process is included in this document with a 30-day period for the submission of objections to that amendment. This document also amends the color additive regulations by removing FD&C Yellow No. 6 from the color additive provisional list.

DATES: Effective date for labeling compliance is January 1, 1989. Effective date confirmed for permanent listing of FD&C Yellow No. 6: December 22, 1986. The manufacturing process amendment (21 CFR 74.706(a)(1)) shall be effective July 9, 1987, except as to any provisions that may be stayed by the filing of proper objections; objections by July 8, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION:

I. Background

In the *Federal Register* of November 19, 1986 (51 FR 41765), FDA published a final rule permanently listing FD&C Yellow No. 6 for use generally in food, drugs, and cosmetics. The action was in response to a petition filed by the Cosmetic, Toiletry and Fragrance Association, the Pharmaceutical Manufacturers Association, and the Certified Color Manufacturers' Association. That rule amended 21 CFR Part 74 by adding new §§ 74.706, 74.1706, and 74.2706; and also amended 21 CFR 81.1(a) and 81.27 by removing the entries for FD&C Yellow No. 6 from those regulations. The rule revised 21 CFR 82.706 to state that FD&C Yellow No. 6 should conform in identity and specifications to the requirements of 21 CFR 74.706 and that all lakes of the color additive, including D&C and External D&C lakes, should be manufactured from previously certified batches of the straight color additive. The rule also established requirements for the labeling declaration of FD&C Yellow No.

6 under 21 CFR Parts 74 and 201 because of evidence of possible allergic-type reactions to the color additive.

FDA received 18 objections to the rule. The objections were submitted by trade and manufacturer's associations and from companies involved in the color additive, food, drug, and cosmetic industries. The objections pertained to two basic issues concerning FD&C Yellow No. 6: its manufacturing process and its labeling. As provided under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)(2)), the filing of objections to those sections of the final rule (manufacturing process, § 74.706(a)(1); and labeling, § 74.706(a), § 74.1706(c), § 201.20(a)) served to stay the effective dates of the regulation until the agency could rule on the objections. The objections are on file in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, under the docket number found in the heading of this document. The objections and the agency's response to them are discussed below. None of the objections included a request for a hearing.

II. Objections Received to Final Rule

A. The Manufacturing Process for FD&C Yellow No. 6

1. One manufacturer objected to the fact that the manufacturing process for the color additive described in 21 CFR 74.706(a)(1) allowed use only of hydrochloric acid as a reagent in the diazotization step. The objection requested that the description of the manufacturing process be amended to allow for a choice of sulfuric acid or hydrochloric acid for this step.

The agency is aware that hydrochloric acid and sulfuric acid are commonly used in the diazotization of aromatic amines. The agency is not aware of any reports of adverse consequences from the alternative use of sulfuric acid for hydrochloric acid. Therefore, the agency accepts the use of sulfuric acid as suggested by the objection and is amending § 74.706(a)(1) to provide for the use of sulfuric acid in the diazotization step of the manufacturing process for FD&C Yellow No. 6. The agency is providing an objection period of 30 days and a 31-day delayed effective date for this amendment.

B. The Labeling Declaration of FD&C Yellow No. 6

Sixteen objections opposed the requirement for the label declaration for FD&C Yellow No. 6 concerning allergic-type reactions to the color additive. One

comment strongly supported the requirement.

2. Several of the objections argued that the labeling requirements should have issued as a proposed rule rather than as a final rule. The objections contended that a proposed rule would have given the scientific community time to review and comment on the scientific studies that the agency presented as evidence for the requirement. The objections argued that the agency failed to follow the notice and comment requirements required by the Administrative Procedure Act (5 U.S.C. 551 et seq.). The objections indicated that the agency should have alerted interested parties of its intention to require label declaration of the additive when the agency published in the *Federal Register* several provisional listing extension documents.

The procedures the agency followed in issuing the labeling requirement are consistent with the procedures specified in the act for permanently listing a color additive (see section 706(b)(3) of the act). These procedures provide that the Secretary must assure the safety of the use or uses for which a particular color additive is listed. In listing the color additive in response to the industry petition, the agency simply followed the requirements of section 706(b)(3) of the act when it prescribed the conditions under which the color additive could be safely used. Procedurally, the law requires nothing more.

3. There were objections to the scientific data base used by the agency as evidence for the decision to require label declaration. For example, the objections asserted that the studies FDA based its decision upon are "largely anecdotal * * *" and are reports of clinicians, apparently untrained in experimental methodology, who were making subjective judgments of qualitative phenomena * * *."

Also, there were requests made in two of the objections for FDA to submit to the Ad Hoc Advisory Committee on Hypersensitivity to Food Constituents, or a committee of that type, the studies on which it based its decision to require label declaration of FD&C Yellow No. 6 and to seek its opinion.

The data base concerning the association between exposure to FD&C Yellow No. 6 and the onset of allergic-type responses is not as complete as the agency would prefer. For example, in the November 19, 1986, final rule (51 FR 41765), the agency recognized that there were problems in the methodology of the clinical studies, and, thus, the results did not provide strong proof of an association between exposure to FD&C

Yellow No. 6 and allergic-type responses. However, in spite of the methodological deficiencies, the results of the studies still indicate a possible association between exposure to FD&C Yellow No. 6 and allergic-type responses.

One objection cited animal studies to refute the FD&C Yellow No. 6 association with allergenicity. The studies were Safford and Goodwin (Ref. 1), Maurer (Ref. 2), and Kriendler et al. (Ref. 3). Safford and Goodwin reported that they were able to produce contact sensitization to tartrazine and its metabolites in guinea pigs, but considered the conditions artificial in terms of human exposure. Maurer also found tartrazine to have a very low allergenic potency in intradermal applications with adjuvants in experimental animals. Kriendler et al. found that FD&C Yellow No. 6 did not cause significant degranulation or histamine release in an *in vitro* rat mast cell test and concluded that FD&C Yellow No. 6 did not release histamine by either a nonspecific or immunological mechanism. Tartrazine was also negative under the conditions of the study.

Animal studies such as these are useful in screening for allergic-type activity and elucidating mechanisms for such activity. However, possible associations observed in humans cannot be disregarded simply because the results have not been confirmed in animals. The issue of whether FD&C Yellow No. 6 does, indeed, cause allergic-type reactions can only be resolved by human studies. The sponsors of this color additive have the burden of providing the information and data that are necessary to resolve the agency's concern. Therefore, until a resolution is reached, products containing FD&C Yellow No. 6 shall declare its presence on the label or in the labeling.

Because the agency believes that the data base is adequate to conclude that label declaration of this color additive is justified, it concludes that an advisory committee is not warranted. Moreover, the agency notes that the objection was procedurally deficient in that it did not invoke the provisions of section 706(b)(5)(C)(i) of the act or Subpart H of 21 CFR Part 14 concerning the establishment of an advisory committee.

4. In reference to the agency's statement that FD&C Yellow No. 6 is structurally similar to FD&C Yellow No. 5 (both azo dyes), an objector stated that "casual molecular structural resemblance should not be confused with classical structural activity relationships." One study and two

books were cited (Pressman, D. et al. (1954) (Ref. 6), Landsteiner, K. (1936, revised edition 1945) (Ref. 4), and Paul (1984) (Ref. 5)) in the objector's discussion for different isomers.

FDA reviewed the references cited by the objector and found that the references provided no clear information on whether FD&C Yellow No. 5 and FD&C Yellow No. 6 have a "classic" structural activity relationship. Moreover, even assuming that the two compounds do not have a classical structural activity relationship, the comment provided no information to address what impact such a finding would have in the face of the already existing information which suggests that FD&C Yellow No. 6 has been associated with allergic type reactions.

5. Many of the objections concerned the effective date for industry to meet the labeling requirements. The objections contended it was unreasonable to expect that industry could comply with the labeling requirements by November 19, 1987. Several objections suggested extending the effective date to January 1, 1989.

The agency recognizes that it may be a hardship to industry to comply with the labeling requirement by November 19, 1987. Accordingly, the agency has decided to extend the effective date to the next uniform labeling date of January 1, 1989.

6. The "wording" of the label declaration of the color additive outlined by the agency was the subject of several objections. One objection noted the fact that the November 19, 1986, regulation required the declaration of FD&C Yellow No. 6 in both the label and labeling of prescription drug products. The objection suggested that a more appropriate means of ensuring the protection of patients who may be intolerant to the color additive would be to declare the color additive in the labeling of prescription drug products (e.g., package brochure) rather than on the container label because the container label is unlikely to be seen by the patient. Other objections concerned the use of the term "Sunset Yellow" on the label because it is not well known as a synonym for FD&C Yellow No. 6. Objections also stated that many companies are already implementing voluntary labeling for FD&C Yellow No. 6 as outlined in guidelines issued by the Proprietary Association (PA) and the Pharmaceutical Manufacturers Association (PMA) and, therefore, such companies should not be required to change the wording on their labels. The objections also suggested that the abbreviated form for FD&C Yellow No. 6 be allowed (Yellow 6).

The agency agrees with the objection that declaring the presence of the color additive in the labeling (e.g., package brochure) of prescription drug products is an appropriate means to ensure the protection of patients who may be intolerant of FD&C Yellow No. 6. The agency is therefore revising § 201.20 to delete the requirement that the presence of FD&C Yellow No. 6 be declared on the label of prescription drugs on the container shipped to the pharmacist by the drug manufacturer.

The agency also agrees with the objections to requiring use of the name "Sunset Yellow" and has revised § 201.20 to remove this name from the required identification of FD&C Yellow No. 6.

In agreement with the objections, the agency is further revising the specific wording of the regulation by omitting the words "contains" and "as a color additive" from the required identification of FD&C Yellow No. 6 in the labeling of over-the-counter and prescription drug products. This revision, together with the permitted use of the abbreviated name as discussed later, will obviate the necessity of the companies that are complying with the PA and PMA guidelines from having to revise the wording on their labels and labeling. This determination is consistent with the agency's policy of using label declaration to inform, and thus to protect, consumers who may be intolerant or allergic to a specific additive.

The agency did not incorporate the abbreviated form of FD&C Yellow No. 6 in the name in the regulation because the proposed rule (50 FR 23815; June 6, 1985) for abbreviated labeling is still pending. However, as stated in the proposed rule, FDA is permitting the use of abbreviated names on labels in accordance with provisions of the proposal pending publication of a final rule. In the finalization of that rule, the agency will make the necessary changes in the regulations.

For clarity, the agency has revised § 201.20 as published in the Federal Register of November 19, 1987 (51 FR 41765), by separating the requirements for drug products that contain FD&C Yellow No. 5 and those that contain FD&C Yellow No. 6.

III. References

The following references have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and are available for inspection between 9 a.m. and 4 p.m., Monday through Friday.

1. Safford, R. J., and B. F. Goodwin, "Immunological Studies on Tartrazine and its Metabolites. I. Animal Studies," *International Archives of Allergy and Applied Immunology*, 77 (3):331-336, 1985.
2. Maurer, T., "Predictive Evaluation of the Allergic Effect of Drugs and Dyes in Experimental Animal," *Acta Pharmacologica Technologia*, Supplement, 8:37-44, 1979.
3. Kriendler, J. J., J. Slutsky, and Z. H. Haddad, "The Effect of Food Colors and Sodium Benzoate on Rat Peritoneal Mast Cells," *Annals of Allergy*, 44(2):76-81, 1980.
4. Landsteiner, K., "The Specificity of Serological Reaction," C. C. Thomas, Springfield, IL (Harvard University Press, Cambridge, revised edition, 1945), 1936.
5. Paul, W. E., "Fundamental Immunology," Raven Press, New York, NY, 1984.
6. Pressman, D., M. Siegel, and L. A. R. Hall, "The Closeness of Fit of Antibenzoate Antibodies about Haptens and the Orientation of the Haptens in Combination," *Journal of the American Chemical Society*, 76:6336-6341, 1954.

IV. Conclusions

There were no requests for a hearing in response to the final rule, only requests for a stay of the labeling provisions of the regulation. Therefore, FDA concludes that FD&C Yellow No. 6 should be permanently listed as of December 22, 1986, as outlined in the November 19, 1986 (51 FR 41765), final rule and that the labeling requirements should be implemented as stated below. However, the agency has decided to extend the effective date for labeling compliance to January 1, 1989.

FDA concludes that the objection to the manufacturing process for FD&C Yellow No. 6 is correct and has amended § 74.706 accordingly.

In the final rule, the agency announced its determination under 21 CFR 25.24(b)(3) that the action permanently listing FD&C Yellow No. 6 will not have a significant effect on the human environment and, therefore, neither an environmental assessment nor an environmental impact statement is required. The agency has also determined, under § 25.24(a)(11), that the action establishing requirements for the label declaration of FD&C Yellow No. 6 is of a type that does not individually or cumulatively have a significant effect on the human environment. Consequently, neither an environmental assessment nor an environmental impact statement is required for the labeling action.

V. Objections

Any person who will be adversely affected by the revisions of § 74.706(a)(1) may at any time on or before July 6, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each

objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects

21 CFR Part 74

Color additives, Food, Cosmetics, Drugs, Medical devices.

21 CFR Part 81

Color additives, Food, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Food, Cosmetics, Drugs.

21 CFR Part 201

Drugs, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the transitional provisions of the Color Additive Amendments of 1960, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Chapter I is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. Part 74 is amended in § 74.706 by revising paragraph (a)(1) to read as follows:

§ 74.706 FD&C Yellow No. 6.

(a) *Identity*. (1) The color additive FD&C Yellow No. 6 is principally the disodium salt of 6-hydroxy-5-[(4-sulfophenyl)azo]-2-naphthalenesulfonic acid (CAS Reg. No. 2783-94-0). The trisodium salt of 3-hydroxy-4-[(4-sulfophenyl)azo]-2,7-naphthalenedisulfonic acid (CAS Reg. No. 50880-65-4) may be added in small amounts. The color additive is manufactured by diazotizing 4-aminobenzenesulfonic acid using hydrochloric acid and sodium nitrite or sulfuric acid and sodium nitrite. The diazo compound is coupled with 6-hydroxy-2-naphthalene-sulfonic acid. The dye is isolated as the sodium salt and dried. The trisodium salt of 3-hydroxy-4-[(4-sulfophenyl)azo]-2,7-naphthalenedisulfonic acid which may be blended with the principal color is prepared in the same manner except the diazo benzenesulfonic acid is coupled with 3-hydroxy-2,7-naphthalenedisulfonic acid.

3. In § 74.1706 by revising paragraph (c)(2) to read as follows:

§ 74.1706 FD&C Yellow No. 6.

(c) ***

(2) The label of over-the-counter drug products intended for human use administered orally, nasally, rectally, or vaginally containing FD&C Yellow No. 6 shall specifically declare the presence of FD&C Yellow No. 6 by listing the color additive using the name FD&C Yellow No. 6. The labeling for over-the-counter and prescription drug products containing FD&C Yellow No. 6 shall declare the presence of FD&C Yellow No. 6. The labels for certain drug products subject to this labeling requirement that are also cosmetics, such as antibacterial mouthwashes and fluoride toothpastes, need not comply with this requirement provided they comply with the requirements of § 701.3 of this chapter.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOOD, DRUGS, AND COSMETICS

4. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 as amended (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

5. Part 81 is amended in § 81.1 *Provisional lists of color additives* by removing the entry for "FD&C Yellow No. 6" from the table in paragraph (a).

§ 81.27 [Amended]

6. In § 81.27 *Conditions of provisional listing* by removing the entry for "FD&C Yellow No. 6" from the table in paragraph (d).

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

7. The authority citation for 21 CFR Part 82 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

8. By revising § 82.706 to read as follows:

§ 82.706 FD&C Yellow No. 6.

(a) The color additive FD&C Yellow No. 6 shall conform in identity and specifications to the requirements of § 74.706 (a)(1) and (b) of this chapter.

(b) All lakes including current D&C external and D&C lakes of FD&C Yellow No. 6 shall be manufactured from previously certified batches of the straight color additive.

PART 201—LABELING

9. The authority citation for 21 CFR Part 201 continues to read as follows:

Authority: Secs. 501, 502, 701, 52 Stat. 1049-1051 as amended (21 U.S.C. 351, 352, 371); 21 CFR 5.10; § 201.21 also issued under secs. 301, 505, 52 Stat. 1042-1043 as amended, 1052-1053 as amended (21 U.S.C. 331, 355).

10. In § 201.20 by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 201.20 Declaration of presence of FD&C Yellow No. 5 and/or FD&C Yellow No. 6 in certain drugs for human use.

(a) The label for over-the-counter and prescription drug products intended for human use administered orally, nasally, rectally, or vaginally containing FD&C Yellow No. 5 shall specifically declare the presence of FD&C Yellow No. 5 as a color additive using the names FD&C Yellow No. 5 and tartrazine. The labeling for over-the-counter and prescription drug products shall bear a statement such as "Contains FD&C Yellow No. 5 (tartrazine) as a color additive" or "Contains color additives including FD&C Yellow No. 5 (tartrazine)". The labels of certain drug products subject to this labeling requirement that are also cosmetics, such as antibacterial mouthwashes and fluoride toothpastes, need not comply

with this requirement provided they comply with the requirements of § 701.3 of this chapter.

(c) The label for over-the-counter drug products intended for human use administered orally, nasally, rectally, or vaginally containing FD&C Yellow No. 6 shall specifically declare the presence of FD&C Yellow No. 6 by listing the color additive using the name FD&C Yellow No. 6. The labeling for over-the-counter and prescription drug products containing FD&C Yellow No. 6 shall declare the presence of FD&C Yellow No. 6. The labels of certain drug products subject to this labeling requirement that are also cosmetics, such as antibacterial mouthwashes and fluoride toothpastes, need not comply with this requirement provided they comply with the requirements of § 701.3 of this chapter.

Dated: May 31, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-12799 Filed 6-4-87; 3:26 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 31 and 602**

[T.D. 8141]

Employment Taxes and Collection of Income Tax at Source; OMB Control Numbers Under the Paperwork Reduction Act; Employee Tip Reporting and Substantiation Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations and withdrawal of temporary regulations.

SUMMARY: This document provides final regulations relating to employee tip reporting and substantiation requirements and withdraws the temporary regulations published in the *Federal Register* July 23, 1985 (50 FR 29964). These final regulations reflect section 1072 of the Tax Reform Act of 1984 and section 1571 of the Tax Reform Act of 1986, as well as provide guidance to employers and employees with respect to the new provisions.

DATES: The removal of §§ 31.6053-3T and 31.6053-4T is effective June 8, 1987. The regulations contained in this document in § 31.6053-3 (h) are effective on and after July 18, 1984. The regulations in § 31.6053-3 (j) (9) are effective for taxable years beginning

after December 31, 1982. The regulations in § 31.6053-3 (b) (5) and § 31.6053-4 are effective for tips received on or after October 1, 1985. The regulations in § 31.6053-3 (f) (1) (iv) and (j) (19) are effective for payroll periods beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT:

Gail H. Morse of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:**Background**

Under current law, all employees who receive cash tips of \$20 or more in a calendar month are required to report such tips to their employers for purposes of income, social security, and railroad retirement tax withholding requirements. To increase compliance with this requirement, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) provided rules which, under certain circumstances, require large food and beverage establishments to file an information report setting forth an allocation of tip amounts. Generally, whenever the employees of a large food or beverage establishment fail to report to their employer tips aggregating 8 percent or more of the gross receipts of an establishment, the employer must allocate to the employees (as tips for purposes of section 6053 (c)) an amount equal to the difference between 8 percent of the establishment's gross receipts and the aggregate amount of tips reported by the employees. The Secretary of the Treasury is authorized to reduce the allocation figure based on a showing by an employer that the tip rate for its particular establishment was lower than 8 percent. Under the provisions enacted in TEFRA, the rate could not be lower than 5 percent. The TEFRA rules were amended by section 1072 of the Tax Reform Act of 1984 (DEFRA) (98 Stat. 1052, 26 U.S.C. 6053 note) to allow a majority of employees to petition for a reduced allocation rate and to permit a minimum allocation rate of 2 percent. In addition, the Act provides that for purposes of determining whether an establishment normally employed more than 10 employees and thus was a large food or beverage establishment, an individual who owns 50 percent or more in value of the stock of a corporation operating a food or beverage establishment is not considered an employee of such establishment. The Act also directed the Secretary to promulgate regulations with

respect to recordkeeping requirements applicable to tipped employees.

Temporary Regulations and Cross-Referencing; Notice of Proposed Rulemaking

On July 23, 1985, the Federal Register published Temporary Employment Tax Regulations (26 CFR Part 31) (50 FR 29964) and a cross-referencing notice of proposed rulemaking (50 FR 29990) under section 6053(c) of the Internal Revenue Code of 1954. Comments were received in response to the proposed regulations, but no hearing was requested. Consequently a public hearing was not held. After consideration of all comments, the proposed regulations are adopted, with minor clarifying changes, by this Treasury decision, and the temporary regulations are withdrawn.

Response to Comments

Documentary Evidence

Documentary evidence, for purposes of the substantiation requirements for tipped employees, is described in § 31.6053-4(a)(3) as copies of any documents that contain (i) amounts that were added to a check by customers as a tip and paid over to the employee or (ii) amounts that were paid by a customer for food or beverages with respect to which tips generally would be received by the employee. Examples of documentary evidence are copies of restaurant bills, credit card charges, or charges under any other arrangement which contain amounts added by the customers as a tip.

Commenters have expressed fear that § 31.6053-4(a)(3) would make it necessary for an employer to provide the described documents to tipped employees, thus shifting the employee's substantiation burden to his or her employer. They are also concerned that the provision would permit employees access to sensitive employer information. The commenters urge that § 31.6053-4(a)(3) be revised to remove this perceived employer burden.

This suggestion is not adopted in the final regulations since § 31.6053-4(a)(3) does not require employers to supply their employees with the described documents. The provision merely illustrates the types of documents that can be used by an employee to substantiate the receipt of tip income if the employee does not maintain a daily record of tips.

Miscellaneous

Section 31.6053-4(a) requires employees to maintain sufficient evidence to establish the amount of tip

income received during a taxable year and describes the types of evidence that will be considered sufficient. That evidence may not be sufficient, however, if facts and circumstances indicate that the employee received a different amount of tip income than shown by the employee's records.

One commenter suggests that the regulations be revised to delineate the facts and circumstances that may indicate that the employee received a different amount of tip income than shown by his or her records. However, because facts and circumstances vary in every case, it is impracticable to provide such delineation.

Other comments urged various revisions to the regulations that can only be accomplished by amending the underlying statutory provision. Thus, the regulatory definitions of a large food and beverage establishment in § 31.6053-3(j)(7) and of an employee in § 31.6053-3(j)(9) for purposes of the large food or beverage establishment definition cannot be revised as suggested by the commenters absent amendments to the definition of a large food or beverage establishment in section 6053(c)(4) of the Internal Revenue Code.

Certain other comments suggest revisions to the regulations (i) to clarify that the 10-employee test for purposes of the determination of a large food or beverage establishment is made as of the preceding calendar year, and (ii) to set forth the application of the reporting requirements to start-up restaurants. These comments are not adopted since such rules currently exist in § 31.6053-3(j)(7)(i) of the Employment Tax Regulations with respect to the 10-employee test and § 31.6053-3(i) of those regulations with respect to new businesses.

Explanation of Provisions

These final regulations reflect amendments to section 6053 with respect to the reduction of the minimum allocation rate from 5 percent to 2 percent (§ 31.6053-3(h)(1)) and with respect to the treatment of 50-percent stockholders as non-employees (§ 31.6053-3(j)(9)).

In addition, the final regulations provide rules with respect to employee-originated petitions for a reduction in the tip allocation rate. Section 31.6053-3(h)(2) provides that employee-originated petitions must be consented to by a majority of employees which, for this purpose, means more than one-half of the directly tipped employees employed by the establishment at the time the petition is filed. Further requirements of employee-originated

petitions are set forth in § 31.6053-3(h)(2)(iii), including a requirement that employers provide certain information to the district director. Such information constitutes return information (as defined in section 6103(b)(2)) and as such shall not be disclosed by the Internal Revenue Service except as provided in section 6103.

In addition to the general recordkeeping requirements applicable to all taxpayers, these final regulations, in response to the congressional mandate to promulgate regulations with respect to recordkeeping requirements applicable to tipped employees, provide rules specifically applicable to tipped employees. Under these final regulations, an employee is required to maintain sufficient evidence to establish the amount of tip income received by the employee during a taxable year. The regulations provide that sufficient evidence consists of either (a) a daily record, or (b) other evidence (such as documentary evidence) of the tip income received which is as credible and as reliable as a daily record (§ 31.6053-4). The daily record or other evidence may not be sufficient evidence if facts and circumstances indicate that the employee received a larger amount of tip income (§ 31.6053-4).

The effective date for these substantiation rules is October 1, 1985. However, under the general recordkeeping provisions of section 6001 and the regulations thereunder, tipped employees are required, for periods prior to that date, to have books and records adequate to substantiate the amount of tip income received. Substantiation considered sufficient under § 31.6053-4 of these final regulations will also be considered sufficient for such prior periods.

Tax Reform Act of 1986

This Treasury decision also makes conforming amendments to § 31.6053-3(f)(1)(iv) and (j) to reflect section 1571 of the Tax Reform Act of 1986. Thus, for payroll periods beginning after December 31, 1986, § 31.6053-3(f)(1)(iv) provides that the method of allocation of tips based on the number of hours worked may be utilized only by an employer that employs less than the equivalent of 25 full-time employees at the establishment during the payroll period. Section 31.6053-3(j)(19) provides that an employer is considered to employ less than the equivalent of 25 full-time employees at an establishment during a payroll period if the average number of employee hours worked per business day during the payroll period is less than 200 hours.

Regulatory Flexibility Act; Executive Order 12291; Paperwork Reduction Act of 1980

The amendment of the regulations proposed by notice of proposed rulemaking on July 23, 1985, and adopted by this Treasury decision is interpretative. Accordingly, the Regulatory Flexibility Act did not apply to the notice of proposed rulemaking and no Regulatory Flexibility Analysis was required. The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The reporting requirements added by this document have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. The reporting requirements have been approved by OMB.

Drafting Information

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

List of Subjects

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 31 and Part 602 are amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority for Part 31 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 31.6053-3 (b)(5), (h) and (j)(9) and 31.6053-4 are also issued under sec. 1072 of Pub. L. 98-369, 98 Stat. 1052; and 26 U.S.C. 6001.

§§ 31.6053-3T and 31.6053-4T [Removed]

Par. 2. Sections 31.6053-3T and 31.6053-4T of the temporary

Employment Tax Regulations are removed.

Par. 3. Section 31.6053-3 is amended by adding a sentence at the end of paragraph (f)(1)(iv), by adding a new paragraph (j)(19) immediately after existing paragraph (j)(18), and by revising paragraphs (b)(5), (h), and (j)(9) to read as set forth below:

§ 31.6053-3 Reporting by certain large food or beverage establishments with respect to tips.

* * * * *

(b) Employer statement to employees

* * *

(5) *Employee reporting of tip income.* Regardless of whether an employee receives an allocation under section 6053(c) and § 31.6053-3, the employee is required to report as income on his or her Federal income tax return all tips received. For tips received before October 1, 1985, an employee must be able to substantiate the amount of reported tip income as provided in section 6001 and the regulations thereunder. For tips received on or after October 1, 1985, an employee must be able to substantiate the amount of reported tip income as provided in § 31.6053-4. The Internal Revenue Service may determine that a tipped employee received a larger amount of tip income than is reflected by the employee's allocation.

* * * * *

(f) Allocation method to be used in the absence of a good faith agreement. (1)

* * *

(iv) * * * For payroll periods beginning after December 31, 1986, the method of allocation described in the preceding sentence may be used only by an employer that employs less than the equivalent of 25 full-time employees (as defined in paragraph (j)(19) of this section) at the establishment during the payroll period.

* * * * *

(h) *Lowering the percentage to be used—(1) In general.* On and after July 18, 1984, an employer or a majority of the employees (as defined in paragraph (h)(2)(iii) of this section) of an employer may petition the district director for the internal revenue district in which the employer's establishment is located to have the percentage of gross receipts that is used to determine the amount to be allocated under section 8053(c)(3)(A) and paragraph (d) of § 31.6053-3 reduced from 8 percent to the percentage that the petitioning employer or employees believe to be the actual percentage of the amount of the establishment's gross receipts that reflects the amount of tips. The district director may thereafter reduce the percentage of gross receipts

used to determine the amount to be so allocated to the percentage that the district director determines to be the proper estimate of the actual percentage of gross receipts constituting tips. The district director, however, may not reduce the percentage below 2 percent. For the rules in effect prior to July 18, 1984, see 26 CFR 31.6053-3(h) (Rev. as of April 1, 1984).

(2) *Time and manner for petition to have percentage reduced—(i) In general.* The petition shall be in writing and shall include sufficient information to allow the district director to estimate with reasonable accuracy the actual tip rate of the establishment. For example, such information might include the charged tip rate, the type of establishment, menu prices, the location of the establishment, the amount of "self-service" required, the days and hours open for business, and whether the customer receives the check from or pays the server for the meal.

(ii) *Employer petitions.* In the case of employer-originated petitions, the employer has the burden of supplying sufficient information to allow the district director to estimate with reasonable accuracy the actual tip rate of the establishment. The employer also shall attach to the petition copies of Form 8027 (if any) filed for the establishment for the 3 years preceding calendar years.

(iii) *Employee petitions.* (A) In the case of employee-originated petitions, a majority of the employees of an establishment must consent to the petition. A majority for purposes of this paragraph is more than one-half of all the directly tipped employees (within the meaning of paragraph (j)(12) of this section) employed by the establishment at the time the petition is filed. In the case of a single petition for certain multi-establishment employers (see paragraph (h)(4) of this section), more than one-half of the aggregate directly tipped employees (at the time the petition is filed) of the establishments covered by the petition must consent. The petition filed with the district director must state the total number of directly tipped employees employed by the establishment (or establishments) and the number of the directly tipped employees consenting to the petition.

(B) The petitioning employees have the burden of supplying sufficient information to allow the district director to estimate with reasonable accuracy the actual tip rate of the establishment to the extent they possess such information. If the employer possesses relevant information, the employer must provide such information to the district

director upon the request of the petitioning employees or district director. Employees who file a petition under this paragraph must promptly notify their employer of the petition. Promptly upon receipt of such notification, their employer must submit to the district director copies of the Form 8027 (if any) filed for the establishment for the 3 immediately preceding calendar years. Any information supplied by the employer during the petitioning process constitutes return information (as defined in section 6103(b)(2)) which shall not be disclosed by the Internal Revenue Service (except as provided in section 6103) to any employees of the employer or to representatives of such employees.

(3) *Effective date for reduced percentage.* The district director shall determine the term for which the reduced percentage is to be effective. At the end of such term, the reduced percentage shall cease to apply unless previously extended by the district director for the district in which the large food or beverage establishment is located. In no event shall the reduced percentage be applied to payroll periods before the date the petition described in paragraph (h)(2) of this section is filed unless the establishment is a new business (as described in paragraph (i) of § 31.6053-3). In the case of a new business or a petition for reduction filed prior to September 30, 1983, the district director may allow the approved reduced percentage to be applied retroactively to the first day of the calendar year of the petition. Until such time as the employer is notified in writing by the district director of approval of a reduction, the employer must continue to use 8 percent of gross receipts for purposes of complying with section 6053(c) and this section.

(4) *Single petition for certain multi-establishment employers.* An employer (including a single employer as defined in section 52 (a) or (b)) or a majority of the employees of such employer may use a single petition for two or more of the employer's establishments if such establishments are essentially the same type of business, the petitioning employer or employees have made a good faith determination that the tip rates at such establishments are essentially the same, and the establishments are located in the same internal revenue region. Single petitions shall include the names and locations of the establishments for which a reduction is requested and the information required by paragraph (h)(2) of this section for a typical establishment. A

single petition for multi-establishments located within an internal revenue region shall be filed with the district director for the internal revenue district in which the greatest number of the establishments included in the petition are located. If there is an equal number of establishments located in two or more internal revenue districts the employer or employees petitioning may choose the district to which the petition is sent.

* * * * *

(j) *Definitions* * * *

(9) *More than 10 employees on a typical business day.* An employer shall be considered to have normally employed more than 10 employees on a typical business day during a calendar year if one-half of the sum of the average number of employee hours worked per business day during the calendar month in which the aggregate gross receipts from food or beverage operations were the greatest plus the average number of employee hours worked per business day during the calendar month in which the aggregate gross receipts from food or beverage operations were the least, is greater than 80 hours. The average number of employee hours worked per business day during a month shall be computed by dividing the total number of hours worked during the month by all employees of the employer who are employed in a food or beverage operation by the average of the number of days during the month that each food or beverage operation at which such employees worked was open for business. If an employer operates both a food or beverage operation and a nonfood or beverage operation, and one or more of his or her employees work for both operations, the employer may make a good faith estimate of the number of hours such employees worked for each operation in a given month. Similarly, in cases where one or more of an employer's employees work for more than one of such employer's food or beverage operations, a good faith estimate may be made of the number of hours such employees worked for each operation in a given month. For purposes of this subparagraph, employees who are employed in a food or beverage operation include all employees of the operation, not just food or beverage employees. The employees of an employer shall include all employees at all food or beverage operations who, along with the employees of such employer, would be treated as employees of a single employer under section 52 (a) or (b) (as in effect on September 3, 1982) and the regulations thereunder. For example, if

an employer at a food or beverage operation is a member of a controlled group of corporations, then all employees of all corporations which are members of such controlled group of corporations shall be treated as employed by each such employer for purposes of this paragraph. However, an individual who owns 50 percent or more in value of the stock of a corporation operating an establishment shall not be treated as an employee of any establishment owned by the corporation.

* * * * *

(19) *Less than the equivalent of 25 full-time employees.* For purposes of paragraph (f)(1)(iv) of this section, an employer shall be considered to employ less than the equivalent of 25 full-time employees at an establishment during a payroll period (as defined in section 3401(b) and the regulations thereunder) if the average number of employee hours worked per business day during a payroll period is less than 200 hours. The average number of employee hours worked per business day during a payroll period shall be computed by dividing the total number of hours worked during the period by all employees of the employer who are employed in a food or beverage operation by the average of the number of days during the period that each food or beverage operation at which such employees worked was open for business. If an employer operates both a food or beverage operation and a nonfood or beverage operation, and one or more of his employees work for both operations, the employer may make a good faith estimate of the number of hours such employees worked for each operation in a given payroll period. Similarly, in cases where one or more of an employer's employees work for more than one of such employer's food or beverage operations, a good faith estimate may be made of the number of hours such employees worked for each operation in a given payroll period. If there is more than one payroll period for the establishment, the payroll period which is used for the greatest number of employees shall be the payroll period for purposes of this paragraph (j)(19). For purposes of this paragraph (j)(19), employees who are employed in a food or beverage operation include all employees of the operation, not just food or beverage employees. The employees of an employer shall include all employees at all food or beverage operations who, along with the employees of such employer, would be treated as employees of a single employer under section 52 (a) or (b) (as

in effect on September 3, 1982) and the regulations thereunder. For example, if an employer at a food or beverage operation is a member of a controlled group of corporations, then all employees of all corporations which are members of such controlled group of corporations shall be treated as employed by each such employer for purposes of this paragraph.

Par. 4. A new § 31.6053-4 is added immediately after existing § 31.6053-3 to read as follows:

§ 31.6053-4 Substantiation requirements for tipped employees.

(a) *Substantiation of tip income*—(1) *In general.* An employee shall maintain sufficient evidence to establish the amount of tip income received by the employee during a taxable year. A daily record maintained by the employee (as described in paragraph (a)(2) of this section) shall constitute sufficient evidence. If the employee does not maintain a daily record, other evidence of the amount of tip income received during the year, such as documentary evidence (as described in paragraph (a)(3) of this section), shall constitute sufficient evidence, but only if such other evidence is as credible and as reliable as a daily record. However, notwithstanding any other provision of this paragraph (a) (1), a daily record or other evidence that is as credible and as reliable as a daily record may not be sufficient evidence if there are facts or circumstances which indicate that the employee received a larger amount of tip income. Moreover, oral statements of the employee, without corroboration, cannot constitute sufficient evidence.

(2) *Daily record.* The daily record shall state the employee's name and address, the employer's name, and the establishment's name. The daily record shall show for each work day the amount of cash tips and charge tips received directly from customers or from other employees, and the amount of tips, if any, paid out to other employees through tip sharing, tip pooling or other arrangements and the names of such employees. The record shall also show the date that each entry is made. Form 4070A, *Employee's Daily Record of Tips*, may be used to maintain such daily record. The daily record of tips received by an employee shall be prepared and maintained in such manner that each entry is made on or near the date the tip income is received. A daily record made on or near the date the tip income is received has a high degree of credibility not present with respect to a record prepared subsequent thereto when generally there is a lack of accurate recall. An entry is made "near the date

the tip income is received" if the required information with respect to tips received and paid out by the employee for the day is recorded at a time when the employee has full present knowledge of those receipts and payments.

(3) *Documentary evidence.* Documentary evidence consists of copies of any documents that contain (i) amounts that were added to a check by customers as a tip and paid over to the employee or (ii) amounts that were paid by a customer for food or beverages with respect to which tips generally would be received by the employee. Examples of documentary evidence are copies of restaurant bills, credit card charges, or charges under any other arrangement (see § 31.6053-3(j)(4)) containing amounts added by the customer as a tip.

(b) *Retention of records.* Records maintained under this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

(c) *Effective date.* The substantiation requirements of this § 31.6053-4 shall be effective for tips received on or after October 1, 1985. For the rules in effect prior to October 1, 1985, see section 6001 and the regulations thereunder. Substantiation considered sufficient as provided in this § 31.6053-4 will also be considered sufficient for tips received before October 1, 1985.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. Section 602.101(c) is amended by removing from the table "§ 31.6053-3T and § 31.6053-4T . . . 1545-0065" and inserting in the appropriate places in the table "§ 31.6053-3 and § 31.6053-4 . . . 1545-0065."

* * * * *

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved: May 15, 1987.

J. Roger Mentz,
Assistant Secretary of the Treasury.
[FR Doc. 87-12841 Filed 6-5-87; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-252 Re: Notice No. 612]

Old Mission Peninsula Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms.

ACTION: Final rule. Treasury decision.

SUMMARY: This final rule establishes a viticultural area known as Old Mission Peninsula, located in Grand Traverse County (in the northwest portion of the lower peninsula of Michigan). The petition was submitted by a winery located in the viticultural area. ATF feels that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase. It will also allow wineries to better designate the specific grape-growing area where their wines come from.

EFFECTIVE DATE: July 8, 1987.

FOR FURTHER INFORMATION CONTACT:

Edward A. Reisman, ATF Specialist, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations also allow the name and location of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF was petitioned for a viticultural area encompassing the narrow peninsula above Traverse City, Michigan. The petition for the "Old Mission Peninsula" viticultural area was submitted by Edward O'Keefe, President of the Chateau Grand Traverse Winery, the only winery located within the boundary of the viticultural area. The viticultural area consists of all the land in Peninsula Township (excluding Marion and Bassett Islands). It also includes a small portion of Traverse City Township. This peninsula is a sliver of land that juts into Grand Traverse Bay, forming on its east side, the East Arm of Grand Traverse Bay, and on its west side, the West Arm of Grand Traverse Bay. The viticultural area is approximately 19 miles long and no more than 3 miles wide at any point. The total area of the viticultural area is approximately 30 square miles (19,200) of land. There are 50 acres of vinifera vineyards for wine production in the Old Mission Peninsula viticultural area. 31 more acres of vineyards are planned for use by 1989. The Old Mission Peninsula is the fourth American viticultural area to be established in Michigan. Leelanau Peninsula located nearby to the west (across Grand Traverse Bay) is one of them.

Evidence of Name

The petitioner submitted evidence in the form of excerpts from Michigan history books and wine reference books that verified that the area has been locally and nationally called the Old Mission Peninsula for a number of years.

Evidence of Boundaries

The Old Mission Peninsula viticultural area is bounded on three sides by the waters of Grand Traverse Bay, and connected on the south by the mainland of Michigan's lower peninsula, at Traverse City. The south boundary, the unmarked light-duty road (known locally as Eastern Avenue) bordering on Northwestern Michigan College, although a man-made boundary, coincidentally is the demarcation point between the Old Mission Peninsula and the inland areas of northwestern Michigan's lower peninsula.

The boundaries of the Old Mission Peninsula viticultural area may be found on two U.S.G.S. Quadrangle (15 Minute Series) maps.

Area History

The petitioner furnished information which identified the viticultural area as a fruit-growing region (cherries, peaches, plums, apples, berries and grapes) for over 100 years. In recent years there has been a revival in interest in grape-growing for commercial purposes on the Old Mission Peninsula. The petitioner claimed the peninsula is isolated and distinguishable from the surrounding area by virtue of natural boundaries and unique geographical features.

Evidence of Geographical Characteristics

Climate

A climate of favorable summer and winter caused by the moderating influence of Lake Michigan is most pronounced in the Grand Traverse Region which includes Old Mission Peninsula, Leelanau Peninsula and a few surrounding counties. The surrounding deep waters of the Grand Traverse Bay, coupled with southwesterly winds carrying warmth from the mainland, create a microclimate on the Old Mission Peninsula. The peninsula, then, is doubly tempered, once from Lake Michigan effects, and again by the Grand Traverse Bay. This additional insulating effect of the bay is reflected in differences in total degree growing days between Old Mission Peninsula, Traverse City, and Leelanau Peninsula.

Data gathered from a National Weather Service summary for the 15-year period (1962-1976) and for the 2-year period (1980-1981) in western Michigan, was provided by the petitioner. Total growing degree days for Old Mission Peninsula at base 50 (the base temperature used for grapes as well as cherries) averages 2,075 degree days over the 15 year period. Traverse City and Leelanau Peninsula average

2,134 degree days over the 2 year period and 2,109 degree days over the 15 year period, respectively. However, even though total growing degree days afforded fruit crops on the Old Mission Peninsula are less in number, they are virtually frost-free, as has been experienced by local fruit growers. In contrast, area frosts have been known to wipe out identical crops in the surrounding Grand Traverse Region, with little or no damage reported on the isolated Old Mission Peninsula. Therefore, temperature variations in both the spring and fall seasons are markedly more moderate on the Old Mission Peninsula than in the immediate surrounding areas.

The evidence presented in the petition and the notice of proposed rulemaking supports the fact that the Old Mission Peninsula region has within its boundaries, distinct and unique grape growing conditions which entitle it to be a separate American viticultural area.

On the basis of the evidence provided by the petitioner, ATF finds Old Mission Peninsula to be a delimited grape growing region distinguishable by geographical characteristics.

Discussion of Comments

On November 18, 1986, Notice No. 612 was published in the *Federal Register* with a 45-day comment period. In that Notice ATF invited comments from all interested parties regarding the proposal to establish "Old Mission Peninsula" as an American viticultural area. Of particular note, ATF specifically invited comments on the proposed boundary and the name for the viticultural area. No comments were received from the public during the comment period.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the proposal is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule, will not have a significant economic impact or impose compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this final rule is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, (44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320), do not apply to this final rule because no requirement to collect information is proposed.

Miscellaneous

ATF does not wish to give the impression by approving "Old Mission Peninsula" as a viticultural area that it is approving or endorsing the quality of the wine derived from this area. ATF is approving this area as being distinct and not better than other areas. By approving this area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of wines from "Old Mission Peninsula."

Drafting Information

The principal author of this document is Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Viticultural areas, Consumer protection, Wine.

Authority and Issuance

27 CFR Part 9—American Viticultural Areas is amended as follows:

PART 9—[AMENDED]

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

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of 9.114 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.114 Old Mission Peninsula.

* * * * *

Par. 3 Subpart C is amended by adding § 9.114 to read as follows:

Subpart C—Approved American Viticultural Areas**§ 9.114 Old Mission Peninsula.**

(a) *Name.* The name of the viticultural area described in this section is "Old Mission Peninsula."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the "Old Mission Peninsula" viticultural area are 2 U.S.G.S. Quadrangle (15 Minute Series) maps, scaled at 1:62,500. They are entitled:

- (1) Elk Rapids, Mich. (1957); and
- (2) Traverse City, Mich. (1957).

(c) *Boundary.* The boundary in Grand Traverse County, Michigan, consists of all of Peninsula Township, excluding Marion and Bassett Islands. In addition, the viticultural area takes in a small portion of Traverse City Township.

(1) The beginning point is on the Traverse City, Mich., U.S.G.S. map at the shoreline of the West Arm of Grand Traverse Bay at Section 1, Township 27 North, Range 11 West (T27N, R11W), approximately 500 feet due west of the intersection of two unmarked light-duty roads (approx. 750 feet north of Bryant Park);

(2) The boundary proceeds north 19 miles along the western shoreline of the Old Mission Peninsula until it reaches the lighthouse near Old Mission Point at the north side of the Peninsula on the Elk Rapids, Mich., U.S.G.S. map, Sec. 23, T30N, R10W;

(3) It then proceeds south for approximately 19 miles along the eastern shoreline of the peninsula to the southeast portion of an unmarked light-duty road (known locally as Eastern Avenue) at Sec. 6, T27N, R10W on the Traverse City, Mich., U.S.G.S. map. The unmarked light-duty road is located immediately north of Northwestern Michigan College on the shoreline of the East Arm of the Grand Traverse Bay;

(4) The boundary travels west along the unmarked light-duty road (known locally as Eastern Avenue) for approximately one mile until it meets an unmarked north/south light-duty road at Sec. 1, T27N, R11W; and

(5) Finally, the boundary proceeds due east 500 feet to the beginning point on the shoreline of the West Arm of the Grand Traverse Bay at Sec. 1, T27N, R11W.

Signed: May 4, 1987.

Stephen E. Higgins,
Director.

Approved: May 21, 1987.

John P. Simpson,
Deputy Assistant Secretary (Regulatory,
Trade and Tariff Enforcement).

[FR Doc. 87-12986 Filed 6-5-87; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 100**

[CGD 1-87-14]

Special Local Regulations; Save the Bay's 11th Annual Swim the Bay Ocean Swim; Coasters Harbor Island, Newport, RI to Potter Cove, Jamestown, RI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Swim the Bay—Save the Bay ocean swim. This event will be held on July 18, 1987 from 7:00 a.m. to 11:00 a.m. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 7:00 a.m. to 11:00 a.m. on July 18, 1987.

FOR FURTHER INFORMATION CONTACT: Lt. L. Brown, U.S. Coast Guard. Phone (617) 223-8311.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553 a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until May 8, 1987, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Lt. L. Brown, project officer, First Coast Guard District Boating Safety Division, and Lt. D.J. St. James, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The Save the Bay, Inc. ocean swim includes 100 swimmers each accompanied by a small rowboat. The participants will enter the water at

Coasters Harbor Island, Newport, Rhode Island, and swim to Potter Cove, Jamestown, Rhode Island, and will cross the East Passage of Narragansett Bay just north of the Newport Bridge. Risk of boat/swimmer collision and large wake hazards to escorting row boats constitute the primary threats to the participants. Vessel traffic and speed will be restricted within a safety zone established in the regulated area. One Coast Guard Cutter and several Coast Guard Auxiliary vessels will be assisting the race sponsor in patrolling the safety zone. The purpose of this regulation is to limit the distance to which nonparticipating vessels may approach the participants and to restrict vessel speeds to a no-wake speed as set forth below. The restrictions are necessary to provide for the safety of life on navigable waters during the event.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-1-14, is added to read as follows:

§ 100.35-1-14

(a) *Regulated Area*: East passage of Narragansett Bay, bank to bank bounded to the south by the Newport Bridge, and to the north by a line drawn from Bishop Rock (41-31'05"N, 71-19'54"W), Newport, Rhode Island to Fowler Rocks (41-32'00"N, 71-21'48"W), Conanicut Island, Jamestown, Rhode Island.

(b) *Special Local Regulations*: All vessels operating in the regulated area or in the vicinity of participants in this event shall:

(1) Approach no closer than 200 yards from any participant. The participants will be swimming from Coaster's Harbor Island, Newport Rhode Island, to Potter Cove, Jamestown, Rhode Island. Each swimmer will be accompanied by a rowboat crewed by at least two persons.

(2) Observe a maximum speed limit of five (5) knots, or "No Wake Speed", whatever is less.

(3) Exercise extreme caution when operating in this area.

Dated: May 22, 1987.

R.L. Johanson,

Rear Admiral (Lower Half), U.S. Coast Guard Commander, First Coast Guard District.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42002E; FRL-3214-8]

Fluoroalkenes; Final Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Toxic Substances Control Act (TSCA), EPA is issuing a final rule to require testing for certain health effects for the following fluoroalkenes: vinyl fluoride (VF; CAS No. 75-02-5), vinylidene fluoride (VDF; CAS No. 75-38-7), hexafluoropropene (HFP; CAS No. 116-15-4) and tetrafluoroethene (TFE; CAS No. 116-14-3). By this action, EPA is also withdrawing its proposed reproductive effects testing for VDF.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 12 p.m. eastern standard time on June 22, 1987. This rule shall become effective on July 22, 1987.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: In the Federal Register of November 6, 1985 (50 FR 46133), EPA issued a proposed test rule under section 4(a) of TSCA to require health effects testing of vinyl fluoride, vinylidene fluoride, hexafluoropropene, and tetrafluoroethene. This proposed testing consisted of reproductive effects testing for VDF, subchronic toxicity testing for HFP, chronic oncogenicity bioassays for VF and VDF, tiered mutagenicity testing for VF, VDF, HFP, and TFE, and, depending on the outcome of the mutagenicity testing, chronic oncogenicity bioassays for HFP and TFE. EPA is now issuing a final test rule to require the above-mentioned health effects testing of VF, VDF, HFP, and TFE, except that the Agency is withdrawing its reproductive effects testing requirement for VDF.

I. Introduction

A. ITC Recommendation and EPA's Previous Actions

TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established an Interagency Testing Committee (ITC) under section 4(e) to recommend to the EPA a list of chemicals to be considered for the promulgation of test rules under section 4(a) of the Act.

The ITC designated the chemical category "fluoro alkenes" for priority testing consideration in its Seventh Report, published in the Federal Register of November 25, 1980 (45 FR 78432). The Agency responded to the ITC's designation, as required by section 4(e) of TSCA, by issuing an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register of October 30, 1981 (46 FR 53704). In response to the ANPR, the Fluoroalkenes Industry Group (FIG) submitted a proposed testing program for VF, VDF, HFP, and TFE. Following publication of the ANPR, the Agency also received data under sections 8(a) and 8(d) of TSCA on the fluoroalkenes. In the Federal Register of June 4, 1984 (49 FR 23112), EPA solicited public comment on a proposed negotiated testing agreement (NTA) for VF, VDF, TFE, and HFP and published its decision not to require testing of another fluoroalkene, trifluoroethene, because of very low exposures to that substance. Subsequent legal action (*NRDC v. EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984)) found that NTA's such as that proposed for the fluoroalkenes are not a legally adequate alternative to test rules in obtaining needed test data on ITC-designated chemicals. On October 30, 1984 the court ordered EPA to reevaluate the testing needs for the fluoroalkenes and by October 31, 1985 to either propose a test rule for the fluoroalkenes or publish the Agency's reasons for not doing so. The Agency, therefore, issued a notice of proposed rulemaking (NPRM) for VF, VDF, HFP, and TFE on October 31, 1985 (50 FR 46133; November 6, 1985). In response to the proposed rule, the Agency received written comments from the Fluoroalkenes Industry Group and its member companies. The FIG also requested a public meeting, which was held April 1, 1986. There, the FIG presented both written and oral comments on the proposed rule. All of the FIG's written comments and the transcript of the public meeting are contained in the record for this action. Having examined these comments, the Agency is now issuing a final test rule for VF, VDF, HFP, and TFE.

B. Test Rule Development Under TSCA

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance or mixture to develop appropriate test data if the Administrator finds that:

(A) (i) The manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment.

(ii) There are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) Testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) A chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) There are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) Testing of such substance or mixture with respect to such effects is necessary to develop such data.

In making section 4(a)(1)(A) findings, EPA considers both exposure and toxicity information to make the finding that the chemical may present an unreasonable risk. For the second finding under section 4(a)(1)(A), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to or environmental release of the chemical. In making the third finding that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules as published in the Federal Register of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) findings are discussed in the Federal Register of July 18, 1980 and June 5, 1981 publications, and the section 4(a)(1)(B) findings are discussed in the June 5, 1981 publication.

In evaluating the ITC's testing recommendations concerning the fluoroalkenes, EPA considered all

available relevant information including the following: Information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of the fluoroalkenes under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) concerning the fluoroalkenes; and published and unpublished data available to the Agency, including that submitted as public comment. From its evaluation, as described in this final rule, EPA is requiring health effects testing for VF, VDF, HFP, and TFE under section 4(a)(1)(A).

II. Review of Available Data

A. Profile

The ITC (Ref. 1) defined the designated fluoroalkenes to include those compounds having the general chemical formulas $C_nH_{(2n-x)}F_x$, where n equals 2 or 3 and x equals 1 to 6. Six fluoroalkenes meeting this category definition were identified from the TSCA Chemical Substances Inventory. Two of the six chemicals, trifluoroethene and 3,3,3-trifluoro-1-propene, were considered by the Agency not to warrant additional testing (49 FR 23112). The reasons relating to this decision have been discussed in the ANPR and proposed NTA for fluoroalkenes. The remaining four compounds, VF, VDF, TFE, and HFP are the subject of this rulemaking. All of these chemicals are gases at room temperature. The production, use, exposure and release of these compounds are discussed in the proposed rule.

B. Review of Toxicity Studies Submitted After Proposal

Subsequent to the fluoroalkenes proposed rule, the FIG submitted a number of toxicity studies to the Agency which are reviewed in this preamble. For a review of earlier studies relevant to the Agency's rulemaking efforts on the fluoroalkenes, the proposed rule should also be consulted.

1. Mutagenicity

Additional mutagenicity data submitted by the FIG gave positive mutagenic results in two studies on HFP and in two studies for VF. A third study in HFP is considered equivocal by the Agency. Three different mutagenicity assays on TFE were also completed by industry. Two were clearly negative, while the third is considered negative by

the FIG, but because of experimental problems is considered inconclusive by the Agency. Two studies on VDF were also recently completed by industry; both are negative.

HFP was tested in an *in vitro* cytogenetics assay in Chinese hamster ovary (CHO) cells both with and without activation (Ref. 2). In both cases, HFP was positive, with responses greater than those of the concurrent positive control (vinyl chloride). HFP in the mouse micronucleus test (preliminary data) yielded weakly positive results in the males, and negative results in the females (Ref. 3). HFP was also tested in the CHO hypoxanthine guanine phosphoribosyltransferase (HPRT) gene mutation assay. In this cells-in-culture test, HFP is reported to be a negative mutagen by industry (Ref. 4). However, the Agency has identified a number of problems in the test; namely, substantial between-culture variability within single treatments, isolated increases in individual cultures, high negative controls in some instances, and a failed positive control in one of the trials (Ref. 38). Because of these problems, the Agency believes that the results of this testing are equivocal and cannot be accepted as indicative of the nongenotoxicity of HFP for gene mutations. Therefore, the Agency is requiring that this test be repeated, both with and without activation.

VF, tested in the CHO/HPRT gene mutation assay, was negative without activation, but positive with activation (Ref. 5). The response of VF was much weaker than the positive control, vinyl chloride. VF was also tested in an *in vitro* cytogenetics assay (CHO cells). Although the results without activation were equivocal, the test was positive for cytogenetic activity with activation (Ref. 6). VDF was also tested in these same two assays but was negative in both cases (Refs. 32 and 33).

TFE was tested in the Ames *Salmonella* assay with four strains of bacteria, TA1535, TA97, TA98, and TA100 both with and without activation. TFE was negative in this assay (Ref. 7). Likewise, TFE tested in an *in vitro* cytogenetics assay (CHO cells) was negative, both with and without activation (Ref. 39).

TFE was also tested in the CHO/HPRT gene mutation assay and was concluded by industry to be negative, both with and without metabolic activation (Ref. 8). However, the assay with activation suffered from a lack of significant response in the positive controls in the first of two trials, and a problem with equipment failures and the

subsequent loss of two experimental dose levels (the 80 and 100 percent levels), in the second trial. Therefore, despite arguments by the FIG to the contrary, the Agency believes that the assay with activation should be repeated before a conclusion of negative results can be drawn for TFE in this test (Refs. 34 and 35).

2. Subchronic Toxicity

The Agency has reviewed data from two inhalation subchronic studies of VDF on rats, sponsored by the Association of Plastics Manufacturers in Europe (APME). Results from the first study show testicular and systemic effects at the two highest dose levels, 40,000 and 7,000 ppm (Ref. 9). The second study, which had a highest dose of 7,000 ppm showed no effects (Ref. 10). A simple fertility study was also conducted as part of the second study, wherein male and female rats that had been exposed to VDF in the 13-week subchronic portion of the study were mated with untreated animals. This fertility study was evaluated by EPA. No effects of potential reproductive significance were observed.

The Agency also reviewed the results of an inhalation subchronic study with VDF performed by the National Toxicology Program on male and female F344 rats (Ref. 11). In this study, VDF caused minor testicular effects (decrease in weight, no lesions) at doses which caused liver, kidney, and blood toxicities. No effects of potential reproductive significance were observed for females. The testicular effects were most pronounced at the highest dose level, 50,000 ppm. NTP reported there was a significant decrease in right testis weight relative to controls. There was also a significant decrease in right testis weight relative to body weight at 5,000 ppm but not 15,000 ppm. Systemic, but not testicular effects, were also seen at 1,500 ppm and 500 ppm, the two lowest doses. These included increases in group mean liver weights and increases in right kidney to body weight ratios.

III. Response to Public Comments

In response to the proposed rule, the Agency received written comments from the FIG and its member companies. The FIG also requested a public meeting, which was held April 1, 1986. There, the FIG presented written and oral comments on the rule. The FIG's written comments and the transcript of the public meeting are contained in the record for this action. The substantive issues raised by industry are discussed below.

A. Worker Exposure

The EPA finding that fluoroalkenes may pose an unreasonable risk of adverse health effects under section 4(a)(1)(A)(i) of TSCA is based in part on the potential for inhalation exposure of workers to the fluoroalkenes. However, the FIG contends that the fluoroalkenes have insufficient exposure potential to pose an unreasonable risk of injury, and without the potential for exposure the Agency does not have the regulatory authority to require testing. In support of this claim, the results of a FIG-sponsored industrial hygiene survey of its manufacturing operations for monomer production and for polymer production involving processing of the fluoroalkenes were submitted to the Agency. The survey results are the basis for the claim that there is no significant exposure to fluoroalkenes in the workplace.

An examination of the FIG survey raises several concerns. One concern is that only full work shift personal measurements were taken, and thus the monitoring results were expressed as time-weighted average concentrations. Although this sampling strategy is appropriate for demonstrating compliance with permissible exposure limits, it obscures the evaluation of peak exposures resulting from short-term release of contaminants in the atmosphere. The results of the FIG survey indicate that worker exposure to fluoroalkenes typically takes the form of brief episodes of relatively high exposure followed by extended periods of little or no exposure.

The FIG survey results include several explanations of how exposure to fluoroalkenes typically occurs. For example, it is stated that, "A detectable sample occurs when a plugged line must be corrected * * *" and, "The detectable sample occurred because of a reactor pluggage." Since the time-weighted average concentration measured for operators who corrected pluggage problems or were exposed to an "unusual pressure relief valve release * * *" was in the range of 10 to 38 ppm, the peak level existing at the time of the problem was likely much higher. The lack of area measurements taken with fixed-location continuous monitors makes it difficult to assess which areas of the plant are most likely to be associated with significant worker exposures.

For many years warnings have been expressed against the use of single values, such as the TWA, as an index of exposure (Ref. 12). Whereas the integration of concentration over time produces a convenient measure of

workplace conditions, toxic responses cannot be expected to vary as a linear function of time and concentration. That is, the amplitude and frequency of variation from the mean due to peaks during the day may be very important.

In addition, for at least one job category (polymer operator) an air-supplied respirator is routinely worn. This type of precaution is not typically taken in situations where engineering controls are adequate to ensure against significant release of contaminants into the atmosphere. Area measurements would have been very useful in evaluating potential exposures for this job category. Also, since the fluoroalkenes are said to be odorless, workers are not likely to be aware of situations where high concentrations are present. Thus, they are much more likely to be subjected to brief periods of intense exposure, such as when a maintenance mechanic performs emergency repairs or when a sample valve is bled to the atmosphere.

Furthermore, the FIG's claim that worker exposure to fluoroalkenes is insignificant relies heavily on the concept of a "level of concern." By their definition, a worker can be said to have no exposure when air samples reveal concentrations less than 1 percent of the level of concern. This unconventional approach to industrial hygiene monitoring has little value in the quantitative assessment of worker exposure to chemicals. By introducing the concept of a level of concern, the FIG has made certain assumptions about the toxicity of the fluoroalkenes. From four unpublished animal studies involving exposures lasting for 2 to 13 weeks, the FIG concluded that exposure concentrations that elicited "minimal" adverse effects would be appropriate to adopt as levels of concern for worker exposure. These "minimal" effects included respiratory tract irritation (VF), testicular and kidney pathology (TFE), and kidney pathology alone (HFP). The Agency does not believe there is any scientific justification for incorporating such assumptions concerning health risks when attempting to evaluate worker exposure to chemicals. In light of the acknowledged lack of chronic toxicity data for the fluoroalkenes, the FIG's approach totally ignores the potential for development of adverse effects (e.g., cancer) following long-term low level exposures. Moreover, the approach taken by the FIG in arriving at a level of concern is not supported by any currently accepted risk assessment methodology.

Current risk assessment practice for non-carcinogens (see for example 51 FR

34028; September 24, 1986) indicates that no-effect levels for chronic exposure may be derived from the highest no-observed-adverse effect level (NOEL) or the lowest-observed-adverse effect level (LOEL) taken from an animal study by applying an appropriate uncertainty factor. However, the Agency considers this approach of using uncertainty factors to be valid only in the case where the substance under consideration is a non-carcinogen, an assumption which has not been documented for the fluoroalkenes. Evaluation of true worker exposure to the fluoroalkenes is much less ambiguous if one chooses simply to examine the actual results of the workplace monitoring presented in the FIG survey. Approximately 17 percent of the total measurements taken gave positive results for the presence of fluoroalkenes. However, this percentage may have been much higher if short-term or area samples had been taken in addition to the time-weighted average personal measurements. For most job categories, the FIG survey results indicated that time-weighted average personal exposures are quite low. Exceptions are evident, however. Vinylidene fluoride polymer operators experienced time-weighted average exposures of 4.5 and 6.5 ppm on what was said to be a "very typical day. No unusual events during the day." Measurements in excess of 30 to 50 ppm (time-weighted average) were reported for several other workers included in the FIG survey.

Supporting evidence for the occurrence of occupational exposure to fluoroalkenes is available in the report of an industrial hygiene survey conducted by NIOSH, the National Institute for Occupational Safety and Health (Ref. 13). Worker exposures to VF were measured at a VF manufacturing facility and a VF polymerization plant. Plant operator exposure levels for VF production were typically less than 2 ppm (time-weighted average), although exposure of an operator during start-up was 21 ppm (time-weighted average). Exposure to VF in the polymerization plant varied from 1 to 5 ppm (time-weighted average).

The results of the FIG survey and the NIOSH survey do not support the conclusion that "there is no significant exposure to the fluoroalkenes in the workplace." The critical issue in evaluating exposure to fluoroalkenes is whether the concentrations reported in the surveys are indeed significant from a public health standpoint. Neither the currently available toxicological data nor the results of the FIG survey are

adequate to resolve this question. Therefore, until more extensive toxicological studies are conducted, it is inappropriate to conclude that current worker exposures to fluoroalkenes are of no concern. EPA believes that the FIG survey, together with other exposure information discussed above, shows that workers are potentially exposed to levels of various fluoroalkenes which may present unreasonable risks of injury to human health.

B. Structure-Activity Relationship (SAR)

The Agency used the structural similarities of VF and VDF to vinyl chloride (VC) and vinylidene chloride (VDC) to support the Agency's conclusion that VF and VDF may present unreasonable risks and need immediate testing for oncogenicity. In addition, similar structure activity relationships were used to support the required mutagenicity testing for TFE and HFP and the conditional oncogenicity testing triggered by the results of those mutagenicity tests. The FIG responded that the physical, chemical, and biological properties of the chlorinated and fluorinated alkenes are vastly different and do not support the analogies drawn by the Agency. The FIG believes that the available data suggest that it is, in fact, unlikely that the fluoroalkenes will behave similarly to the chloroalkenes and, hence, the Agency's conclusion is unjustified.

The FIG contended that it is extremely unlikely that VF or VDF will behave anything like their chlorinated analogues with regard to physical and chemical properties. They reasoned that fluorine's high electronegativity, short crystal and covalent radii, and the short C-F bond length and high bond strength make fluoroalkenes unique and hence any analogies to chloroalkenes are inappropriate. They went on to compare a number of physical and chemical properties of fluoro- and chloroalkenes that exemplify these differences. They concluded by stating that "structure-activity relationships in the haloalkenes demonstrate that it is unlikely that there will be any similarity between fluoroalkenes and chloroalkenes."

While there are a number of properties that distinguish fluoro compounds from their chloro analogs, and also the bromo analogs, the FIG has not demonstrated why or how these differences would affect the biological activity (e.g., the epoxidation of the C=C double bond).

In certain chemical reactions, such as electrophilic addition to the double bond, the reactivity in fluoroalkenes will be reduced because of the inductive withdrawal of electron density due to

the high electronegativity of the fluorine (Ref. 14), but the reaction will not be stopped altogether; moreover, the toxicological significance of such rate differences is not obvious. For the same reason, nucleophilic addition reactions will be faster for the fluoroalkenes. Radical reactions will also take place in both chloro- and fluoroalkenes. While the FIG pointed out that some gas phase radical reactions are slower for fluoroalkenes than for chloroalkenes by an unspecified factor, no details of the kinetics were provided, and no mention was made of enzyme mediated or solution reactions. In general, however, radical reactions proceed at similar rates regardless of the substrate. In biological systems, all of these reactions (electrophilic, nucleophilic, and radical) are important and will take place with both fluoroalkenes and chloroalkenes, although probably at different rates. Since epoxides have been implicated in the mechanism of carcinogenesis for some alkenes and arenes, their formation is of special interest, and it appears that this reaction can proceed by both radical and ionic mechanisms in biological systems (Ref. 15). Therefore, in the case of the fluoroalkenes, the potential for epoxide formation *in vivo* is present, and it appears that similar reactions can take place for both chloro- and fluoroalkenes and that the expected differences in physical and chemical properties cannot be used to rule out similar toxicities in biological systems.

The FIG also states that the available data on the biologic effects of the chloro- and the fluoroalkenes are very different and do not support the analogies that the Agency has drawn. The experimental evidence presented by the FIG indicates that the fluorinated compounds have a lower potential to be sequestered in body tissues or fluids, have a much higher acute lethal level, and affect different target organs. With regard to the latter point, it is stated that the chlorinated compounds generally affect the liver as the primary target organ, while the kidneys are the primary target organ for the fluoroalkenes, and that this implies a different mechanism of action for these two classes of compounds. In support of this the FIG cites data submitted by the industry indicating that the fluorinated compound TFE is metabolized entirely by a glutathione pathway, whereas the biologically active metabolite of the chlorinated alkenes is produced by a cytochrome P-450 enzyme system. The FIG believes the available biological data indicate that the fluoroalkene compounds have different biologic fates than the chlorinated alkenes, and hence

there is little justification in making analogies between these two classes of compounds.

TFE and tetrachloroethylene (TCE) apparently have qualitatively different metabolic routes as demonstrated in the study by Odom and Green (Ref. 16). However, this is not true for VF and VDF compared to VC and VDC. Furthermore, all of the haloalkenes apparently are metabolized by an oxidative mechanism involving microsomal monooxygenases (cytochrome P-450), although the rates vary widely (Ref. 17). Bolt et al. (Ref. 18) showed interaction with P-450 by measuring the degree of inhibition of aniline hydroxylation and aminopyrene demethylation. They found that VC which is rapidly metabolized, exerted a weak effect as did VF, while VDF was substantially stronger. Presumably the VC interaction is shorter because it is rapidly oxidized, probably to chloroethylene oxide, and quickly released. VDF remains bound longer since it is oxidized slower, and thus interferes more strongly with the P-450 enzyme activities.

VC, VF, and VDF have also been shown to metabolize similarly *in vivo*, and concomitantly produce acetonemia in rats (Refs. 19 and 20). The increases of acetone production were concentration (dose) dependent and showed saturable kinetics. Interestingly, VDF was found to be more potent than VC for this toxic effect.

This acetonemia was shown to be caused by reactive metabolites formed by oxidative interaction with cytochrome P-450. Pretreatment with the inducers phenobarbital and DDT increased the effect, while the inhibitors pyrazole and dithiocarb caused a reduction, as did reducing the oxygen concentration in the atmosphere. Since VC is known to be oxidized to chloroethylene oxide, it is believed that corresponding fluorooxiranes are formed from VF and VDF. All such epoxides can act as direct alkylators, or can rearrange to precursors of chloro- and fluoroacetic acids.

Filser et al. (Ref. 20) also found that infusion of chloro- and fluoroacetate at the rates they would be formed by VC and VDF did produce acetonemia, probably by interfering with the citric acid cycle. This shows that the oxidative metabolites formed analogously from VC, VF, and VDF can cause the same toxic effect. Since the fluoroacetate treatment did not cause as much acetone formation as did the corresponding dose of VDF, they thought that an epoxide intermediate may have directly alkylated cytosolic

coenzyme A to account for the excess production of ketone bodies.

In contrast also to the FIG position, Conolly et al. (Ref. 21) have shown that VF is hepatotoxic, like VC, by an oxidative mechanism. Furthermore, Stockle et al. (Ref. 22) and Conolly et al. (Ref. 23) have also shown that VDF is hepatotoxic by an oxidative mechanism, like VDC and VC.

Therefore, EPA believes that the Agency's conclusions on the need for testing, to the extent that they are based on SAR between the fluoroalkenes and their chlorinated analogs, are appropriate and supported by the available data.

C. Genotoxicity Screening Tests and the Use of Automatic Triggers

The Agency proposed a tiered mutagenicity testing program for the fluoroalkenes in the proposed test rule. Positive results in certain Tier I test systems (mammalian cells in culture assay, *in vitro* cytogenetics assay, *in vivo* cytogenetics assay, mouse micronucleus assay) would automatically trigger Tier II testing (*Drosophila* sex-linked recessive lethal assay, dominant lethal assay). Positive results in Tier II test systems would trigger Tier III (mouse specific locus assay, heritable translocation assay). However, prior to requiring the Tier III tests the Agency proposed to hold a public program review to determine if continued testing would serve a scientific and regulatory need. If Tier III tests are conducted, the results would permit the Agency to perform quantitative risk assessments for genetic effects. Also, under the proposed rule for TFE and HFP positive results in any one of the following: *In vitro* cytogenetic assay, *in vivo* cytogenetic assay, mammalian cells in culture assay, and sex-linked recessive lethal assay in *Drosophila melanogaster*, would trigger oncogenicity testing.

The FIG disagreed with many aspects of the Agency's proposed genotoxicity testing program for the fluoroalkenes. Many of the points of contention are identical to those brought up during comments concerning the EPA-proposed test rule for the C₉ aromatic hydrocarbon fraction (50 FR 20662). Since the response to these comments has not substantially changed, the Agency is providing only a brief summary of the response as presented in the C₉ test rule with reference to the C₉ rule for greater detail of discussion.

The FIG believes that greater weight should be placed on negative *in vivo* findings rather than positive *in vitro* cytogenetic test results. Using this philosophy, a positive *in vitro*

cytogenetic test would require further testing *in vivo* to confirm the results, rather than negative *in vitro* results requiring further testing *in vivo* as described in the present test rule. In addition, negative results in the *in vivo* test would indicate that no further testing should be required regardless of the results of the *in vitro* assay. As the Agency stated in the C₉ rule, the intent of the Agency is to maximize the detection of clastogenic agents. It should therefore be noted that *in vitro* assays may detect genotoxicity via alternative mechanisms, target tissues or species, and thus in part potentially complement *in vivo* assays for the same endpoint. Since it is considered that the *in vitro* data by themselves are predictive of both potential germ cell mutagens and carcinogens, positive results in the *in vitro* assay would require no further Tier I genotoxicity testing, while the recognized limitations associated with all *in vitro* test systems make it prudent to conduct further *in vivo* studies to confirm any negative findings.

The FIG asserts that all tests required by the Agency should be validated for routine use, have recognized scientific guidelines, be capable of being performed according to Agency-mandated Good Laboratory Practice (GLP) standards, and serve a useful purpose in the context of developing regulations. This comment was made with specific reference to the sex-linked recessive lethal assay in *Drosophila* and the dominant lethal test in rats, and concerned the scientific usefulness of the information provided by these assays and the relevance of this information to the development of regulations. As outlined in the C₉ final test rule, the Agency considers both the sex-linked recessive lethal assay and the dominant lethal assay to be validated tests. Because they are whole animal tests, the Agency also believes that they provide information not duplicated by other tests in this battery before proceeding with more costly Tier III tests. However, the Agency recognizes that there is some debate among scientists concerning the relative standing of certain mutagenicity tests as predictors of mutagens in humans or predictors of carcinogenicity. Recognizing this, the Agency has decided in the case of the fluoroalkenes to hold a public meeting after the Tier II mutagenicity testing is completed. At the meeting, the Agency will discuss its assessment of the weight of the evidence for proceeding (or not) with Tier III mutagenicity testing (for VF, VDF, HFP, and TFE) or with oncogenicity testing (for TFE and HFP).

The proposed requirement for the mouse specific locus and heritable translocation tests were opposed by the FIG on the grounds that they would provide no useful information beyond that already obtained by Tier I and II *in vitro* and *in vivo* tests, and would not assist in defining acceptable exposure levels. In addition, the FIG commented that adequate laboratory facilities in the United States are not generally available for conducting these assays using the GLP standards required by the Agency. The FIG maintains that the heritable translocation test is considered a valid research tool, but is not an assay to be employed in routine testing. It further maintains that this assay would provide no additional information beyond that obtained by a positive dominant lethal test. For these reasons, the FIG believes that the Agency cannot justify requiring either the mouse specific locus test or the heritable translocation test in the proposed test rule for the fluoroalkenes.

Regarding the issue of available test facilities, there are commercial laboratories readily available which can perform the heritable translocation assay. Testing facilities for the mouse specific locus assay are admittedly much more limited at the present time. The availability of testing facilities for the mouse specific locus assay is dealt with in detail in the final test standards and reporting requirements rule for diethylenetriamine (DETA), which has been published in the *Federal Register* (52 FR 3230; February 3, 1987). The DETA rule and the summary of a meeting held in October 1986 between the U.S. Department of Energy and the Agency on this subject should be consulted for a full discussion of this issue (Ref. 36).

The Agency stated in the C_0 rule that these two assays are not to be considered screening tests, but rather are intended for human risk assessment. Therefore, the Agency does not consider their cost, which is estimated to be less than half that of a 2-year assay for oncogenicity, to be unreasonable. The strategy for use of these tests in human risk assessment has been outlined by the Agency in the Final Guidelines for Mutagenicity Risk Assessment published in the *Federal Register* (51 FR 34006; September 24, 1986). The FIG, however, asserts that quantitative estimates of human genetic risk from these assays are of only limited value. They state the reasons for these limitations as follows: The studies are limited to male gametes (premeiotic stem cells in the case of the mouse specific locus test); there are species,

age, and sex variability in DNA repair processes; and accurate calculations of germ cell risk as it relates to all aspects of human exposure would be impossible. The Agency recognized the limitations of risk assessment with regard to genetic endpoints in their response presented in the C_0 test rule. Although there are limitations, it is believed that estimating risk is an important aspect in protecting the public from chemicals which may have adverse effects on future generations. Risk assessment, regardless of whether it is for chronic toxicity, carcinogenicity, or genetic end-points, inherently has limitations, many of which are similar to those stated by the FIG. These limitations stem from the extrapolation from animal models to humans where data necessary for extrapolation, exact relations, and correlations between the animal model and humans, are not usually available. Development of methods for risk assessment is an ongoing process with modifications made to the existing procedures as new information becomes available. The Agency's (now final) Guidelines for Mutagenicity Risk Assessment reflect the best approach available at this time, and EPA considers it inappropriate to postpone the effort to assess human genetic risk until a definitive methodology has been developed.

Although the FIG concurs with the philosophy of using short-term tests to screen compounds for potential mutagenic and carcinogenic effects, the FIG is opposed to the use of these screening tests as automatic triggers for further testing. Rather than using automatic triggers, the FIG proposes that scientific reviews occur during critical stages of testing to determine if the results generated warrant the conducting of further tests. There are two separate sets of automatic triggers proposed in the test rule on fluoroalkenes. The first would allow certain Tier I genotoxicity tests to trigger Tier II genotoxicity testing. The second set of automatic triggers would initiate an oncogenicity study if positive results were obtained from any of certain specified short-term tests. With regard to the latter, the FIG believes a weight of evidence approach is necessary in the evaluation of these short-term tests and that it is not scientifically justified to permit the positive results of a single short-term test to initiate oncogenicity testing.

In addressing the use of automatic triggers with regard to mutagenic potential in the C_0 test rule, the Agency stated that scientific judgement is required in assessing the need for a test

where reference data are limited or the test is controversial. This is the case with Tier III tests, and the Agency will provide opportunity for public comment prior to initiating these tests. With Tier I tests, however, the Agency considers it appropriate for positive results to automatically require further Tier II testing. The available reference data and past experience with Tier I tests indicate that scientific review of any positive data would likely support further Tier II testing, and EPA believes that the public interest in promptly obtaining appropriate test data on suspected hazardous chemicals would not best be served by incorporating a public review between Tiers I and II. Regarding the use of automatic triggers for oncogenicity testing, the Agency has stated in the C_0 test rule that negative results in this battery of short-term assays, in the absence of other evidence for oncogenic potential, indicate a small likelihood that a compound will be a chemical carcinogen. Regarding the use of automatic triggers for oncogenicity testing, the Agency believes that clearly positive results in one of the designated assays is suggestive of a carcinogenic potential, and the only way to empirically support or refute this suggestive evidence is by conducting a chronic oncogenicity test. It is, therefore, the Agency's opinion that automatic triggers as proposed in the fluoroalkenes test rule for TFE and HFP are justified on scientific grounds. However, the Agency agrees with the FIG that a review of the testing results is appropriate before proceeding with oncogenicity testing and therefore the Agency will have a public review before requiring the triggered oncogenicity testing for TFE and HFP.

D. Immediate Testing for Oncogenicity of VF and VDF

Based on data available on VF and VDF indicating that these two chemicals may present an unreasonable risk for oncogenic effects, the Agency proposed that both VF and VDF be tested immediately for oncogenic effects in both rats and mice for VF, and in mice for VDF. (Because there is presently an ongoing bioassay of VDF in rats, being conducted using a protocol EPA has reviewed and found to be adequate, only a test in mice will need to be conducted under this rulemaking for VDF.) The FIG considers the data on VF and VDF inadequate to support the Agency's requirement for immediate oncogenicity testing of these two compounds.

In support of the Agency position on VF, the Agency cites the structural

similarity between VF and the known human carcinogen VC, along with positive mutagenicity results from an assay using *E. coli* reported by the Agency in its Proposed Negotiated Testing Program (June 4, 1984; 49 FR 23112). Recent *in vitro* studies have also shown VF to be positive in Chinese hamster ovary cells for both mutagenicity and cytogenicity endpoints. The FIG contends that the physical, chemical, and biologic properties of VF are not sufficiently similar to those of vinyl chloride to permit extrapolation between these two compounds. In addition, the FIG states that a single mutagenicity test in a prokaryotic assay system is not sufficient evidence to support a finding of potential unreasonable risk.

The relevance of the structure activity relationship between the fluoroalkenes and chloroalkenes has been discussed previously in Unit II.B. of this document. As discussed there, EPA believes there is sufficient similarity between VF and its chloro analog to justify at least a qualitative extrapolation with regard to oncogenic potential. The structural similarity between VF and vinyl chloride in itself would support a finding of potential unreasonable risk for VF. The positive mutagenicity data, therefore, are mainly additional supportive data.

The Agency agrees with the FIG that if there were only data from a single prokaryotic mutagenicity test a finding of potential unreasonable risk for VF would be less justified. The data base on VF is more extensive, however. The evidence includes not only the positive tests in *E. coli*, but also the structural similarity with vinyl chloride. It is this entire weight of evidence which constituted the basis for the finding of potential unreasonable risk and the need for immediate testing. Furthermore results from additional mutagenicity testing received after proposal, and discussed in Unit II.B., support the Agency's testing decision for VF. Therefore, there is no reason to delay the carcinogenicity testing of VF, since the results of additional short term screening tests (if negative) would not negate the Agency's concern.

The FIG presented similar objections to the requirement that VDF be immediately tested for oncogenicity. The Agency considers that the response to comments pertaining to VF (above) are also applicable to VDF. It should also be noted that there are two positive mutagenicity tests of VDF, one in *E. coli* and a second in *S. typhimurium*. Positive tests in two different species of bacteria provide confirmatory evidence

that VDF is active in short-term tests predictive for oncogenicity.

In addition to the above objections to the immediate testing of VDF for carcinogenicity, the FIG further contended that additional data presented by the Agency concerning VDF did not support the conclusion that VDF had a potential for being either an animal or human carcinogen. These additional objections related to the Agency's conclusions that VDC is a proven chemical carcinogen, that the results of the Maltoni and Tovoli (Ref. 22) study demonstrated a carcinogenic potential for VDF, and that the altered foci of enzymatic activity in the liver observed by Stockle et al. (Ref. 24) following exposure to VDF were indicative of preneoplastic lesions.

The issues concerning whether the data on VDC support the conclusion that VDC is a potential human carcinogen are very complex. These issues have been addressed by the Agency's Carcinogen Assessment Group (CAG) (Ref. 25). According to CAG's appraisal the animal data for VDC are "limited" and the human data "inadequate" with regard to carcinogenicity. The weight of evidence places this compound in Group C, which represents chemicals that are "possible" human carcinogens. The CAG calculated an incremental cancer risk estimate for human exposure to VDC. In making this determination for VDC, CAG not only considered the animal bioassay data, but also considered "supporting evidence from mutagenicity studies, and related biochemical and toxicity considerations" before making the final determination. Because of the structural similarities between VDF and VDC the Agency believes that CAG's carefully conducted and detailed assessment can be justifiably factored into the weight of evidence decision on whether VDF should be tested immediately for carcinogenicity.

The FIG has a number of reservations regarding the experimental design and interpretation of results in the study by Maltoni and Tovoli (Ref. 24) which described the first bioassay of VDF. Deficiencies in study design included the use of group sizes which were too small, the use of only one species (the rat), and administration of the test compound by gavage in an oily vehicle rather than by inhalation. The FIG provided data demonstrating that VDF was easily lost from oily solutions, with as much as a 50 percent decrease from the original concentration in an open container measured during one hour. The major deficiency in the interpretation of the results relates to

the pooling of incidence data for lipomas and liposarcomas which arose at different anatomical sites. The FIG concludes that the deficiencies in this study preclude the use of these data for supporting the finding that VDF should be tested immediately for carcinogenicity.

The study by Maltoni and Tovoli (Ref. 24) has the design deficiencies the FIG described. Most of these deficiencies, however, would tend to make the study less sensitive for the detection of potential carcinogens. The 30 to 35 animals per sex, per group, is less than the 50 animals of each sex specified in current National Toxicology Program protocols; however, this number of animals is not inconsistent with the group size used by many investigators conducting basic research into carcinogens. Similarly, the use of only one species is typical in studies that are not conducted to support regulatory action. The possible loss of test material through volatilization from the vehicle is a limiting factor in this study which would tend, particularly if the magnitude was as large as suggested by the FIG, to result in a negative finding. The suggestion of positive results using a protocol which is less powerful than that required by TSCA test guidelines is a strong indication that a more extensive study, as required in this test rule, will confirm the potential for VDF to be a carcinogen, as well as providing the necessary data to determine potential human risk.

The pooling of tumor data nearly always results in some controversy, since the appropriateness of the groupings is difficult to justify without a complete understanding of the underlying mechanisms of the tumorigenic response. The FIG maintains that without the pooling of the lipomas and liposarcomas the data from the Maltoni and Tovoli (1979) study indicate that there was no increase in tumors. The Agency considers the results of the study to be highly suggestive of a tumorigenic response regardless of whether the data are pooled. The authors of this study indicated that these two tumor types are very rare in the Sprague-Dawley rat used in their laboratory, with a combined historical incidence of 0.5 percent. Considering the limitations of this study, the Agency believes that the reported increase in lipomas and liposarcomas above historic control values suggests a positive response and indicates a need for further testing. If the Maltoni and Tovoli (Ref. 24) study was adequate, no further testing would be required. However, because of

deficiencies in study design and an indication of a tumorigenic response, we believe this study provides a sound rationale for requiring further testing of VDF.

As further justification for the need for oncogenicity testing of VDF, the Agency cited a report by Stockle et al. (Ref. 22) demonstrating that inhalation exposure of newborn rats to VDF resulted in ATP-ase deficient foci in the liver. The FIG maintains that these enzyme altered foci are not preneoplastic changes, that the newborn rat is an inappropriate animal model since many hepatic enzymes are not developed at this stage of life, and that acute and subchronic toxicity studies have failed to demonstrate VDF-induced hepatotoxicity and hence the "appearance of foci does not necessarily mean that carcinomas will occur". The FIG believes that for the above reasons the study by Stockle et al. (Ref. 22) provides no substantiation for the conclusion that VDF may present an unreasonable risk for oncogenicity.

The Agency believes that the available data on chemically induced enzyme-altered foci in the liver can be used to support the assessment of oncogenic potential of VDF. The data do not indicate the exact relationship that enzyme-altered foci have with regard to hepatocellular carcinoma, and hence the terminology used by Stockle et al. (Ref. 22) of preneoplastic hepatic foci may provide for some confusion. Sirica et al. (Ref. 26) demonstrated a correlation between the extent of development of enzyme altered foci and chemical treatment regimes which resulted in the development of hepatocarcinomas. They suggested that these altered foci are the progeny of initiated cells. A difficulty with the concept that the altered foci are direct precursors to neoplastic cells is that alterations such as decreases in ATP-ase activity are often reversible after cessation of exposure to the chemical carcinogen (Ref. 27). Peraino et al. (Ref. 28) provide three alternative explanations for the relationship of altered enzyme foci to neoplasia as follows: (1) The altered foci evolve directly into tumors by progressive cellular deviation, (2) the member cells of a focus have enhanced sensitivity, and (3) a chemical carcinogen independently produces enzyme-altered cells and tumor cells by action at separate genetic loci (Ref. 28). Regardless of which of the current theories prevail, the present data clearly indicate that enzyme foci in the liver are associated with exposure to chemical carcinogens and the subsequent development of hepatocellular

carcinomas. Therefore, the fact that VDF produced ATP-ase deficient foci is additional supportive evidence for the finding that VDF may present an unreasonable risk of oncogenicity.

The Agency does not consider the other objection presented by the FIG as relevant to the interpretation of the study by Stockle et al. (1979). The metabolic capability of newborn mammals is different than that of the adult with regard to both Phase I and II reactions in the liver. This results in differences in the ratio of oxidative to conjugative reactions. This difference in ratio could make newborn animals particularly sensitive to the induction of certain tumor types, while adult animals appear to be more sensitive to the induction of other tumor types (Ref. 29). Particularly for a test that is used as a qualitative indicator of neoplastic potential, it is not scientifically justified to exclude data generated from newborn animals. The FIG also commented that hepatotoxicity has not been observed in either acute or subchronic studies with VDF, which would indicate that enzyme altered foci do not necessarily precede the development of carcinomas. The Agency disagrees that VF and VDF are not hepatotoxic. This is discussed above in Unit III.B.

The findings that VF and VDF may present an unreasonable risk for oncogenic effects is based on the weight of evidence from all the studies cited in the proposed test rule and additional studies subsequently obtained by EPA as described above. As pointed out by the FIG, some of these studies have deficiencies, but taken together, the evidence from all the data indicates a potential for these two compounds to be carcinogens. Moreover, negative results in the short term assays of VF and VDF proposed by the FIG would not provide sufficient evidence to prove that VF and VDF are not carcinogenic. Because of the strength of the entire data set, the Agency is requiring immediate oncogenicity testing.

E. Two-Generation Study With VDF

The Agency had proposed that a two-generation reproductive toxicity test be conducted to evaluate the potential hazard from exposure to VDF. This proposal was based on preliminary results from a 13-week toxicity study submitted by the industry in which the absolute weights of the epididymides and testes were reduced after 4 and 13 weeks of exposure to VDF (Ref. 9). The FIG contends that a two-generation reproductive test is unjustified, stating that the presently available data do not indicate a potential for VDF to result in adverse effects on reproduction.

The Agency agrees. The Agency notes that VDF caused testicular toxicity in the industry study and in the NTP study, described in Unit II.8., only at relatively high dose levels (7,000 and 5,000 ppm, respectively) and only in the presence of other significant systemic effects. Furthermore, the Agency finds that given the weight of the evidence, including the present low exposure of VDF relative to the observed testicular effects, that there is no indication of potential unreasonable risk associated with VDF for reproductive toxicity. Therefore, the Agency is withdrawing its proposed requirement for reproductive effects testing for VDF.

F. Tests and Test Species

The FIG, in its comments, argued that the mouse micronucleus cytogenetics assay be used in place of the *in vivo* cytogenetics assay required in the proposed rule. The FIG has already tested one fluoroalkene (HFP) in this assay. The end-points of both assays are comparable. The Agency agrees that the mouse micronucleus assay is a reasonable alternative to the *in vivo* cytogenetics assay for the purposes of testing the fluoroalkenes. The Agency is requiring that the Agency's test standards for the mouse micronucleus assay be used to test the fluoroalkenes where that testing is required. However, a repetition of the mouse micronucleus assay is not being required for HFP.

The FIG also argued in its public comments that the hamster, rather than the mouse, should be the second species of choice (after the rat) in any required oncogenicity testing of the fluoroalkenes. The FIG stated concern that the mouse exhibits a high susceptibility to spontaneous development of adenomatous lung tumors. The FIG also noted that the tracheobronchial epithelium of the hamster is more similar to that of humans and therefore is possibly a better model for examining compounds which may be respiratory carcinogens. The Agency does not agree that the hamster should be used in place of the mouse in the case of the fluoroalkenes. The historical data and laboratory experience in handling the mouse in the oncogenicity bioassay are much superior to that of the hamster. Furthermore, not all mouse strains are susceptible to the problems cited by the FIG. Also, the Agency's concern for oncogenic effects for the fluoroalkenes is based largely on effects observed in the liver and possibly also the kidneys, not the respiratory system. There is no evidence that the fluoroalkenes may be respiratory carcinogens. This, of course,

does not mean that oncogenicity may not be observed in other organs or organ systems, including the respiratory system. Therefore the Agency sees no necessity to test the hamster in place of the mouse.

G. Reporting Deadlines

The FIG concurs with the proposed reporting schedule for the subchronic toxicity testing for HFP and the oncogenicity tests for VF and VDF. The FIG commented, however, that the reporting deadlines for the other proposed tests were unrealistic. The FIG commented that the reporting deadlines for these latter tests failed to take into account the logistics of such an extensive testing program. In addition, the FIG believes that special consideration should be given to the reporting schedule of the fluoroalkenes since these substances are gases which require special test facilities. For the sake of reproducibility, the FIG believes that all tests should be performed at one facility, which would impose the limitation that only one substance could be tested at a given time. Also, the FIG points out that TFE is highly hazardous and is normally not shipped off-site because of its explosive potential. When shipping is required, the TFE is diluted with inert material which would have to be removed prior to testing. It is claimed that the purchase and installation of the appropriate separation equipment at a testing facility would add several months to the time required for developing test results.

The Agency believes that although there are fewer testing facilities capable of performing tests on gaseous materials, sufficient facilities will be available, as discussed in the proposed test rule, for conducting the required tests on the fluoroalkenes. The issue of test facilities is primarily limited to the *in vivo* studies, which require extended exposure periods, while the other test procedures can be performed using exposure techniques available to most testing laboratories. The Agency disagrees with the FIG that all tests have to be performed in the same facility in order to assure reproducibility. The basic contention of this argument is that comparisons of test results are relevant only when the tests are conducted within one facility, and that comparisons of results between facilities is difficult. The body of data available to evaluate the toxicological properties of most compounds has been derived not only from different facilities but from studies conducted during different time periods, and these studies, if conducted with acceptable state-of-

the-art procedures, have proved adequate.

Furthermore, the Agency has taken into account that additional time may be necessary to perform testing by inhalation. For the short-term *in vivo* mutagenicity assays (e.g., mouse micronucleus, *Drosophila* SLRL and rodent dominant lethal assays) an additional 2 months time was provided for set-up and standardization. For the longer term studies (e.g., mouse specific locus and oncogenicity assays) an additional 3 months was provided.

The Agency also disagrees that additional time is needed in testing TFE to allow for the installation of special equipment for reconstituting the TFE at the testing facility. Although TFE does present an explosive hazard as a result of the formation of polymeric peroxides, these peroxides can be chemically inhibited (Ref. 14). Terpene inhibitors are considered effective and are used to protect against polymerization during storage. The level of inhibitor recommended for stabilization of TFE is 0.5 percent (Ref. 31), which would provide material of sufficient quality for the recommended tests. We believe that the relatively small amounts of material used in biological testing, as compared to manufacturing uses, will not present a severe safety problem if handled with appropriate care. In addition, the gas at a purity of 99 percent has been available from specialty gas distributors. Also, in the proposed rule, the reporting requirement for the subchronic toxicity study on TFE is 18 months. This is 3 months longer than the Agency's usual requirement for an inhalation subchronic study. The 18-month reporting requirement will remain in the final rule. The Agency considers this sufficient additional time to resolve any handling issues for TFE.

The FIG further claimed that the Agency did not take into account the logistics of such extensive testing when considering the reporting deadlines. The Agency disagrees. The reporting deadlines set by the Agency take into account the longest possible sequential route of testing and the added time necessary for each test when formulating the reporting deadline for the last test in a series. The FIG suggested that greater time should be allowed for certain required tests; however, no substantial rationale was provided for the necessity of further time allotments. The Agency believes that the deadlines set forth for the fluoroalkenes in this rule are reasonable, and that the special considerations of testing these

compounds, which are gases, have sufficiently been taken into account.

IV. Findings

EPA is basing its proposed health effects testing of VF, VDF, TFE, and HFP on the authority of section 4(a)(1)(A) of TSCA.

EPA finds that the manufacture of these fluoroalkenes may present an unreasonable risk of chronic health effects, carcinogenicity and/or mutagenicity to humans exposed to these substances, based on data presented in the ANPR, the proposed rule, and in Unit II.B. of this notice, which indicate that VF, VDF, and HFP may have potential oncogenic effects, that VF, VDF, TFE, and HFP may have potential chronic renal effects and that VF, VDF, TFE, and HFP may have mutagenic effects.

Available data indicate that VDF may produce oncogenic effects, as evidenced by positive mutagenicity in *E. coli* and a strain of *Salmonella*, preneoplastic changes observed in the liver cells of rats treated with VDF, and positive oncogenicity results in a study submitted by the FIG. Although this latter study was performed using methodology considered questionable by the Agency, the results are nonetheless considered suggestive of oncogenic potential for VDF. VDF is also structurally similar to VDC which has shown evidence of oncogenicity in some studies.

The Agency also finds that the data available indicate that VF may produce oncogenic effects, based on positive mutagenicity in *E. coli*, positive results in the CHO/HPRT gene mutation assay, and the CHO cytogenicity assay, liver toxicity similar to that seen for VC (a known human oncogen), and the structural similarity of VF to VC. More recently, as discussed in Unit II.B., HFP has been found to be a positive mutagen in *in vitro* cytogenicity testing and in the mouse micronucleus assay. The Agency considers both of these tests to be correlative with oncogenicity, and therefore finds that these data indicate that HFP may also produce oncogenic effects and that further testing is needed to assess HFP's oncogenic potential. Additionally, both TFE and HFP have produced renal function impairment; however, because a no-observed effect level has not been established for HFP, subchronic testing for that compound is necessary. Both VF and VDF induce similar changes in blood and urine chemistry as HFP and TFE when administered to test animals, suggesting the possibility for similar renal toxicity.

As reported by the ITC, the fluoroalkenes may metabolize to form reactive epoxides which can result in genotoxicity. In the NPRM, EPA noted that although the TFE and HFP metabolite data do not indicate mutagenic potential in the *Salmonella* test system, these results alone are insufficient evidence of non-mutagenicity of a compound. Since that time, HFP has been tested with positive results in the *in vitro* cytogenetics mutagenicity assay and weakly positive results in the mouse micronucleus test. TFE was also tested in the CHO/HPRT gene mutation assay, but the Agency considers the results of that test to be inconclusive, as discussed in Unit II.B. Therefore, the Agency considers that the individual chemicals VF, VDF, TFE, and HFP may have genotoxic potential and may present a mutagenic risk to humans exposed to these chemicals. Data available on these effects are inconclusive, and further testing is needed.

EPA also finds that there is sufficient potential for human exposure to VF, VDF, TFE, and HFP, as discussed in the NPRM and Unit III.A. of this notice, to support section 4(a)(1)(A) findings for these chemicals. As discussed in the NPRM and in Units II. and III. of this rule, the Agency also finds that the available data are insufficient to reasonably predict or determine the effects of the manufacture of VF, VDF, TFE, and HFP on human health in the areas noted above in this section and, thus, EPA finds that testing is necessary to develop such data. EPA believes that the data resulting from this testing will be relevant to a determination as to whether the manufacture, processing, or use of VF, VDF, TFE, and HFP does or does not present an unreasonable risk of injury to human health.

V. Final Rule and Test Standards

A. Testing and Test Standards

The Agency is requiring that health effects testing be conducted on the fluoroalkenes in accordance with specific test guidelines set forth in Title 40 CFR Part 798. The Agency is requiring that HFP be tested in the rat and mouse for inhalation subchronic toxicity as specified in § 798.2450 and as modified in § 799.1700(c)(3)(i)(B). The Agency is also requiring that inhalation oncogenicity tests be conducted in rats and mice for VF and in mice for VDF. The test guidelines in § 798.3300 are required as the test standards for the oncogenicity testing of VF in both species and for VDF in mice. Oncogenicity testing of VDF in rats is being performed under the sponsorship

of the Association of Plastics Manufacturers in Europe using test protocols submitted earlier by the FIG (NPRM Refs. 24 and 25). These protocols were reviewed and approved by the Agency as part of the previous proposed NTA. Should this testing not be performed in accordance with protocols and laboratory practices approved by EPA, or if the data are not submitted in a timely fashion, then EPA will issue a final rule for the VDF oncogenicity testing requirement in rats. The oncogenicity testing for VF and VDF is an immediate requirement. The Agency believes that the data now available on these two compounds support a section 4(a)(1)(A)(i) finding that the manufacture of these substances may present an unreasonable risk of oncogenicity. Furthermore, recent mutagenicity results for HFP, discussed in Unit II.B. of this rule, also suggest that HFP has potential to be oncogenic. Therefore, in accordance with the Agency's triggers from mutagenicity to oncogenicity as described in the Fluoroalkenes Proposed Test Rule (50 FR 46133), HFP is required to be tested in mice and rats for oncogenicity. Oncogenicity testing for HFP shall be conducted according to § 798.3300. However, oncogenicity testing for HFP will not be required to begin until after the Agency holds a public program review on HFP, which will be held shortly after completion of the subchronic toxicity testing and Tier II mutagenicity testing required for HFP in this rule-making. After the public review and an Agency determination that either testing must begin, or that testing is not necessary, the Agency will notify industry by certified letter or Federal Register notice either affirming or proposing to rescind the oncogenicity testing requirement for HFP.

There is much less evidence at the present time to indicate that TFE may be a potential oncogen. Therefore, oncogenicity testing for TFE is required only if triggered by the results of the mutagenicity testing required in this rule. The test guidelines in § 798.3300 shall be used as the test standards for such testing if it is triggered. Positive test results for TFE in any of the following tests will trigger the oncogenicity testing requirement for that chemical: *In vitro* cytogenetics assay, mouse micronucleus assay, mammalian cells in culture assay, or sex-linked recessive lethal assay in *Drosophila melanogaster*. However, prior to initiation of oncogenicity testing for TFE, the Agency will have a public review of all the relevant data, before requiring commencement of oncogenicity testing. This review will be

held soon after completion of Tier II of the tiered mutagenicity testing required for TFE in this notice. Official notice, in the form of a certified letter II.8. of this rule, the Agency is requiring that both VF and VDF be tested in the SLRL assay. A positive result in the SLRL assay for any chemical tested will trigger a mouse specific locus test, as specified in § 798.5200 and as modified in § 799.1700(c)(1)(i)(D)(2), in the same chemical. If the SLRL assay is negative then the mouse specific locus test will not be required.

To assess the potential for fluoroalkenes to cause chromosomal aberrations, the Agency requires that an *in vitro* cytogenetic assay be conducted. This test has been completed for each of the subject fluoroalkenes, as discussed in Unit II.B.1. If the results of the *in vitro* test are positive then a dominant lethal assay is required. Both VF and HFP were tested and found to be positive in the *in vitro* cytogenetics assay, thus requiring the dominant lethal assay for these compounds as specified in § 798.5450 and as modified in § 799.1700(c)(2)(i)(B)(2). A positive result in the dominant lethal assay will trigger a heritable translocation assay as specified in § 798.5460 and as modified in § 799.1700(c)(2)(i)(D)(2). If the *in vitro* cytogenetic assay is negative then a mouse micronucleus assay will be required (as specified in § 798.5395 and as modified in § 799.1700(c)(2)(i)(B)(2)) for that fluoroalkene. (This is a requested change from the *in vivo* cytogenetics assay specified in the proposed rule; see Unit III.F. for a discussion of this change.) Both VDF and TFE were negative in the *in vitro* cytogenetics assay and thus, the mouse micronucleus test is required for VDF and TFE. Should the mouse micronucleus results prove negative, then no further chromosomal aberration testing would be required for that substance. A positive result in the mouse micronucleus cytogenetic assay for any fluoroalkene would trigger the dominant lethal assay for that fluoroalkene. HFP, which was positive in both the mouse micronucleus test and the *in vitro* cytogenetics assay, is required to be tested in the dominant lethal assay. Again, if the dominant lethal assay is positive for any fluoroalkene, a heritable translocation assay shall be conducted for that fluoroalkene.

If the results from the dominant lethal assay and/or the SLRL assay are positive, EPA will hold a public program review prior to requiring the initiation of the heritable translocation and/or mouse specific locus testing. Public

participation in this program review will be in the form of written public comments or a public meeting. Request for public comments or notification of a public meeting will be published in the *Federal Register*. Should the Agency determine, based on the weight of the evidence then available, that proceeding to the heritable translocation test and/or mouse specific locus test is no longer warranted, the Agency would propose to repeal that test requirement and, after public comment, issue a final amendment to rescind the requirement.

For a more detailed discussion concerning mutagenicity tiered testing and program review see the final test rule for the C₉ aromatic hydrocarbon fraction (50 FR 20662, May 17, 1985).

The Agency is requiring that the above-referenced TSCA Health Effects Test Guidelines be the test standards for the testing of the fluoroalkenes. The specified TSCA guidelines for health effects testing provide generally accepted minimal conditions for ensuring that any required testing will result in reliable and adequate data for evaluating the health effects of VDF, VF, TFE, and HFP. The Agency reviews the TSCA test guidelines once a year in accordance with the process described in the *Federal Register* of September 22, 1982 (47 FR 41857). In reviewing the applicability of the mutagenic effects and subchronic test guidelines to the fluoroalkenes, EPA has determined that certain modifications are necessary in order to ensure that the resulting data are reliable and adequate.

EPA has issued a separate *Federal Register* notice containing certain revisions to these TSCA Test Guidelines to provide more explicit guidance on the necessary minimum elements for each study published in the *Federal Register* of (May 20, 1987). These modifications are adopted in the test standards for VF, VDF, HFP, and TFE. EPA has also responded to comments concerning these guideline revisions in the record for that rulemaking and these are contained in the docket for this rulemaking (Ref. 37).

B. Test Substance

EPA is specifying that VDF, VF, TFE, and HFP of at least 99 percent purity be used as test substances. EPA believes that test materials of this purity are available at reasonable cost. EPA has specified relatively pure substances for testing because the Agency is interested in evaluating the effects attributed to the subject compounds themselves. This requirement would increase the likelihood that any toxic effects observed are related to the subject fluoroalkenes and not to any impurities.

C. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use, and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that there are insufficient data to reasonably determine or predict the effects of the manufacture of the fluoroalkenes on human health, EPA is requiring that persons who manufacture or intend to manufacture VF, VDF, TFE, or HFP at any time from the effective date of this final test rule to the end of the reimbursement period be subject to the specific health effects testing requirements for each individual fluoroalkene which they manufacture. Thus, those persons who manufacture or intend to manufacture all four fluoroalkenes are subject to the entire set of testing requirements set forth in this rule. However, those persons who manufacture or intend to manufacture a subset of those four chemicals are responsible only for the particular testing requirements for the subset of fluoroalkenes which they manufacture. The end of the reimbursement period for each substance is 5 years after the last final report is submitted for that substance or an amount of time after the submission of the last final report required under the test rule equal to that which was required to develop data, if more than 5 years.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790.

EPA did not propose to require the submission of equivalence data as a condition for exemption from the testing for the fluoroalkenes. As noted in Unit IV.B., EPA is interested in evaluating the effects attributable to the fluoroalkenes subject to this rule themselves, and has specified relatively pure substances for testing.

Manufacturers subject to this rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

D. Reporting Requirements

The Agency is requiring that all data developed under this rule be reported in accordance with the TSCA Good Laboratory Practice standards (40 CFR Part 792).

The Agency is required by TSCA section 4(b)(1)(C) to specify the time periods during which persons subject to a test rule must submit test data. On the basis of the Agency's regulatory experience for the tests required for the fluoroalkenes, as well as in response to public comments, EPA is adopting the reporting requirements for these tests and which are presented in the following table.

REPORTING REQUIREMENTS FOR THE FLUOROALKENES

Test	Reporting deadline for final report (months after the effective date of final rule, except as indicated and, in parentheses, number of interim 6-month reports required)			
	VF	VDF	TFE	HFP
Gene mutation cells in culture assay			6	6
Sex-linked recessive lethal test in <i>Drosophila</i>	9(1)	9(1)	15(2)	15(2)
Mouse specific locus assay ¹	51(8)	51(8)	51(8)	51(8)
<i>In vitro</i> cytogenetics test				
Mouse micronucleus cytogenetics test		10(1)	10(1)	
Dominant lethal test	9(1)	19(1)	19(1)	9(1)
Heritable translocation assay ¹	25(4)	25(4)	25(4)	25(4)
Oncogenicity (inhalation) ²	56(9)	56(9)	56(9)	56(9)
Subchronic toxicity (inhalation)				18(2)

¹ Figures indicate the reporting deadline, in months, calculated from the date of notification of the test sponsor by certified letter or FEDERAL REGISTER notice that, following public program review of all of the then existing data for the fluoroalkenes fraction, the Agency has determined that the required testing must be performed.

² For TFE and HFP, the figures indicate the reporting deadline, in months, calculated from the date of notification of the test sponsor by certified letter or FEDERAL REGISTER notice that, following public program review, the Agency has determined that the required testing must be performed. For VF and VDF, the figures indicate the reporting deadline, in months, calculated from the effective date of the Fluoroalkenes Final Rule.

In regards to interim reports, the Agency has decided that interim reports for the testing required under section 4 of TSCA should be submitted at 6-month intervals, rather than at 3-month intervals, as was previously proposed for the fluoroalkenes. This reporting frequency will be sufficient to keep EPA informed of the current status of required testing and of any difficulties which the testing facility may encounter during testing. This change also lessens the reporting burden of test sponsors. Accordingly, the final reporting requirements for the testing required for the fluoroalkenes reflect a requirement for 6-month, rather than 3 months, interim reports.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the *Federal Register* as required by section 4(d) of TSCA.

Persons who export a chemical substance or mixture which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707. In brief, as of the effective date of the final test rule, an exporter of the fluoroalkenes covered by this rule (VF, VDF, HFP, and TFE) must report to EPA the first annual export or intended export of a fluoroalkene to any one country. EPA will notify the foreign country concerning the test rule for the chemical.

E. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11

applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits/inspections may be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with any final rule for the fluoroalkenes. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations thereof, and that the TSCA GLP standards and the test standards established in the rule are being complied with.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to \$25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers that fail to submit a letter of intent or an exemption request and that continue manufacturing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition

of criminal penalties of up to \$25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

VI. Economic Analysis of Final Rule

To assess the potential economic impact of this rule, EPA has prepared an economic analysis (Ref. 30) that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of the fluoroalkenes: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations. If there is no indication of adverse effect, no further economic analysis will be performed; however, if the first level of analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted which more precisely predicts the magnitude and distribution of the expected impact.

Total testing costs for the final rule for the fluoroalkenes are estimated to range from \$4,783,500 to \$6,196,200. In order to predict the financial decision-making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period in order to finance the testing expenditure in the first year.

The annualized test costs (using a cost of capital of 25 percent over a period of 15 years) range from \$1,239,800 to \$1,605,600. Based on the total combined

1977 estimated production volumes for the four fluoroalkenes of 48 to 77 million pounds, the unit test costs will be about 2.6 to 3.3 cents per pound. (However, for TFE, the 1984 production volume was available and this more recent figure was used in this combined estimate.) In relation to the 1985 list prices for the fluoroalkenes, these costs are equivalent to 0.3 to 0.8 percent of price. On an individual chemical basis, these costs represent 0.5 to 0.6 percent of price for TFE, 0.3 to 0.4 for HFP, and 0.6 to 0.8 for VDF. Although a list price is not available for VF, it can reasonably be assumed to be in the same range as those of the other fluoroalkenes, and thus cost in relation to price is probably less than one percent.

Based on these costs and the uses of the fluoroalkenes, the economic analysis indicates that the potential for significant adverse economic impact as a result of this test rule is low. This conclusion is based on the following observations:

1. The estimated unit test costs are low—3.3 cents per pound for the category.

2. The overall demand for the fluoroalkenes appears relatively inelastic due to their exclusive use as precursors in the manufacture of highly specialized polymers and elastomers.

3. The market expectations for the fluoroalkenes are very optimistic.

The TSCA Reimbursement Rule allows affected private parties to negotiate among themselves an equitable cost reimbursement scheme; therefore, while this reimbursement assumption is reasonable, other reimbursement approaches are also possible. The opposite assumption from that used above is one in which each chemical in the category is treated individually; the cost of testing that chemical will be borne only by the manufacturers of that chemical. Under this assumption, the annualized test cost for each chemical is divided by the annual production of that chemical; the increased cost is then compared with the selling price of that chemical. On an individual chemical basis, using this assumption, these costs represent 0.2 to 0.3 percent of price for TFE, 4.9 to 6.4 percent for HFP, and 0.9 to 1.2 percent for VDF. Again, although a list price is not available for VF, it can reasonably be assumed to be in the same range as those of the other fluoroalkenes; with costs likely to be similar to, or perhaps slightly higher than those of VDF. Thus, some chemicals will have higher test costs than others, but given the uses of these four chemicals, and their fairly inelastic demand and the favorable market expectations, it is reasonable to

assume that none of these chemicals will be significantly affected.

Refer to the economic analysis (Ref. 30) available in the public record for this rulemaking for a complete discussion of the test cost estimation and the potential for economic impact resulting from these costs.

VII. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing (PB 82-140773)", can be obtained through the National Technical Information Service (NTIS). On the basis of this study, the Agency believes that test facilities and personnel are available to perform the testing in this final rule.

VIII. Rulemaking Record

EPA has established a record for this rulemaking, (OPTS-42002E). This record includes basic information considered by the Agency in developing this final rule and appropriate Federal Register notices.

This record includes the following information:

A. Support Documentation

(1) Federal Register notices pertaining to this rule consisting of:

(a) Notice Containing the ITC Designation of Fluoroalkenes to the Priority List (45 FR 78432).

(b) Notice of the Agency's Initial Response to the ITC on Fluoroalkenes (46 FR 53704).

(c) Notice of the Agency's Proposed Decision to Adopt a Negotiated Testing Program on Fluoroalkenes (49 FR 23112).

(d) Notice of the Agency's Proposed Rulemaking on Fluoroalkenes (50 FR 46133).

(e) Notice of Interim Final Rule on Single-phase Test Rule Development and Exemption Procedures (50 FR 20652).

(f) Notice of Final Rulemaking on Data Reimbursement (48 FR 31786).

(g) Written comments on the Fluoroalkenes Proposed Test Rule Submitted to USEPA by the Fluoroalkenes Industry Group.

(h) Transcript of Proceedings of the Public Meeting of April 1, 1986 on the

Proposed Rule for Fluoroalkenes and Material Submitted by the Fluoroalkenes Industry Group as Presented in the Public Meeting.

(i) Notice of the Agency's Final Rulemaking on the C9 Aromatic Hydrocarbon Fraction (50 FR 20662).

(j) Notice of the Agency's Final Guidelines for the Health Assessment of Suspect Developmental Toxicants (51 FR 34028).

(k) Notice of the Agency's Final Guidelines for Mutagenicity Risk Assessment (51 FR 34006).

(l) Notice of the Agency's Final Test Standards and Reporting Requirements for Diethylenetriamine (52 FR 3230).

(m) Notice of the Agency's Final Rulemaking on Revision of TSCA Test Guidelines (52 FR 19056).

B. References

(1) Seventh Report of the Interagency Testing Committee to the Administrator. (45 FR 78432; November 25, 1980).

(2) E.I. duPont de Nemours & Company. Evaluation of Hexafluoropropylene in the *In Vitro* Assay for Chromosome Aberrations in Chinese Hamster Ovary (CHO) Cells. Submitted to USEPA. (July 23, 1986).

(3) E.I. duPont de Nemours & Company. Mouse Micronucleus Test with Hexafluoropropylene. Preliminary Information Submitted to USEPA. (August 7, 1986).

(4) E.I. duPont de Nemours & Company. Mutagenicity Evaluation of Hexafluoropropylene in the CHO/HPRT Assay. Submitted to USEPA. (February 3, 1986).

(5) E.I. duPont de Nemours & Company. Mutagenicity Evaluation of Vinyl Fluoride in the CHO/HPRT Assay. Submitted to USEPA. (August 22, 1986).

(6) E.I. duPont de Nemours & Company. Evaluation of Vinyl Fluoride in the *In Vitro* Assay for Chromosome Aberrations in Chinese Hamster Ovary (CHO) Cells. Submitted to USEPA. (October 22, 1986).

(7) Fluoroalkenes Industry Group. Mutagenicity Evaluation of Tetrafluoroethylene in *Salmonella typhimurium* (Final Report). Submitted to USEPA. (July 10, 1986).

(8) Fluoroalkenes Industry Group. Mutagenicity Evaluation of Tetrafluoroethylene in the CHO/HPRT Assay. Submitted to USEPA. (August 22, 1986).

(9) Fluoroalkenes Industry Group. Sub-Chronic (13-Week) Inhalation Toxicity Study of Vinylidene Fluoride in Rats (Final Report). Submitted to USEPA. (June 12, 1986).

(10) Fluoroalkenes Industry Group. Fertility Inhalation Toxicity Study with Vinylidene Fluoride (VF2) in Rats. Submitted to Richard Troast, Test Rules Development Branch. (September 8, 1986).

(11) Litton Bionetics, Inc. Thirteen-Week Subchronic Study in F344 Rats. Vinylidene Fluoride. Final Report. Submitted to National Toxicology Program. (April 1984).

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Exposure and Dose, and of its Key Elements." *Journal of the American Industrial Hygienists Association* 46:481-487. (1985).

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preneoplastic foci and neoplastic nodules in rodent liver." *Toxicologic Pathology* 10: 19-33. (1982).

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(33) Fluoroalkenes Industry Group. Evaluation of Vinylidene Fluoride in the *In Vitro* Assay for Chromosome Aberrations in Chinese Hamster Ovary (CHO) Cells. Submitted to USEPA. (December 18, 1986).

(34) Fluoroalkenes Industry Group. Letter with attachment from R.E. Stahl to Richard Troast. (December 2, 1986).

(35) USEPA (United States Environmental Protection Agency). Memorandum from David S. Klauder to Gary E. Timm. "Response to industry's disagreement with EPA Critique of CHO/HPRT assay on tetrafluoroethylene (TFE)." (December 30, 1986).

(36) USEPA (United States Environmental Protection Agency). Summary of Meeting with U.S. Department of Energy on availability of Oak Ridge National Laboratory to conduct the mouse visible specific locus assay at Industry's expense for chemicals subject to a TSCA section 4 Test Rule requirement. (October 1986).

(37) USEPA (United States Environmental Protection Agency). "Response to Public Comments, Proposed Revision of TSCA Test Guidelines as published in 51 FR 1522." (April, 1987).

(38) USEPA (United States Environmental Protection Agency). Memorandum from David S. Klauder to Gary Timm. "Review of Mutagenicity Testing Results on Fluoroalkenes." (December 4, 1986).

(39) Fluoroalkenes Industry Group. Evaluation of Tetrafluoroethylene in the *In Vitro* Assay for Chromosome Aberrations in Chinese Hamster Ovary (CHO) Cells. Submitted to USEPA. (April 3, 1987).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Room NE-G004, 401 M Street, SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Agency will supplement

this record periodically with additional relevant information received.

IX. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. First, the total cost of all the proposed testing for fluoroalkenes is \$4,720,000 to \$6,114,000 over the testing and reimbursement period. Second, the cost of the testing is not likely to result in a major increase in users' costs or prices. Finally, based on its present analysis, EPA does not believe that there will be any significant adverse effects as a result of this rule.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L., 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated will not have a significant impact on a substantial number of small businesses because: (1) They are not expected to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070-0033.

List of Subjects in 40 CFR Part 799

Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: May 28, 1987.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 799 is amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625

2. Section 799.1700 is added to read as follows:

§ 799.1700 Fluoroalkenes.

(a) *Identification of test substances.*

(1) Vinyl fluoride (VF; CAS No. 75-02-5), vinylidene fluoride (VDF; CAS No. 75-38-7), tetrafluoroethene (TFE; CAS No. 116-14-3), and hexafluoropropene (HFP; CAS No. 116-15-4) shall be tested in accordance with this section.

(2) VF, VDF, TFE, and HFP of at least 99 percent purity shall be used as the test substances.

(b) *Persons required to submit study plans, conduct tests and submit data.* All persons who manufacture VF, VDF, TFE, or HFP, other than as an impurity, from July 22, 1987 to the end of the reimbursement period shall submit letters of intent to conduct testing or exemption applications, submit study plans, conduct tests in accordance with the TSCA Good Laboratory Practice Standards (40 CFR Part 792), and submit data as specified in this section, Subpart A of this Part, and Part 790 of this chapter for single-phase rulemaking, for the substances they manufacture.

(c) *Health effects testing—(1) Mutagenic effects—Gene mutation—(i) Required testing.* (A) (1) A detection of gene mutations in somatic cells in culture assay shall be conducted with TFE and HFP in accordance with § 798.5300 of this chapter except for the provisions in paragraphs (c), (d)(3)(i), (4), (5) and (6) and (e).

(2) For the purposes of this section, the following provisions also apply:

(i) *Reference substances.* No reference substance is required.

(ii) *Test method—Type of cells used in the assay.* Mutation induction at the HPRT locus shall be measured in Chinese hamster ovary (CHO) cells. Cells shall be checked for Mycoplasma contamination and may also be checked for karyotype stability.

(iii) *Test method—Metabolic activation.* Cells shall be exposed to the test substance only in the presence of a metabolic activation system for TFE, and in both the presence and absence of a metabolic activation system for HFP. The metabolic activation system shall be derived from the post-mitochondrial fraction (S-9) of livers from rats pretreated with Aroclor 1254.

(iv) *Test method—Control groups.* Positive and negative controls shall be included in each experiment. In assays with metabolic activation, the positive control substance shall be known to require such activation. Filtered air shall serve as the negative control.

(v) *Test method—Test chemicals.* The test should be designed to have a predetermined sensitivity and power.

The number of cells, cultures, and concentrations of test substance used should reflect these defined parameters. The number of cells per culture is based on the expected background mutant frequency; a general guide is to use a number which is 10 times the inverse of this frequency. Several concentrations (usually at least four) of the test substance shall be used. These shall yield a concentration-related toxic effect. The highest concentration shall produce a low level of survival (approximately 10 percent), and the survival in the lowest concentration shall approximate that of the negative control. Cytotoxicity shall be determined after treatment with the test substance both in the presence and in the absence of the metabolic activation system.

(vi) *Test performance.* Cells in treatment medium with and without metabolic activation shall be exposed to varying concentrations of test gas-air mixtures by flushing treatment flasks with 10 volumes of test gas-air mixture at a rate of 500 mL/min or that rate which will allow complete flushing within 1 minute. Each flask shall be closed with a cap with a rubber septum. Headspace samples shall be taken at the beginning and end of the exposure period and analyzed to determine the amount of test gas in each flask. Flasks shall be incubated on a rocker panel at 37° C for 5 hours for tests with metabolic activation. At the end of the exposure period, cells treated with metabolic activation shall be washed and incubated in culture medium for 21 to 26 hours prior to subculturing for viability and expression of mutant phenotype. Cells treated without metabolic activation shall be washed and subcultured immediately to determine viability and to allow for expression of mutant phenotype. Appropriate subculture schedules (generally twice during the expression period) shall be used. At the end of the expression period, which shall be sufficient to allow near optimal phenotypic expression of induced mutants (generally 7 days for this cell system), cells shall be grown in medium with and without selective agent for determination of numbers of mutants and cloning efficiency respectively. This last growth period is generally 7 days at 37° C. Results of this test shall be confirmed in an independent experiment.

(B) (1) A sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with VDF and VF in accordance with § 798.5275 of this chapter except for the provisions in paragraph (d)(5). This test shall also be performed with TFE or HFP if the

somatic cells in culture assay conducted pursuant to paragraph (c)(1)(i)(A) of this section produces a positive result.

(2) For the purposes of this section the following provisions also apply:

(i) *Test chemicals.* It is sufficient to test a single dose of the test substance. This dose shall be the maximum tolerated dose or that which produces some indication of toxicity. Exposure shall be by inhalation.

(ii) [Reserved]

(C) (1) A mouse specific locus assay shall be conducted with VF, VDF, TFE, and HFP in accordance with § 798.5200 of this chapter, except for the provisions of paragraph (d)(5), for whichever of these substances produces a positive result in the sex-linked recessive lethal test in *Drosophila melanogaster* conducted pursuant to paragraph (c)(1)(i)(B) of this section if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

(2) For the purposes of this section, the following provisions also apply:

(i) *Test chemicals.* A minimum of two dose levels shall be tested. The highest dose tested shall be the highest dose tolerated without toxic effects, provided that any temporary sterility induced due to elimination of spermatogonia is of only moderate duration, as determined by a return of males to fertility within 80 days after treatment, or shall be the highest dose attainable. Animals shall be exposed to the test substance by inhalation. Exposure shall be for 6 hours a day. Duration of exposure shall be dependent upon accumulated total dose desired for each group.

(ii) [Reserved]

(ii) *Reporting requirements.* (A) Mutagenic effects-gene mutation tests shall be completed and the final results submitted to the Agency as follows: Somatic cells in culture assay, within 6 months after the effective date of the final rule; *Drosophila* sex-linked recessive lethal, within 9 months (for VF and VDF) and within 15 months (for TFE and HFP) after the effective date of the final rule; mouse specific locus assay, within 51 months after the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated.

(B) Progress reports shall be submitted to the Agency every 6 months beginning 6 months after the effective date of the final rule or receipt of notice that testing shall be initiated.

(2) *Mutagenic effects—Chromosomal aberrations—(i) Required testing.* (A) (1) A mouse micronucleus cytogenetics test

shall be conducted with VDF and TFE in accordance with § 798.5395 of this chapter except for the provisions in paragraphs (d)(5)(i), (ii), and (iii).

(2) For the purposes of this section, the following provisions also apply:

(i) *Test method—Vehicle.* No vehicle is required.

(ii) *Test method—Dose levels.* Three dose levels shall be used. The highest dose tested shall be the maximum tolerated dose, that dose producing some indication of cytotoxicity (e.g., a change in the ratio of polychromatic to normochromatic erythrocytes, or the highest dose attainable).

(iii) *Test method—Route of administration.* Animals shall be exposed by inhalation for 6 hours per day for 5 consecutive days.

(B) (1) For each respective test substance, a dominant lethal assay shall be conducted with VF and HFP in accordance with § 798.5450 of this chapter except for the provisions in paragraphs (d)(2)(i), (4)(i), (5) and (e). This test shall also be performed with TFE or VDF if either the *in vitro* cytogenetics test conducted pursuant to paragraph (c)(2)(i)(A) of this section or the mouse micronucleus cytogenetics test conducted pursuant to paragraph (c)(2)(i)(B) of this section produce a positive result.

(2) For the purposes of this section, the following provisions also apply:

(i) *Test method—Description.* For this assay, the test substance shall be administered by inhalation for 5 consecutive days for 6 hours per day.

(ii) *Test method—Concurrent controls.* Concurrent positive and negative (vehicle) controls shall be included in each experiment.

(iii) *Test method—Test chemicals.* Exposure shall be by inhalation for 5 consecutive days for 6 hours per day. Three dose levels shall be used. The highest dose shall produce signs of toxicity (e.g., slightly reduced fertility) or shall be the highest attainable.

(iv) *Test performance.* Individual males shall be mated sequentially to 1 or 2 virgin females. Females shall be left with the males for at least the duration of one estrus cycle or alternatively until mating has occurred as determined by the presence of sperm in the vagina or by the presence of a vaginal plug. In any event, females shall be left with the males for no longer than 7 days. The number of matings following treatment shall ensure that germ cell maturation is adequately covered. Mating shall continue for at least 6 weeks. Females shall be sacrificed in the second half of pregnancy, and uterine contents shall be examined to determine the number of implants and live and dead embryos.

The examination of ovaries to determine the number of corpora lutea is left to the discretion of the investigator.

(C) (1) A heritable translocation assay shall be conducted with VF, VDF, TFE, or HFP in accordance with § 798.5460 of this chapter except for the provisions in paragraphs (d)(3)(i), (5), and (e)(i), if the dominant lethal assay conducted for that substance pursuant to paragraph (c)(2)(i)(C) of this section produces a positive result and if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

(2) For the purposes of this section, the following provisions also apply:

(i) *Test method—Animal selection.* The mouse shall be used as the test species.

(ii) *Test method.* No vehicle is required. At least two dose levels shall be used. The highest dose level shall result in toxic effects (which shall not produce an incidence of fatalities which would preclude a meaningful evaluation) or shall be the highest dose attainable. Animals shall be exposed by inhalation.

(iii) *Test performance—Treatment and mating.* The animals shall be dosed with the test substance 6 hours per day, 7 days per week over a period of 35 days. After treatment, each male shall be caged with 2 untreated females for a period of 1 week. At the end of 1 week, females shall be separated from males and caged individually. When females give birth, the date of birth, litter size and sex of progeny shall be recorded. All male progeny shall be weaned and all female progeny shall be discarded.

(ii) *Reporting requirements.* (A) Mutagenic effects chromosomal aberration testing shall be completed and final results submitted to the Agency after the effective date of the rule as follows: mouse micronucleus cytogenetics, within 10 months for VDF and TFE after the effective date of the final rule; dominant lethal assay, within 9 months (for VF and HFP), and within 19 months (for VDF and TFE), after the effective date of the final rule; heritable translocation assay, within 25 months after the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated.

(B) Progress reports shall be submitted to the Agency every 6 months beginning 6 months after the effective date of the final rule or receipt of notice that testing shall be initiated.

(3) *Subchronic toxicity—(i) Required Testing.* (A) An inhalation subchronic toxicity test shall be conducted with HFP in accordance with the TSCA Test

Guideline specified in § 798.2450 of this chapter except for the provisions in paragraphs (d)(5), (10)(v), and (e)(3)(iv)(D).

(B) For the purpose of this section the following provisions also apply:

(1) *Test procedures—Exposure conditions.* The animals shall be exposed to the test substance 6 hours per day, 5 days per week for 90 days.

(2) *Test procedures—Observation of animals.* Animals shall be weighted weekly, and food and water consumption shall also be measured weekly.

(3) *Test report—Individual animal data.* Food and water consumption data shall be reported.

(ii) *Reporting requirements.* (A) The required subchronic toxicity test shall be completed and final results submitted to the Agency within 18 months after the effective date of the final rule.

(B) Progress reports shall be submitted to the Agency every 6 months beginning 6 months after the effective date of the final rule.

(4) *Oncogenicity—(i) Required testing.* Oncogenicity tests shall be conducted in both rats and mice by inhalation with VF and in mice with VDF in accordance with § 798.3300 of this chapter. Oncogenicity tests shall be conducted in both rats and mice with HFP if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

Oncogenicity tests shall also be conducted by inhalation in both rats and mice with TFE in accordance with § 798.3300 of this chapter if TFE yields a positive test result in any one of the following mutagenicity tests: The *in vitro* cytogenetics assay conducted pursuant to paragraph (c)(2)(i)(A) of this section, the mouse micronucleus cytogenetics assay conducted pursuant to paragraph (c)(2)(i)(B) of this section, the mammalian cells in culture assay conducted pursuant to paragraph (c)(1)(i)(A) of this section or the sex-linked recessive lethal assay in *Drosophila melanogaster* conducted pursuant to paragraph (c)(1)(i)(B) of this section if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated. Criteria for positive test results are established in 40 CFR 798.5375, 798.5385, 798.5300 and 798.5275 of this chapter, respectively.

(ii) *Reporting requirements.* (A) The oncogenicity testing shall be completed and the final results submitted to the Agency within 56 months after the

effective date of the final rule for VF and VDF. For TFE and HFP, the oncogenicity testing shall be completed and final results submitted to the Agency within 56 months after the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated.

(B) Progress reports shall be submitted every 6 months beginning 6 months after the effective date of the final rule for VF and VDF and beginning 6 months after notification by certified letter or **Federal Register** notice that testing is to begin for TFE and HFP.

(d) *Effective date.* The effective date of this final rule is July 22, 1987.

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070-0033)

[FR Doc. 87-12828 Filed 6-5-87; 8:45 am]

BILLING CODE 5560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 34

Medical Examination of Aliens (AIDS)

AGENCY: Centers for Disease Control, Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This rule amends the Medical Examination of Aliens regulations (42 CFR Part 34). The final rule requires that a finding of acquired immunodeficiency syndrome (AIDS) be reported by the medical examiner to the consular or immigration officer. This Final Rule cites AIDS as a "dangerous contagious disease" which makes an alien inadmissible under provisions of section 212(a)(6) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)).

EFFECTIVE DATE: July 8, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Laurence S. Farer, Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, GA. 30333, telephone (404) 329-1286, or FTS 236-1286.

SUPPLEMENTARY INFORMATION: Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on April 23, 1986 (5 FR 15354) proposed that AIDS be added to the list of "dangerous contagious diseases" in the Medical Examination of Aliens regulations (42 CFR 34.2(b)). The NPRM proposed that aliens be excluded from entering the United States for permanent residence under the authority of section 212(a)(6) of the Immigration and Nationality Act

(8 U.S.C. 1182(a)(6)). After reviewing the comments received in response to the NPRM, and further consideration of the matter, the Department has decided to add AIDS to the list of "dangerous contagious diseases" in these regulations. The Department is also publishing elsewhere in this issue of the **Federal Register** an NPRM proposing to substitute HIV infection for AIDS on the above-cited list, since individuals who are so infected, but do not actually have AIDS, are also contagious.

Discussion of Comments

Comments were received from 116 individuals and 16 organizations. A summary of the substantive comments and our response follows.

Comment—Comments were received from 107 sources favoring the exclusion of aliens with AIDS. Most of these comments were brief, but supported the proposal. Four commenters thought that all aliens seeking admission to the United States should be screened for AIDS.

Response—These comments demonstrated general public sentiment for the concept of exclusion of aliens with AIDS.

42 CFR Part 34 outlines all aspects of the medical examination of aliens, including those medical conditions which may cause an alien to be inadmissible. This Final Rule specifically cites AIDS as a "dangerous contagious disease." It does not change who is required to have a medical examination. A medical examination is mandatory for applicants for permanent resident status, fiancé(e)s of U.S. citizens and/or their children, and refugees. For aliens seeking temporary admission, a medical examination may be required at the discretion of a consular officer overseas or an immigration inspector at a U.S. port of entry if there is reason to suspect that an excludable condition exists.

Comment—Comments were received from 25 sources opposing the rule. The majority of these commenters expressed concern about possible discrimination against aliens falling into "high-risk" groups for AIDS, and the possibility of inappropriate referrals for medical examination. Several commenters thought the proposal did not reflect current knowledge about AIDS and its transmission and would promote further misunderstanding about the condition. Three commenters expressed concern that exclusion would subvert a humanitarian responsibility to accept persons with AIDS who want to enter the U.S. for medical care. Five commenters expressed concern about possible reciprocal actions by foreign

governments which could hinder international travel by U.S. citizens.

Response—The final rule does not change who is required to have a medical examination. The same aliens will continue to be subject to a medical examination, under the same conditions, and by the same medical examiners. This final rule requires that the medical examiner, if there is clinical suspicion of AIDS, establish a diagnosis and report the findings to the consular or immigration officer. The PHS provides medical examiners with technical guidance for conducting the medical examination in accordance with applicable law and regulations. Instructions will be provided to the medical examiners regarding obtaining the medical history and clinical signs to look for and how to diagnose AIDS.

The current overall fatality rate is greater than 50% and exceeds 90% 3 to 5 years following onset of illness. AIDS is not spread by casual contact which is the usual public concept of "contagious," but it is spread by sexual contact, needle-sharing, transfusion of blood or blood products, and perinatally from infected mother to newborn. The spread of AIDS by certain high risk sexual practices is not unlike several other diseases currently on the list of "dangerous contagious diseases" in the regulations implementing our responsibilities under the Immigration and Nationality Act. Accordingly, in the context of the Immigration and Nationality Act, AIDS is being added to the existing list of "dangerous contagious diseases."

It should be stressed that the designation is being made specifically in the context of the requirement of the Immigration and Nationality Act. This designation has not been made on the basis of any new scientific knowledge about the transmission or natural history of AIDS, nor should any such interpretation be drawn. Also, this designation alone should in no way alter existing AIDS prevention and control activities in this country. All existing Public Health Service recommendations and guidelines on the prevention and control of AIDS remain in full effect as currently written.

Further, this Final Rule will not interfere with the ability of an alien with AIDS, who wishes medical care in the U.S., to seek a nonimmigrant (temporary) visa under the authority of section 212(d)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(3)).

The Secretary has determined that this amendment will not significantly impact on a substantial number of small entities and therefore does not require

preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act, Pub. L. 96-354.

The Secretary has also determined that this amendment is not a "major rule" under Executive Order 12291. Thus, a regulatory impact analysis is not required because it will not:

(1) Have an annual effect on the economy of \$100 million or more;

(2) Impose a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 42 CFR Part 34

Acquired immunodeficiency syndrome (AIDS), Immigration, Medical examination of aliens.

Section 34.2 of Part 34 of Title 42, Code of Federal Regulations, is amended as set forth below.

Dated: May 1, 1987.

Robert E. Windom,
Assistant Secretary for Health.

Approved: May 8, 1987.

Otis R. Bowen,
Secretary.

PART 34—MEDICAL EXAMINATION OF ALIENS

1. The authority citation for 42 CFR Part 34 continues to read as follows:

Authority: Sec. 215, 58 Stat. 690, as amended, sec. 234, 66 Stat. 198; 42 U.S.C. 216, 8 U.S.C. 1224; sec. 322, 325, 58 Stat. 696, as amended, 697, as amended, secs. 212, 326, 66 Stat. 182, as amended, 200; 42 U.S.C. 249, 252, 8 U.S.C. 1182, 1226.

2. Section 34.2(b) of Part 34 is revised to read as follows:

§ 34.2 Definitions.

* * *

(b) Dangerous contagious diseases. Any of the following diseases:

- (1) Acquired immunodeficiency syndrome (AIDS)
- (2) Chancroid.
- (3) Gonorrhea.
- (4) Granuloma inguinale.
- (5) Leprosy, infectious.
- (6) Lymphogranuloma venereum.
- (7) Syphilis, infectious stage.
- (8) Tuberculosis, Active.

* * *

[FR Doc. 87-12990 Filed 6-5-87; 8:45 am]
BILLING CODE 4160-18-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

Admission and Training of Midshipmen at the United States Merchant Marine Academy; Pay Increase

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is amending its regulations on merchant marine training to set the rate of pay that midshipmen at the United States Merchant Marine Academy will receive while assigned to merchant vessels for their one year of at-sea training to be the same as the monthly salary rate received by cadets/midshipmen at the other Federal academies.

EFFECTIVE DATE: June 8, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Crawford Ellerbe, Academy Program Analyst, Office of Maritime Labor and Training, Department of Transportation, Washington, DC 20590, (202) 366-2643.

SUPPLEMENTARY INFORMATION: This amendment to Part 310 of Title 46, Code of Federal Regulations establishes the rate of pay that midshipmen of the United States Merchant Marine Academy receive while assigned to merchant vessels at sea. It reflects MARAD's long-standing policy of adjusting midshipmen pay periodically to match the monthly rate of pay of cadets/midshipmen at the other Federal academies. On December 31, 1986, that rate was raised to \$494.40 by EO 12578 (52 FR 505, January 8, 1987). Formerly, MARAD published a final rule each time it increased the rate of pay received by its midshipmen, and last did so in 1983 (48 FR 16488). In effect, this amendment will automatically increase the rate of pay for midshipmen serving on merchant vessels each time there is an increase in the monthly salary received by cadets/midshipmen at the other Federal academies.

The pay rate adjustment will occur after a change in the rate of pay for cadets/midshipmen at the other Federal academies, and will be effective either on June 15th or December 15th of the same calendar year, whichever occurs first. The reason for the delay is to avoid having to pay the increase retroactively and to start the new rate of pay at the beginning of a sea training period.

Applicable Legal Authorities

The rate of pay received by midshipmen while assigned to

subsidized merchant vessels is a matter of "public contract" with the owners of vessels operating under operating-differential subsidy agreements, so this rule is exempt from the application of 5 U.S.C. 553. Under 5 U.S.C. 553(a), rules relating to agency management or public contracts are exempted from the notice and comment requirements of that section. Accordingly, it is being issued as a final rule, without opportunity for public comment. Also, it is being made effective upon publication, because the increase needs to be implemented quickly to effect comparability in pay with cadets/midshipmen at the other Federal academies who have been receiving their pay raises since the beginning of 1987. We do not expect to receive objections to this change from vessel operators.

The Maritime Administrator has determined that this amendment to its regulations is not a major rule within the scope of E.O. 12291. This is a nonsignificant regulation under Department of Transportation Regulatory Policies and Procedures dated February 26, 1979 (DOT Order 2100.5). MARAD has determined that the economic impact is so minimal that further regulatory evaluation is not required. The effective present pay increase for midshipmen assigned to merchant ships is \$14.40 monthly, which represents a total annual increase in cost to vessel operators under operating-differential subsidy agreements of only about \$43,000. The Maritime Administrator certifies that the amendment to its regulation will not exert a significant economic impact on a substantial number of small entities, within the meaning of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), since the affected steamship operators are very large companies. It includes no reporting requirement for the collection of information within the scope of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 46 CFR Part 310

Grant programs—Education, Maritime Administration, Schools, Seamen.

PART 310—[AMENDED]

Accordingly, Part 310 Title 46 of the Code of Federal Regulations is amended as follows:

1. By amending the authority citation for Subpart C to read as follows:

Authority: Secs. 204(b) and 1301-1308, Merchant Marine Act, 1936, as amended, (46 U.S.C. 1114(b) and 1295-1295g); 49 CFR 1.66 (46 FR 47458, September 28, 1981).

2. By revising paragraph (c) § 310.60 to read as follows:

§ 310.60 Training on subsidized vessels.

(c) *Pay.* Midshipmen shall receive pay while employed aboard merchant vessels directly from the steamship company employers at the same rate received by cadets and midshipmen at the other Federal academies. A change in the rate of pay for midshipmen at the Academy shall occur after a change in the rate of pay for cadets/midshipmen at the other Federal academies and shall be effective either on June 15th or on December 15th of the same calendar year, whichever occurs first. While aboard ship, they shall be berthed in single-occupancy rooms or in rooms with other midshipmen in that part of the vessel designated for licensed officers (or in first-class passenger quarters) and shall mess with the licensed officers. The steamship company employers shall also pay the midshipmen such subsistence and room allowance in port, transportation allowances, and other bonuses or allowances as are paid to the licensed officers of the vessel in which the midshipmen are employed.

Dated: June 3, 1987.

By order of the Maritime Administrator,
Maritime Administration.

James E. Saari,
Secretary.

[FR Doc. 87-12973 Filed 6-5-87; 8:45 am]

BILLING CODE 4910-81-M

46 CFR Part 386

[Docket No. R-114]

Regulations Governing Public Buildings and Grounds at the United States Merchant Marine Academy

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: These regulations are intended to formally implement authority delegated by the Administrator of General Services to the Secretary of Transportation, and redelegated to the Maritime Administrator, to appoint special police for the protection of buildings, grounds and equipment at the United States Merchant Marine Academy (Academy).

These regulations specify activities which are prohibited on Academy premises. Violators will be subject to penalties fixed by order of the United States District Court for the Eastern District of New York.

EFFECTIVE DATE: July 8, 1987.

FOR FURTHER INFORMATION CONTACT: John J. White, (202) 366-2812.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of June 1, 1948 (62 Stat. 281), as amended, the Administrator of General Services (Administration), the head of the General Services Administration (GSA), may appoint uniformed guards as special police for duty in connection with the policing of public buildings under the jurisdiction of the Administrator. "Such special policemen shall have the same powers as sheriffs and constables upon such Federal property to enforce the laws enacted for the protection of persons and property, and to prevent breaches of the peace . . . and to enforce any rules and regulations made and promulgated by the Administrator or such duly authorized officials of the Administration for the property under their jurisdiction." (40 U.S.C. 318). The Administrator delegated to the Secretary of Commerce the authority "to appoint uniformed guards as special policemen and to make all needful rules and regulations for the protection of those parcels of property at the U.S. Merchant Marine Academy at Kings Point, New York . . . which are not protected by the GSA guards, and over which the Federal Government has exclusive or concurrent jurisdiction" (32 FR 11969, August 18, 1967).

Prior to the transfer of MARAD to the Department of Transportation (DOT) by Pub. L. 97-31 (95 Stat. 151, August 6, 1981), MARAD was a unit of the Department of Commerce, and was responsible for operating the Academy, pursuant to authority in Title XII of the Merchant Marine Act, 1936 (Act), as amended (46 U.S.C. 1295). That authority had been delegated to MARAD by the Secretary of Commerce. After MARAD's transfer to DOT, the Secretary delegated authority to the Maritime Administrator to carry out the Act, and specifically authorized the Maritime Administrator to exercise the authority delegated by the Administrator for protection duties on the parcels of property at the Academy which are not protected by GSA guards, and over which the Federal Government has exclusive or concurrent jurisdiction. (49 CFR 1.66).

On February 11, 1987, MARAD published in the *Federal Register* a notice of proposed rulemaking (NPRM), stating the background of the delegations of authority with regard to the appointment of special police at the Academy and a description of the activities proposed to be prohibited. The NPRM invited public comment, and the comment period expired on March 30,

1987. MARAD received no comments during the comment period or after its expiration.

The Maritime Administrator has determined that this is not a major rule, as defined in E.O. 12291, nor a significant rule under DOT Order 2100.5. The final rule implements statutory authority, delegated to MARAD, to protect property and persons at the Academy. It affects a very limited group of people, namely, the Midshipmen and the faculty and other employees of the Academy, as well as visitors to the Academy, and results in the appointment of existing Academy employees as special police. For these reasons, the Maritime Administrator certifies, pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), that the rule will not exert a significant economic impact on a substantial number of small entities. The budgeted cost for security and fire protection at the Academy is almost \$249,000 for FY 1987 and \$263,000 for FY 1988. The appointment of Special Police will not increase the cost of security since existing staff will be used. Because of this minimal economic impact, further economic evaluation is unnecessary. This proposed rule contains no reporting requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 46 CFR Part 386

Federal buildings and facilities, Law enforcement officers.

Accordingly, MARAD is adopting as a final rule, without any changes from the text published as a proposed rulemaking, a new 46 CFR Part 386, to read as follows:

PART 386—REGULATIONS GOVERNING PUBLIC BUILDINGS AND GROUNDS AT THE UNITED STATES MERCHANT MARINE ACADEMY

Sec.

- 386.1 Hours of admission to property.
- 386.3 Preservation of property.
- 386.5 Conformity with signs and posted regulations.
- 386.7 Disturbances.
- 386.9 Gambling.
- 386.11 Alcoholic beverages and controlled substances.
- 386.13 Soliciting, vending, and debt collection.
- 386.15 Distribution of handbills.
- 386.17 Photographs for news, advertising or commercial purposes.
- 386.19 Dogs and other animals.
- 386.21 Vehicular and pedestrian traffic.
- 386.23 Weapons and explosives.
- 386.25 Enforcement, penalties and other laws.

Authority: 40 U.S.C. 318; 32 FR 11969 (August 18, 1967); Pub. L. 97-31 (95 Stat. 151, August 6, 1981); 49 CFR 1.66.

§ 386.1 Hours of admission to property.

Academy property shall be closed to the public during other than normal working hours, as well as during Regimental leave periods and indoctrination training for the fourth class year. The closing of property shall not apply where the Superintendent has approved the after normal working hours use of buildings or athletic facilities for authorized activities. During normal working hours, property shall be closed to the public only when situations require this action to ensure the orderly conduct of Academy business. The Superintendent, or a designated representative of the Superintendent, shall make the decision to close all or any areas of Academy property. This action shall be coordinated with the Head, Department of Public Safety and Security (Security), of the Academy. When property, or a portion thereof, is closed to the public, admission to the property, or to any area thereof, shall be restricted to authorized persons, who shall register with Security personnel upon entry to the property. When requested, any person shall display Government or other identifying credentials to Security personnel when entering, leaving, or while on Academy property.

§ 386.3 Preservation of property.

Prohibited actions against property on the Academy grounds are improper disposal of rubbish; theft of or damage to property; throwing articles from an Academy building; and climbing on statues, fountains or any part of a building.

§ 386.5 Conformity with signs and posted regulations.

Persons in and on Academy property shall, at all times, comply with official signs and posted regulations of a prohibitional, instructional or directional nature, and shall also comply with the directions of Academy special police and other authorized officials. These regulations shall be enforced by uniformed special police and other designated security personnel.

§ 386.7 Disturbances.

Any loitering, disorderly conduct or other conduct on Academy property which creates loud or unusual noise or a nuisance which unreasonably obstructs the use of any area, including entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots; or impedes or disrupts the performance of official duties by Government

employees or Midshipmen activities is prohibited.

§ 386.9 Gambling.

Unless permitted by Executive or Department of Transportation Order, participating in games of chance for money or other consideration, or in the operation of gambling devices, or the conduct of a lottery or a pool, or the selling or purchasing of numbers tickets, is prohibited on Academy property.

§ 386.11 Alcoholic beverages and controlled substances.

Operation of a motor vehicle on Academy property while intoxicated, under criteria set forth in the statutes of the State of New York, is prohibited. The consumption or possession by any person on Academy property of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, amphetamines or any other substances controlled under the laws of the State of New York or the United States is prohibited. These prohibitions shall not apply in cases where drugs are being used as prescribed for a patient by a licensed physician. The prohibition against possession and consumption of alcoholic beverages shall not apply when possessed or consumed by staff or resident officers in private residences, or when the Superintendent, or a designee of the Superintendent, has granted an exemption in writing for an appropriate reason.

§ 386.13 Soliciting, vending, and debt collection.

Soliciting aims, or commercial soliciting and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts is prohibited on Academy property. This prohibition does not apply to national or local drives for funds for charitable purposes, welfare, health, or other purposes as authorized by the "Manual on Fund Raising Within the Federal Service," issued by the U.S. Office of Personnel Management under Executive Order 10927 of March 18, 1961, and sponsored or approved by the Superintendent; and to commercial lessees and contractors authorized to sell goods or services.

§ 386.15 Distribution of handbills.

The distribution of materials such as pamphlets, handbills and flyers, and the displaying of placards or posting of materials on bulletin boards or elsewhere in or on Academy property shall be coordinated with the Head, Department of Public Safety and Security, of the Academy so as not to impede Academy employees in the

performance of their duties or Midshipmen activities.

§ 386.17 Photographs for news, advertising, or commercial purposes.

Such photographs for news, advertising or commercial purposes may be taken on Academy premises only with the written consent of the Office of External Affairs at the Academy. Except where national security regulations apply or a Federal Court Order or rule prohibits, photographs for news purposes may be taken in entrances, lobbies, foyers or corridors, or in auditoriums in which public meetings are being held. Photographs for advertising and commercial purposes may be taken only with the written permission of and in locations specified by the Office of External Affairs.

§ 386.19 Dogs and other animals.

Persons are prohibited from bringing dogs and other animals on to the Academy premises, except for authorized purposes and except for seeing eye or other guide dogs, or pets approved in writing by the Superintendent or a designee of the Superintendent.

§ 386.23 Vehicular and pedestrian traffic.

Operators of all vehicles on Academy property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of Academy special police, Security personnel or other authorized individuals, and all posted traffic signs and with restrictions indicated by marked traffic areas. The following acts are prohibited on Academy property: the blocking with vehicles of entrances, driveways, walks, loading platforms or fire hydrants; parking without a permit, except in emergencies; parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs or marked traffic areas, including yellow curbs. Vehicles parked in violation of the foregoing shall be subject to the issuance of a Traffic Violation Notice and/or removal of the vehicle at the owner's risk and expense. The Superintendent may issue and post other specific traffic directives as may be required, applicable to drivers and pedestrians. When so issued and posted, such directives shall have the same force and effect as if made a part hereof. Proof that a motor vehicle was in violation of these regulations or such directives shall be evidence that the registered owner was responsible for the violation.

§ 386.23 Weapons and explosives.

No person shall carry or possess firearms, other dangerous or deadly weapons or parts thereof, explosives or items intended to be used to fabricate an explosive or incendiary device, or parts thereof, either openly or concealed, while on Academy property, except for official purposes specifically authorized in writing by the Superintendent or a designee of the Superintendent.

§ 386.25 Enforcement, penalties and other laws.

Whoever shall be found guilty of violating any regulations in this part while in or on Academy property is subject to a fine of not more than \$50 or imprisonment of not more than 30 days, or both (40 U.S.C. 318c). Nothing in these regulations shall be construed to abrogate any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated. These regulations shall be posted prominently throughout the Academy. Penalties for their violation shall be incorporated in the Schedule of Fines for Petty Offenses established by order of the United States District Court for the Eastern District of New York.

Dated: June 3, 1987.

By order of the Maritime Administration.

James E. Saari,

Secretary.

[FR Doc. 87-12972 Filed 6-5-87; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 67 and 69

[CC Docket 78-72 & 80-286; FCC 87-133]

Common Carrier Services; Subscriber Line Charge, High Cost Assistance, Lifeline Assistance, and Common Line Pooling Modifications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has determined that the residential and single-line business subscriber line charges should be gradually increased to a cap of \$3.50 over a two year period. The Commission also has determined that the high cost assistance measures, the lifeline assistance measures and the common line pooling arrangement should be modified. Finally, the Commission has determined that the subscriber line charge for embedded

Centrex lines should be increased to a cap of \$6.00 over a two year period.

EFFECTIVE DATE: June 8, 1987, except §§ 69.116 and 69.117, effective April 1, 1989.

ADDRESS: Federal Communications Commission, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara J. Lynch, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-6363.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Decision and Order, CC Docket Nos. 78-72 and 80-286 adopted April 16, 1987 and released May 19, 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 the Decision and Order

1. In a Further Notice of Proposed Rulemaking released on July 2, 1986, the Federal Communications Commission (the FCC) initiated a proceeding to examine the effects of (1) subscriber line charges (SLCs) (2) the Federal lifeline assistance program, and (3) present measures to assist high cost telephone companies. The FCC sought comment from interested parties on these subjects as well as on the common line tariff and pooling system administered by the National Exchange Carrier Association (NECA). In accordance with its previous decision to implement subscriber line charges, it asked the Federal-State Joint Board in CC Docket No. 80-286 (Joint Board) to examine this record and prepare recommendations for further action. In a Recommended Decision and Order released on March 31, 1987, the Joint Board adopted a comprehensive and integrated set of recommendations concerning these subjects. The FCC hereby adopts these recommendations, with minor modifications, and the analysis and reasoning on which they are founded.

2. With regard to subscriber line charges, the FCC adopts the Joint Board's conclusion that implementation of SLCs has had no adverse effect on universal service, has permitted more rational recovery of NTS costs, has increased the economically efficient use of the public switched network, and has reduced the extent of pricing discrimination between switched and special access service which will help

reduce the threat of uneconomic bypass. The FCC adopts herein the Joint Board's recommendation of a permanent solution to the issue of the proper method for interstate NTS cost recovery and, therefore, finds that residential and single-line business SLCs will increase in three increments, \$.60, \$.60, and \$.30, to a cap of \$3.50 per line per month. However, it adopts these recommendations with minor changes in the proposed schedule. The first \$.60 increase will be implemented on July 1, 1987, instead of June 1, 1987. This will provide a full 45 days notice for the flow through tariff to be filed by AT&T. The second step, i.e., the second \$.60 increase, will be implemented on December 1, 1988, rather than September 1, 1988. This will enable the members of the Joint Board to perform more extensive monitoring and analysis of the impact of the first \$.60 increase. The FCC also adopts the recommendation that the SLC for embedded Centrex lines increase at \$1.00 increments to a cap at \$6.00 on the same schedule as the residential and single-line business SLCs. The FCC shares the Joint Board's belief that additional benefits will be realized through the adoption of its recommendations, including increased telephone subscribership levels, efficiency gains, reduced bypass incentives, and decreased service price discrimination.

3. The FCC adopts the Joint Board's conclusion that the existing lifeline assistance program is a sound response to concerns about the level of telephone subscribership among low income groups. In addition, it adopts the Joint Board's recommendation that the current Federal lifeline assistance program be increased to correspond with the proposed subscriber line charge increases which would provide federal assistance to match state contributions on any amount up to the full SLC of \$3.50. Further, it adopts the Joint Board's recommendation that a new lifeline program of Federal assistance, described as Link Up America, be implemented that would offset one-half of the charges for commencing telephone service, up to \$30, for households that meet the established criteria. The new Link Up America program also would encourage local exchange carriers (LECs) to offer deferred payment schedules for these charges by paying a LEC's interest costs, on an amount up to \$200, when it provides for a deferred payment schedule and does not charge interest to qualified subscribers. Finally, the FCC adopts the Joint Board's

recommendation that the subscriber line charge waiver and the Link Up America programs be funded by charges assessed on the interexchange carriers (IXCs). Initially, it finds that the revenue requirement for both programs will be recovered through the carrier common line (CCL) charge. However, upon implementation of the revisions to the present pooling mechanism in 1989, discussed below, the lifeline assistance revenue requirement will be recovered through flat-rate, per-line charges assessed on the IXCs based on the number of 1+ (i.e., for purposes of this Order, service feature groups C and D) lines "presubscribed" to each such carrier.

4. The FCC also adopts the Joint Board's recommendation to retarget the high cost assistance measures provided to high cost telephone companies. The retargeting of the measures will provide an additional interstate expense allocation to small and medium size LECs and less assistance to large LECs, specifically, LECs with over 200,000 access lines. Finally, the retargeted assistance will be recovered from IXCs through flat-rate charges calculated according to the same methodology as lifeline.

5. The FCC adopts the Joint Board's recommendation that the existing common line tariff and pooling system be modified to permit LECs to withdraw from the NECA tariff and pool and file common line tariffs based on their own costs. LECs will be able to withdraw from the NECA pool and will be required to contribute long term support (LTS) to those LECs that remain in the NECA pool, thus enabling pooling companies, which generally will be small high cost companies, to tariff a CCL charge equal to the charge that would result if all LECs remained in the pool. Four years of transitional support payments (TRS) will be provided to qualifying LECs that withdraw from the pool. Such LECs must be net recipients from the pool in 1988 and must withdraw from the NECA tariff and pool in accordance with a schedule that provides the largest companies one opportunity and smaller companies two opportunities to leave the pool and qualify to receive TRS. TRS will be paid by those nonpooling companies that were net contributors to the pool in 1988. TRS recipients will not pay LTS to pooling companies during the transition period. The pooling modifications will be implemented on April 1, 1989, the date of the final increase in SLCs.

6. The FCC states that the benefits to be gained from these modifications are obtainable as a direct result of the

implementation of subscriber line charges. It states that, absent the future SLC increases, it is not possible to secure the major benefits attributable to other components of the Joint Board's unified package of recommendations. It further finds that the package of modifications will help ensure the continuation of nationally averaged interstate long distance rates, and will provide local telephone companies with substantial relief from the threat of uneconomic bypass. This relief will occur because SLC increases will lower all telephone company CCL rates, which are the driving force behind the uneconomic bypass activity. However, even with the present level of SLCs, the FCC states that there still exists a significant threat of bypass of the public switched network.

7. The FCC adopts the Joint Board's recommendation to implement a more comprehensive monitoring plan in order to track the impact of these modifications. The FCC believes that a comprehensive monitoring plan will provide a strong record on the effects of these actions on the telecommunications industry. It will keep an open docket in the proceeding to permit comments for all interested parties regarding the nature and scope of the monitoring plan. Reports will be forwarded to Congress and state regulators and these reports will assure that all those interested in the progress of this plan will receive current information relevant to their review. The FCC also states that it will initiate proceedings in the future to make necessary adjustments to the Part 69 Rules, *inter alia*, the administration of NECA and the operations of the NECA common line pool. It will take steps to consider whether existing CCL tariff filing requirements should be reduced for small LECs withdrawing from the NECA common line pool and what, if any, adjustment should be made to the pooling modifications to ensure that they do not inadvertently and unreasonably affect the marketability of small LECs.

8. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

9. The FCC certifies that the Regulatory Flexibility Act, 5 U.S.C. 603, is not applicable to the rule changes it is adopting in this proceeding. In accordance with the provisions of

section 605 of that Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of this *Report and Order* in the *Federal Register*. Because of the nature of local exchange and access services, the FCC concluded that small telephone companies are dominant in their fields of operation and therefore are not small entities as defined by the Regulatory Flexibility Act. See MTS and WATS Market Structure, 93 FCC 2d 241, 338-89 (1983). Thus, the FCC is not required by the terms of that Act to apply the formal procedures set forth herein. It is nevertheless committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with its other public interest responsibilities. Accordingly, the FCC has chosen to utilize, on an informal basis appropriate Regulatory Flexibility Act procedures to analyze the effect of regulations on small telephone companies. As part of the analysis of the proposal described in this *Report and Order*, however, the FCC has considered the impact of the changes on small telephone companies, i.e., those serving 50,000 or fewer access lines. These changes will not have an adverse effect on those companies and should benefit such carriers through increased assistance in the lifeline and high cost assistance measures.

Ordering Clauses

10. Therefore, it is ordered, that the recommendations contained in the Recommended Decision and Order of the Federal-State Joint Board released March 31, 1987 are adopted, pursuant to sections 4(i), 4(j), 201, 202, 203, 205, 221, 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i) through (j), 201, 202, 203, 205, 221, 403, and 410 (1986), as modified herein and are effective immediately upon publication in the *Federal Register*.

11. It is further ordered, that under the authority cited above, Part 67 Jurisdictional Separations Procedures: Standard Procedures for Separating Telephone Property Costs, Revenues, Expenses, Taxes, and Reserves and Part 69 Access Charges are amended as shown at the end of this document to reflect the modifications adopted herein, and are effective upon publication in the *Federal Register*.

12. It is further ordered, that the National Exchange Carrier Association and the local exchange carriers file tariff revisions on May 1, 1987, to be effective July 1, 1987, implementing the initial increase of \$.60 in subscriber line charges on residential and single-line

business lines and \$1.00 on embedded Centrex lines.

13. *It is further ordered*, that the National Exchange Carrier Association file tariff revisions reflecting the initial increase of \$.60 in subscriber line charges in the originating carrier common line charge.

14. *It is further ordered*, that AT&T Communications file tariff revisions on May 15, 1987, to be effective July 1, 1987, reflecting the savings realized as a result of the July 1, 1987 increase in subscriber line charges.

15. *It is further ordered*, that the National Exchange Carrier Association and the local exchange carriers file tariff revisions on October 3, 1988, to be effective December 1, 1988, and on February 1, 1989, to be effective April 1, 1989, implementing the second \$.60 and third \$.30 increases in subscriber line charges on residential and single-line business lines and on embedded Centrex lines.

16. *It is further ordered*, that AT&T Communications file tariff revisions on October 17, 1988, to be effective December 1, 1988, and on February 15, 1989, to be effective April 1, 1989, reflecting the savings realized as a result of the December 1, 1988 and April 1, 1989, respectively, increases in subscriber line charges.

17. *It is further ordered*, that the petitions filed by Bell Atlantic Telephone Companies, Rochester Telephone Company and the Illinois Local Exchange Carriers requesting increases in subscriber line charges and common line pooling modifications are dismissed.

18. *It is further ordered*, that the National Association of State Utility Consumer Advocates' motion to compel disclosure, or in the alternative, to deny participation is denied.

19. *It is further ordered*, that for purposes of the above-noted tariff filings, § 61.58 of this Commission's Rules, 47 CFR 61.58 is waived.

List of Subjects

47 CFR Part 67

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Part 67 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 67—JURISDICTIONAL SEPARATIONS PROCEDURES: STANDARD PROCEDURES FOR SEPARATING TELEPHONE PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES

1. The authority citation for Part 67 continues to read as follows:

Authority: 47 U.S.C. 151, 48 Stat. 1064, as amended 50 Stat. 189 (47 U.S.C. 154(i)), 48 Stat. 1064 (47 U.S.C. 154(j)), 48 Stat. 1064 (47 U.S.C. 221(c)), 48 Stat. 1080 (47 U.S.C. 410(c)), 85 Stat. 363.

2. The existing Subpart G is amended by removing the section number "§ 67.701" and redesignating Subpart G as Appendix-glossary. A new Subpart G is added to read as follows:

Subpart G—Lifeline Connection Assistance Expense Allocation

Sec.
67.701 General.

Definitions

67.711 Lifeline Connection Assistance.

Telephone Company Eligibility

67.721 Telephone company eligibility for Lifeline Connection Assistance Expense Allocation.

Data Collection

67.731 Submission of information to the National Exchange Carrier Association.

Calculation of Lifeline Connection Assistance Expense Adjustment

67.741 Expense adjustment.

Subpart G—Lifeline Connection Assistance Expense Allocation

§ 67.701 General.

(a) The Lifeline Connection Assistance Expense of the interstate apportionment shall consist of an expense adjustment computed in accordance with the subpart. The expense adjustment will be added to interstate expenses and deducted from state expenses for eligible study areas as defined in this Subpart after all other steps required by this part have been completed.

(b) The expense adjustment will be computed as provided in § 67.741.

Definitions

§ 67.711 Lifeline Connection Assistance.

(a) For purposes of this Subpart, Lifeline Connection Assistance shall describe the following lifeline telephone assistance for eligible residential subscribers as defined in § 67.711(b):

(1) A reduction in the charges for commencing telephone service assessed for a single telephone line per household at the principal place of residence; and/or

(2) A deferred schedule for payment of the charges assessed for commencing service, for which the telephone company does not charge interest.

(b) In order to be eligible for assistance, a residential subscriber must:

(1) Have lived at an address where there has been no telephone service for at least three months immediately prior to the date that the assistance described in § 67.711(a)(1) and/or § 67.711(a)(2) is requested from the telephone company;

(2) Not have received assistance pursuant to § 67.711(a)(1) and/or § 67.711(a)(2) within the last two years, with receipt of such assistance to be measured from the date of initiation of the telephone service for which assistance was provided;

(3) Not be a dependent for federal income tax purposes as defined in 26 U.S.C. 152 (1986) unless the subscriber is more than 60 years of age; and

(4) Meet the requirements of a state established income test.

(c) Charges assessed for commencing service include any state tariffed charges levied for connecting a subscriber to the network. These charges do not include security deposit requirements.

Telephone Company Eligibility

§ 67.721 Telephone company eligibility for Lifeline Connection Assistance Expense Allocation.

(a) In order to be entitled to the additional interstate expense adjustment described in this Subpart a telephone company:

(1) Must provide Lifeline Connection Assistance as defined in § 67.711(a)(1) and/or § 67.711(a)(2) to eligible subscribers as defined in § 67.711(b);

(2) Shall verify that subscribers meet the eligibility criteria set out in § 67.711(b)(1) through (2) provided that:

(i) Verification of subscriber eligibility by designated state officials may be substituted for verification by the telephone company;

(ii) If a state determines that it is administratively or economically infeasible for the state or telephone company to verify the eligibility criteria described in § 67.711(b)(1) through (2) when the necessary information must be provided by a telephone company or agency outside the state, or when this determination is made in other specified circumstances, self-certification of these criteria will be allowed;

(iii) If the eligibility criteria described in § 67.711(b)(1) through (2) are self-certified, the eligibility criterion described in § 67.711(b)(4) must be

verified by the state or by the telephone company;

(3) May accept self certification of the eligibility criteria described in § 67.711(b)(3) through (4), except as provided in § 67.721(a)(2)(iii).

(4) Shall file information with the Commission Secretary demonstrating that it is eligible for the additional interstate expense adjustment.

(b) The additional interstate expense adjustment shall be effective as soon as the Commission certifies that the State or local telephone company is eligible for the additional interstate expense adjustment, the local exchange company files the data required by § 67.731 with the National Exchange Carrier Association, and the relevant tariff provisions become effective.

Data Collection

§ 67.731 Submission of information to the National Exchange Carrier Association.

(a) In order to allow calculation of the lifeline expense adjustment each local telephone company wishing to receive the additional interstate expense allocation provided for in this subpart shall provide the National Exchange Carrier Association established pursuant to Part 69 of the Commission's rules with the information listed below for each of its study areas. The information for the succeeding calendar year is to be filed with the Association on June 30th of each year after certification. The information filed on June 30th of each year will be used in the jurisdictional allocations underlying the cost support data for the access tariffs to be filed the following October.

(1) An estimate of the number of eligible households which will receive the lifeline assistance described in § 67.711(a)(1) pursuant to a lifeline assistance program which has received Commission certification.

(2) An estimate of the average discount on service commencement charges to be provided to each subscriber, not to exceed 50 percent of the charges for commencement of the same service applicable to non-lifeline customer or \$30.00, whichever is less;

(3) An estimate of the number of eligible subscribers which will receive the lifeline assistance described in § 67.711(a)(2).

(4) An estimate of the averaged deferred interest cost for each subscriber, provided that:

(i) The deferred amount on which the cost of interest shall be calculated is not to exceed \$200.00; and

(ii) Interest shall be applied only to amounts actually outstanding, at the rate for 10-year Treasury Bills on

January 1 of each year, with the interest rate adjusted only with each filing.

(b) In the event that this additional interstate expense allocation is to be in effect for a given study area for less than a full calendar year, the carrier is to submit the information described in § 67.731(a)(1) through (4) adjusted to reflect the number of subscribers and the relevant costs for the portion of the year during which this expense adjustment will be in effect as part of its § 67.721(a)(4) submission to the Commission.

(c) These data shall be filed with NECA at the same time they are filed with the Commission.

Calculation of Lifeline Connection Assistance Expense Adjustment

§ 67.741 Expense adjustment.

(a) The additional interstate expense allocation shall be calculated by adding the following:

(1) The number of households provided pursuant to § 67.731(a)(1) times the dollar amount provided pursuant to § 67.731(a)(2); and

(2) The number of households provided pursuant to § 67.731(a)(3) times the dollar amount provided pursuant to § 67.731(a)(4).

(b) The expense adjustment calculated pursuant to § 67.741(a) shall be adjusted each year to reflect the actual number of lifeline recipients and the actual dollar amount of the benefits provided to them in the previous estimated benefits for that year calculated pursuant to § 67.741(a), this difference shall be added to the amount calculated pursuant to § 67.741(a) for the following year. If the actual benefits provided in a given year are less than the estimated amount for that year calculated pursuant to § 67.741(a), this difference shall be subtracted from the amount calculated pursuant to § 67.741(a) for the following year.

(c) A pro-rata share of the expense adjustment calculated pursuant to § 67.741(a) through (b) shall be subtracted from the intrastate expenses for each account described below as calculated pursuant to the preceding subparts of Part 67 and added to the interstate expenses for each such account calculated pursuant to the preceding subpart of this Part 67. The pro-rata share for each account shall be calculated by multiplying the total interstate expenses adjustment by the ratio of the unseparated expenses for the account involved to the unseparated expenses for all of the accounts listed below:

(1) Accounts 602.1 through 602.8—Repairs of outside plant

(2) Account 603—Test desk work

(3) Account 604—Repairs of central office equipment

(4) Account 645—Local Commercial operations

(5) Account 662—Revenue Accounting Expenses

Part 69 of the Title 47 of the Code of Federal Regulations is amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.2(hh) through (mm) is added to read as follows:

§ 69.2 Definitions.

(hh) *Level I Contributors*—Telephone companies that are not association Common Line tariff participants, file their own Common Line tariffs effective April 1, 1989, and had a lower than average Common Line revenue requirement per minute of use in 1988 and thus were net contributors (i.e. had a negative net balance) to the association Common Line pool in 1988.

(ii) *Level I Receivers*—Telephone companies that are not association Common Line tariff participants, file their own Common Line tariffs effective April 1, 1989, and had a higher than average Common Line revenue requirement per minute of use in 1988 and thus were net receivers (i.e. had a positive net balance) from the association Common Line pool in 1988.

(jj) *Level II Contributors*—A telephone company or group of affiliated telephone companies with fewer than 300,000 access lines and less than \$150 million in annual operating revenues that is not an association Common Line tariff participant, files its own Common Line tariff effective January 1, 1990, and that had a lower than average Common Line revenue requirement per minute of use in 1988 and thus was a net contributor (i.e., had a negative net balance) to the association Common Line pool in 1988.

(kk) *Level II Receivers*—A telephone company or group of affiliated telephone companies with fewer than 300,000 access lines and less than \$150 million in annual operating revenues that is not an association Common Line tariff participant, files its own Common Line tariff effective January 1, 1990, and that had a higher than average Common Line revenue requirement per minute of use

in 1988 and thus was a net receiver (i.e., had a positive net balance) from the association Common Line pool in 1988.

(ll) "Long Term Support" (LTS) means funds provided by telephone companies that are not association Common Line tariff participants to association Common Line tariff participants. LTS enables association Common Line tariff participants to charge a Common Line (CCL) rate equivalent to the CCL rate that would result if all telephone companies participated in the association Common Line tariff.

(mm) "Transitional Support" (TRS) means funds provided by telephone companies that are not association Common Line tariff participants, but were net contributors to the association Common Line pool in 1988, to telephone companies that are not association Common Line tariff participants and were net receivers from the association Common Line pool in 1988.

3. Section 69.3 (e)(1) is revised and (e)(9) is added to read as follows:

§ 69.3 Filing of access service tariffs.

(e) * * *

(1) Such a tariff must cross reference association charges for the Carrier Common Line and End User Common Line element or elements if such company or companies participate in the pooling of revenues and revenue requirements for such elements.

(9) A telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff effective April 1, 1989 shall notify the association not later than August 30 of the preceding year that it will no longer participate in the association tariff. A telephone company or groups of affiliated telephone companies that elects to file its own Carrier Common Line tariff effective January 1, 1990, or thereafter pursuant to § 69.3(a), shall notify the association not later than June 30 of the preceding year that it will no longer participate in the association tariff. A telephone company or groups of affiliated telephone companies that elects to file its own Carrier Common Line tariff for one of its study areas shall file its own Carrier Common Line tariff(s) for all of its study areas.

4. Section 69.4 (b) and (c) is revised to read as follows:

§ 69.4 Charges to be filed.

(b) Except as provided in Subpart C of this part and in § 69.4(c), the carrier's carrier charges for access service filed with this Commission shall include

charges for each of the following elements:

(c) For all tariffs filed with this Commission that become effective after March 31, 1989, the carrier's carrier charges for access service shall include charges for each of the elements listed in § 69.4(b) and for each of the following elements:

- (1) Universal Service Fund
- (2) Lifeline Assistance

5. Section 69.5(d) is added to read as follows:

§ 69.5 Persons to be assessed.

(d) Beginning April 1, 1989, Universal Service Fund and Lifeline Assistance charges shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services and that have at least:

- (1) One percent of the total common lines presubscribed to interexchange carriers in all study areas; or
- (2) Five percent of the presubscribed lines in any study area and a minimum of one thousand presubscribed lines in that study area.

6. Section 69.104 (c) and (d) is revised and (e) through (m) is added to read as follows:

§ 69.104 End user common line.

(c) Except as provided in § 69.104(d) through (h), the single line rate or charge shall be computed by dividing one-twelfth of the projected annual revenue requirement for the End User Common Line element by the projected average number of local exchange service subscriber lines in use during such annual period.

(d) If the monthly charge computed in accordance with § 69.104(c) exceeds \$6, the charge for each local exchange service subscriber line, except a residential line, a single-line business line, or a line used for Centrex-CO service that was in place or on order as of July 27, 1983, shall be \$6.

(e) The monthly charge for each residential or single line business local exchange service subscriber shall be the charge computed in accordance with § 69.104(c), or the relevant transitional charge established in § 69.203, whichever is lower.

(f) Except as provided in § 69.104 (j) and (k), the charge for each residential local exchange service subscriber line shall be the same as the charge for each single line business local exchange service subscriber line.

(g) A line shall be deemed to be a residential line if the subscriber pays a rate for such line that is described as a residential rate in the local exchange service tariff.

(h) A line shall be deemed to be a single line business line if the subscriber pays a rate that is not described as a residential rate in the local exchange service tariff and does not obtain more than one such line from a particular telephone company.

(i) The End User Common Line charge for each multi-party subscriber shall be assessed as if such subscriber had subscribed to single-party service.

(j) The End User Common Line charge for a residential subscriber shall be 50% of the charge specified in § 69.104 (c) and (d) if the residential local exchange service rate for such subscribers is reduced by an equivalent amount, *Provided*, That such local exchange service rate reduction is based upon a means test that is subject to verification.

(k)(1) The End User Common Line charge for residential subscribers shall be reduced to the extent of the state assistance as calculated in paragraph (k)(2) of this section, or waived in full if the state assistance equals or exceeds the residential End User Common Line charge under the circumstances described below. In order to qualify for this waiver, the subscriber must be eligible for and receive assistance or benefits provided pursuant to a narrowly targeted telephone company lifeline assistance program, requiring verification of eligibility, implemented by the State or local telephone company. A state or local telephone company wishing to implement this End User Common Line reduction or waiver for its subscribers shall file information with the Commission Secretary demonstrating that its plan meets the criteria set out in this section and showing the amount of state assistance per subscriber as described in paragraph (k)(2) of this section. The reduction or waiver of the End User Common Line charge shall be available as soon as the Commission certifies that the State or local telephone plan satisfies the criteria set out in this paragraph and the relevant tariff provisions become effective.

(2)(i) The State assistance per subscriber shall be equal to the difference between the charges to be paid by the participating subscribers and those to be paid by other subscribers for comparable monthly local exchange service, service connections and customer deposits, except that benefits or assistance for connection charges and deposit

requirements may only be counted once annually. In order to be included in calculating the state assistance, such benefits must be for a single telephone line to the household's principal residence.

(ii) The monthly state assistance per participating subscriber shall be calculated by adding the amounts calculated in paragraphs (k)(2)(ii)(A) and (B) of this section.

(A) The amount of the monthly State assistance per participating subscriber for local exchange service shall be calculated by dividing the annual difference between charges paid by all participating subscribers for residential local exchange service and the amount which would have been charged to non-qualifying subscribers for comparable service by twelve times the number of subscribers participating in the State assistance program. Estimates may be used when historic data are not available.

(B) The amount of the monthly State assistance for service connections and customer deposits per participating subscriber shall be calculated by determining the annual amount of the reductions in these charges for participating subscribers each year and dividing this amount by twelve times the number of participating subscribers. Estimates may be used when historic data are not available.

(I) In connection with the filing of access tariffs pursuant to § 69.3(a), telephone companies shall calculate for the association their projected revenue requirement attributable to the operation of § 69.104(j) through (k). The association shall add such amounts to the Lifeline Assistance revenue requirement, bill and collect such amounts from interexchange carriers pursuant to §§ 69.116 through 69.117, and distribute the funds to qualifying telephone companies pursuant to § 69.603(d).

(m) No charge shall be assessed for any WATS access line.

7. Section 69.105 (a) and (b) are revised to read as follows:

§ 69.105 Carrier common line.

(a) A charge that is expressed in dollars and cents per access minute of use shall be assessed upon all interexchange carriers that use local exchange common line facilities for the provision of interstate or foreign telecommunications services, except that the charge shall not be assessed upon interexchange carriers to the extent they resell MTS or MTS-type services of other common carriers (OCCs).

(b)(1) The Carrier Common Line charge of association Common Line tariff participants shall be computed by dividing the projected Carrier Common Line revenue requirement of such telephone companies, plus the projected Carrier Common Line revenue requirement of telephone companies that are not association Common Line tariff participants, by the projected annual access minutes of use for all interstate and international services that use local exchange common line facilities and are subject to charges under paragraph (a) of this section. Each minute of use of any local exchange common line by such services shall be counted for purposes of computing this charge. Telephone companies that are not association Common Line tariff participants shall submit to the Commission and to the association whatever data the Commission shall determine are necessary to calculate this charge.

(2) The Carrier Common Line charge(s) of telephone companies that are not association Common Line tariff participants shall be computed at the level of Carrier Common Line access element aggregation selected by such telephone companies pursuant to § 69.3(e)(7). The charge for each such element shall be computed by dividing the projected Carrier Common Line revenue requirement by the projected annual access minutes for all interstate or foreign services that use local exchange common line facilities related to such revenue requirement.

* * * * *

8. Section 69.116 (effective April 1, 1989) is added to read as follows:

§ 69.116 Universal service fund.

(a) A charge that is expressed in dollars and cents per line per month shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services and that have at least:

(1) One percent of the total common lines presubscribed to interexchange carriers in all study areas; or

(2) Five percent of the presubscribed lines in any study area and a minimum of one thousand presubscribed lines in that study area.

(b) The charge shall be computed by the association on a semi-annual basis by dividing one-twelfth of the projected annual Universal Service Fund revenue requirement by the total number of common lines presubscribed to interexchange carriers defined in § 69.116(a). The association shall bill and collect the charge, and disburse

associated revenue, on a monthly basis pursuant to § 69.603(c).

(c) Telephone companies shall provide to the association the data necessary to compute the charge. These data shall include the number of presubscribed common lines in each study area and the number of those lines associated with each interexchange carrier serving that study area. In a study area served by a single interexchange carrier, all common lines shall be considered as presubscribed to that interexchange carrier. Information concerning presubscribed common lines shall be filed with the association on June 30 and January 2 of each year, beginning on January 2, 1989. Presubscribed common line data filed on June 30 shall be calculated as of December 31 of the preceding year, and presubscribed common line data filed on January 2 shall be calculated as of June 30 of the preceding year.

9. Section 69.117 (effective April 1, 1989) is added to read as follows:

§ 69.117 Lifeline assistance.

(a) A charge that is expressed in dollars and cents per line per month shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services and that have at least:

(1) One percent of the total common lines presubscribed to interexchange carriers in all study areas; or

(2) Five percent of the presubscribed lines in any study area and a minimum of one thousand presubscribed lines in that study area.

(b) The charge shall be computed by the association on a semi-annual basis by dividing the sum of one-twelfth of the projected annual Lifeline Assistance revenue requirement and one-twelfth of the projected annual revenue requirement calculated by all telephone companies pursuant to § 69.104(l) by the number of common lines presubscribed to interexchange carriers defined in § 69.117(a). The association shall bill and collect the charge, and disburse associated revenue, on a monthly basis pursuant to § 69.603(d).

(c) Telephone companies shall provide to the association the data necessary to compute the charge. These data shall include the number of presubscribed common lines in each study area and the number of those lines associated with each interexchange carrier serving that study area. In a study area served by a single interexchange carrier, all common lines shall be considered as presubscribed to that interexchange carrier. Information concerning

presubscribed common lines shall be filed with the association on June 30 and January 2 of each year, beginning on January 2, 1989. Presubscribed common line data filed on June 30 shall be calculated as of December 31 of the preceding year, and presubscribed common line data filed on January 2 shall be calculated as of June 30 of the preceding year.

§ 69.202 [Removed].

10. Section 69.202 should be removed.

11. Section 69.203(a) through (c) is revised to read as follows:

§ 69.203 Transitional end user common line charges.

(a) Except as provided in § 69.104 and 69.204, the End User Common Line charge for single line business subscribers, single line residential subscribers, and multi-line residential subscribers shall be the lesser of the charge computed in § 69.104(c) or \$2 per line per month until June 30, 1987; \$2.60 per line per month during the period from July 1, 1987 through November 30, 1988; \$3.20 per line per month during the period from December 1, 1988 through March 31, 1989; and \$3.50 per month thereafter.

(b) The End User Common Line charge for each subscriber line used for Centrex-CO service that was in place or on order as of July 27, 1983, shall be the lesser of the charge computed in § 69.104(c) of \$3 per line per month until June 30, 1987; \$4 per line per month during the period from July 1, 1987 through November 30, 1988; \$5 per line per month for the period from December 1, 1988 through March 31, 1989; and \$6 per line per month thereafter.

(c) No charge shall be assessed for any WATS access line.

* * * * *

12. Section 69.207 is revised to read as follows:

§ 69.207 Interim carrier common line charges.

Notwithstanding §§ 69.203 and 69.205, the transitional premium charges for the Carrier Common Line element shall be computed in accordance with this section during the period commencing June 1, 1986, and concluding November 30, 1988. For purposes of this section, the term "open end" of a call refers to the origination or termination of a call that utilizes exchange carrier common line plant. (A call can have no, one, or two open ends). The transitional premium charges for the Carrier Common Line element shall be expressed in dollars and cents per access minute. The charge shall be 4.33 cents per premium minute for: All terminating premium minutes on

calls with two open ends (e.g., an MTS or OCC MTS-type call); and all WATS-type or FX calls. For purposes of this section, the term "originating-II minutes" refers to originating minutes on calls with two open ends. The charge on premium originating-II minutes shall be computed by subtracting the sum of the projected revenues generated from the 4.33 cents per minute premium charge described above and the corresponding non-premium charge, from the carrier common line revenue requirement and dividing the remainder by the sum of the projected premium originating-II minutes and a number equal to .45 multiplied by the projected non-premium originating-II minutes. For purposes of this section, if the calculations described above result in a negative per minute charge on originating-II minutes, such charge shall be adjusted to equal .00 cents, and the charge of 4.33 cents on terminating minutes shall be lowered accordingly.

13. Section 69.410 is revised to read as follows:

§ 69.410 Other expenses.

Except as provided in §§ 69.411, 69.412, and 69.413, expenses that are not apportioned pursuant to § 69.401 through 69.409 shall be apportioned among the interexchange category and all access elements in the same manner as § 69.309 Other Investment.

14. Section 69.411 is added to read as follows:

§ 69.411 Non participating company payment/receipts.

For telephone companies that are not association Common Line tariff participants, the payment or receipt of funds described in § 69.612(a) through (b) shall be apportioned, respectively, as an addition to or a deduction from their common line revenue requirement.

15. Section 69.412 is added to read as follows:

§ 69.412 Universal service fund expenses.

Expenses allocated to the interstate jurisdiction pursuant to §§ 36.631 and 36.641 shall be assigned to the Carrier Common Line Element until March 31, 1989. Beginning April 1, 1989, such expenses shall be assigned to the Universal Service Fund Element.

16. Section 69.413 is added to read as follows:

§ 69.413 Lifeline assistance expenses.

Expenses allocated to the interstate jurisdiction pursuant to § 36.741 shall be assigned to the Carrier Common Line Element until March 31, 1989. Beginning April 1, 1989, such expenses shall be assigned to the Lifeline Assistance Element.

17. Section 69.501(a) is revised to read as follows:

§ 69.501 General.

(a) Any portion of the Common Line element annual revenue requirement that is attributable to long term support or transitional support shall be assigned to the Carrier Common Line element.

* * * * *

18. Section 69.502 is revised to read as follows:

§ 69.502 Base factor allocation.

The projected revenues from the End User Common Line charges and Special Access surcharges shall be deducted from the base factor portion to determine the amount that is assigned to the Carrier Common Line element. End User Common Line charges that are waived pursuant to § 69.104(j) through (k) shall be included in projected End User Common Line revenues for purposes of this computation.

19. Section 69.601(b) is revised to read as follows:

§ 69.601 Exchange carrier association.

* * * * *

(b) All telephone companies that participate in the distribution of Carrier Common Line revenue requirement, pay long term support to association Common Line tariff participants, or receive payments from the transitional support fund administered by the association shall be deemed to be members of the association.

20. Section 69.603(c) through (f) is added to read as follows:

§ 69.603 Association functions.

* * * * *

(c) The association shall administer the Universal Service charge, including the direct billing to and collection of associated revenues on a monthly basis from interexchange carriers pursuant to § 69.116 and the distribution of these revenues to qualified telephoned companies based on their share of expenses assigned to the Universal Service Factor portion of the interstate allocation pursuant to § 36.631.

(d) The association shall administer the Lifeline Assistance charge, including the direct billing to and collection of associated revenues on a monthly basis from interexchange carriers pursuant to § 69.117, and the distribution of these revenues to qualified telephone companies based on their share of expenses assigned to the Lifeline Assistance Fund pursuant to § 36.741 and of End User Common Line charges associated with the operation of § 69.104(j) through (l).

(e) The association shall annually compute, in accordance with §§ 69.105 and 69.612, the mandatory Long Term Support payment of telephone companies that are not association Common Line tariff participants, bill and collect the appropriate amounts on a monthly basis from such telephone companies, and distribute Long Term Support revenue among association Carrier Common Line tariff participants.

(f) The association shall annually compute, in accordance with § 69.612, the Transitional Support requirement for Level I and Level II Company Receivers, bill and collect the appropriate amounts on a monthly basis from Level I and Level II Contributors, and distribute the Transitional Support requirement among Level I and Level II Receivers.

21. Section 69.604(a) is revised to read as follows:

§ 69.604 Billing and collection of access charges.

(a) Telephone companies shall bill and collect all access charges except those charges specified in §§ 69.116 and 69.117.

* * * * *

22. Section 69.605(a) is revised to read as follows:

§ 69.605 Reporting and distribution of pool access revenues.

(a) Access revenues and cost data shall be reported by participants in association tariffs to the association for computation of monthly pool revenues distributions in accordance with this Subpart.

* * * * *

23. Section 69.612 is added to read as follows:

§ 69.612 Long term and transitional support.

A telephone company that does not participate in the association Common Line tariff shall have computed by the association:

(a) *Long Term Support Obligation.* The Long Term Support payment obligation of telephone companies that are not association Common Line tariff participants shall be equivalent to the difference between the projected Carrier Common Line revenue requirement of association Common Line tariff participants and the projected revenue recovered by the association Carrier Common Line charge as calculated pursuant to § 69.105(b)(1).

(1) For the period from April 1, 1989 through December 31, 1993, the Long Term Support payment obligation shall

be funded by all telephone companies that are not association Common Line tariff participants and do not receive transitional support pursuant to § 69.612(b). The percentage of the total annual Long Term Support requirement paid by each telephone company in this group that is not a Level I or Level II Contributor shall equal the number of its common lines divided by the total number of common lines of all telephone companies paying Long Term Support. The remaining amount of Long Term Support requirement shall be allocated among Level I and Level II Contributors based upon the amount of each Level I and Level II Contributor's 1988 contributions to the association Common Line pool in relation to the total amount of 1988 Common Line pool contributions of all other Level I and Level II Contributors. The association shall inform each telephone company about its mandatory Long Term Support obligations within a reasonable time prior to the filing of each telephone company's annual Common Line tariff revisions or other similar filing ordered by the Commission. Such amounts shall represent a negative net balance due to the association that it shall bill, collect, and distribute pursuant to § 69.603(e).

(2) Beginning January 1, 1994, and thereafter, the Long Term Support payment obligation shall be funded by each telephone company that files its own Carrier Common Line tariff and does not receive transitional support. The percentage of the total annual Long Term Support requirement paid by each of these companies shall equal the number of its common lines divided by the total number of common lines of all telephone companies paying Long Term Support. The association shall inform each telephone company about its mandatory Long Term Support obligation within a reasonable time prior to the filing of each telephone company's annual Common Line tariff revisions or other similar filing ordered by the Commission. Such amounts shall represent a negative net balance due to the association that it shall bill, collect, and distribute pursuant to § 69.603(f).

(b) *Transitional Support.* (1) Telephone Companies categorized as Level I and Level II Receivers that file their own Common Line tariffs effective April 1, 1989 shall receive Transitional Support for a four year period commencing April 1, 1989. Level II Receivers that file their own Common Line tariffs effective January 1, 1990 shall receive Transitional Support for a

four year period commencing January 1, 1990. Transitional Support for each of these telephone companies shall be computed on the basis of its net revenues less revenue requirement amounts for 1988 (adjusted for the additional revenues resulting from an increase in End User Common line charges to \$3.50) Transitional Support for these telephone companies during the transition period shall be as follows:

Year 1—80% of the adjusted 1988 frozen amount

Year 2—60% of the adjusted 1988 frozen amount

Year 3—40% of the adjusted 1988 frozen amount

Year 4—20% of the adjusted 1988 frozen amount

(2) For the period from April 1, 1989 through December 31, 1993, the Transitional Support Fund shall be funded by all telephone companies or groups of affiliated telephone companies that are not association Common Line tariff participants and do not qualify under § 69.612(b)(1) for Transitional Support payments. The percentage of the total annual Transitional Support requirement paid by each telephone company or group of affiliated telephone companies meeting this definition that is not a Level I or Level II Contributor shall equal the number of its common lines divided by the total number of common lines of all companies paying Transitional Support. The percentage of the remaining Transitional Support requirement shall be allocated among Level I and Level II Contributors based upon the amount of each Level I and Level II Contributor's 1988 contributions to the association Common Line Pool in relation to the total amount of 1988 Common Line pool contributions of all other Level I and Level II Contributors. The Association shall inform each Level I and Level II Contributor about its mandatory Transitional Support payment within a reasonable time prior to the filing of each telephone company's annual Common Line tariff revisions or other similar filing ordered by the Commission. Such amounts shall represent a negative net balance due the association from Level I and Level II Contributors that the association shall bill, collect, and distribute pursuant to § 69.603(f).

[FR Doc. 87-12235 Filed 6-5-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 604 and 658

[Docket No. 60585-7090]

Shrimp Fishery of the Gulf of Mexico

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

ACTION: Final rule; notice of OMB control number.

SUMMARY: This rule makes effective a section in the final rule amending the regulations for the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) which modifies for 1987 the area off Texas closed to trawling. The Office of Management and Budget (OMB) has approved the

information collection requirements (ICR) of § 658.5(c).

EFFECTIVE DATE: Section 658.5(c) is effective May 20, 1987.

FOR FURTHER INFORMATION CONTACT: W. Perry Allen, 813-893-3722.

SUPPLEMENTARY INFORMATION: On May 21, 1987 (52 FR 19147), NOAA published a final rule amending the regulations for the FMP, effective May 21, 1987, except that § 658.25(a) is suspended, and § 658.25(c) is effective from May 15, 1987, through August 14, 1987. On May 20, 1987, OMB approved the ICR of § 658.5(c), the reporting requirements for the Texas closure. This notice informs the public of the approval under OMB control number 0648-0176.

Dated: June 2, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

NOAA amends 50 CFR Part 604 as set forth below:

PART 604—[AMENDED]

1. The authority citation for Part 604 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

2. The table in § 604.1 is amended by adding § 658.5(c) to read as follows:

§ 604.1 OMB control numbers assigned under the Paperwork Reduction Act.

50 CFR Part or section where the information collection requirement is located		Current OMB control No. (all numbers begin 0648-)
§ 658.5(c)		-0176

[FR Doc. 87-12948 Filed 6-5-87; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 52, No. 109

Monday, June 8, 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

Food and Nutrition Service

7 CFR Part 251

Temporary Emergency Food Assistance Program (TEFAP); Distribution Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations governing the Temporary Emergency Food Assistance Program (7 CFR Part 251). This amendment would prohibit the distribution of any materials not directly related to participation in or eligibility for TEFAP or other government assistance programs or services. The intent of the proposed rule is to assure that TEFAP participants are not subjected to pressure, or the appearance of pressure, to support various political, social or religious points of view in connection with the receipt of TEFAP commodities.

DATE: To be assured of consideration, comments should be received on or before August 7, 1987.

ADDRESS: Comments should be sent to: Susan Proden, Chief, Program Administration Branch, Food and Nutrition Service, Park Office Center—Room 502, Alexandria, Virginia 22302. Telephone (703) 756-3660.

Comments in response to these proposed rules may be inspected at the address above during normal business hours (8:30 a.m. to 5:00 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, (703) 756-3660.

SUPPLEMENTARY INFORMATION: Any new information collection and recordkeeping requirements contained in this rule are subject to approval by the Office of Management and Budget before becoming effective, in

accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520).

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. Compliance with the provisions in this rule will not have an annual effect on the economy of more than \$100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

This action has been reviewed with regard to the Regulatory Flexibility Act (5 U.S.C. 601 through 612). S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities. This program is listed in the Catalog of Federal Domestic Assistance under 10.568 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and the final rule related notice published at 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

Background

Since the beginning of the distribution of surplus commodities to households in December 1981, the Department has learned that local agencies (emergency feeding organizations (EFO) or the distribution sites under the EFO) that distribute TEFAP commodities have occasionally used the distribution for purposes beyond simply giving food to those in need. For example, there have been instances in which political literature has been handed out with the commodities giving the appearance that the candidate sponsored the distribution. Despite the specific prohibition against such activities found in § 251.10(f), the Department has

become aware that some local agencies have continued to distribute various types of fliers, pamphlets, religious messages and other literature that have no relationship to the distribution of commodities or the availability of other programs targeted to the needy.

The Department is concerned about this practice and does not wish participants to assume that they must accept the literature or other information being distributed in order to receive commodities. Although receipt of the information may be voluntary, participants may believe that their eligibility for TEFAP will somehow be affected if they object to taking the information. In addition, the Department does not wish to convey any implied endorsement of the information being distributed.

The Department believes that participants should be able to receive commodities without also receiving unsolicited literature. Therefore, we are proposing to expand the prohibitions in the TEFAP regulations to encompass any literature not directly related to participation in or eligibility for TEFAP or other government programs for which TEFAP participants may be eligible. The proposed regulations would prohibit distribution of materials about such things as State referenda or constitutional amendments, political candidates, political or social causes or religious doctrines.

The Department in the past has not taken an active enforcement role in this area. Previously, whenever a violation has been brought to our attention, we have asked the State agency in charge of TEFAP distributions to have the violation stopped immediately. Recently, the Department has also asked that State agencies consider terminating agreements with local agencies that distribute unsolicited literature. Despite this new emphasis, the Department is still receiving reports that some local agencies are giving out commodities and unrelated literature simultaneously. To prevent this continued abuse, the Department is proposing that local agencies which violate this policy be terminated from further TEFAP distribution unless the State agency can find no other organization in the area to distribute the commodities. If a violating organization is the only one in an area that could administer the program, the State agency would be required to

monitor distribution to ensure that no further abuses occur.

Since there are several ways to impose sanctions on violators, the Department is particularly interested in public comments in this area and welcomes detailed analysis and suggestions for how to structure the final rules.

List of Subjects in 7 CFR Part 251

Aged, Agricultural commodities, Business and industry, Food Assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Part 251 is proposed to be amended as follows:

PART 251—TEMPORARY EMERGENCY FOOD ASSISTANCE PROGRAM

1. The authority citation for Part 251 continues to read as follows:

Authority: Pub. L. 98-8, as amended; 7 U.S.C. 612c note.

2. Section 251.10(f) is revised as follows:

§ 251.10 Miscellaneous provisions.

(f) *Prohibition against distribution of unsolicited materials.* (1) Emergency feeding organizations and distribution sites shall not distribute or permit distribution of any materials to TEFAP participants which are unrelated to the eligibility for or participation in TEFAP or other government programs or services while conducting distribution of TEFAP foods. This prohibition includes printed information on bags, boxes or other containers in which commodities are distributed. Materials which may not be distributed during TEFAP distributions include, but are not limited to, materials about State referenda or constitutional amendments, political candidates, political or social causes, or religious doctrines. Materials which may be distributed include recipes, information about commodities, dates of future distributions, hours of operations, or other programs or services for the needy and similar information.

(2) *Termination for violation.* Except as provided in paragraph (f)(3) of this section, State agencies shall immediately terminate from further participation in TEFAP operations any emergency feeding organization or distribution site that distributes materials prohibited from being distributed under paragraph (f)(1) of this section.

(3) *Termination exception.* The State agency may withhold termination of an emergency feeding organization's or distribution site's TEFAP participation if the State agency cannot find another emergency feeding organization or distribution site to operate the distribution in the area served by the violating organization. In such circumstances, the State agency shall monitor the distribution of commodities by the violating organization to assure that no further violations occur.

Dated: June 3, 1987.
S. Anna Kondratas,
Acting Administrator.
[FR Doc. 87-13009 Filed 6-5-87; 8:45 am]
BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Parts 907 and 908

[Docket Nos. AO-245-A9 & AO-250-A7]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Recommended Decision on Proposed Amendment of Marketing Orders 907 and 908

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This Recommended Decision invites exceptions on proposed further amendment of Marketing Order Nos. 907 (7 CFR Part 907) and 908 (7 CFR Part 908). The amendment proposals would change the provisions of the marketing orders concerning the structure of the Navel Orange Administrative Committee and the Valencia Orange Administrative Committee. These committees are established under the respective marketing orders for the purpose of administering the programs. The amendment proposals concern committee size and composition, eligibility to serve, eligibility to nominate, the number of concurring votes required to carry committee motions, limitation of tenure for members of the Valencia Orange Administrative Committee, and conforming changes.

DATE: Written exceptions to this recommended decision filed by interested persons must be received by July 8, 1987.

ADDRESS: Interested persons may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Room 1079, South Building, Washington, DC 20250. Four copies of

all written exceptions should be submitted, and they will be made available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523 South Building, Washington, DC 20250, telephone 202-447-5697.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Hearing issued June 4, 1986, and published in the June 6, 1986, issue of the *Federal Register* (51 FR 20664).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this Recommended Decision with respect to proposed further amendment of Marketing Order No. 907 (7 CFR Part 907) regulating the handling of navel oranges grown in Arizona and designated part of California and Marketing Order No. 908 (7 CFR Part 908) regulating the handling of Valencia oranges grown in Arizona and designated part of California, hereinafter referred to collectively as the "orders."

This notice of filing of the Recommended Decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900).

This proposed amendment of the orders was formulated on the record of a public hearing held on June 10-12, 1986, at Visalia, California. Notice of this hearing was published June 6, 1986, in the *Federal Register* (51 FR 20664). The Notice of Hearing contained amendment proposals submitted by Sequoia Orange Company, R.E. Herrick of Belridge Farms and Packing Company, and the Navel and Valencia Orange Administrative Committees established under the orders, hereinafter referred to collectively as the "committees."

Small Business Consideration

The Administrator of the Agricultural Marketing Service has determined that

this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). As stated in the Notice of Hearing, interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the amendment proposals on small businesses.

It is estimated that approximately 125 handlers of California-Arizona navel oranges are regulated under Marketing Order No. 907 and approximately 115 handlers of California-Arizona Valencia oranges are regulated under Marketing Order No. 908. Given an appropriate definition of a small business concern (i.e., for purposes of review pursuant to the RFA, an agricultural service firm with average annual receipts not exceeding \$3,500,000), almost all of the handlers of navel and Valencia oranges would fall within that definition. Thus, few handlers, if any, can be considered large or predominant in a relative or absolute sense.

The Recommended Decision contains several proposals which could give more orange industry organizations representation on the committees. It is proposed to increase the size of the committees from 11 to 13 members and to limit to six the number of members which a central marketing organization, handler, or group of handlers may nominate to serve on each of the committees. It is proposed to limit the number of consecutive terms of office which members of the Valencia Orange Administrative Committee may serve to three two-year terms. (Tenure is already limited to three two-year terms for members of the Navel Orange Administrative Committee.) Also, it is proposed to allow individual handlers or groups of handlers (other than the largest central marketing organization in each industry) to form their own associations for the purpose of nominating committee members. Under the current orders, nominations are made by three fixed groups: The cooperative marketing organization which handles more than 50 percent of total volume; all other cooperative marketing organizations; and, all growers not affiliated with the first two groups. Within the "other cooperative" group, the cooperative which handles the largest volume usually nominates all the member positions apportioned to that group. The proposed change would allow any handler to combine with any other handler or handlers based on mutual agreement for the purpose of forming nominating groups. This would give handlers flexibility to maximize

their opportunities for representation on the committees.

To the extent that these proposals give industry organizations increased representation in the nominating process and on the committees, these organizations could incur some costs. Such costs would include additional time that might be spent by the handler groups and growers in nominating members to the committees and by new committee members in completing qualification statements and acceptance letters as required by the U.S. Department of Agriculture. Another cost would be the time required to attend committee meetings and to conduct other committee business to the extent that these costs might not be fully reimbursable by the committees. However, these costs are not expected to be significant.

Material Issue

The material issue of record is as follows:

Amend the orders to change provisions of the orders concerning the structure of the Navel Orange Administrative Committee and the Valencia Orange Administrative Committee. The amendment proposals concern committee size and composition, eligibility to serve, eligibility to nominate, the number of concurring votes required to carry motions, limitation of tenure for members of the Valencia Orange Administrative Committee, and conforming changes.

Findings and Conclusions

Committee Size

Sections 907.20 and 908.20 should be amended to provide that committee size be increased from 11 to 13 members and that employees of growers could serve on the committees as grower members. Twelve of the members would be growers, employees of growers, handlers, employees of handlers, or employees of central marketing organizations. Each of these members would have two alternates. There would also be one non-industry member with one alternate. Presently, there are six members who are growers, four members who are handlers, employees of handlers, or employees of central marketing organizations, and one non-industry member. The grower and handler members have two alternates, and the non-industry member has one alternate.

Enlarging the committees would increase the opportunity for representatives of more industry organizations to serve on the

committees as well as expand the information base available to committee members and staff. These factors would improve the decisionmaking process of the committees. A number of other marketing order committees, namely the Lemon Administrative Committee, the Florida Citrus Administrative Committee, and the Texas Valley Citrus Committee, have 13 or more members.

Thirteen-member committees would better reflect the diversity of the industry and yet provide a workable forum for the expression of views. Hearing testimony indicates that larger committees would also help ensure that a variety of viewpoints are adequately and accurately communicated to Department officials both in the field offices and in Washington, DC. There are several thousand orange growers and 115 to 125 orange handlers, each with its own perception of the market, its unique sources of data, differing marketing needs, and diverse objectives. Adding two additional members would further increase the viewpoints and have the very desirable goal of affording more marketing entities in the industry with some formal voice in industry decisionmaking.

The only objections in the hearing record on increasing the size of the committees were (1) the additional cost and (2) that increasing the size of the committees would serve no positive purpose. The cost of adding two additional members and their respective alternates is quite insignificant when compared to the overall budgets of the two committees and when compared to the benefits that would be derived. The preponderance of testimony indicates that there would be significant benefits derived from adding members to the committees, and that some smaller industries have larger committees. Thus, increased representation appears to be highly desirable.

The number of grower members and the number of handler members would no longer be specified in §§ 907.20 and 908.20. The number of grower and handler members would be apportioned as provided under the recommended provisions for §§ 907.22 and 908.22. Under these provisions, the first position nominated by a nominating group would be a grower position; the second position nominated by a nominating group would be a handler position; the third position nominated by a nominating group would be a grower position; and so forth. Such an apportionment would provide that at least half of the members are grower members.

To provide that a member, alternate, or additional alternate truly represents the group that nominated such individual, each member, alternate, and additional alternate would become ineligible to serve in the event that such individual is no longer affiliated with the group that nominated such individual.

There was one proposal to require that 13-member committees be composed of nine grower members, three handler members, and one non-industry member. This proposal would give growers a "super majority" on the committee because growers are the intended beneficiaries of marketing orders and because handlers may have interests which are adverse to those of growers. However, the recommended method of apportioning grower and handler member positions is designed to provide a reasonable balance between grower and handler members.

Regarding the provision that employees of growers may serve on the committees as grower members, hearing testimony indicates that approximately half of the navel and Valencia orange acreage in the production areas belongs to absentee owners. These individuals often live too far away to participate in committee deliberations and are not close enough to their businesses to have intimate knowledge of daily or weekly marketing and production situations. There was also testimony that some absentee growers deed a few acres to their employees so that the employees will be eligible to serve on the committees. The employees who are on-site would be good spokespersons for the interests of the growers and would be knowledgeable of the weekly marketing needs of their organizations. Permitting employees of growers to serve on the committees as grower members would allow more grower interests to be communicated in committee decisionmaking and prevent the necessity of deeding land to such employees in order that the growers be represented. The spectrum of thought available for committee decisionmaking would be greatly increased by broadening the base of grower representatives available to serve on the committees.

Another proposal to change §§ 907.20 and 908.20 involved the so-called non-industry member and alternate. It was proposed that the non-industry member be redesignated as the "public" member and that the Secretary consider suggestions for non-industry representatives from the industry at large and from the general public as well as from the committees. The proposal

further stated that non-industry representatives should not have had at any time any direct or indirect economic interest in the industry and that non-industry representatives have "consumer credentials." The current selection process allows (but does not require) the Secretary to consider individuals other than those nominated by the committees. Also, it would be difficult to implement the other requirements in the proposal. Therefore, no change in the qualification or selection criteria for non-industry members is included in this decision.

To maintain viable committees during the period between when the amendments become effective and when newly structured committees are selected by the Secretary, members currently serving on the committees would be authorized to serve until new members could be nominated by the industry and selected by the Secretary under the new committee structure.

There is precedent for permitting holdover members to serve during the period between when an order is amended and when a new committee can be selected. A similar approach was taken when the administrative committee under the filbert/hazelnut marketing order (7 CFR Part 982) was enlarged and membership criteria changed effective August 19, 1986 (51 FR 29545).

Interim Procedures

In order to facilitate the restructuring of the Navel and Valencia Orange Administrative Committees as described in this decision, the Department plans to implement interim procedures by which the initial nominations would be made. The Department invites comments on and/or proposals for interim procedures which will be reviewed prior to the issuance of any interim procedures.

At such time as the marketing orders would be amended, the committees would recommend to the Secretary rules and regulations to implement the provisions of the recommended amendments.

Tenure

Section 907.21 would be amended to delete the last sentence which reads as follows: "Members of the committee who have served three consecutive two-year terms as of October 1, 1984, are not eligible to serve on the committee as a member, alternate member, or additional alternate member until October 1, 1986." This sentence was part of the January 1985 amendment of the order, and it was necessary at the time to specify how the tenure limitation of three terms would be implemented.

However, this sentence no longer serves any constructive purpose since the effective date has now passed, and the tenure limitation has been fully implemented.

Section 908.21 is proposed to be amended to include a provision for limiting the tenure of Valencia Orange Administrative Committee members, including the non-industry member, to three terms. Current provisions of the order do not limit the number of two-year terms that members may serve. However, to promote increased industry participation and involvement in the administration of the Valencia orange marketing order, it is concluded that a limitation on the maximum number of consecutive terms of office is appropriate.

It would serve no useful purpose to limit the tenure for alternates or additional alternates because alternates serve only during the absence of a member or in the event of a member's death, removal, resignation, or disqualification. However, under this provision, grower members would be precluded from serving as handler members, and *vice versa*; to extend their eligibility to serve.

A similar tenure limitation proposal did not receive the requisite support of Valencia orange growers in the referendum conducted in August 1984. However, tenure limitation was favored by navel orange growers and was implemented in January 1985 for Navel Orange Administrative Committee members. The preponderance of hearing testimony indicates that growers should have the opportunity to reevaluate their position on this issue since the 1984 referendum and that regular turnover of members on the committee would provide for a beneficial input of new ideas and perspectives. Testimony also supports making the limitation retroactive to February 1, 1984, so that individuals having served three consecutive terms as of January 31, 1990, would not be eligible to serve as a member, alternate, or additional alternate until the term of office which begins on February 1, 1992. This would be consistent with the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (January 25, 1982) on this issue. The guidelines state that establishing a limit on tenure would "improve representation (on the committees) and allow for different and more contemporary ideas. In this view, the Secretary will require that all committee membership be limited in tenure."

If the committees are restructured under the terms of this Recommended

Decision, nominations would be conducted (as indicated in the previous section of this decision) to provide nominees for each position on each committee. During the nomination process, eligibility determination would include, in part, the number of years, if any, each nominee had served on the committee for which such nominee is nominated, i.e., each nominee's tenure status.

There is the possibility that such nominations could be conducted in the middle of the current terms. The current term of office for the Navel Orange Administrative Committee ends on September 30, 1988. Should nominations pursuant to this proposed amendment be made and members selected to the Navel Orange Administrative Committee prior to the end of this term, two short terms of office would be created. It does not seem appropriate to count both partial terms as full terms under the tenure limitation provision. In addition, it would not be desirable to delay nominations pursuant to this proposed amendment until late 1988 when the next regular term would begin. Therefore, the partial term of office which exceeds 12 months would be considered a full term of office in applying the tenure provision, and the partial term of office of less than 12 months would not be considered a full term in applying the tenure provision. This would ensure that an individual serving the shorter of the two partial terms would not be penalized, so to speak, by losing one third of that member's three-term eligibility simply because the committee was restructured. In the case of an individual who has served three terms on the committee and must "sit out" a term, this member would be expected to "sit out" for the longer of two terms to regain eligibility to serve as a member on the committee.

The current term of office for members of the Valencia Orange Administrative Committee, on the other hand, expires in early 1988 (January 31). Therefore, a different situation exists. It is recommended that nominations for the initial term of office for the Valencia Orange Administrative Committee would begin on February 1, 1988, the beginning of the next regularly scheduled term of office. With this approach, there would be no problem in applying the tenure provision. Both the 1986-88 term under the current committee structure and the 1988-90 term under the proposed committee structure would be full terms.

Nomination Procedures

The proposed amendment of §§ 907.22 and 908.22 contains the mechanics for nominating members to fill the 13 positions specified in §§ 907.20 and 908.20. Sections 907.22 and 908.22 describe the types of entities eligible to nominate members to the committees and prescribes formulas for deciding how many members each entity may nominate and which nominees must be growers and which nominees must be handlers.

Under current order provisions (§§ 907.20 and 908.20), there are six grower members and their alternates, four handler members and their alternates, and a non-industry member and alternate on each committee. These members are nominated pursuant to §§ 907.22 and 908.22 as follows. For both the navel and Valencia orange committees, the cooperative marketing organization, or the growers affiliated therewith, which handles more than 50 percent of the total volume of oranges handled in fresh domestic channels, including Canada, is entitled to nominate three grower members and two handler members, and their respective alternates and additional alternates to the committee. Until the committees were reapportioned in 1986, other cooperative marketing organizations were entitled, collectively, to nominate one grower member, one handler member, and their respective alternates. Independent growers were entitled to nominate two grower members, one handler member, and their respective alternates. Under the navel orange program, nomination of independent members is accomplished by mail balloting.

Reapportionment is currently provided for in §§ 907.29(n) and 908.29(n). Membership of both the navel and the Valencia orange committees was reapportioned to more accurately reflect the proportionate share of navel and Valencia oranges, respectively, handled by the respective types of marketing organizations operating under the marketing orders (51 FR 9626, March 20, 1986, for the Valencia Orange Administrative Committee and 52 FR 29183, January 30, 1987, for the Navel Orange Administrative Committee). In both reapportionments, the number of members representing the other cooperative marketing organizations was increased from two to three, and the number of members representing independents was decreased from three to two. However, neither marketing order provides for reapportioning membership on the committees when the largest cooperative marketing

organization no longer handles more than 50 percent of the total volume of oranges handled in fresh domestic channels, including Canada, under each program. This possibility was a principal reason for the hearing on committee structure.

The proposed committee structure negates the need for separate provision in the marketing orders for reapportioning seats on the committees between cooperatives and independents, between growers and handlers, and if the largest cooperative marketing organization no longer handles in excess of 50 percent of the fruit handled under each marketing order. The proposed nominating procedure, in effect, provides for reapportionment on a continual basis in two-year intervals. In other words, the nominations for members for each two-year term of office will reflect the proportionate share of each marketing entity as of the previous fiscal (navel oranges) or marketing (Valencia oranges) year. Committee membership would automatically respond to changes in the navel and Valencia orange industries. As the industries gradually change, so would the committees.

Proposed paragraph (a) of §§ 907.22 and 908.22 specifies three main categories of nominating entities which would supersede paragraphs (b), (c), and (d) of current §§ 907.22 and 908.22. The first entity would be the central marketing organization or, at the option of that organization, the growers affiliated with that organization, which disposed of the largest percentage of the total volume of navel and Valencia oranges disposed of by all handlers in all outlets during the fiscal (navel oranges) or marketing (Valencia oranges) year prior to that in which the nominations are made (§§ 907.22(a)(1) and 908.22(a)(1)). This differs from current order provisions in that this nominating entity represents the central marketing organization with the largest percentage of total dispositions rather than the cooperative marketing organization which handled more than 50 percent of the total volume of oranges handled, as currently provided in §§ 907.22(b) and 908.22(b). By removing the "in excess of 50 percent" requirement, the proposed provision eliminates the present problem of no mechanism whereby the largest central marketing organization may nominate individuals to serve on the committees if it happens to handle less than 50 percent of the total volume. The number of grower and handler members this entity may nominate is discussed elsewhere in this decision.

The second major change found in §§ 907.22(a)(1) and 908.22(a)(1) of this proposal is that the volume basis for determining nominating rights would be the total volume of oranges "disposed of in all outlets" rather than the total volume of oranges "handled in fresh domestic channels, including Canada." Total dispositions to all outlets would include by-products, animal feed, charitable donations, and exports in addition to fresh domestic shipments. Direct testimony indicates that such a change would be in line with the tree crop basis which is used for determining prorate bases and allotments. Further, while exported fruit and fruit that is processed into juice or otherwise utilized is not regulated under the marketing orders, the market for such fruit and subsequent disposition of such fruit have an impact upon the fresh domestic market and committee deliberations on the need for and level of regulation. In addition, if only fresh domestic shipments are used in determining nominating rights, the rights of an individual or group could be voided by an unusual event, such as a freeze, which could affect the suitability of fruit for the fresh market but not for other outlets.

The recommendation for using total dispositions as a basis for nominations and apportionment of committee members varies slightly in terminology from the committee proposals which were published in the Notice of Hearings. The committee proposals specified the total volume handled by all handlers in all outlets. However, a committee witness testified that all fruit which is run through a packinghouse should be included. This indicates that a more inclusive definition than "volume handled" was intended by the committee proposals since both marketing orders define "handle" to refer only to fruit placed into domestic channels. Therefore, this Recommended Decision uses the broader term of total dispositions, which more accurately reflects the intent of the committee proposals.

Objections raised at the hearing to using the total volume of oranges disposed of in all outlets as the basis for determining nominating rights include the fact that only fresh domestic shipments are regulated. Since only fresh domestic shipments are regulated and since assessments for the administration of the orders are collected only on regulated shipments, the argument presented was that only individuals who are regulated and who pay assessments should be eligible to nominate members to serve on the

regulatory bodies established under the order. Another argument presented by a witness against determining nominating rights on the basis of total dispositions was that information on fruit utilized in outlets other than the fresh domestic market might be difficult to verify.

It is the Department's position that the use of total dispositions in all outlets would more accurately reflect each entity's proportion of the industry and impact on the industry in general. Further, this provision would increase the potential for each committee as a whole to reflect the industries as a whole. It is not desirable to require an individual entity to have paid a specified amount of assessments in order to have the right to participate in the nomination process or committee deliberations. In fact, growers, who do not pay assessments, are currently entitled to membership on the committee. In order for the committees to make decisions for the benefit of the industry at large, it is necessary for the committees to have at their disposal in the decisionmaking process the experience and knowledge of the industry at large. Further, the orders currently require, under §§ 907.70 and 908.70, handlers to report to the committees shipments of fruit not subject to regulation. Safeguards are currently in effect under each order to verify that such shipments do not enter fresh domestic marketing channels. Therefore, the committees can verify information on dispositions to non-fresh-domestic-market outlets.

One proposal recommended that nominating rights be determined in direct proportion to the average of the volume of fresh domestic shipments in each district during the two preceding fiscal years. At the hearing, one witness stated that using a two-year average would compensate for the great fluctuations in Valencia orange production that can occur because Valencia oranges are alternate bearing, i.e., large crops alternate with small crops. However, all Valencia orange producers are similarly affected by this characteristic of the Valencia orange variety, and it is not likely that this aspect of the nature of the fruit would have a significant effect upon any industry organization's proportion of fresh domestic shipments or total dispositions. Therefore, there is no apparent advantage to using a two-year average in determining nominating rights or allocating positions on the committee. In fact, there may be a disadvantage to using a two-year average. Averaging two years' dispositions would lessen the effects of

any change in industry composition. One segment of the industry might be declining while another would be increasing. Such averaging could reduce the effects of this change and limit the nominating rights of the growing industry segment while protecting the nominating rights of the declining segment.

Further, this decision provides that nominating rights be determined on the basis of each nominating entity's percentage of total dispositions during the fiscal or marketing year prior to that in which nominations are made. Currently, the marketing orders prescribe that this calculation be made on the basis of the current fiscal or marketing year. In the case of both navel and Valencia oranges, it has often been necessary to use the information on shipments for a partial year in order to ensure that nominations are made in time to select a new committee in a timely manner. The committees, therefore, initially proposed that the calculations be made on the basis of the immediately preceding (full) fiscal or marketing year. At the hearing, the committees revised their position and proposed a different period for calculating total dispositions. However, the committees' revised proposal would not provide adequate time to conduct nominations under this Recommended Decision. Thus, the Recommended Decision prescribes the use of the statistics for the latest full year. This approach precludes the possibility that late season shipments could affect a nominating entity's percentage. It also provides a sufficient period of time to conduct nominations after the percentages are computed on the basis of a full year and before the term of office begins.

The second type of nominating entity under this proposal would be declared individual handlers and declared groups of handlers. Handlers not affiliated with the largest central marketing organization would be eligible to file a declaration as a nominating entity. On the basis of such declared handler's percentage of the total volume of fruit disposed of by all handlers in all outlets during the fiscal or marketing year prior to that in which nominations are made, such declared handler would be entitled to nominate members to the committees. If the declared handler is a Capper-Volstead cooperative, the nominations for grower members could be made by a resolution of the board of directors of the cooperative or by members growers, at the option of the cooperative. If such declared handler is an independent entity, the growers who deliver fruit to

such entity would nominate grower members to the committees. Declared groups of handlers which are comprised of solely Capper-Volstead cooperatives or solely independent handlers would nominate grower members to the committees on the same basis as declared individual Capper-Volstead cooperatives or independent handlers, respectively. However, when a declared group of handlers is comprised of a combination of Capper-Volstead cooperatives and independent handlers, all nominations of grower members are to be made by the growers affiliated with those handlers. All types of declared individual handlers and declared groups of handlers would be eligible to nominate handler members. There would be no limit on the number of nominating entities (declared individual handlers or declared groups of handlers). However, no handler would be eligible to participate as a member of more than one nominating entity.

The committees proposed that only declared handlers and members of declared groups of handlers would nominate grower and handler members from their respective entities and that such nominations would be ratified by the growers affiliated with such entities. However, prohibiting cooperative marketing organizations' boards of directors from voting for their members would be a significant departure from current, well established procedures. Cooperative boards of directors are composed of growers and are elected by the grower members of each cooperative. The boards normally take actions on behalf of the growers in the cooperative. Requiring growers to ratify the nominations made by a resolution of a cooperative's board of directors would be contrary to the duties and powers already granted them by their members. For this reason, grower ratification of cooperative handler nominations would not be required, and all grower member nominations from declared independent handlers, declared groups of independent handlers, and declared groups of independent and cooperative handlers would be voted upon by the growers who deliver fruit to such declared handlers or groups of handlers. It is reasonable to require nominations from declared groups which contain both independent handlers and cooperative handlers to be made by the growers delivering to such handlers. Allowing a cooperative's board of directors to vote for its entire membership in this instance could give more "weight" to a cooperatives' vote since not all growers who deliver fruit to

the independent handler may choose to vote. Cooperative and independent handlers willing to unite into a declared nominating group would be expected to share enough similar goals that this requirement would not be burdensome and would be equitable to all of their growers.

Evidence presented at the hearing supported the concept of guaranteeing that growers retain the ultimate right and responsibility for the nomination of committee members. Since the coalitions would be formed by handlers and not by growers, the provisions for grower voting described above are found to provide the best means of maximizing the growers' role in the nominating process. For the same reason, growers would nominate only grower members. Handler members would be nominated by declared individual handlers and declared groups of handlers. In the case of declared Capper-Volstead cooperatives, the cooperatives' boards of directors would have the opportunity to nominate grower members.

The recommended amendment of §§ 907.20 and 908.20 provides that any handler or grower member, alternate, or additional alternate would be disqualified if such person ceases to be affiliated with the group that nominated such person. However, any declarations made by individual handlers and groups of handlers would be irrevocable for one term (two years). This restriction is intended to provide that membership on the committees would be relatively stable for the duration of a full term of office. It is also intended to provide that vacancies which occur during any given term would be filled from the nominating group that nominated the person who leaves the committee during that particular term. Declared groups of handlers, however, would be permitted to "re-group" for the purpose of making nominations for each full term of office.

This nomination method would solve several problems inherent in current order provisions for the second category of membership on the committees. Currently, the larger "other cooperatives" usually develop a slate of candidates for all the positions in this category of membership. Under the recommended process, smaller cooperatives could declare themselves as a nominating group and be entitled to nominate one or more members of the committees, depending upon their combined percentage of total orange dispositions for the previous fiscal or marketing year. The recommended process would also eliminate the potential inequity of apportionment of

"other cooperative" and independent member seats which occurs when "other cooperatives" as a whole and independents as a whole handle roughly the same volume of fruit. Under current order provisions, "other cooperatives" are entitled to three seats on the committees, and independents are entitled to only two seats on the committees when "other cooperatives" handle only slightly more oranges than the independents.

Further, the recommended nominating groups and membership categories eliminate the necessity of defining the term "cooperative." There is confusion in the industry over the definition of a "cooperative marketing organization." Until recently, the orders included only a definition for "central marketing organization." In order to clarify which handlers were considered in the "other cooperative" category and which would be considered independents, a new section (§§ 907.104 and 908.104) was added to the rules and regulations of the orders, effective January 13, 1986, to include a definition of a "cooperative marketing organization" (50 FR 5071, December 12, 1985). However, this action has not completely settled the controversy. Permitting handlers to declare individually or in groups, regardless of whether they would be considered cooperative or independent under current order provisions, would dispel the issue and, at the same time, help ensure fair representation on the committees.

For nominating entities comprised of the largest central marketing organization, declared individual handlers, and declared groups of handlers, the number of grower members and/or handler members to be nominated would be as follows:

Number of members nominated by a nominating entity	Type of membership
1.....	1 grower.
2.....	1 grower, 1 handler.
3.....	2 growers, 1 handler.
4.....	2 growers, 2 handlers.
5.....	3 growers, 2 handlers.
6.....	3 growers, 3 handlers.

The third, and last, category of nominating entities would be comprised of the growers who are not affiliated with the largest central marketing organization or with any of the declared individual handlers or declared groups of handlers. All members nominated by these entities would be grower members. There was testimony presented at the hearing that if the growers in this third category did not represent enough volume to be entitled

to nominate one member they would be disenfranchised. However, such group of growers would be eligible to earn nominating rights under a proposed provision which is discussed later in this section.

Revised paragraphs (b) and (c) of §§ 907.22 and 908.22 would limit to six each the number of members, alternate members, and additional alternate members which any entity in the first two categories of nominating entities may nominate. Some form of limitation on the number of members any one entity could nominate was favored by all proponents at the hearing, and testimony was offered in opposition to such a limitation. The committees proposed limiting the number of members any of the new entities proposed by this action could nominate to five based on 11-member committees. The Sequoia Orange Company proposed limiting the number of members which the major cooperative marketing organization and all other cooperative marketing organization categories from the current orders could nominate to six based on 13-member committees. Belridge Farms and Packing Company proposed limiting the number of members which any one of the three nominating categories from the current orders could nominate to six based on 13-member committees. The major reason given at the hearing for such limitation was that no one industry entity should dominate a committee to the extent that it could control the setting of weekly prorate regulations.

Limiting to six the number of members which any entity may nominate except the unaffiliated grower entity, would conform to the hearing testimony by preventing any one of those entities from controlling a majority of the seats on either of the proposed 13-member committees. However, evidence suggests that the entity composed of growers who are not affiliated with the largest central marketing organization or with any of the declared individual handlers or groups of handlers should not be limited in the number of members it may nominate. This entity would be composed of growers who deliver to handlers who choose not to participate in the nomination process. These growers would form an entity by default and would not represent an organized group. It is unlikely that committee members nominated by this entity would vote in a bloc. Moreover, in the unlikely event that the largest central

marketing organization's percentage of total dispositions is small and no individual handlers or groups of handlers declare, the largest central marketing organization could earn the right to nominate a disproportionately large number of members under the remainder provision (discussed below) if the unaffiliated grower entity is limited to six members.

Proposed §§ 907.22(b) and 908.22(b) provide that each nominating entity shall earn the right to nominate one member, plus one alternate member and one additional alternate member, for each 8.33 percent (rounded to the nearest hundredth) attributable to such

50%—(excess over 50%)

6

This formula is necessary due to the six-member limitation. Under the method whereby an entity earns the right to nominate one member for each 8.33 percent of total dispositions, such entity would reach the six-member limit at 50 percent of total dispositions. If such entity controls more than 50 percent of total dispositions, the amount above 50 percent could not be used by the entity to earn further committee representation. In this case, rights to nominate the remaining six members should be apportioned over the remaining volume of dispositions, which would equal less than 50 percent of total dispositions. The above formula would provide an entity with rights to nominate one member, plus one alternate and one additional alternate, for each one-sixth of the remaining volume of total dispositions controlled by such entity. (See Example III below.)

These bases for determining nominating rights are identical to those proposed by the committees at the hearing, except that adjustments have been made to adapt the committee proposals to 13-member committees. This decision recommends adoption of these bases because they require entities to have the same volume of dispositions to earn the right to nominate each member within the confines of the six-member limitation. Other proposals presented at the hearing provide that the volume required to nominate each member would vary among nominating categories or within the same category depending on the number of members to be nominated.

The bases for determining nominating rights discussed so far would ensure

entity of total volume of oranges disposed of by all handlers in all outlets during the fiscal year (navels) or marketing year (Valencias) prior to that in which nominations are made. This method would apply when no entity in the largest central marketing organization category or the declared handlers or groups of handlers category has more than 50 percent of total dispositions. When one of these entities has more than 50 percent of total dispositions, the following formula would be used to determine the percentage required to nominate each member:

Percentage required to nominate one member, one alternate, and one additional alternate

that no more than 12 industry members would be nominated to serve on each committee. However, these bases could result in the allocation of rights to nominate less than 12 industry members. In this case, if one additional member, plus alternate and additional alternate, remains to be nominated, the right to make such nomination should belong to that nominating entity which has the largest volume percentage in excess of its volume percentage used initially to earn nominating rights. If a second member, plus alternate and additional alternate members, remains to be nominated, the right to make such nomination should belong to that nominating entity which has the second largest volume percentage in excess of its volume percentage used initially to earn nominating rights. This process should continue until the rights to nominate all remaining committee positions are allocated. All entities should be eligible to compete for these remaining positions except for entities which have already reached their six-member limit. Entities which did not dispose of a sufficient volume to obtain rights to nominate a member under the initial allocation process would be eligible to compete for a member under this remainder process.

Several examples should help to clarify how the total allocation process would operate.

Example I: The largest central marketing organization (Group A) controls 46 percent of total dispositions, three declared handler entities (Groups B, C, and D) control 20 percent, 11 percent, and 16 percent, respectively, and the unaffiliated growers (Group E) control 7 percent.

EXAMPLE I

Groups	A	B	C	D	E	Totals
Percent controlled.....	46	20	11	16	7	100% dispositions.
Number of seats allocated based on 8.33% per seat.....	5	2	1	1	0	9 seats.
Excess percentage.....	5.33	3.33	2.67	7.67	7.00	
Additional seats allocated.....	1	0	0	1	1	3 remaining seats.
Totals.....	6	2	1	2	1	12 seats.

Example II: The largest central marketing organization (Group A) has control of 30 percent of total dispositions, there are no declared handler groups, and the unaffiliated growers (Group B) control 70 percent of total dispositions. There is no limit to the number of members which the unaffiliated growers may nominate.

EXAMPLE II

Groups	A	B	Totals
Percent controlled.....	30	70	100% dispositions.
Number of seats allocated based on 8.33% per seat.....	3	8	11 seats.
Excess percentage.....	5.00	3.33	
Additional seats allocated.....	1	0	1 remaining seat.

50%—(excess over 50%)

6

Percentage required to nominate one member, one alternate, and one additional alternate

The formula is solved as follows:

$$\frac{50\% - 8\%}{6} = 7.00\%$$

The number of seats which the largest central marketing organization may nominate is limited to six.

EXAMPLE III

Groups	A	B	C	D	Totals
Percent controlled.....	58	24	7	11	100% disposition.
Number of seats allocated based on 7% per seat.....	6	3	1	1	11.
Excess percentage.....	3.00	0.00	4.00		
Additional seats allocated.....	0	0	1		1 remaining seat.
Totals.....	6	3	1	2	12 seats.

All positions on the committees would continue to be apportioned by industry affiliation alone, and not on a basis of both industry affiliation and district representation. A proposal to base membership on industry affiliation and district representation was explored at the hearing. Testimony indicates that,

EXAMPLE II—Continued

Groups	A	B	Totals
Totals.....	4	8	12 seats.

Example III: The largest central marketing organization (Group A) controls 58 percent of total dispositions, two declared handler groups (Groups B and C) control 24 percent and 7 percent of total dispositions respectively, and the unaffiliated growers (Group D) control 11 percent of dispositions. Because the largest central marketing organization controls more than 50 percent of total dispositions, the percentage required to nominate each member, plus alternate and additional alternate, is calculated as follows:

under this proposal, as many as 12 different nominating groups could be formed, and the proposal specified that the Secretary would determine the rights of each group. Evaluation of the proposal shows that these rights could be assigned in a variety of ways and still meet all of the proposed requirements. Also, a district with a low volume of shipments would be combined with another district so that the proposed benefit of providing representation for each district could be compromised. However, the procedures recommended in this decision could be implemented more precisely than the procedures outlined in the affiliation-district proposal. Each individual entity's nominating rights would be evident as soon as such entity received the information on its percentage of total dispositions. The entity could refer to the order language and the implementing rules and regulations to determine such entity's nominating rights, and handler coalitions could be formed accordingly with a minimum of delay and confusion. Further, handler groupings could be formed on an

intradistrict basis to provide nominees with district affiliation.

Revised paragraph (e) of §§ 907.22 and 908.22 would provide that all nominations made by growers, on behalf of themselves or on behalf of the largest central marketing organization, declared individual handlers, or declared groups of handlers, would be accomplished by mail balloting. Mail balloting is currently provided for the nomination of independent grower and handler members and alternates under § 907.22 of the navel orange marketing order. The procedures for conducting such mail balloting are specified in § 907.102(a)(3) of the rules and regulations of the order (50 FR 34076, August 23, 1985). This provision would be the basis for the formulation of mail balloting procedures to be developed to implement amended §§ 907.22 and 908.22.

Direct mail balloting of growers would be more efficient than conducting nominations by handlers which would subsequently be ratified by growers via mail balloting. Also, holding nomination meetings to ensure representation for three to four thousand growers would be ineffective, costly, and difficult to arrange. Requiring voting by mail ballot for growers would help ensure that each grower is accorded the voting rights to which such grower is entitled. In order to provide growers with information on the candidates, mail ballots could include background information on each candidate.

Each grower would be entitled to cast one vote on behalf of such grower, the grower's agents, subsidiaries, affiliates, and representatives, as currently provided in paragraph (e) of §§ 907.22 and 908.22. If a grower delivers fruit to more than one declared handler or group of handlers, the grower would vote for grower members to represent the nominating entity to which the grower delivered the greatest volume of fruit. In the unlikely event that a grower made identical shipments to two declared handlers or groups of handlers, the grower would choose one entity and vote for grower members to represent only that one entity. A grower not affiliated with the largest central marketing organization and not affiliated with any declared handler or any declared group of handlers would be entitled to cast one vote for each position in the balloting conducted to nominate the number of grower members allocated to the nominating entity which is comprised of all such growers.

The proposal to weigh each grower's vote on the basis of each grower's production would provide growers with

greater production a greater voice in the nominating process than those with less production. However, the California-Arizona navel and Valencia orange industries consist of essentially small entities, and under the orders it has been the custom for each grower to have an equal vote in elections. Weighing the votes of growers could subordinate the interests of smaller growers to those of larger growers in committee decisionmaking. Therefore, the provision entitling each grower one vote would remain unchanged.

Paragraph (f) of §§ 907.22 and 908.22 would be simplified in light of the proposed revision of §§ 907.20, 907.22, 908.20, and 908.22 and for the sake of clarity. The non-industry member and alternate would be nominated by members of the committee who were nominated according to the above-described procedures and were selected by the Secretary. The orders provide that the Secretary shall set the date for the committees to nominate the non-industry members and alternates. However, it is expected that the newly structured committees would make such nominations at the first meeting after their selection.

Paragraph (g) of §§ 907.22 and 908.22 would be revised in its entirety. Paragraph (g) currently provides that grower and handler members, alternates, and additional alternates "may be reallocated pursuant to" paragraph (n) of §§ 907.29 and 908.29. The language in paragraph (g) of §§ 907.22 and 908.22 as well as that in paragraph (n) of §§ 907.29 and 908.29 would be obsolete should this Recommended Decision be implemented for the reasons stated herein.

Revised paragraph (g) would specify that the committees shall recommend and the Secretary shall establish procedural rules and regulations to implement the recommended amendment of §§ 907.22 and 908.22. This provision would render paragraph (a) of the current §§ 907.22 and 908.22 obsolete. Presently, paragraph (a) provides that the Secretary shall prescribe the time and manner of nominating members.

Direct testimony from several witnesses supported the concept of developing the procedures for implementing amended §§ 907.22 and 908.22 by informal rulemaking. The procedures need to be flexible enough to meet changing industry needs. In addition, the current rules and regulations on nominating procedures and selection criteria (§§ 907.102, 907.104, 908.102, and 908.104) would need to be revised to delete provisions that would be inconsistent with the

amended marketing orders and to add provisions to implement certain provisions of the amended marketing orders. Therefore, this Recommended Decision prescribes that the procedures for implementing the provisions of §§ 907.22 and 908.22 be developed by informal rulemaking. As stated previously, however, interim procedures for the conduct of the initial nominations will be set forth in any forthcoming Secretary's decision. Establishing interim procedures would facilitate the restructuring of the committees.

The proposals considered at the hearing based committee structure on large nominations by industry affiliation or on district nominations by affiliation. This decision, made on the proposals and evidence presented at the hearing, recommends at large nominations by affiliation, with a flexible framework for apportioning membership among segments of the industry based upon their relative dominance in the industry.

Conforming Changes

For the purpose of clarifying the terms of this proposal, a definition of "Capper-Volstead cooperative" would be added to the orders. Such a definition is found in current §§ 907.104(a)(1) and 908.104(a)(1) (i.e. "an association of producers that is qualified under the provisions of the Act of the Congress of February 18, 1922, known as the 'Capper-Volstead Act,' (7 U.S.C. 291, 292)). Therefore, the definition would be moved from §§ 907.104 and 908.104 to new §§ 907.19 and 908.19a and current §§ 907.104 and 908.104 would be deleted.

Minor conforming changes would be made to §§ 907.23, 907.24, 907.27, 908.23, 908.24, and 908.27.

Current §§ 907.26 and 908.26 (Vacancies) would be amended so that they would conform with the proposed nomination process. That is, these sections would specify that vacancies be filled through nominations by the same nominating entity which nominated the person who vacates a position. This would provide continuity of representation on the committees for a given term. In addition, the sentence that specifies that the Secretary may fill any vacancy on the committees without regard to nominations "if the names of nominees to fill any such vacancy are not made available to the Secretary within 15 days after such vacancy occurs" would become impossible to comply with if the orders are amended as recommended because mail balloting procedures could not be accomplished within 15 days. Further, §§ 907.24 and 908.24 (Failure to nominate) provide that the Secretary may select members to the

committees in the event that nominations are not submitted to the Secretary. This provision is applicable to both initial nominations and those made for the purpose of filling vacancies. It is also anticipated that the rules and regulations developed to implement the provisions of this proposed amendment will address a timetable for nominations, including nominations made to fill vacancies. Therefore, it is found that the 15-day deadline for submitting nominations to fill vacancies would serve no useful purpose and would be deleted should the orders be amended as described in this decision.

Another conforming change would be to delete paragraph (n) from §§ 907.29 and 908.29. Paragraph (n) specifies that the committees, with the approval of the Secretary, may reapportion the number of grower or handler members on the committees. Should the orders be amended as proposed, the nomination process and flexible committee structure described in this decision would eliminate the necessity for this provision. The proposed nomination process would provide that the committees would theoretically be reapportioned every two years (with each term of office) to reflect the then current structure of the navel and Valencia orange industries.

Voting Procedures

Several proposals on amending §§ 907.30 and 908.30 were considered at the hearing. These proposals related to the number of members necessary to constitute a quorum, the number of votes required on committee actions, the desirability of permitting telephone and telegraph voting, and other voting issues.

It is recommended that a simple majority continue to be considered as constituting a quorum and necessary for all committee actions. This represents no change from the current language in §§ 907.30(a) and 908.30(a) except that the six concurring votes required for committee actions based on 11-member committees would be changed to seven concurring votes based on the proposed 13-member committees. Both proponents of the current committee size of 11 members and proponents of 13-member committees agreed that a simple majority would be sufficient to reflect industry sentiment on issues other than recommendations for size and volume regulations; although there was one witness who recommended that a vote by two-thirds of the committee be required to pass a motion.

For the number of votes required on size and volume regulations, one witness advocated that eight votes (of a 13-member committee) be required to recommend size or volume regulations and that 10 votes be required to recommend size or volume regulations for any week following 10 consecutive weeks of volume regulation. These "super majority" requirements, according to the witness, would ensure that there was significant industry agreement on the need for regulation, help prevent any one entity from dominating the committees, and require closer scrutiny of the long-term use of volume regulations. Opponents of the proposed "super majority" requirement testified that such a requirement would allow a minority of committee members (and, hence, a minority of the industry) to veto the wishes of the majority.

It is the Department's position that the "super majority" requirements or the requirement that two-thirds of the committee be required to pass a motion would enable a small portion of the industry to nullify the views of the majority. If no one entity is permitted to have more than six seats on the committee, then at least one more concurring vote would be required to pass a motion. Further, historically, the members of the organization with the greatest number of committee members have not always voted as a bloc. Diversity has been exhibited within that organization as well as without. There have also been many occasions when votes by committee members have been unanimous. Therefore, the "super majority" requirement appears to be unnecessarily stringent, considering the nature of committee deliberations and voting history.

The witness who favored requiring a vote of two thirds of the members present to pass a motion also expressed the opinion that the non-industry member should not be in the position of casting tie-breaking votes and therefore should not vote. The Department is not in favor of eliminating the voting member status of the non-industry members of the committees. Also, non-industry members vote at the same time as the other members. Therefore, the voting status of the non-industry member remains unchanged.

A proposal to restrict voting on volume regulations to the non-industry member and members from the district to be regulated was also considered at the hearing. Under this proposal, a majority plus one concurring vote of those eligible to vote would be required in order to recommend size or volume regulations and a majority plus two

concurring votes would be required to recommend size or volume regulations for any week following 10 consecutive weeks of size or volume regulations. Testimony in favor of this proposal included the benefit that only committee members who have a direct economic interest in the outcome of the vote would be eligible to vote. Conversely, representatives of districts which are not regulated could not participate in the imposition of regulations for another district. However, under the marketing orders for California-Arizona navel and Valencia oranges, members are not selected by district, and it is not recommended in this decision that the orders be amended to provide for representation by districts. Therefore, this proposal would be unworkable in the navel and Valencia orange programs.

There is also a flaw in the proposal to limit voting on size and volume regulations to representatives from the district to be regulated. It is logical on the surface, but testimony by one of the proponents points out that it would be impractical if a particular district was represented by only one, two, or three members on the committee. In the Valencia orange program, there are three districts. If each district had four representatives, a majority of four would be three members, and a majority plus one would be four members. This would not only be a "super majority," it would represent a unanimous vote. In the navel orange program, however, there are four districts. If there were three members from each district, a simple majority would be two members, and a majority plus one member would be a unanimous vote. A vote of the majority plus two would be impossible. Therefore, this proposal appears to have little applicability to the navel orange program. It also appears that requiring a unanimous vote under either program is not the intent of the witnesses in favor of the majority plus one or two vote proposals or those in favor of requiring two thirds of the members to pass a motion.

Paragraph (b) of §§ 907.30 and 908.30 would remain unchanged. Paragraph (b) provides that the committees may vote by telephone, telegraph, or other means as long as any votes so cast are confirmed promptly in writing. This option is available to the committees with the caveat that, if an assembled meeting is held, all votes must be cast in person. Under one proposal, telephone or telegraph voting would be prohibited on volume regulation recommendations. The proponent of this restriction stated that all votes on volume regulations

should be made in an open room where the public and growers have an opportunity to participate. Most telephone voting occurs in the middle of a regulatory week and most mid-week votes are recommendations to relax restrictions and allow more fruit to be shipped. Opponents of voting via telephone stated that not every handler is in a position to respond to mid-week increases in allotment.

Testimony in favor of telephone or telegraph voting, however, contends that this option provides the committees with flexibility in carrying out their functions. Providing for voting by telephone is necessary because sometimes a weekly volume regulation must be amended on short notice to correct a committee miscalculation or to respond to an emergency caused by the weather, a strike, or other unforeseen event which causes a quick and dramatic change in the market situation.

The Department believes that the committees need the flexibility provided by telephone voting. It is desirable to permit the committees to meet by telephone and recommend an increase in shipments, i.e., a decrease in regulation. Marketing entities which cannot respond as quickly as others to an increase in allotment have the ability to carry forward any unused allotment for two weeks, so the additional quantities of fruit can still be marketed. Additionally, any entity which finds itself in a position of being able to market more fruit than it is allotted during a particular week has the right to contact the committee staff or chairman and request that a telephone vote to increase the allotments be taken.

Reporting and Recordkeeping

Handlers currently maintain records under §§ 907.73 and 908.73 of the marketing orders, and the recordkeeping burden for such has already been approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) under OMB No. 0581-0116 for the navel orange order and OMB No. 0581-0121 for the Valencia orange order.

Any additional reporting or recordkeeping burdens attendant to the implementation of this Recommended Decision will be submitted for approval to the OMB. Such submission will include drafts of any new forms, such as mail ballots, that may be needed. It is anticipated that the reporting burden will not increase significantly because mail balloting will replace nomination meetings, and mail balloting is currently required for certain members of the Navel Orange Administrative

Committee. Any increase in requirements would relate to the increase in the number of members on the committees, should the proposed amendment of the marketing orders be approved by growers of navel and Valencia oranges voting in a referendum for amending each program. Any increases in the reporting or recordkeeping requirements under the two marketing orders would not be effective until OMB approval has been obtained.

Rulings on Briefs of Interested Persons

At the conclusion of the hearing, the Administrative Law Judge fixed July 2, 1986, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs, based on the evidence received at the hearing. Such date was subsequently extended until July 7, 1986, by the Administrative Law Judge in a document issued July 2, 1986. Briefs and proposed findings and conclusions were filed on behalf of certain interested persons. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions, set forth herein, the requests to make such findings or to reach such conclusions are denied.

General Findings

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

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

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

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

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

(5) The orders, as amended, and as hereby proposed to be further amended, prescribe, so far as practicable, such different terms applicable to different parts of the production areas as are necessary to give due recognition to differences in the production and marketing of navel and Valencia oranges grown in the production areas; and

(6) All handling of navel and Valencia oranges grown in the production areas as defined in the orders, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Parts 907 and 908

Marketing Agreements and Orders, California, Arizona, Oranges, Navel, and Valencia.

For the reasons set forth in the preamble, 7 CFR Parts 907 and 908 are proposed to be amended as follows:

Recommended Further Amendment of the Marketing Orders

The following amendment of the amended marketing orders is recommended as the detailed means by which the foregoing conclusions may be carried out:

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:

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

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. A new § 907.19 is added under the undesignated center heading "Definitions" to read as follows:

§ 907.19 Capper-Volstead cooperative.

The term "Capper-Volstead cooperative" shall mean an association of producers (i.e., growers) that is qualified under the provisions of the Act of the Congress of February 18, 1922, known as the "Capper-Volstead Act," (7 U.S.C. 291, 292).

3. Section 907.20 is revised to read as follows:

§ 907.20 Establishment and membership.

(a) There is hereby established a Navel Orange Administrative Committee which, as soon as nominations are made pursuant to § 907.22 and selections made pursuant to § 907.23, shall consist of 13 members, for each of whom there shall be one alternate and for each grower and handler member one additional alternate. Twelve of the members and their respective alternates and additional alternates shall be growers, employees of growers, handlers, employees of handlers, or employees of central marketing organizations. One member and alternate shall be a non-industry member and alternate non-industry member, which persons shall not be growers, handlers, or employees, agents, or representatives of a grower or handler (other than a charitable or educational institution which is a grower or handler) or central marketing organization. A grower member, alternate grower member, or additional alternate grower member shall be a grower or an employee of a grower and shall be disqualified if such person ceases to be affiliated with the entity that nominated such person. A handler member, alternate handler member, or additional alternate handler member shall be a handler, employee of a handler, or employee of a central marketing organization and shall be disqualified if such person ceases to be affiliated with the group that nominated such person.

(b) Members, alternate members, and additional alternate members of the committee serving immediately prior to the effective date of this amended subpart shall serve as the members, alternate members, and additional alternate members of the committee until nominations are made pursuant to § 907.22 and selections made pursuant to § 907.23.

4. Section 907.21 is revised to read as follows:

§ 907.21 Term of office.

The term of office of each member, alternate member, and additional alternate member of the committee shall be for a period of two years, and such terms shall begin on October 1 of each even-numbered year: *Provided*, That such members, alternate members, and additional alternate members shall serve in such capacities for the portion of the term of office for which they are selected and qualified and until their respective successors are selected and have qualified. The consecutive terms of office of members, not including alternate members or additional

alternate members, shall be limited to three terms. No person having served three consecutive terms as a member of the committee shall serve as a member, alternate member, or additional alternate member for the next succeeding term of office.

5. Section 907.22 is revised to read as follows:

§ 907.22 Nominations.

(a) Nominations for member, alternate member, and additional alternate member positions, except for the non-industry member and alternate non-industry member, shall be made by the following entities:

(1) The central marketing organization or, at the option of that organization, the growers affiliated with that organization which disposed of the largest percentage of the total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year prior to that in which nominations are made.

(2) Declared individual handlers or declared groups of handlers not affiliated with the organization eligible to nominate under paragraph (a)(1) of this section or the body of growers who deliver navel oranges to such declared handlers or declared groups of handlers. No limit shall be placed on the number of nominating entities which may be formed pursuant to this paragraph:

Provided, That no handler may participate as a member of more than one nominating entity. The following table shall be used to determine whether the nominations made by entities established pursuant to this paragraph shall be made by the handler(s) comprising such entities or by the growers who deliver to the handler(s) comprising such entities:

Type of member to be nominated—	Type of business engaged in by declared handler—	Nominations made by—
Grower	Capper-Volstead cooperative	Cooperative's board of directors or growers at the option of the board.
	Independent	Growers
	Combination of Capper-Volstead cooperative and independent	Do
Handler	Capper-Volstead cooperative	Cooperative's board of directors
	Independent	Handler
	Combination of Capper-Volstead cooperative and independent	Cooperative's board of directors and independent handler.

(3) The body of growers not affiliated either with the organization eligible to nominate under paragraph (a)(1) of this section or with those handlers who have declared under paragraph (a)(2) of this section.

(b)(1) The number of nominations which any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section may make shall be determined by its volume percentage of the total volume of navel oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year prior to that in which nominations are made—	Number of members which may be nominated (an alternate and an additional alternate shall be nominated for each member)
00.00 to 08.32	0
08.33 to 16.66	1
16.67 to 24.99	2
25.00 to 33.32	3
33.33 to 41.66	4
41.67 to 49.99	5
50.00 and above	6

Provided, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage which exceeds 50 percent, the percentage figures in the preceding table shall change according to the following formula:

$$50\% - (\text{excess over } 50\%) = \text{Percentage required to nominate one member, one alternate, and one additional alternate}$$

(2) The number of nominations which the nominating entity specified in paragraph (a)(3) of this section may make shall be determined by its volume percentage of the total volume of navel oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year prior to that in which nominations are made—	Number of members which may be nominated (an alternate and an additional alternate shall be nominated for each member)
00.00 to 08.32	0
08.33 to 16.66	1
16.67 to 24.99	2
25.00 to 33.32	3
33.33 to 41.66	4
41.67 to 49.99	5
50.00 to 58.32	6
58.33 to 66.66	7
66.67 to 74.99	8
75.00 to 83.32	9
83.33 to 91.66	10
91.67 to 99.99	11
100	12

Provided, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage which exceeds 50 percent, the percentage figures in the preceding table shall change according to the following formula:

$$50\% - (\text{excess over } 50\%) = \text{Percentage required to nominate one member, one alternate, and one additional alternate}$$

(c) If nominations for member positions pursuant to paragraph (b) of this section total less than 12 in number, eligibility to make the remaining nominations shall be determined as follows: If one additional member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to the nominating entity which has the greatest volume percentage that has not been used to earn nominating rights pursuant to paragraph (b) of this section; if a second member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to that nominating entity which has the second greatest volume percentage that has not been used to earn nominating rights pursuant to paragraph (b) of this section; and so forth: *Provided*, That no nominating entity specified in either paragraph (a)(1) or (a)(2) of this section shall be eligible to nominate more than a total of six members, plus alternates and additional alternates, pursuant to this paragraph and paragraph (b)(1) of this section.

(d)(1) Members nominated by the entities specified in either paragraph (a)(1) or (a)(2) of this section shall be nominated as grower members or handler members, according to the following schedule:

Number of members nominated by a nominating entity	Type of membership
1	1 grower.
2	1 grower, 1 handler.
3	2 growers, 1 handler.
4	2 growers, 2 handlers.
5	3 growers, 2 handlers.
6	3 growers, 3 handlers.

(2) All members nominated by the nominating entities specified in paragraph (a)(3) of this section shall be grower members.

(e) Nominations made by growers pursuant to paragraph (a) of this section shall result from the conduct of mail

balloting procedures conducted by the Secretary whereby candidates to represent an entity are voted on by the affiliated growers. When voting for nominees, each grower shall be entitled to cast one vote on behalf of such grower, the grower's agents, subsidiaries, affiliates, and representatives.

(f) The members of the committee selected by the Secretary pursuant to § 907.23 shall meet on a date designated by the Secretary and shall nominate the non-industry member and alternate non-industry member.

(g) The committee shall recommend and the Secretary shall establish procedural rules and regulations to implement this section.

6. Section 907.23 is revised to read as follows:

§ 907.23 Selection.

From the nominations made pursuant to § 907.22 (a) through (e) or from other qualified growers and handlers, the Secretary shall select 12 members of the committee and an alternate and additional alternate for each member. From the nominations made pursuant to § 907.22(f) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

7. Section 907.24 is revised to read as follows:

§ 907.24 Failure to nominate.

If nominations are not made within the time and in the manner specified pursuant to § 907.22, the Secretary may, without regard to nominations, select the members, alternate members, and additional alternate members of the committee on the basis of the representation provided for in § 907.23.

8. Section 907.26 is revised to read as follows:

§ 907.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member, alternate member, or additional alternate member of the committee to qualify or in the event of the death, removal, resignation, or disqualification of any member, alternate member, or additional alternate member of the committee, a successor to the unexpired term of such member, alternate member, or additional alternate member of the committee shall be selected by the Secretary from nominations made in the manner specified in § 907.22 by the same nominating entity which nominated such persons for the term or from other qualified persons.

9. Section 907.27 is revised to read as follows:

§ 907.27 Alternate members.

During the absence or at the request of a committee member, that member's alternate shall act in the place of such member, and, in the absence of such alternate, the additional alternate shall so act: Provided, That a grower member may designate any alternate grower member or additional alternate grower member to act in that member's place if the alternate grower member or additional alternate grower member so designated was selected from the same entity which was authorized to nominate the member, and that a handler member may designate any alternate handler member or additional alternate handler member to act in that member's place if the alternate handler member or additional alternate handler member so designated was selected from the same entity which was authorized to nominate the member. In the event of death, removal, resignation, or disqualification of a member, that member's alternate shall act for such member until a successor for such member is selected and has qualified.

§ 907.29 [Amended]

10. Section 907.29 is amended by removing paragraph (n).

11. Section 907.30 is amended by revising the title and paragraph (a) to read as follows:

§ 907.30 Voting procedures.

(a) A majority of the committee shall constitute a quorum and any action of the committee shall require at least seven concurring votes.

* * * * *

§ 907.104 [Amended]

12. Section 907.104 is removed.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

13. A new § 908.19a is added under the undesignated center heading "Definitions" to read as follows:

§ 908.19 Capper-Volstead cooperative.

The term "Capper-Volstead cooperative" shall mean an association of producers (i.e., growers) that is qualified under the provisions of the Act of the Congress of February 18, 1922, known as the "Capper-Volstead Act" (7 U.S.C. 291, 292).

14. Section 908.20 is revised to read as follows:

§ 908.20 Establishment and membership.

(a) There is hereby established a Valencia Orange Administrative Committee which, as soon as nominations are made pursuant to § 908.22 and selections are made pursuant to § 908.23, shall consist of 13 members, for each of whom there shall be one alternate and for each grower and handler member one additional alternate. Twelve of the members and their respective alternates and additional alternates shall be growers, employees of growers, handlers, employees of handlers, or employees of central marketing organizations. One member and alternate shall be a non-industry member and alternate non-industry member, which persons shall not be growers, handlers, or employees, agents, or representatives of a grower or handler (other than a charitable or educational institution which is a grower or handler) or central marketing organization. A grower member, alternate grower member, or additional alternate grower member shall be a grower or an employee of a grower and shall be disqualified if such person ceases to be affiliated with the entity that nominated such person. A handler member, alternate handler member, or additional alternate handler member shall be a handler, employee of a handler, or employee of a central marketing organization and shall be disqualified if such person ceases to be affiliated with the group that nominated such person.

(b) Members, alternate members, and additional alternate members of the committee serving immediately prior to the effective date of this amended subpart shall serve as the members, alternate members, and additional alternate members of the committee until nominations are made pursuant to § 908.22 and selections made pursuant to § 908.23.

15. Section 908.21 is revised to read as follows:

§ 908.21 Term of office.

The term office of each member, alternate member, and additional alternate member of the committee shall be for a period of two years, and such terms shall begin on February 1 of each even-numbered year: *Provided*, That such members, alternate members, and additional alternate members shall serve in such capacities for the portion of the term of office for which they are selected and qualified and until their respective successors are selected and have qualified. The consecutive terms of office of members, not including alternate members or additional

alternate members, shall be limited to three terms. No person having served three consecutive terms as a member of the committee shall serve as a member, alternate member, or additional alternate member for the next succeeding term of office. For the purpose of calculating this limitation, persons who have served three consecutive terms as members as of February 1, 1990, will not be eligible to serve on the committee as a member, alternate member, or additional alternate member until February 1, 1992.

16. Section 908.22 is revised to read as follows:

§ 908.22 Nominations.

(a) Nominations for member, alternate member, and additional alternate member positions, except for the non-industry member and alternate non-industry member, shall be made by the following entities:

(1) The central marketing organization or, at the option of that organization, the growers affiliated with that organization which disposed of the largest percentage of the total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year prior to that in which nominations are made.

(2) Declared individual handlers or declared groups of handlers not affiliated with the organization eligible to nominate under paragraph (a)(1) of this section or the body of growers who deliver Valencia oranges to such declared handlers or declared groups of handlers. No limit shall be placed on the number of nominating entities which may be formed pursuant to this paragraph: *Provided*, That no handler may participate as a member of more than one nominating entity. The following table shall be used to determine whether the nominations made by entities established pursuant to this paragraph shall be made by the handler(s) comprising such entities or the growers who deliver to the handler(s) comprising such entities:

Type of member to be nominated—	Type of business engaged in by declared handler—	Nominations made by—
Grower	Copper-Volstead cooperative.	Cooperative's board of directors or growers at the option of the board.
	Independent.	Growers.
	Combination of Copper-Volstead cooperative and independent.	Do.
Handler	Copper-Volstead cooperative.	Cooperative's board of directors.
	Independent.	Handler.

Type of member to be nominated—	Type of business engaged in by declared handler—	Nominations made by—
	Combination of Copper-Volstead cooperative and independent.	Cooperative's board of directors and independent handler.

(3) The body of growers not affiliated either with the organization eligible to nominate under paragraph (a)(1) of this section or with those handlers who have declared under paragraph (a)(2) of this section.

(b) (1) The number of nominations which any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section may make shall be determined by its volume percentage of the total volume of Valencia oranges disposed of in all outlets as follows:

$$50\% - (\text{excess over } 50\%)$$

6

Percentage required to nominate one member, one alternate, and one additional alternate

(2) The number of nominations which the nominating entity specified in paragraph (a)(3) of this section may make shall be determined by its volume percentage of the total volume of Valencia oranges disposed of in all outlets as follows:

$$50\% - (\text{excess over } 50\%)$$

6

Percentage required to nominate one member, one alternate, and one additional alternate

Nominating entity's percentage of total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year prior to that in which nominations are made—	Number of members which may be nominated (an alternate and an additional alternate shall be nominated for each member)
00.00 to 08.32	0
08.33 to 16.66	1
16.67 to 24.99	2
25.00 to 33.32	3
33.33 to 41.66	4
41.67 to 49.99	5
50.00 to 58.32	6
58.33 to 66.66	7
66.67 to 74.99	8
75.00 to 83.32	9
83.33 to 91.66	10
91.67 to 99.99	11
100	12

Provided, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage which exceeds 50 percent, the percentage figures in the preceding table shall change to the following formula:

Nominating entity's percentage of total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year prior to that in which nominations are made—

00.00 to 08.32	0
08.33 to 16.66	1
16.67 to 24.99	2
25.00 to 33.32	3
33.33 to 41.66	4
41.67 to 49.99	5
50.00 and above	6

Provided, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage which exceeds 50 percent, the percentage figures in the preceding table shall change according to the following formula:

(c) If nominations for member positions pursuant to paragraph (b) of this section total less than 12 in number, eligibility to make the remaining nominations shall be determined as follows: If one additional member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to that nominating entity which has the greatest volume percentage that has not been used to earn nominating rights pursuant to paragraph (b) of this section; if a second member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to that nominating entity which has the second greatest volume percentage that has not been used to earn nominating rights pursuant to paragraph (b) of this section; and so forth: *Provided*, That no nominating entity specified in either paragraph (a)(1) or (a)(2) of this section shall be eligible to nominate more than a total of six members, plus alternates and additional alternates, pursuant to this paragraph and paragraph (b)(1) of this section.

(d)(1) Members nominated by the entities specified in either paragraph (a)(1) or (a)(2) of this section shall be nominated as grower members or handler members, according to the following schedule:

Number of members nominated by a nominating entity	Type of membership
1	1 grower,
2	1 grower, 1 handler.
3	2 growers, 1 handler.
4	2 growers, 2 handlers.
5	3 growers, 2 handlers.
6	3 growers, 3 handlers.

(d)(2) All members nominated by the nominating entities specified in paragraph (a)(3) of this section shall be grower members.

(e) Nominations made by growers pursuant to paragraph (a) of this section shall result from the conduct of mail balloting procedures conducted by the Secretary whereby candidates to represent an entity are voted on by the affiliated growers. When voting for nominees, each grower shall be entitled to cast one vote on behalf of such grower, the grower's agents, subsidiaries, affiliates, and representatives.

(f) The members of the committee selected by the Secretary pursuant to § 908.23 shall meet on a date designed by the Secretary and shall nominate the non-industry member and alternate non-industry member.

(g) The committee shall recommend and the Secretary shall establish procedural rules and regulations to implement this section.

17. Section 908.23 is revised to read as follows:

§ 908.23 Selection.

From the nominations made pursuant to § 908.22 (a) through (e) or from other qualified growers and handlers: the Secretary shall select 12 members of the committee and an alternate and additional alternate for each member. From the nominations made pursuant to § 908.22(f) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

18. Section 908.24 is revised to read as follows:

§ 908.24 Failure to nominate.

If nominations are not made within the time and in the manner specified pursuant to § 908.22, the Secretary may, without regard to nominations, select the members, alternate members, and additional alternate members of the committee on the basis of the representation provided for in § 908.23.

19. Section 908.26 is revised to read as follows:

§ 908.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member, alternate member, or additional alternate member of the committee to qualify or in the event of the death, removal, resignation, or disqualification of any member, alternate member, or additional alternate member of the committee, a successor to the unexpired term of such member, alternate member, or additional alternate member of the committee shall be selected by the Secretary from nominations made in the manner specified in § 908.22 by the same nominating entity which nominated such persons for the term or from other qualified persons.

20. Section 908.27 is revised to read as follows:

§ 908.27 Alternate members.

During the absence or at the request of a committee member, that member's alternate shall act in the place of such member and, in the absence of such alternate, the additional alternate shall so act: *Provided*, That a grower member may designate any alternate grower member or additional alternate grower member to act in that member's place if the alternate grower member or additional alternate grower member so designated was selected from the same entity which was authorized to nominate the member; and that a handler member may designate any alternate handler member or additional alternate handler member to act in that member's place if the alternate handler member or additional alternate handler member so designated was selected from the same entity which was authorized to nominate the member. In the event of death, removal, resignation, or disqualification of a member, that member's alternate shall act for such member until a successor for such member is selected and has qualified.

§ 908.29 [Amended]

21. Section 908.29 is amended by removing paragraph (n).

22. Section 908.30 is amended by revising the title and paragraph (a) to read as follows:

§ 908.30 Voting procedures.

(a) A majority of the committee shall constitute a quorum and any action of the committee shall require at least seven concurring votes.

* * *

§ 908.104 [Removed]

23. Section 908.104 is removed.

Signed at Washington, DC, on June 1, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 87-12865 Filed 6-5-87; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites public comments on a proposal to suspend for the months of June through August 1987 the requirement that a cooperative association deliver 51 percent or more of the producer milk of members of the association to pool distributing plants of other handlers in order to qualify a supply plant operated by the cooperative association for pooling under the Nebraska-Western Iowa order. The action was requested by a cooperative association that represents producers who supply milk for the market. The association claims that this action is necessary to assure that its member dairy farmers who have regularly supplied the market's fluid needs will continue to share in the market's fluid milk sales.

DATE: Comments are due on or before June 15, 1987.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7183.

SUPPLEMENTARY INFORMATION: The Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk pooled and priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural

Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), the suspension of the following provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of June through August 1987:

In § 1065.7(c), the words "51 percent or more of the".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include June 1987 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would remove for the months of June through August 1987 the requirement that a cooperative association deliver 51 percent or more of the producer milk of members of the association to pool distributing plants of other handlers in order to qualify a supply plant operated by the cooperative association for pooling. The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents a large number of the market's producers.

Although milk production is slightly below last year's levels, the cooperative states that the proposed suspension is needed because the percentage of the cooperative's member milk production shipped to distributing plants is expected to fall below 51 percent. For the months of January through April 1987, Mid-Am production pooled on the Nebraska-Western Iowa order was 2 percent lower than for the same period of 1986. For the market as a whole, pooled producer milk decreased 1 percent during January through April 1987 from the same period in 1986, while Class I sales also declined by 1 percent. According to the cooperative, receipts at pool distributing plants also have declined.

Mid-Am states that the decrease in Class I sales that will accompany the closing of schools for the summer will reduce the percentage of the cooperative's producer milk shipped to Nebraska-Western Iowa pool distributing plants during the months of

June through August. As alternatives to depooling some milk of its member producers, the cooperative would have to attempt to pool Nebraska-Western Iowa producer milk on another Federal order or ship milk to distributing plants where the milk would be received, loaded back into the truck and shipped to a manufacturing plant. Either alternative would require the cooperative to move milk in an uneconomic and inefficient manner solely to maintain the pool status of producers who historically have supplied the fluid needs of the Nebraska-Western Iowa marketing area.

Accordingly, it may be appropriate to suspend the 51 percent delivery standard for the months of June through August 1987.

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1065 continues to read as follows:

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

Signed at Washington, DC, on: June 2, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 87-12943 Filed 6-5-87; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 309, 310, and 314

[Docket No. 86-032P]

Disposal of Livestock Carcasses and Parts Condemned for Biological Residues

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service proposes to amend the Federal meat inspection regulations governing methods of handling and disposing of livestock carcasses and parts of carcasses condemned by the Agency because they bear or contain biological residues which cause the articles to be adulterated. Current regulations do not require methods of disposal that preclude use of such carcasses and parts of carcasses in nonhuman foods such as animal feed. Many biological residues may not be destroyed by current disposal methods, and these residues may cause the tissues of livestock consuming animal feed made from condemned articles to become adulterated. To preclude livestock carcasses and parts

condemned because of biological residues from being used to make animal feed, the Agency believes that such condemned articles must be destroyed by incineration or burial. If adopted, this proposal will make the Federal meat inspection regulations governing the disposition of livestock carcasses and part of carcasses adulterated with biological residues consistent with regulations which govern the disposition of poultry carcasses and parts of carcasses condemned because of biological residues.

DATE: Comments must be received on or before: August 7, 1987.

ADDRESS: Written comments may be sent in duplicate to the Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3168, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under **SUPPLEMENTARY INFORMATION**.)

FOR FURTHER INFORMATION CONTACT:

Dr. Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposal is not a major rule under Executive Order 12291. The proposed rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The average number of residue-based condemnations for the last 5 years has been 1,624 per year out of an average annual slaughter of 119.3 million animals. Therefore, requiring such carcasses and parts to be destroyed by incineration or burial would have minimal impact on livestock slaughtering establishments.

Effect On Small Entities

The Administrator of the Food Safety and Inspection Service has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, as

defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The occurrence of carcasses or parts condemned for biological residues is usually limited to one or a few carcasses or parts at any given time. Because of the low incidence of residue-adulterated carcasses or parts, establishments slaughtering a small number of livestock each year are unlikely to encounter a carcass or parts requiring condemnation because of a biological residue.

Comments

Interested persons are invited to submit written comments concerning this proposed rule. Written comments should be sent, in duplicate, to the Policy Office and should refer to the docket number appearing in the heading of this document. All comments submitted pursuant to this notice will be made available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Secretary of Agriculture is responsible for assuring that meat and meat food products distributed to consumers are wholesome and not adulterated (21 U.S.C. 602). FMIA provisions for preventing the use in commerce of meat and meat food products which are adulterated include sections 3 and 4 (21 U.S.C. 603 and 604). Section 3 of the FMIA directs the Secretary, through inspectors, to provide an ante-mortem examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines before they are allowed to enter an establishment in which they are to be slaughtered. Section 4 of the FMIA provides for a post-mortem examination and inspection of the carcasses and parts of carcasses of such animals. Ante-mortem and post-mortem inspections reveal diseases, abnormalities, or other conditions which cause the carcass or its parts to be adulterated within the meaning of section 1(m) of the FMIA (21 U.S.C. 601(m)). Inspectors identify all carcasses and parts thereof found to be adulterated as "Inspected and condemned". The condemned carcasses and parts must be destroyed for food purposes in the presence of an inspector (21 U.S.C. 604). Federal meat inspection regulations specify methods of disposal of condemned livestock carcasses and parts of carcasses.

An integral part of the meat inspection program, which is administered and enforced by the Food Safety and Inspection Service (FSIS) (7 CFR 2.17(g) and 2.55(a)(2)), is the

detection and control of biological residues in livestock during ante-mortem inspection and in livestock carcasses and parts of carcasses during post-mortem inspection. Biological residues are described in the regulations (9 CFR 301.2) as substances which remain in livestock at the time of slaughter or in any tissues after slaughter as the result of treatment or exposure of livestock to a pesticide, organic or inorganic compound, hormone, hormone-like substance, growth promoter, antibiotic, anthelmintic, tranquilizer or other therapeutic or prophylactic agent.

Tolerances and recommended action levels for biological residues are developed by other Departments. FSIS applies the tolerances and action levels for animal drugs and unavoidable contaminants established by the Food and Drug Administration (FDA) and the tolerances and action levels for pesticides established by the Environmental Protection Agency. FSIS condemns livestock carcasses and parts of carcasses in which these biological residues exceed the established tolerance or action levels. FSIS also condemns livestock carcasses and parts of carcasses which bear or contain any amount of biological residues for which no tolerance or action level has been established.

FSIS condemns livestock carcasses and parts of carcasses on the basis that the level of a biological residue causes the article to be adulterated as that term is defined in the FMIA.

Section 1(m) of the FMIA contains provisions that are relevant to adulteration determinations based on the presence of biological residues (21 U.S.C. 601(m)). These provisions define as "adulterated" any carcass, part thereof, meat, or meat food product that "... bears or contains any poisonous or deleterious substance which may render it injurious to health..." (21 U.S.C. 601(m)(1)); or "... bears or contains (by reason of administration of any substances to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the Secretary, make such article unfit for human food (21 U.S.C. 601(m)(2)(A)); or "... is, in whole or part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act" (21 U.S.C. 601(m)(2)(B)); or "... is for any other reason unsound, unhealthful,

unwholesome, or otherwise unfit for human food" (21 U.S.C. 601(m)(3)).

Farm animals may be treated with or exposed to such biological residues as animal drugs, pesticides and other chemicals directly or indirectly through medications, feed, equipment, building materials, and other sources. Most of the compounds are appropriately used in the modern, efficient production of livestock. However, carelessness or misuse of these compounds may result in adulterating residues which result in condemnation of carcasses and carcass parts upon inspection.

Condemned carcasses and carcass parts must be disposed of by denaturing, tanning (inedible rendering), or other methods that assure they will not be used in human food. However, these methods are not designed to preclude other uses, such as animal feed.

Rendering and denaturing destroy harmful microorganisms, but the methods are not effective in destroying all biological residues. As a result, rendered and denatured products used in animal feed may cause the tissues of the livestock consuming the feed to become adulterated. Only incineration or burial of livestock carcasses and parts of carcasses condemned because they are adulterated with pesticide, drug, or other biological residues can preclude the recycling of those residues through other animals. Therefore, the Agency believes that incineration or burial is necessary to assure the effective destruction of such condemned carcasses and carcass parts and to prevent the distribution of adulterated meat and meat food products (21 U.S.C. 602 through 604, 621).

The official establishment would be responsible for properly disposing of any carcasses condemned for biological residues by contacting appropriate State or local authorities to arrange for disposal at an approved incinerator or burial site. Once arrangements have been made, the disposal would continue to be under observation and supervision of a Program employee to assure effective destruction.

Under this proposal, a new § 314.12 would be added to the Federal meat inspection regulations to specify methods for the destruction of livestock carcasses and parts thereof condemned for biological residues. Section 309.16 of the Federal meat inspection regulations (9 CFR 309.16) would be amended to refer to § 314.12. Other disposal methods in §§ 314.1 and 314.3 of those regulations (9 CFR 314.1 and 314.3) would no longer be acceptable alternatives for disposing of such carcasses and parts. Therefore,

the reference to §§ 314.1 and 314.3 in § 314.16 would be deleted.

Section 310.5 (9 CFR 310.5) also would be amended to add the provision that carcasses and parts condemned for biological residues shall be kept separate from other condemned products in order to assure that they are disposed of in compliance with the regulations.

Proposed Rule

For reasons set forth in the preamble, Title 9, Parts 309, 310, and 314, of the Code of Federal Regulations would be amended as set forth below.

List of Subjects

9 CFR Part 309

Ante-mortem inspection, Meat inspection.

9 CFR Part 310

Carcasses and parts, Meat inspection.

9 CFR Part 314

Meat inspection, Condemned or other inedible products.

PART 309—ANTE-MORTEM INSPECTION

1. The authority citation for Part 309 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 601 *et seq.*, 33 U.S.C. 1254(b).

2. Section 309.16 would be amended by revising paragraph (b) to read as follows:

§ 309.16 Livestock suspected of having biological residues.

(b) All carcasses and edible organs and other parts thereof, in which are found any biological residue which render such articles adulterated, shall be marked "U.S. Condemned" and disposed of in accordance with § 314.2 of this subchapter, unless ordered otherwise by the Administrator in specific cases.

PART 310—POST-MORTEM INSPECTION

3. The authority citation for Part 310 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 601 *et seq.*, 33 U.S.C. 1254(b).

4. Section 310.5 would be amended by designating the current paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 310.5 Condemned carcasses and parts to be so marked; taking; separation.

(a) * * *

(b) Carcasses and parts of carcasses condemned under § 309.16(b) for biological residues in an official establishment shall be kept separate from all other condemned carcasses and parts.

PART 314—HANDLING AND DISPOSAL OF CONDEMNED OR OTHER INEDIBLE PRODUCTS AT OFFICIAL ESTABLISHMENTS

5. The authority citation for Part 314 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 33 U.S.C. 466–466k.

6. Part 314 would be amended by adding a new section 314.12 to read as follows:

§ 314.12 Disposition of carcasses and parts condemned for biological residues.

Carcasses and parts of carcasses condemned under § 309.16(b) shall be destroyed either by incineration or by burial, in accordance with the requirements of the appropriate State or local authorities, in the presence and under the supervision of a Program employee.

Done at Washington, DC., on: May 21, 1987.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 87-12941 Filed 6-5-87; 8:45 am]

BILLING CODE 3410-DM-M

9 CFR Part 362

[Docket No. 85-012P]

Identification Service for Poultry

AGENCY: Food Safety and Inspection Service (FSIS).

ACTION: Proposed rule.

SUMMARY: This proposed rule would provide identification service for poultry and poultry products that have been federally inspected and passed, and so marked to identify them as inspected and passed. This would allow a warehouse or similar facility to divide such products into smaller portions or combine such products into larger units, while maintaining the identity of the product as federally inspected and passed and so marked. Pursuant to the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), Parts 350 through 362 of Title 9 have been promulgated to regulate the voluntary inspection and certification service for meat and poultry. Identification service

for meat and meat food products is already provided for under § 350.3(a) of the regulations.

DATE: Comments must be received on or before: August 7, 1987.

ADDRESS: Written comments to: Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3168, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that the proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Since the proposal would provide for a voluntary, reimbursable inspection service, the costs to the Food Safety and Inspection Service (FSIS) would be minimal. The proposal would be cost-saving to producers since it saves the costs associated with transporting product to official establishments. No indication exists that there should be any costs to consumers since the proposed rule would be, in fact, cost-saving.

Effects on Small Entities

Under the circumstances mentioned above, the Administrator, Food Safety and Inspection Service, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601).

Paperwork Requirements

The proposed rule would require that firms wishing to obtain identification service for poultry under the proposed voluntary program register with FSIS. These firms would also be required to maintain certain records outlined in the regulations. The recordkeeping and

reporting requirements have been submitted to the Office of Management and Budget under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

Comments

Interested parties are invited to submit comments concerning this notice. Written comments should be sent in duplicate to the Regulations Office. The comments should reference Docket Number 85-012P. All comments submitted pursuant to this notice will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Section 350-3 of Title 9 of the regulations authorizes a voluntary identification service to be provided for meat and other products that have been federally inspected and passed at an official establishment. The purpose of providing identification service is to allow a warehouse or similar facility to divide such products into smaller portions or combine such products into larger units, while maintaining the identity of the product as federally inspected and passed and so marked.

While this voluntary program has been in place for some time with regard to meat and other products, no similar regulation exists to provide a similar service for poultry and poultry products.

In recent years, the increasing demand for poultry products has led to alternative marketing and distribution methods. In order to meet the demand presented by these newly-developed marketing methods, some processors have expressed an interest in breaking bulk, repackaging, weighing, and officially labeling poultry products at warehouses or distribution points which are not federally inspected. Under current poultry regulations, most of these operations as well as the official identification and labeling of poultry products must be performed at an official establishment in the presence of an inspector.

Under the proposed regulation, the continued presence of an inspector during these operations would ensure that the poultry products have been properly stored, transported and have not been changed in any manner that would make them ineligible for the federal mark of inspection. The proposed regulation would allow a processor greater latitude in the handling and distribution of his product by permitting identification service at a location other than an official establishment.

The current identification service for meat and other products is a voluntary

service, provided by FSIS, upon application under § 350.5 of the regulations. When a warehouse is approved for identification service, an inspector will go to the warehouse and supervise proper identification, sanitary conditions, and product integrity. The inspector will then permit the remarking and labeling of product with the federal mark of inspection.

Identification service for poultry would be obtained in a similar fashion as for meat. An application would be made for this voluntary service under § 362.3 of Title 9 of the regulations. The firm requesting identification service for poultry will reimburse FSIS according to § 362.5 of the regulations. Currently, the base rate is \$19.04 per hour.

FSIS believes that providing this service for poultry would be beneficial since it would facilitate the efficient handling and distribution of poultry and poultry products. In view of the success of the program FSIS currently makes available for meat and meat food products, it appears that it would be in the best interests of consumers and producers if FSIS were to make available the same service for poultry and poultry products. This objective would be accomplished by amending § 362.2 of Title 9 of the regulations by adding a new paragraph (c).

List of Subjects in 9 CFR Part 362

Poultry and poultry products,
Voluntary inspection.

PART 362—[AMENDED]

1. The authority citation for Part 362 continues to read as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1662, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

§ 362.2 [Amended]

2. Section 362.2 would be amended by adding a new paragraph (c), to read as follows:

(c) *Identification Service.* (1) Poultry or other product that is federally inspected and passed at an official establishment, or upon importation, under the Poultry Products Inspection Act, is officially marked to identify it as federally inspected and passed. In order to facilitate the division of such poultry or other product into smaller portions or its combination into larger units and still maintain its identity as product which has been federally inspected and passed and so marked, inspectors may supervise the handling and weighing of the product and mark such portions and units with the official mark of Federal

inspection when they determine that identity has been maintained.

(2) At the time service is furnished, product must be sound, wholesome, and fit for human food. The service will be available only on premises other than those of official establishment. The sanitation of the place or area where service is furnished must comply with the provisions of Part 381, Subpart H of this chapter.

(3) The mark of inspection shall be applied only under the immediate supervision of an inspector.

(4) This service does not cover further cutting and processing of products. These activities must take place at an official establishment.

(5) The registration and recordkeeping requirements enumerated in Part 381, Subpart Q, of this chapter shall apply to firms requesting voluntary identification service under this paragraph (c).

Dated: June 2, 1987.

Donald L. Houston,
Administrator, Food Safety and Inspection Service.

[FR Doc. 87-12942 Filed 6-5-87; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 211, 225 and 262

[Docket No. R-0584]

Assessment of Fees for Supervision of Edge Corporations and Bank Holding Companies and for Processing Applications

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rulemaking.

SUMMARY: On November 12, 1986, the Board of Governors of the Federal Reserve System, sought public comment on a proposal to assess fees for certain of its supervisory activities. 51 *Federal Register* 48101 (November 19, 1986). The Board advanced the proposal as a possible cost recovery measure to supplement prior Board actions to streamline operations and eliminate unnecessary functions. This proposal was designed to recover the total of identifiable costs incurred by the Federal Reserve in supervising Edge Act corporations and in processing applications submitted by banks, bank holding companies and others. After reviewing the comments submitted in response to its original proposal, the Board is seeking comment on a revised proposal. This proposal would levy charges for the supervision of bank

holding companies (in particular the parent holding company and its nondepository subsidiaries) as well as for the supervision of Edge Act corporations and for processing applications. Under this proposal fees and assessments would be set to recover about half of the costs incurred by the Federal Reserve in conducting these activities. The Board also requests comment on whether, if the Board does decide to charge for certain supervisory activities, this revised proposal to charge lower fees but to include bank holding company supervision is preferable to its original proposal.

DATE: Comments must be received by July 6, 1987.

ADDRESS: All comments, which should refer to Docket No. R-0584, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or should be delivered to the Office of the Secretary, Room 2223, Eccles Building, 20th Street and Constitution Avenue, NW., between the hours of 8:45 a.m. and 5:25 p.m. weekdays. Comments may be inspected in Room 1122, Eccles Building between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT:

Frederick M. Struble, Associate Director, (202) 452-3794, Don E. Kline, Associate Director, (202) 452-3421, Kevin M. Raymond, Supervisory Financial Analyst (202) 452-2573, or James V. Houpt, Supervisory Financial Analyst (202) 452-3358, Division of Banking Supervision and Regulation; or James E. Scott, Senior Counsel, (202) 452-3513, Legal Division, or for users of Telecommunications Devices for the Deaf, Earnestine Hill or Dorothea Thompson (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

In November, 1986, the Board proposed for public comment a schedule of fees designed to recover the identifiable costs incurred by the Federal Reserve in supervising of Edge Act corporations defined in section 25(a) of the Federal Reserve Act, 12 U.S.C. 611 *et seq.*) and in processing applications filed by bank holding companies and state member banks and by companies or individuals seeking to acquire control of such banking organizations. The Board's proposal to begin to recover a portion of its costs was limited to these two specific areas of activity in order to avoid duplicating charges levied by other bank regulatory agencies. Since

the Board supervises Edge Act corporations and processes applications submitted to the System, Federal Reserve assessments and fees for these activities would avoid a duplication of charges.

Most of the comments submitted by the public were opposed to the proposal. Various arguments were offered in opposition, including the additional burden on banking organizations at a time when they are experiencing strong pressures on profit margins and the recommendation that general revenues of the Board be used since the System's regulatory activities are a necessary complement to its monetary policy responsibilities.

After reviewing the comments submitted by the public, the Board has revised its proposal to significantly lower the proposed fees for applications and supervision of Edge Act corporations. In conjunction with that revision, however, the Board is proposing a specific schedule of annual fees for inspection and supervision of bank holding companies. (The Board previously sought comment on the general concept of charging for such supervision.) The Board has reached a tentative conclusion that the Federal Reserve's supervision of bank holding companies, particularly the assets of parent companies and the nondepository subsidiaries of such companies, are also activities conducted solely by the Federal Reserve. Thus, it appears that a Federal Reserve charge for these activities would also be more in the nature of a charge for additional supervision rather than a duplication of charges imposed by other agencies.

The Board, therefore, has decided to seek comment on a proposal to charge for the supervision of parent holding companies and their nondepository subsidiaries as well as for the supervision of Edge Act corporations and for processing various types of applications. The proposal would set assessments and fees to recover about half of the identifiable costs (based on 1986 estimates after certain downward adjustments) of each of these activities.

Annual Assessments for the Inspection of Bank Holding Companies

While the Federal Reserve's supervision of bank holding companies involves a review of examination reports and other data relating to the condition of subsidiary depository institutions, the System ordinarily does not directly examine such depository institutions as part of the process of inspecting bank holding companies. Moreover, subsidiary depository institutions pay assessments to federal

or state agencies. Thus, to avoid double assessment, the Board has decided to structure its proposal to charge inspection fees in the form of an annual assessment to bank holding companies so that they do not reflect the estimated costs incurred by the System in reviewing these subsidiary depository institutions.

In focusing on the nondepository activities of bank holding companies, the Board is proposing to use, as the basis for determining the annual assessment to be charged a holding company, assets of the parent that are not investments in or claims on any subsidiary, whether depository or nondepository, plus the assets of nondepository subsidiaries. The specific calculation to obtain the adjusted parent plus nondepository assets amount is as follows: Add the total assets for the parent company and its consolidated nondepository subsidiaries, and then subtract parent company loans and advances to, and investments in, depository and nondepository subsidiaries.

The Board is proposing a schedule of annual fees to be paid by all but the smallest bank holding companies for inspection and supervision both on premises and off premises. The Board believes that a standard fee schedule based on the size of a bank holding company's nondepository assets is preferable to an approach based upon recorded staff time. The standard fee schedule is easier to administer, more predictable for budgetary and planning purposes of the entity being assessed, and less likely to result in disputes as to time spent and examiner productivity, disputes that might reduce the quality of the inspection process. The Board notes that it has proposed a similar approach for charging for its supervision of Edge corporations for the same reasons. Some commenters asserted, in discussing the proposal for Edge corporations, that a fee schedule that varies on the basis of asset size is inequitable for larger bank holding companies. But there is, in fact, a general correlation between time spent and costs incurred in an inspection and the size of the company inspected, and the proposal has been structured to reflect that correlation. Moreover, since the Board is proposing to collect revenues equal to only one half of the estimated costs of supervising bank holding companies (after first making adjustments for the costs involved in supervising depository subsidiaries), no organization will be charged a fee that exceeds the cost incurred in supervising its parent

company and nondepository subsidiaries.

Similarly, the Board is proposing that the annual fee for the inspection and supervision of bank holding companies include pre-inspection monitoring and post-inspection evaluation conducted off site. A significant part of the Federal Reserve's work in the supervision and inspection process consists of monitoring reports and other data provided by bank holding companies, evaluating performance trends, developing peer group standards for comparison, and generally in deciding when an on-site inspection is needed. The Board is requesting comment, however, on whether an annual assessment should be paid only if an on-site inspection is performed.

The estimated direct and overhead costs attributed to the overall supervision of bank holding companies by the System's accounting system amounted to approximately \$24 million in 1986. The Board has estimated that the costs incurred in supervising the depository subsidiaries of bank holding company was approximately \$6 million. This amount, consequently, was deducted from the estimate of the total cost involved in supervising bank holding companies before developing the schedule of annual assessments presented in Table 1. A decision was also made not to levy a charge on banking organizations that have total nondepository assets of less than \$50,000.

Annual Assessments for Supervising Edge Act Corporations and for Processing Applications

Table 2 presents the schedule of annual assessments for Edge Act corporations the Board is contemplating adopting as part of the proposal in which it would charge for the supervision of bank holding companies and Edge Act corporations and for processing various applications submitted to the Federal Reserve. The assessment schedules shown in the table are basically similar in form to those in the Board's November 1986 fee proposal. That is, separate schedules are specified for investment Edges and banking Edges and the structure of assessments for both groups of organizations increases with their size. These structural features were adopted in order that the relative size of assessments charged different organizations would be consistent with the relative costs the System incurs in supervising them. The assessment schedules shown in Table 2 have been revised to reflect the estimated costs incurred in supervising Edge Act

corporations in 1986 (rather than in 1985 as used in the previous proposal) and have been set to produce revenues equal to approximately half those costs.

Tables 3 and 4 present alternative fee schedules for applications that the Board is contemplating using if it decides to adopt the proposal of charging for supervising bank holding companies and Edge Act corporations and for processing applications. The fee structures presented in the tables are also similar in basic form to the November proposal. Table 3 shows fees that would be charged for processing three different groupings of applications if the Board were to charge a flat fee for each type of application. Table 4 uses the same groupings of applications as in

Table 3, but would vary the fee charged for processing applications in each group in accordance with the "pro forma" size of the applicant. The level of fees in both tables have been set to collect revenues equal to one half of the estimated costs (after certain deductions) incurred by the System in processing applications in 1986. The Board is proposing to adopt the more flexible Table 4 proposal. Neither table would contemplate charging for processing Federal Reserve membership applications or ATM applications, and fees for certain applications that must be submitted in conjunction with other applications would be set at a reduced level.

TABLE 1.—SCHEDULE OF ANNUAL ASSESSMENT TO BE CHARGED BANK HOLDING COMPANIES

Nonbank assets of parent holding company plus assets of nonbank subsidiaries ¹ (Millions of dollars)	Annual assessment				
	This amount (dollars)	Plus	Factor	Times	Excess over (Millions of dollars)
0 to .05	0		0.000000		.0
.05 to .2	0		.003000		.05
.2 to .5	450		.000400		.2
.5 to 1.0	570		.000300		.5
1.0 to 10.0	720		.000200		1.0
10.0 to 25.0	2,520		.000120		10.0
25.0 to 100.0	4,320		.000090		25.0
100.0 to 500.0	11,070		.000060		100.0
500.0 to 2,000.0	35,070		.000020		500.0
2,000.0 to 5,000.0	65,070		.000016		2,000.0
5,000.0 to 15,000.0	113,070		.000011		5,000.0
15,000.0 and over	223,070		.000005		15,000.0

¹ For each bank holding company, the asset total for parent + nonbank subsidiary amount is to be computed by (a) adding total assets for the parent company and its consolidated nonbank subsidiaries, and (b) then subtracting parent company loans and advances to, and investments in, bank and nonbank subsidiaries.

TABLE 2.—SCHEDULE OF ANNUAL ASSESSMENTS FOR EDGE AND AGREEMENT CORPORATIONS

Total assets plus standby letters of credit (Millions of dollars)	Annual assessment				
	This amount (dollars)	Plus	Factor	Times	Excess over (Millions of dollars)
Investment Corporations:¹					
0 to 10	500		0.000100		0
10 to 25	1,500		.000070		10
25 to 100	2,550		.000050		25
100 to 500	6,300		.000035		100
500 to 2,000	20,300		.000016		500
2,000 to 5,000	44,300		.000014		2,000
Over 5,000	86,300		.000009		5,000
Banking Corporations:					
0 to 10	1,000		.000200		0
10 to 25	3,000		.000120		10
25 to 100	4,800		.000090		25
100 to 500	11,550		.000060		100

TABLE 2.—SCHEDULE OF ANNUAL ASSESSMENTS FOR EDGE AND AGREEMENT CORPORATIONS—Continued

Total assets plus standby letters of credit (Millions of dollars)	Annual assessment				Excess over (Millions of dollars)
	This amount (dol- lars)	Plus	Factor	Times	
500 to 2,000.....	35,550		.000020		500
2,000 to 5,000.....	65,550		.000016		2,000
Over 5,000.....	113,550		.000011		5,000

Plus: .0000020 times the amount of commitments to purchase foreign currencies and U.S. dollar exchange.

¹ Consolidated with their subsidiaries.

TABLE 3.—ALTERNATIVE FLAT FEE SCHEDULE FOR PROCESSING APPLICATIONS SUBMITTED TO THE FEDERAL RESERVE SYSTEM

Type of application	Fee
Category A..... Bank holding company formations, acquisition of banks, nonbanks (going concerns) and bank holding companies; bank holding company stock redemptions and changes in control; international investment applications.....	\$4,100
Category B..... Initial foreign branches, Edge Act and other international activities; domestic bank mergers; and changes in control for state member banks.....	2,000
Category C..... Bank holding company nonbank acquisitions (de novo) and state member bank branches, bank service corporations, investments in bank premises and issuance of capital notes by state member banks; certain foreign branch and investment notifications.....	1,000

TABLE 4.—PROPOSED FEE SCHEDULE FOR PROCESSING APPLICATIONS SUBMITTED TO THE FEDERAL RESERVE SYSTEM

Total assets ¹ (millions of dollars)	Fee)				Excess over (millions of dollars)
	This amount (dollars)	Plus	Factor	Times	
Category A: ²					
0 to 150.....	3,200	0			
150 to 1,000.....	3,200		.000001764		150
1,000 to 5,000.....	4,700		.000000375		1,000
5,000 to 10,000.....	6,200		.000000300		5,000
Over 10,000.....	7,700				
Category B:					
0 to 150.....	1,200	0			
150 to 1,000.....	1,200		.000000588		150
1,000 to 5,000.....	1,700		.000000125		1,000
5,000 to 10,000.....	2,200		.000000100		5,000
Over 10,000.....	2,700				
Category C:					
0 to 150.....	700	0			
150 to 1,000.....	700		.000000235		150
1,000 to 5,000.....	900		.000000050		1,000
5,000 to 10,000.....	1,100		.000000040		5,000
Over 10,000.....	1,300				

¹ Total assets are to be measured on a pro forma basis—that is, the applicant's total assets if its application is approved.

² For types of applications and notifications included in each category, see Table 3.

Specific Issues for Comment

The Board requests comment on the following issues raised by the proposed rulemaking.

1. The Board has proposed a revised schedule of assessments for the supervision of Edge corporations (Table 2) as well as revised alternative schedules of fees for the processing of a variety of applications filed with the Board (Tables 3 and 4). The fees are substantially lower than originally proposed (see 51 Federal Register 48101 November 19, 1986)), in part, because the Board has expanded the scope of the proposed system of charges to include a significant additional Board function—inspection of bank holding companies—for which a schedule of proposed assessments is presented in Table 1. The Board seeks comment on whether, if it decides to charge for supervisory activities, it should adopt the schedule of fees contained in Tables 1, 2 and 4 to recover approximately half of the System's costs in conducting these activities, or whether it should charge fees at a much higher level, as proposed in November 1986, only for Edge corporation supervision and for processing a variety of applications (approximately two times the proposed fees in Tables 2 and 4). If assessments and fees are to be charged only for the narrower set of supervisory functions, they would be established to recover virtually all of the System's costs in conducting these activities.

2. Whether the proposed fee schedule for inspection of bank holding companies is reasonably structured as based on a sliding scale to be determined by nondepository asset size?

3. Whether in setting the annual fees for inspection and supervision of bank holding companies, the Board should assess such fees only if an on-site inspection is performed?

Regulatory Flexibility Act

The Board is sensitive to the impact of the proposed rule on small entities. Consequently, the Board is considering the imposition of fees for supervision of Edge corporations for the inspection of bank holding companies and for applications on a sliding scale based upon the size of the regulated organization. It has proposed comparatively limited fee assessments for smaller organizations, and, indeed, proposes not to charge bank holding companies that have relatively minimal amounts of nondepository assets. Moreover, the proposed schedules are designed to recover partially those costs associated with a particular supervisory

activity. The Board believes the fees payable will be sufficiently small as to have no significant impact on the financial stability of a reasonably profitable institution.

The proposed regulation imposes no additional information collection requirements.

List of Subjects

12 CFR Part 211

Accounting for fees on international loans, Schedule of fees for examination, Allocated transfer risk reserve, Reporting and disclosure of international assets; Banks, Banking, Federal Reserve System, Foreign banking, Reporting and recordkeeping requirements, Export trading companies.

12 CFR Part 225

Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Schedule of fees for inspection.

12 CFR Part 262

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Schedule of fees for applications.

For the reasons set forth above, the Board proposes to amend 12 CFR Parts 211, 225 and 262 as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS

1. The authority citation for Part 211 continues to read as follows:

Authority: Federal Reserve Act (12 U.S.C. 211 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978 (Pub. L. 95-369; 92 Stat. 607; 12 U.S.C. 3101 *et seq.*); the Bank Export Services Act (Title II, Pub. 97-290, 96 Stat. 1235); and the International Lending Supervision Act Title IX, Pub. L. 98-181, 97 Stat. 1153).

2. Section 211.4 is amended by adding an additional paragraph (a)(7) to read as follows:

§ 211.4 Edge and Agreement Corporations.

(a) * * *

(7) Edge corporations shall be assessed an annual fee by the Board for supervision and inspection. The schedule of such fees is provided in § 263.3(d) of the Board's Rules of Procedure, 12 CFR 262.3(d).

PART 225 BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

3. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 19844, 3106, 3108, 3907, 3909.

4. Section 225.5 is amended by adding paragraph (d) to read as follows:

§ 225.5 [Amended]

(d) The Board shall assess fees for inspection of bank holding companies on the basis of the assets of the parent holding companies and all nondepository subsidiaries according to the following schedule.

SCHEDULE OF ANNUAL ASSESSMENT TO BE CHARGED BANK HOLDING COMPANIES

Nonbank assets of parent holding company plus assets of nonbank subsidiaries ¹ (millions of dollars)	Annual assessment				
	This amount	plus	Factor	times	Excess over (millions of dollars)
.0 to .05.....	0		0.000000		.0
.05 to .2.....	0		.003000		.05
.2 to .5.....	450		.000400		.2
.5 to 1.0.....	570		.000300		.5
1.0 to 10.0.....	720		.000200		1.0
10.0 to 25.0.....	2,520		.000120		10.0
25.0 to 100.0.....	4,320		.000090		25.0
100.0 to 500.0.....	11,070		.000060		100.0
500.0 to 2,000.0.....	35,070		.000020		500.0
2,000.0 to 5,000.0.....	65,070		.000016		2,000.0
5,000.0 to 15,000.0.....	113,070		.000011		5,000.0
15,000.0 and over.....	223,070		.000005		15,000.0

¹ For each bank holding company, the asset total for parent + nonbank subsidiary amount is to be computed by (a) adding total assets for the parent company and its consolidated nonbank subsidiaries, and (b) then subtracting parent company loans and advances to, and investments in, bank and nonbank subsidiaries.

5. Section 225.24(a) is revised to read as follows:

§ 225.24 [Amended]

(a) *Filing application.* An application for the Board's prior approval under this subpart shall be filed with the appropriate Reserve Bank on the designated form and shall comply with § 262.3 of the Rules of Procedure (12 CFR 262.3), which requires the payment of an application fee and the publication by the applicant of newspaper notice of the application.

* * *

6. Section 225.43(a) is amended by adding the following sentence at the end.

§ 225.43 [Amended]

(a) * * * Each notice shall be accompanied by the appropriate fee as set forth in § 262.3 of the Board's Rules of Procedures (12 CFR 262.3).

* * *

PART 262—RULES OF PROCEDURE

7. The authority citation for Part 262 is revised to read as follows:

Authority: Administrative Procedure Act (5 U.S.C. 552); Bank Holding Company Act (12 U.S.C. 1841 *et seq.*); International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*); and the International Lending Supervision Act (12 U.S.C. 3901 *et seq.*).

§ 262.3 [Amended]

8. In § 262.3 paragraphs (d) through (l) are redesignated as paragraphs (e) through (m).

9. In § 262.3 a new paragraph (d) is added to read as follows:

* * *

(d) (1) The Board shall assess fees for the filing of all applications (except applications for membership in the Federal Reserve System and for ATM applications) according to the following schedule.

**PROPOSED FEE SCHEDULE FOR PROCESSING APPLICATIONS SUBMITTED TO THE
FEDERAL RESERVE SYSTEM**

Total assets ¹ (millions of dollars)	Fee				
	This amount (dollars)	plus	Factor	times	Excess over (millions of dollars)
Category A ²:					
0 to 150.....	3,200		0		
150 to 1,000.....	3,200		.000001764		150
1,000 to 5,000.....	4,700		.000000375		1,000
5,000 to 10,000.....	6,200		.000000300		5,000
Over 10,000.....	7,700				
Category B:					
0 to 150.....	1,200		0		
150 to 1,000.....	1,200		.000000588		150
1,000 to 5,000.....	1,700		.000000125		1,000
5,000 to 10,000.....	2,200		.000000100		5,000
Over 10,000.....	2,700				
Category C:					
0 to 150.....	700		0		
150 to 1,000.....	700		.000000235		150
1,000 to 5,000.....	900		.000000050		1,000
5,000 to 10,000.....	1,100		.000000040		5,000
Over 10,000.....	1,300				

¹ Total assets are to be measured on a pro forma basis—that is, the applicant's total assets if its application is approved.

² For types of applications and notifications included in each category, see Table 3.

(2) The Board shall assess fees for the supervision of Edge Act corporations according to the following schedule.

SCHEDULE OF ANNUAL ASSESSMENTS FOR EDGE AND AGREEMENT CORPORATIONS

Total assets plus standby letters of credit (millions of dollars)	Annual assessment				
	This amount (dollars)	plus	Factor	times	Excess over (millions of dollars)
Investment corporations: ¹					
0 to 10.....	500		0.000100		0
10 to 25.....	1,500		.000070		10
25 to 100.....	2,550		.000050		25
100 to 500.....	6,300		.000035		100
500 to 2,000.....	20,300		.000016		500
2,000 to 5,000.....	44,300		.000014		2,000
Over 5,000.....	86,300		.000009		5,000
Banking corporations:					
0 to 10.....	1,000		.000200		0
10 to 25.....	3,000		.000120		10
25 to 100.....	4,800		.000090		25
100 to 500.....	11,550		.000060		100
500 to 2,000.....	35,550		.000020		500
2,000 to 5,000.....	65,550		.000016		2,000
Over 5,000.....	113,550		.000011		5,000

Plus: .0000020 times the amount of commitments to purchase foreign currencies and U.S. dollar exchange.

¹ Consolidated with their subsidiaries.

By order of the Board of Governors of the Federal Reserve System, June 2, 1987.

William W. Wiles,
Secretary of the Board.

[FR Doc. 87-12901 Filed 6-5-87; 8:45 am]

BILLING CODE 6210-01-M

**EXPORT-IMPORT BANK OF THE
UNITED STATES**

12 CFR Part 404

**The Freedom of Information Reform
Act of 1986; Revision of Fees, Fee
Waiver Policy and Other Changes**

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Export-Import Bank of the United States (Eximbank) proposes to amend its regulations regarding fees charged for processing requests under the Freedom of Information Act, as amended (FOIA). These changes are necessary to implement certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570). Pursuant to Pub. L. 99-570, these proposed amendments are written to follow the Uniform Freedom of Information Act Fee Schedule and Guidelines, published in the *Federal Register* in final form by the Office of Management and Budget on March 27, 1987.

DATE: Written comments must be received by the contact person listed below on or before July 8, 1987.

ADDRESS: Comments should be addressed to the General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, NW., Washington, DC 20571. Comments received may be inspected in the Office of Public Affairs located in Room 1203 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gregory Beams, (202) 566-8194.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 ("Reform Act") required the Office of Management and Budget to develop and issue a schedule of fees and guidelines applicable to the processing of FOIA requests. After publication of the proposed schedule and guidelines in the *Federal Register* on January 16, 1987, and consideration of comments

received, OMB issued its final rule regarding fees and relevant guidelines in the Federal Register on March 27, 1987. The Department of Justice provided agencies with advisory fee waiver policy guidance in a Memorandum dated April 2, 1987, issued by the Assistant Attorney General. The following amendments to 12 CFR Part 404 conform to OMB's schedule and guidelines, and are consistent with the Department of Justice guidance respecting fee waiver policy. Technical changes have also been made to reflect changes in the titles of Eximbank officers, and requirements for the use of specific forms have been deleted.

Eximbank has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies 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.

Eximbank has certified that this rule will not have a significant economic impact on a substantial number of small entities because only a very small percentage of that group will likely be affected by this regulation—i.e., those entities that choose to submit requests for records under the Freedom of Information Act, 5 U.S.C. 552. As a result, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 404

Disclosure of Information.

For the reasons set forth in the preamble, it is proposed to amend 12 CFR Part 404 as set forth below:

PART 404—[AMENDED]

1. The authority citation for Part 404 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 635; Freedom of Information Reform Act of 1986, Pub. L. 99-570; Debt Collection Act of 1982, Pub. L. No. 97-365.

§ 404.3 [Amended]

2. Amend 12 CFR 404.3(d) by removing "Public Affairs Office in Room 1267" and adding in lieu thereof "Office of the Secretary in Room 933".

§ 404.4 [Amended]

3. Amend 12 CFR 404.4(c)(1) by removing "Senior Vice President—Research and Communications" wherever it appears and adding in lieu thereof "Office of the General Counsel".

4. Amend 12 CFR 404.4(c)(1) by removing "EIB Form 73-5, described in paragraph (d) of this section, may be used in lieu of a letter for purposes of making the request."

5. Amend 12 CFR 404.4(c)(3) by removing "Senior Vice President—General Counsel" and adding in lieu thereof "General Counsel".

6. Amend 12 CFR 404.4(c)(4) by removing "Senior Vice President—General Counsel" and adding in lieu thereof "General Counsel".

7. Remove § 404.4(c)(6) and § 404.4(c)(7) in their entirety, and redesignate § 404.4(c)(8) as § 404.4(c)(6).

8. Remove 12 CFR 404.4(d).

9. Revise § 404.6 to read as follows:

§ 404.6 Schedule of fees.

(a) *Definitions.* (1) The term "direct costs" means those expenditures which Eximbank 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 the 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.

(2) 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. Searches may be done manually or by computer using existing programming.

(3) 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 usable by requesters.

(4) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use 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.

(5) 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 belongs in this category, Eximbank must determine the use to which a requester will put the documents requested. Where Eximbank 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, Eximbank may seek additional clarification before assigning the request to a specific category.

(6) 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.

(7) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (a)(5) 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.

(8) 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. 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 that organization, even though not actually employed by it. A publication contract would be the clearest proof, but Eximbank may also look to the past publication record of a requester in making this determination.

(b) *Fees to be charged—general.* Eximbank will charge fees that recoup the full allowable direct costs it incurs,

and will use the most efficient and least costly methods to comply with requests for documents made under the FOIA. Eximbank may contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method, and does not result in an ultimate cost to the requester greater than it would be if Eximbank had performed these tasks. Eximbank will not contract out responsibilities which the FOIA provides that it alone may discharge, such as determining applicability of an exemption, or determining whether to waive or reduce fees. When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as the Government Printing Office or the National Technical Information Service, Eximbank will inform requesters of the steps necessary to obtain records from those sources.

(1) *Manual searches for records.* Eximbank will charge for search and review work performed by its employees according to the following fee schedule:

Clerical, hourly rate.....	\$12.00
Professional, hourly rate.....	\$24.00

(2) *Computer searches for records.* Eximbank will charge the actual direct cost of providing the service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search. Operator/programmer salary will be calculated at basic pay plus 16 percent. Average rates for CPU operating costs and operator-programmer salaries involved in FOIA searches will be established and periodically revised to reflect actual direct costs. These rates will be available upon request.

(3) *Review of records.* Only requesters who are seeking documents for commercial use will be charged for time Eximbank spends reviewing records to determine whether they are exempt from mandatory disclosure. Charges will be assessed only for the initial review, i.e., the review undertaken the first time Eximbank analyzes the applicability of a specific exemption to a particular record or portion of a record. Eximbank will not charge for review at the administrative appeal level of an exemption 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 may be assessed. Eximbank will charge for employee time spent in review according to the rates set forth in paragraph (b)(1) of this section.

(4) *Duplication of records.* The per page charge for paper copy reproduction of documents is \$.25. For copies prepared by computer, such as tape or printouts, or for other methods of reproduction or duplication, Eximbank will charge according to their actual direct cost. If Eximbank estimates that duplication charges are likely to exceed \$25.00, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such notice will offer a requester the opportunity to confer with Eximbank personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(5) *Other charges.* Complying with requests for special services such as those listed below is entirely at the discretion of Eximbank. Eximbank will recover the full costs of providing services such as those enumerated below to the extent that it elects to provide them:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc. (Charges will not be made for ordinary packaging and mailing.)

(6) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, Eximbank will provide the first 100 pages of duplication and the first two hours of search time without charge. Except for commercial use requesters, Eximbank will not begin to assess fees until after it has provided the free search and reproduction, and will not charge a fee in any case of \$6.00 or less. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, Eximbank would determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost was equal to or less than \$6.00, no charges would result. For searches made by computer, when the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, Eximbank will begin to assess charges for computer search.

(c) *Fees to be charged—categories of requesters.* There are four categories of FOIA requesters, with specific levels of fees for each category prescribed by law. Requesters in each category must reasonably describe the records sought.

(1) *Commercial use requesters.* When Eximbank receives a request for documents for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Inclusion in this fee category is determined not by the identity of the requester, but by the use to which the information will be put. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. Eximbank will recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records.

(2) *Educational and non-commercial scientific institution requesters.* Eximbank will provide documents to requesters in this category 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. To be included in this category it must be apparent from the nature of the request that the request serves a scholarly research goal of the institution, rather than an individual goal.

(3) *Requesters who are representatives of the news media.* Eximbank will provide documents to requester in this category 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 paragraph (a)(8) of this section, and his or her request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester will not be considered to be a request that is for a commercial use.

(4) *All other requesters.* Eximbank 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 will be furnished without charge. Requests from record subjects

for records about themselves filed in Eximbank systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

(d) *Charging interest—notice and rate.* Eximbank will begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Receipt of the fee at Eximbank will stay the accrual of interest. 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.

(e) *Charges for unsuccessful search.* Eximbank will 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.

(f) *Aggregating requests.* A requester may not file multiple requests at the same time each seeking a portion of a document or documents, solely in order to avoid payment of fees. When Eximbank reasonably believes that a requester or 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, Eximbank may aggregate any such requests and charge accordingly. In no case will Eximbank aggregate multiple requests on unrelated subjects from one requester.

(g) *Method of payment and advance payments.* All payments to Eximbank shall be in the form of cash, check, or money order payable to the Export-Import Bank of the United States. Eximbank will not require a requester to make an advance payment—i.e., payment before work is commenced or continued on a request, unless:

(1) Eximbank estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00, in which case Eximbank 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) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), in which case Eximbank will require the requester to pay the full amount owed plus any applicable interest or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before Eximbank begins to process a new request or a pending request from the requester. The

administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt 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 Eximbank has received fee payments described above.

(h) *Effect of the Debt Collection Act of 1982 (Pub. L. 97-365).* In accordance with the provisions and authorities of the Debt Collection Act of 1982, Eximbank reserves the right to disclose information to consumer reporting agencies and to use collection agencies, where appropriate, to encourage payment of fees.

(i) *Fee waivers and appeals.* (1) Eximbank will waive or reduce applicable fees upon request, only if it determines that in the particular instance, 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, and the disclosure is not primarily in the commercial interest of the requester. Eximbank will employ the following factors to determine whether (FOIA) fees should be waived or reduced—

(i) Whether 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; Specifically,

(A) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(B) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(C) 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;

(D) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(ii) Whether disclosure of the information is not primarily in the commercial interest of the requester: Specifically,

(A) the existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(B) 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 disclosure, that disclosure is primarily in the commercial interest of the requester.

(2) The requirements of both paragraphs (i)(1)(i) and (i)(1)(ii) of this section must be satisfied before any waiver or reduction can be given, and the requester in all cases has the burden of presenting sufficient evidence or information to justify the requested waiver or reduction. The requester may use the procedures set forth in § 404.5 to appeal the denial of a waiver request under this section.

Hart Fessenden,

General Counsel.

[FR Doc. 87-12764 Filed 6-5-87; 8:45 am]

BILLING CODE 6690-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-17-AD]

Airworthiness Directives; Cessna Models T303, 310, 320, 335, 336, 337, P337, 340, 401, 402, 404, 411, 414 and 421 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to Cessna Models T303, 310, 320, 335, 336, 337, P337, 340, 401, 402, 404, 411, 414 and 421 Series airplanes, hereafter referred to as 300 and 400 Series airplanes, which would require modification of the fuel filler port to prevent inadvertent filling of the fuel tanks with jet fuel. The NTSB has reported six accidents or incidents on the above aircraft where misfueling was found to have contributed to the accidents. The modification is necessary to prevent further misfueling and thereby preclude inflight engine failure.

DATES: Comments must be received on or before July 28, 1987.

ADDRESSES: Cessna Aircraft Company Service Information Letter ME84-31, dated July 20, 1984, applicable to this AD may be obtained from Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201; or may be examined at the Rules Docket at the address below. Send comments on

the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Council, Attention: Rules Docket No. 87-CE-17-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Riddle, Aerospace Engineer, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4427.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Council, Attention: Airworthiness Rules Docket No. 87-CE-17-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The NTSB has reported that there have been six accidents or incidents on Cessna 300 and 400 Series airplanes as a result of inflight engine failure or loss of power in which misfueling with jet fuel was the cause. Further, they indicate that most cases of misfueling of light aircraft occur with light, twin-engine, piston-powered airplanes which are similar in appearance to turbine engine-powered airplanes.

In recent years, the frequency of accidents involving misfueling with jet fuel has increased significantly despite efforts of the FAA and other interested parties. On September 17, 1982, and October 5, 1984, the FAA issued two Advisory Circulars (ACs) Nos. 20-116 and 20-122, "Marking Aircraft Fuel Filler Openings with Color Coded Decals," and "Anti-Misfueling Devices: Their Availability and Uses." Both recommend methods to prevent aircraft misfueling. However, the level of response to these ACs appears low considering the nature of the problem and the number of airplanes involved. Therefore, in the interest of aviation safety, the modification of the fuel filler port recommended by the NTSB is proposed.

Since the condition described is likely to exist or develop in other Cessna Aircraft Company Model 300 and 400 Series airplanes of the same type design, the proposed AD would require compliance with Cessna Service Information Letter ME84-31 dated July 20, 1984, for all Cessna Model 300 and 400 Series airplanes. ME84-31 offers seven different kits for the above airplanes. The FAA has determined there are approximately 14,472 Cessna airplanes affected by the proposed AD. The estimated cost of modifying these airplanes would depend on the number of fuel filler caps on the airplane. Many of the above airplanes have optional wing or wing locker tanks. The cost to modify the Cessna fleet is \$5,073,116. This cost assumes that the optional fuel tanks are installed on those airplanes on which they were offered. The average cost per airplane is \$350.

The cost of complying with the proposal will not have significant financial impact on any small entities owning affected airplanes.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "Addresses".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

PART 39—[AMENDED]

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD: Cessna: Applies to the following airplanes certificated in any category:

Model	Serial No.
T303	T30300001 thru T303000301
310 thru 310R	310-39032 thru 310R2140
320 thru 320F	320-0001 thru 320F0045
335	335-0001 thru 335-0065
336	336-0040 thru 336-0195
337	33700001 thru 33701882
P337	P3370001 thru P3370322
340 thru 340A	340-0001 thru 340A1543
401 thru 401B	401-0001 thru 401B0221
402 thru 402C	402-0001 thru 402C0853
404	404-001 thru 404-0859
411 thru 411A	411-0001 thru 411A0300
414 thru 414A	414-0001 thru 414A0858
421 thru 421C	421-0001 thru 421C1257

Compliance: Required as indicated, unless already accomplished.

To preclude misfueling of the airplane resulting in engine failure, accomplish the following:

(a) Within the next 12 calendar months after the effective date of this AD, unless already accomplished, modify all fuel filler opening(s) in accordance with the instructions contained in Cessna Service Information Letter ME84-31, dated July 20, 1984.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) In accordance with FAR Part 43, Appendix A, Item (c) 29, the modifications required by this AD (except installation of the SK303-29, SK337-40A and SK337-41A kits) are preventative maintenance and may be performed by the holder of a pilot certificate issued under FAR Part 61 on airplanes owned or operated by him, subject to the limitations of FAR 43.3(g). The maintenance record entries required by FAR 43.9 and FAR 91.173 must be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201; or may examine the document(s) referred to herein at the FAA, Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 28, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-12894 Filed 6-5-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-CE-18-AD]

Airworthiness Directives; Gulfstream Models 500, 500A, 500B, 500S, 500U, 520, 560, 560A, 560E, 560F, 680, 680E, 680F, 680FL, 680FP, 680FL(P), 685, 700, and 720 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Gulfstream Models 500, 500A, 500B, 500S, 500U, 520, 560, 560A, 560E, 560F, 680, 680E, 680F, 680FL, 680FP, 680FL(P), 685, 700, and 720 airplanes, herein referred to as "500/600/700 Series" airplanes, which would require the modification of the fuel filler port to prevent inadvertent filling of the fuel tanks with jet fuel. The NTSB has reported four accidents where aircraft misfueling was found to have contributed to the accidents. The modification is necessary to prevent further misfueling and thereby preclude in-flight engine failure.

DATES: Comments must be received on or before July 28, 1987.

ADDRESSES: Gulfstream Aerospace Corp., Service Information No. SI-209, dated July 15, 1986, applicable to this AD may be obtained from Gulfstream Aerospace Corp., Wiley Post Airport, P.O. Box 22500, Oklahoma City, Oklahoma 73123. This information may be examined at the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-18-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location

between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Garry Sills, FAA, Southwest Region, Airplane Certification Branch, ASW-150, 4400 Blue Mound Rd., Fort Worth, Texas 76106; Telephone (817) 624-5164.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-18-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The NTSB has reported that there have been four accidents as a result of in-flight engine failure on Gulfstream Model 500/600/700 Series airplanes with reciprocating engines in which misfueling with jet fuel was the cause. Further, they indicate that most cases of misfueling of light aircraft occur with light, twin-engine, piston-powered airplanes which are similar in appearance to turbine engine-powered airplanes.

In recent years, the frequency of accidents involving misfueling with jet fuel has increased significantly despite efforts of the FAA and other interested parties. On September 17, 1982, and October 5, 1984, the FAA issued two Advisory Circulars (AC) Nos. 20-116 and 20-122, "Marking Aircraft Fuel Filler Openings with Color Decals," and

"Anti-Misfueling Devices: Their Availability and Uses." Both recommend methods to prevent aircraft misfueling. However, the level of response to these AC's appears low considering the nature of the problem and the number of airplanes involved. Therefore, in the interest of aviation safety, the modification of the fuel filler port recommended by the NTSB is proposed.

Since the condition described herein is likely to exist or develop in other Gulfstream Aerospace Corp., Model 500/600/700 Series airplanes of the same type design, the proposed AD would require compliance with Gulfstream Service Information No. SI-209, dated July 15, 1986, for all Gulfstream Model 500/600/700 Series airplanes. SI-209 offers three different kits for the airplanes. These kits are permitted by FAA AC No. 20-122 to be installed by the owner/operator or A&P mechanic or equivalent.

A certain group of Gulfstream airplanes originally had a siphoning fuel filler cap and were required by AD 73-6-2 to be modified to a nonsiphoning configuration by the installation of a Gulfstream Commander Custom Kit No. 87A. Compliance with AD 73-6-2 is a prerequisite to the accomplishment of this action.

The FAA has determined there are approximately 1,995 airplanes affected by the proposed AD. The estimated cost of modifying these airplanes would depend on the number of fuel filler caps on the airplane. For all model airplanes except the Model 700, the cost per tank is \$105. The cost for the Model 700 is \$288.

Gulfstream Models 500, 500A, 500B, 500U, 500S, 520, 560, and 560A have only one filler cap. Gulfstream Models 560E, 560F, 680, 680F, 680FP, 680FL, 680FLP, and 720 have three filler caps. The Model 700 has two filler caps and two optional filler caps. The total cost to modify the fleet will be \$405,830. The cost of complying with the proposal will not have a significant financial impact on any small entities owning affected airplanes.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy

of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Gulfstream: Applies to Models 500, 500A, 500B, 500U, 520, 560, 560A, 560E, 560F, 680, 680E, 680F, 680F(P), 680FL(P), and 720 (S/N 1 through 1854); and Models 500S (S/N 1755 through 3323), 680FL (S/N 1261 through 1853), 685 (S/N 12001 through 12066), and 700 (S/N 70001 through 70032) airplanes certified in any category.

Compliance: Required as indicated, unless already accomplished. To preclude misfueling of the airplane resulting in engine failure, accomplish the following:

(a) Within the next 12 calendar months after the effective date of this AD, unless already accomplished, modify all fuel filler opening(s) in accordance with the instructions contained in Gulfstream Service Information No. SI-209, dated July 15, 1986.

Note.—AD 73-6-2, applicable to certain of the above referenced airplanes, is a prerequisite to the accomplishment of the actions prescribed in this AD.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) In accordance with FAR Part 43, Appendix A, item (c)29, the modifications required by this AD are preventative maintenance and may be performed by the holder of a pilot certificate issued under FAR Part 61 on airplanes owned or operated by him, subject to the limitations of FAR 43.3(g). The maintenance record entries required by FAR 43.9 and FAR 91.173 must be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, ASW-150, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Gulfstream Aerospace Corp., P.O. Box 22500, Oklahoma City, Oklahoma 73123; or may examine the documents referred to herein at the FAA, Office of the

Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 28, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-12895 Filed 6-5-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-CE-16-AD]

Airworthiness Directives; Piper Models PA-31, PA-31-300, PA-31-325, PA-31-350, PA-31P, PA-31P-350, PA-60-600, PA-60-601, PA-60-601P, PA-60-602P, and PA-60-700P

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to Piper Models PA-31, PA-31-300, PA-31-325, PA-31-350, PA-31P, PA-31P-350, PA-60-600, PA-60-601, PA-60-601P, PA-60-602P, and PA-60-700P airplanes, herein referred to as "PA-31 and PA-60 Series" airplanes, which would require the modification of the fuel filler port to prevent inadvertent filling of the fuel tanks with jet fuel. The NTSB has reported eight accidents where aircraft misfueling was found to have contributed to the accidents. The modification is necessary to prevent further misfueling and thereby preclude inflight engine failure.

DATE: Comments must be received on or before July 28, 1987.

ADDRESSES: Piper Aircraft Corporation Service Bulletin No. 797A, dated April 2, 1985, applicable to this AD may be obtained from Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (305) 567-4366. This information may be examined at the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-16-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Goodall, Aerospace Engineer, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; Telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-16-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The NTSB has reported that there have been eight accidents as a result of inflight engine failure on Piper Aircraft Corporation Model PA-31 and PA-60 series airplanes with reciprocating engines in which misfueling with jet fuel was the cause. Further, they indicate that most cases of misfueling of light aircraft occur with light, twin-engine, piston-powered airplanes which are similar in appearance to turbine engine-powered airplanes. In recent years, the frequency of accidents involving misfueling with jet fuel has increased significantly despite efforts of the FAA and other interested parties. On September 17, 1982, and October 5, 1984, the FAA issued two Advisory Circular (AC) Nos. 20-116 and Nos. 20-122, "Marking Aircraft Fuel Filler Openings with Color Coded Decals," and "Anti-Misfueling devices: Their Availability and Uses." Both recommend methods to prevent aircraft misfueling. However, the level of response to these AC's appears low considering the nature of the problem and the number of airplanes

involved. Therefore, in the interest of aviation safety, the modification of the fuel filler port recommended by the NTSB is proposed. Since the condition described herein is likely to exist or develop in other Piper Aircraft Corporation Model PA-31 and PA-60 Series airplanes of the same type design, the proposed AD would require compliance with Piper Aircraft Corporation Service Bulletin No. 797A, dated April 2, 1985, for all Piper Aircraft Corporation Model PA-31 and PA-60 Series airplanes with reciprocating engines. SB-797A offers six different kits for the airplanes. These kits are permitted by FAA Advisory Circular No. 20-122 to be installed by the owner/operator or A&P mechanic or equivalent.

The FAA has determined there are approximately 7,100 airplanes affected by the proposed AD. The estimated cost of modifying these airplanes would depend on the number of fuel filler caps on the airplane. Most PA-31 series airplanes have two fuel ports while some are equipped with three. The average cost per fuel port for these aircraft to comply with this proposed AD is \$35 except for the PA-31P-350, which is \$93 per port. Most PA-60 series airplanes have three fuel ports but some are equipped with four. The average cost per fuel port for these aircraft to comply with this proposed AD is \$62. The approximate total cost to modify the fleet would be \$685,000. The cost of complying with the proposal will not have a significant financial impact on any small entities owning affected airplanes.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read Part 39—(Amended) as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:
Piper: Applies to Model PA-31-300 and PA-31 (S/N 31-5 thru 31-8412019), PA-31-325 (S/N 31-7400990 and 31-7512006 thru 31-8412015), PA-31-350 (S/N 31-5001 thru 31-8452021), PA-31-350 (S/N 31-6253001 thru 31-8453004), PA-31P (S/N 31P-3 thru 31P-7730012), PA-31P-350 (S/N 31P-8414001 thru 31P-8414050), PA-60-600, PA-60-601, PA-60-601P, PA-60-602P, PA-60-700P, (all S/N's) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished. To preclude misfueling of the airplane resulting in engine failure, accomplish the following:

(a) Within the next 12 calendar months after the effective date of this AD, unless already accomplished, modify the fuel filler opening(s) in accordance with the instructions contained in Piper Aircraft Corporation Service Bulletin No. 797A, dated April 2, 1985.

Note.—This AD does not apply to the PA-23-250 (Aztec F) or the PA-36 (Brave) which are also listed on Piper Service Bulletin No. 797A.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) In accordance with FAR Part 43, Appendix A, item (c) 29, the modifications required by this AD are preventative maintenance and may be performed by the holder of a pilot certificate issued under FAR Part 61 on airplanes owned or operated by him, subject to the limitations of FAR 43.3(g). The maintenance record entries required by FAR 43.9 and FAR 91.173 must be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine the document(s) referred to herein at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 28, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-12896 Filed 6-5-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 4

[Docket No. RM81-7-001]

Exemption From Licensing Requirements of Part I of the Federal Power Act of a Category of Small Hydroelectric Power Projects With an Installed Capacity of 5 Megawatts or Less

June 2, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to rescind §§ 4.109 through 4.113 of its regulations (18 CFR 4.1009-4.113 (1982)). These regulations were promulgated in Order No. 202, a final rule issued in this docket on January 19, 1982. The final rule exempted two categories of hydroelectric power projects from the licensing requirements of the Federal Power Act (FPA), 16 U.S.C. 792-828c (1982), subject to certain terms and conditions. The Commission stayed the effectiveness of the final rule in June 1983.

DATE: Written comments on this proposed rule must be filed with the Commission by July 8, 1987.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lynn S. Lichtenstein, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to rescind §§ 4.109 through 4.113 of its regulations (18 CFR 4.109-4.113 (1982)). These regulations were promulgated in Order No. 202, a final rule issued in this docket on January 19, 1982.¹ The final rule, which was appealed to the United States Court of Appeals for the District of Columbia Circuit in *National Wildlife Federation v. FERC*,² exempts two

¹ Order No. 202, issued January 19, 1982, 47 FR 4232 (January 29, 1982), FERC Stat. & Regs., Reg. Preambles ¶ 30.329 (1982).

² No. 82-2434 (D.C. Cir., filed December 3, 1982).

categories of hydroelectric power projects from the licensing requirements of the Federal Power Act (FPA), 16 U.S.C. 792 through 828c (1982), subject to certain terms and conditions. At the Commission's request, the Court of Appeals for the D.C. Circuit remanded the record in May 1983 to the Commission for further consideration. Pending the outcome of its reconsideration, the Commission stayed the effect of §§ 4.109 through 4.113 of its regulation.³

II. Background

Title IV of the Energy Security Act of 1980 (ESA) ⁴ amends the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2700 and 2708 (1982), to authorize the Commission to exempt certain small hydroelectric power projects on a case-by-case basis, or by class or category of such projects from all or part of the requirements of Part I of the FPA, including any licensing requirement.

Under section 408 of the ESA, the Commission has the discretion to provide exemptions under certain conditions. First, the proposed installed capacity of a project must not exceed 5 megawatts (MW) and must use the water power potential of an existing dam or a "natural water feature" that does not require the creation of a dam or man-made impoundment. Second, section 408 provides that certain environmental requirements apply to projects that the Commission exempts from licensing. Those requirements include the National Environmental Policy Act of 1969, the Endangered Species Act, and the Fish and Wildlife Coordination Act. Third, the statute states that any exemption from licensing will be subject to the consultation provisions in section 30 of the FPA. That section requires the Commission to include in any exemption the terms and conditions prescribed by state and Federal fish and wildlife agencies for the protection of fish and wildlife and other natural resources.

In the final rule issued in Order No. 202, the Commission exercised its discretion under section 408(b) of the ESA to exempt "classes or categories" or project.⁵ The rule established procedures to exempt two categories of small hydroelectric power projects that use existing dams. One category, described in § 4.109(a), includes projects

with a proposed installed generating capacity of more than 100 kilowatts (kW), but not more than 5 MW. Projects in the second category, described in § 4.109(b), must not exceed 100 kW of proposed installed capacity and are eligible for exemption under slightly different terms and conditions. Under § 4.109(c), any qualifying project is automatically exempted from licensing 30 days after the Commission receives a brief notice of exemption from licensing.

In the course of the rulemaking proceeding, some commenters argued that fish and wildlife agencies may impose conditions on a project-specific basis under section 30 of the FPA. These commenters contended all terms and conditions be included in a generic rule.

In Order No. 202 and in the order on rehearing,⁶ the Commission stated that it had complied with the requirements of section 30(c) by providing an opportunity in the rulemaking proceeding for fish and wildlife agencies to recommend terms and conditions for inclusion in the final regulations.⁷ The Commission also stated that making exemptions subject to project-specific terms and conditions would be incompatible with a truly categorical approach.⁸

The National Wildlife Federation, New England Rivers Center, and Trout Unlimited, Inc. (NWF) jointly appealed the final regulations to the D.C. Circuit in *National Wildlife Federation v. FERC*. NWF argued that the state and Federal fish and wildlife agencies must have the flexibility to consider the environmental impacts of particular projects and establish binding project-specific terms and conditions for the protection of the environment.

On April 18, 1983, the Commission requested by motion that the court remand the final rule to the Commission for further consideration. The court granted the Commission's motion and remanded the record in the case on May 20, 1983, so that the Commission could reconsider the categorical exemption rule. The Commission then issued a stay of the rule on June 15, 1983, and directed exemption applicants to use the case-by-case exemption procedures in §§ 4.101 through 4.108 of the regulations.

III. Discussion

The Commission had little experience with exemptions from licensing in 1982 when it established the categorical exemption procedures. In 1982, the case-

specific procedures in §§ 4.101 through 4.108 had been in effect for little more than a year. In order to eliminate the need for case-by-case evaluation and conditioning of every exemptible project, the Commission designed the categorical exemption regulations to impose generic environmental terms and conditions on every qualifying project. In order to qualify, a project owner must, before filing a notice of exemption, obtain certification from relevant agencies, identified in the regulations, stating that the proposed project complies with the terms and conditions of the regulations. Specifically, this certification process requires the project owner to consult with the appropriate fish and wildlife agencies and to come to agreement on any environmental concerns before he may file a notice of exemption.

The Commission's experience indicates it is inappropriate to categorically exempt certain projects instead of conducting case-by-case project evaluations. To date, the Commission has received more than 1,400 applications for exemptions from licensing under these regulations.⁹ Through processing and reviewing this large number of applications, the Commission has acquired considerable experience regarding the issues and problems that arise in processing exemptions from licensing for small hydroelectric power projects. The Commission's review of filings requesting categorical exemptions shows that the fish and wildlife agencies, although they certified the projects pursuant to the Commission's procedures, sometimes believed that additional, site-specific terms and conditions were necessary to more adequately protect fish and wildlife resources. The Commission believes that its procedures must respond to the concerns raised by these agencies since they have the primary authority and responsibility to analyze and mitigate the impacts by exempted projects on fish and wildlife resources. Therefore, the Commission is providing the agencies that have mandatory conditioning authority with the opportunity to impose project-specific conditions on all exemption applicants.

The Commission also believes that other aspect of the categorical exemption regulations may be inappropriate. For example, under the regulations proposed to be rescinded, there is no provision for comment or

³ Order No. 202-C, issued June 15, 1983, 48 FR 29474 (June 27, 1983), FERC Stat. & Regs., Reg. Preambles ¶ 30.461 (1983).

⁴ Pub. L. 96-294, 94 Stat. 611.

⁵ Procedures for exemption on a case-by-case basis are set forth in §§ 4.101 through 4.108 of the Commission's regulations.

⁶ Order No. 202-B, issued October 12, 1982, 47 FR 46269 (October 18, 1982), FERC Stat. & Regs., Reg. Preambles ¶ 30.403.

⁷ 47 FR 4233-34; 47 FR 46270.

⁸ 47 FR 4233; 47 FR 46270.

⁹ Approximately 1,417 applications were received from 1981 through March of 1987. Of these, approximately 710 have been granted.

protest by interested persons before an exemption becomes effective. On the other hand, under the Commission's case-specific procedures, the Commission published a notice of an application for exemption and gives interested persons an opportunity to comment on or protest the exemption or to intervene in the proceeding. The notice and comment procedure is a useful part of the exemption process. Prior to applying for an exemption, a project owner must have all the real property interests in non-Federal lands necessary to develop and operate the proposed project. A dispute over property rights generally will be brought to the Commission's attention through the notice and comment procedure. If the Commission is made aware of the dispute, it would not issue an exemption, since an exemption is not granted for a project that is not on property owned by (or under option to) the applicant.

Finally, the Commission does not believe that revising the categorical exemption procedures, rather than rescinding them, would serve a regulatory purpose. If the Commission were to revise the categorical exemption procedures, it would need to establish procedures similar to the existing case-by-case procedures in order to resolve the problems identified by its experience.¹⁰

Accordingly, the Commission proposes to rescind the categorical exemption procedures established in §§ 4.109 through 4.113 of the regulations.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 through 612 (1982), requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that, if promulgated, will have a "significant economic impact on a substantial number of small entities." The Commission is not required to make such analyses if a proposed rule will not have such an impact. The Commission believes that the proposed rule will not have a "significant economic impact." The rescission of the categorical exemption regulations will not preclude a project owner from obtaining an exemption. Any proposed project that would qualify for a generic exemption also would qualify for an exemption under the case-specific

procedures in §§ 4.101 through 4.108 of the Commission's regulations. Under the case-specific procedures, a developer must file an application for exemption instead of the short notice of exemption that is required under the categorical exemption procedures. Any resulting difference in costs to the project owner, however, will have an insignificant effect on total project costs.

Therefore, pursuant to section 605(b) of the RFA, the Commission certifies that this rule, if promulgated, will not have a "significant economic impact on a substantial number of small entities."

V. Comment Procedures

The Commission invites interested persons to submit written comments, data, views, and other information concerning the proposal to rescind the categorical exemption regulations. An original and 14 copies of such comments must be filed with the Commission not later than July 8, 1987. Comments submitted by mail must be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should reference Docket No. RM81-7-001.

All written submissions will be placed in the Commission's public files and will be available for public inspection through the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 4

Electric power, Reporting and record keeping requirements.

In consideration of the foregoing, the Commission proposes to amend Part 4 of Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,
Secretary.

PART 4—[AMENDED]

1. The authority citation for Part 4 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. 99–495; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Energy Security Act of 1980, Pub. L. 96–294, 94 Stat. 611; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E. O. 12009, 3 CFR 142 (1978).

2. The table of contents for Subpart K of Part 4 is amended removing §§ 4.109 through 4.113 and the corresponding titles.

§ 4.101 [Amended]

3. Section 4.101 is amended by removing the words "or categorical".

§ 4.106 [Amended]

4. Section 4.106 paragraph (c) is amended to remove the words "or a notice of exemption from licensing".

§§ 4.109 through 4.113 [Removed]

5. Part 4 is amended by removing §§ 4.109–4.113.

[FR Doc. 87–12927 Filed 6–5–87; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Parts 161 and 250

[Docket No. RM87–5–000]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines

June 2, 1987.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking related to marketing affiliates of interstate pipelines.

SUMMARY: The Federal Energy Regulatory Commission is issuing a notice of proposed rulemaking to state by rule what are prohibited practices by interstate pipelines and marketing affiliates under the Natural Gas Act and Natural Gas Policy Act. The Commission is also proposing reporting requirements, in computer-accessible form, to provide data that will reveal where unduly discriminatory or otherwise unlawful practices are occurring, and is proposing remedies that would be utilized if either the substantive standards or reporting requirements proposed in this rule were violated.

In addition, the Commission, by separate announcement, is providing for complementary informal processes—by establishment of an enforcement task force—to address existing and future complaints regarding marketing affiliates expeditiously, and to avoid formal processes where possible.

DATES: An original and 14 copies of comments must be filed by July 23, 1987. To the maximum extent practicable, an opportunity for oral presentation of data, views, and arguments shall be afforded, if requested by July 23, 1987. If any requests are received, a notice scheduling such hearing will be published in the *Federal Register* at a later date.

ADDRESS: All filings should refer to Docket No. RM87–5–000 and should be

¹⁰ Moreover, relatively few project owners took advantage of the categorical exemption procedures during the one year that they were in effect. During the period they were in effect, 1982–1983, the Commission received 48 notices of exemption, as opposed to more than 250 applications for case-specific exemptions.

addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Peter J. Roidakis, (202) 357-8224, (for information regarding this rule)
John E. Moeller, Jr., (202) 357-5228, (for information regarding the enforcement task force)
Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking Related to Marketing Affiliates of Interstate Pipelines

I—Introduction

On November 14, 1986, the Commission issued its "Notice of Inquiry (NOI) into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines." (Docket No. RM87-5-000) (51 FR 41982, November 20, 1986, FERC Stats. & Regs. ¶35,520). The NOI was issued in response to several petitions for rulemaking¹ and several specific cases which had raised the issue of potential abuse of the pipeline-marketing affiliate relationship.²

The NOI solicited comments on numerous general issues related to the Commission's legal authority to regulate pipeline marketing affiliate activity, the relevance of antitrust law, examples of existing abuses, and possible remedies. One hundred and seven commenters responded.³

¹ Petitions of Hudson Gas Systems, Inc. in Docket No. RM86-19-000, Minnesota Department of Public Service in Docket No. RM87-1-000, and Shell Gas Trading Company in Docket No. RM87-2-000.

² Northern Natural Gas Co., Docket No. RP82-71-000 *et al.*, 20 FERC ¶61,040 (1982); Mountain Fuel Resources, Inc., Docket No. RP86-87, 36 FERC ¶61,150 (1986); ANR Pipeline Co., Docket No. RP86-105, 35 FERC ¶61,400 (1986); Independent Petroleum Association of Mountain States v. Panhandle Eastern Pipe Line Co., Docket No. CP86-584, 36 FERC ¶61,282 (1986); Southern Natural Gas Co., Docket No. CP86-277-001 *et al.*, 36 FERC ¶61,275 (1986); Texas Gas Transmission Corp., Docket No. CP86-349-001, 36 FERC ¶61,274 (1986); Tenneco Corp. *et al.*, Docket No. CI86-168-000, 37 FERC ¶61,133 (1986); Arkla Exploration Co., Docket No. CI86-376-000 *et al.*, 37 FERC ¶61,011 (1986); Southern Natural Gas Co., Docket No. CI86-371 *et al.*, 36 FERC ¶61,401 (1986); Tenneco Oil Co. *et al.*, Docket No. CI86-254-000 *et al.*, 36 FERC ¶61,399 (1986).

³ Each comment was assigned to one of ten interest group categories to simplify discussion. (See List of Commenters by Industry Group, and Alphabetical List of Commenters, which are attached as Appendixes A and B, and which also establish the abbreviations to be used herein.) The ten interest group categories are as follows: (1) Major producers (seven comments); (2) independent producers (fourteen comments); (3) interstate

II—Preliminary Assessment

The comments received in response to the NOI appear to indicate that no industry-wide standards of conduct are being observed, and that anticompetitive activities could be occurring.

The Commission has concluded, in response to the comments received, to issue this notice of proposed rulemaking (NOPR) to outline its preliminary assessment of what it considers to be prohibited practices by interstate pipelines and marketing affiliates. The Commission is also proposing reporting requirements to provide data that will reveal where anticompetitive practices are occurring, and suggested remedies for violation of either the substantive standards or the reporting requirements. In addition, the Commission, by separate announcement, is putting in place immediately informal procedures—by establishing an enforcement task force—to process existing and future complaints quickly and establish a system for resolving disputes related to marketing affiliates without time-consuming formal processes.⁴ The informal task force proceedings are separate from, and intended to complement, the more formal rules and requirements proposed in this notice.

The discussion that follows indicates which other approaches, suggested by the various commenters, are being proposed by the Commission for formal rulemaking at this time. There are many allegations of anticompetitive practices in the NOI record, particularly from

pipelines (nineteen comments); (4) intrastate pipelines (three comments); (5) local distribution companies (twenty comments); (6) industrial consumers (seven comments); (7) public entities (sixteen comments); (8) affiliated marketers (three comments); (9) independent marketers (eighteen comments); and (10) other (two documents). The two documents in group ten were not comments on the NOI itself, but were letters from individuals that had been placed in the NOI file by Staff because the content of their letters appeared at least tangential to the subject of the NOI.

No particular significance is intended by the particular interest group designation assigned to a commenter. Classifying each comment by interest group was only intended to create a manageable framework in which to discuss the thousands of pages of comments that were filed. Some comments could obviously fit into more than one interest group category. (e.g., a holding company that owns both production and pipeline facilities, or a pipeline and its marketing affiliate filing joint comments). A summary of the commenters' positions, by industry group, is attached as Appendix C to this notice of proposed rulemaking.

⁴ The task force, it should be noted, will receive and investigate complaints of unlawful activities that may raise barriers to competition in the natural gas market, including activities that improperly restrict access to transportation or that impede market-responsive pricing.

independent marketers and producers,⁵ such that the Commission has determined, on balance, that the record is sufficient to warrant issuance of the notice of proposed rulemaking.

However, if the proposed rule discussed below results in the disclosure of more concrete evidence of abuse in particular cases or as a general practice, and other remedies fail, the Commission may order a particular pipeline to divorce or divest itself from its marketing affiliate, or to propose such divorcement or divestiture as a general rule for all interstate pipelines.⁶

The law prohibits undue discrimination on behalf of pipeline marketing affiliates or any harassment of non-affiliates.⁷ The Commission has identified several areas of special concern: some pipelines may be serving their affiliates faster than non-affiliates; some affiliates may have access to confidential information regarding availability of capacity and other issues; and some pipelines may be selectively enforcing operating provisions against non-affiliated shippers while not holding affiliates to the same standards.

In addition, there are serious issues raised concerning anticompetitive activities, such as the abuse of selective discounting under Order No. 436,⁸ the selective application of balancing penalties, and other selective use of tariff provisions and requirements such as those related to gas quality and volume requirements. The Commission is aware that the flexibility of selective discounting and waiver of tariff requirements may be permitted under certain regulations and tariffs. The unduly discriminatory application and anticompetitive effects of such flexibility are what concerns the Commission here. The proposed rule focuses on these areas of concern.

Finally, it has been suggested that a "dual" approach to interstate pipeline marketing affiliates be adopted. Under

⁵ Examples of these allegations are presented in Appendix D, and in at least one case, *Independent Association of Mountain States v. Panhandle Eastern Pipe Line Company*, Docket Nos. CP86-232-000 *et al.*, abuses have been determined to have occurred after a full evidentiary hearing.

⁶ Under "divorcement," pipelines could have marketing affiliates, but would not be allowed to do business with their own affiliates. (Cf. DO) comments at 24, which adopts this meaning for the term "divorcement.") Under "divestiture," pipelines would be prohibited from having marketing affiliates altogether. The Commission will use the term "organizational separation" to refer to the prohibition of pipelines and marketing affiliates from sharing the same offices, facilities, or personnel.

⁷ 15 U.S.C. 717(c) and (d).

⁸ 50 FR 42408 (1985), FERC Stats. & Regs. [Reg. Preambles 1982-85] ¶30,665.

this approach, interstate pipelines that have not elected to become open-access transporters under Order No. 436 would not be permitted to have an affiliated marketer, while those electing to become Order No. 436 pipelines would. One argument for this approach is that it would put an incentive back into the Order No. 436 choice, and would encourage a pipeline to make that election and thereby forego much of any monopoly power it might have over transportation. The question that remains, though, is the same as that generally under examination here for all pipelines, namely, how the Order No. 436 pipeline-marketing affiliate combination should be structured or regulated so as to prevent possible cross-subsidization⁹ or anticompetitive leveraging of any residual market power over transportation.

Since the idea of this dual approach—prohibiting marketing affiliates for non-Order No. 436 pipelines, while permitting them for Order No. 436 pipelines—was not high lighted as part of the notice of inquiry, the Commission is asking for comments on such an approach as part of this notice of proposed rulemaking.

The Commission also seeks comments on whether organizational separation of personal and facilities should be required of any interstate pipeline with a marketing affiliate, so that employees of the pipeline and the marketing affiliate function completely independently of each other. The Commission seeks comments on whether shared personnel and facilities should be prohibited.

III—Proposed Rule

The first part (A.) of the notice of proposed rulemaking would establish standards of conduct for interstate pipeline/marketing affiliate¹⁰ relations in two general areas: For tariff-related issues, and for non-tariff-related issues of fairness in marketing and transportation practices. This statement of prohibited practices will provide a framework under which persons may formulate complaints for resolution. (By

separate announcement the Commission is establishing procedures, to be immediately effective as in the public interest, to process existing and future complaints.) The second part (B.) of the notice of proposed rulemaking proposes certain reporting and recordkeeping requirements and implementation procedures. The third part (C.) discusses the remedies available to the Commission for noncompliance with the proposed rules and the judicial precedent and statutory authority underlying those remedies. There is also a fourth section (D.) which specifically focuses on section 501 of the NGPA as the basis for the reporting requirements established by the rule. Finally, the concluding section (E.) proposes establishment of an "open season" to provide equal access to transportation queues in the future, and seeks comments on the proposal.

A. Statement Respecting Prohibiting Practices¹¹

1. *Tariff-related issues.* Commenters have noted that some pipelines selectively failed to enforce their tariff requirements for sales by affiliates. For example, some may waive minimum quantity tariff requirements where gas is bought from an affiliate, or may selectively enforce contract quality specifications. *See, e.g.,* Hadson comments at 16–17. The Commission interprets such anticompetitive treatment as unduly discriminatory under the NGA, and therefore, unlawful, and states the following rules with respect to tariff provisions to prohibit such treatment.

(a) All tariff provisions must be implemented in a uniform manner.

(b) Any conditions that are required by a tariff¹² must be strictly enforced as to marketing affiliates, as well as to nonaffiliates.

(c) Tariffs must not provide marketing affiliates with a higher scheduling and curtailment priority for less essential service that would ordinarily have a lower priority.

(d) Tariffs must specify what information and format constitute a valid request for transportation service by shippers, and these tariff provisions must clearly and completely specify these requirements.¹³

(e) Pipelines must process all pending requests within a specific period of time, or in accordance with specific milestones, to be specified in advance in their tariff.

(f) Refiling of a pipeline's tariff will be required to meet the above standards.¹⁴

2. *Non-tariff-related issues.* (a) Interstate pipelines may not dispose of transportation requests by affiliates or provide transportation service in response to such requests before disposing of valid pending transportation requests by non-affiliates which were received by the pipeline prior to the requests of the affiliates.¹⁵

(b) Pipelines may not reveal any confidential information provided by non-affiliated shippers to secure service, to their affiliates; pipelines should not reveal any of their own confidential information to their affiliates solely but should communicate it contemporaneously to all shippers if it is revealed at all.

(c) Information filed with transportation requests must not be made available to marketing affiliate personnel, any other pipeline, or any other shipper,¹⁶ unless it is made

¹³ If such specifications are not already part of the pipeline's tariff, a pipeline must include them in its tariff and upon request promptly provide any person with a copy of such specifications for a valid request, any standardized form used by the pipeline to process such a request for transportation, and reasonable instructions for completing such form. If a pipeline does not make such requirements known, it is violating this rule's reporting requirements.

¹⁴ This requirement is premised on the Commission's belief that tariffs of interstate pipelines affiliated with marketers are unjust and unreasonable under NGA section 5 if they do not conform to these standards. *See Wisconsin Gas Co. v. FERC*, 770 F.2d 1144 (D.C. Cir. 1985).

¹⁵ Related examples of undue discrimination would be any abuse of the first-come, first-served rule by advising the affiliate of the pipeline's intent to provide open-access transportation before making this intent publicly known, or any other means to manipulate capacity allocation by delaying processing of valid requests for transportation by non-affiliates. (*See* discussion of "open season" proposal, *infra*.) The Commission also wishes to clarify, if necessary, that the requirement in its own Form ST-549 calling for the end-user of the gas to be reported need only be filed with the Commission 30 days after the transaction is commenced. Unless the pipeline can show an imperative operational need for it, this information need not be provided to the pipeline directly.

¹⁶ Some types of information treated under 2.d. above might include (1) the points between which the natural gas is to be transported by the pipeline; (2) the estimated total maximum daily quantities of natural gas to be transported by the pipeline, on a peak day, on an average day, and on an annual

Continued

⁹ *See, e.g.,* Comments of Natural Gas Clearinghouse, Inc. (NGCH) as supplemented April 13, 1987, with NGCH's comments in Docket No. PL87-3-000, of which the Commission takes administrative notice herein.

¹⁰ The proposed rule would apply to all interstate natural gas pipelines "affiliated" in any way with a marketing or brokering entity. To determine whether any person or entity is an "affiliate" under the definition in NGPA section 2(27), a 10% voting interest shall be a *prima facie* indicator of sufficient "control" to meet that definition, although a lesser percentage may be determined, on application, to amount to sufficient "control" in a particular case. *See* 15 U.S.C. 3301 (27).

¹¹ Issues discussed will, however, sometimes be stated in the positive, rather than in the negative. Specific examples will be presented in footnotes.

¹² Such conditions would include those related to: balancing/storage service; penalties; credit-worthiness standards and maximum pre-payment required; processing fees and requirements; curtailment priorities; and flexibility of receipt and/or delivery points. *See, e.g.,* Entrade comments which state that a particular pipeline requires Entrade to list each receipt point and volumes for each receipt point, and has a "use-it-or-lose-it" provision for each receipt point. However, contracts for the pipeline's affiliate simply list "various receipt points" and allow unlimitedly flexible rates "to be calculated monthly."

available on a not unduly discriminatory basis to all potential shippers.

(d) Interstate pipelines may not provide information to affiliated shippers regarding the availability of capacity for transportation service unless such offer or information is simultaneously communicated generally to all potential shippers, affiliated and non-affiliated, on the pipeline's system. "Potential shippers" include all current transportation and sales customers of the pipeline, and all persons who have pending requests for transportation service or for information regarding transportation service on the pipeline.

(e) An interstate pipeline may not condition or tie its agreement to release gas subject to take-or-pay relief, to an agreement by the producer (or a customer/end-user) to obtain services from any affiliate of the pipeline, or to an offer by the pipeline to provide or expedite transportation service to its affiliate relating to the released gas. Pipelines must also confirm, if asked, when independent marketers or producers are selling released gas, so that the pipeline's purchasers may know when these sales are mitigating the pipeline's take-or-pay liability. In this regard, any false or misleading information¹⁷ about take-or-pay will be considered a violation of this rule's reporting requirements.

(f) Pipelines must maintain logs showing all requests for transportation and their disposition. Such a log shall be kept current and shall be made available to members of the public upon request during business hours at the pipeline's place of business or by photocopy by mail at a reasonable cost. The log will also be filed with the Commission, and updated monthly. Such log should include information regarding the date of all transportation requests; the identity of the shipper making the request; the volumes, duration, and sources of the gas; receipt and delivery points of the gas to be transported; whether the service requested is interruptible or firm; the identity of the ultimate end-user of the gas when the information is public; the transportation rates requested and received for such

service and whether or not the gas being transported is subject to take-or-pay relief; the disposition of the request by the pipeline; date and an explanation of the disposition of the request; and any complaints by the shipper or end user concerning the requested or furnished service. It should also state whether the marketing affiliate was in any way connected with the transaction. (See Format 592 and proposed § 250.16 *infra*.)

(g) Records of who received transportation service and volumes authorized, and receipt and delivery points should also be kept on a daily basis.

(h) Finally, pipelines will be required to develop written procedures that will enable shippers and the Commission to determine how the prohibited practices have been eliminated.

B. Commission Implementation and Procedures

1. *Implementation.* Thirty days after the effective date of a final rule herein,¹⁸ all interstate pipelines providing transportation service under Part 284 of the Commission's regulations or pursuant to NGA section 7(c) certificates shall report to the Commission, pursuant to sections 8, 10, 14, and 16 of the Natural Gas Act, and sections 311 and 501 of the NGPA, their plans for complying with the requirements of this proposed rule.

Each such compliance plan should include the following information:

(a) Written informal procedures by which the pipeline addresses and resolves complaints by shippers or potential shippers;

(b) Written procedures by which the pipeline assures equal access by affiliated and non-affiliated shippers and potential shippers to information regarding the availability and pricing of transportation service and capacity offered by the pipeline for nomination and whether the gas involved was "released" gas;

(c) Written procedures that will enable shippers and the Commission to determine how the prohibited practices have been eliminated in conformance with the above standards. (Essentially a compliance plan that states how the pipeline plans to implement these requirements and to satisfy each subparagraph under the Statement Respecting Prohibited Practices in Part A.)

(d) How the pipeline assures that information under paragraphs (a), (b)

and (c), above, is communicated generally on an on-going basis to shippers and potential shippers on its system.

2. *Procedures.* The Commission is also establishing by separate announcement its own procedures that may be utilized concurrently by any complainant. These are not being proposed as part of this rule, but are intended to be immediately effective on announcement. These initially will include an informal fact-gathering process comprised of:

(a) Establishment of a task force to receive telephoned (and written) complaints about alleged unduly discriminatory activities by marketing affiliates. The task force will also review allegations made in the NOI comments involving specific companies;

(b) Initiation by the task force of preliminary investigations into complaints, pursuant to section 1b.6 of the Commission's Rules Relating to Investigations, 18 CFR 1b.6 (1986), to verify facts, ascertain the scope of any problem, and attempt informal resolution; and

(c) Compilation and analysis of cases for presentation to the Commission to apprise the Commission of the nature and extent of complaints and enable the Commission to decide whether to institute a formal investigation and/or refer matters to the Department of Justice.

Additional procedures, as required, may include:

(a) Initiation of hearings, pursuant to Rule 502 of the Commission's Rules of Practice and Procedure, 18 CFR 385.502 (1986), in which a pipeline will be directed to show cause why it has not unduly discriminated in favor of its marketing affiliate.

(b) Formal investigations, conducted pursuant to section 1b.5 of the Commission's Rules Relating to Investigations, 18 CFR 1b.5 (1986).

C. Remedies

(i) *Outline of remedies*—Where information indicates that unlawful, unduly discriminatory practices have occurred, the following remedies are among those that will be considered, as appropriate:

1. Where Transportation Is Provided Under section 7(c) of the NGA, including Order No. 436 Blanket Certificates.

(a) Require the pipeline to refund:

(i) An amount reasonably calculated to put actual or prospective shippers and suppliers who were injured by the pipeline's undue discrimination in the position they would have been had the undue discrimination not occurred; or

(ii) Grains derived from the pipeline's undue discrimination, including (a)

basis; (3) the dates of projected commencement and projected termination of service; (4) the estimated quantity of gas to be transported that has been released by reason of a change in, or termination of, the first seller's contractual obligation to provide natural gas service to the pipeline or its affiliate, and the date of such release; (5) identity of ultimate end user, at least until service has commenced.

¹⁷ An example of such "false or misleading" information would be where a pipeline or an affiliate states there will be a take-or-pay billing credit that will flow to the pipeline customer if the customer purchases gas from the affiliate. E.g., see proposed § 161.3(g), *infra*.

¹⁸ Section 553(d) of the APA requires that publication of a final rule must take place "not less than 30 days before its effective date." 5 U.S.C. 553(d) (1976).

return on equity for all transportation provided in an unduly discriminatory manner and (b) an amount equivalent to profits obtained by the affiliate as a result of the pipeline's undue discrimination.

(b) Issue an order and/or obtain a federal court injunction requiring the pipeline to transport in accordance with its authorization (*i.e.*, in a not-unduly-discriminatory manner).

(C) Condition present¹⁹ or future transportation on:

(i) Loss of priority for some or all transportation arranged by the affiliate;

(ii) Limitation or elimination of the pipeline's authority to transport gas sold or brokered by the marketing affiliate (divorcement);

(iii) Restructuring of corporate structures of pipeline and affiliate to ensure against future undue discrimination;

(iv) Regulating the affiliate in the future as part of the pipeline; and/or

(v) Divestiture of the affiliate.

(d) Assess civil penalties of up to \$5,000 per day for any knowing violation of this regulation's reporting and recordkeeping requirements established herein.

2. Where Transportation Is Provided Under section 311(a)(1) of the NGPA.

(a) Employ any and all remedies provided under Section 1, above.

(b) Assess civil penalties of up to \$5,000 per day:

(i) For any unduly discriminatory acts for the period in which they occurred, which a reasonable person would determine to be under; and/or

(ii) For any of the unduly discriminatory acts set forth in this rule, all of which hereafter occurring will be treated as "knowing" violations of section 504(a)(2) of the NGPA, 15 U.S.C. 3414(a)(2) (1982); and/or

(iii) For any knowing violation of the reporting and recordkeeping requirements established herein.

Where it appears that undue discrimination may be knowing and willful or may violate the federal antitrust laws, the Commission may transmit evidence of such violations to the Department of Justice for appropriate action.

¹⁹ Where past or present violation of a prohibited practice results in an affiliated marketer obtaining a preferred place in the first come, first-served queue, one remedy available would be to order the pipeline to terminate service to the affiliate at its place in the queue and to move the affiliated marketer to the end of the queue. In considering such an approach, the Commission would take into account the equitable interests of the producer, the purchaser, and the shipper, and seek to minimize any adverse effect on them. If such adverse impact cannot be avoided, other remedies will be applied to correct and deter the violation.

(ii) *Legal basis for remedies*—This section sets forth the Commission's authority to remedy interstate and intrastate pipelines' violations of the Natural Gas and the Natural Gas Policy Act.

Where a pipeline grants an undue preference to its marketing affiliate or subjects a non-affiliate to undue prejudice, the Commission may impose various remedies. The remedies available to the Commission for such violations depend on whether a pipeline is transporting pursuant to a certificate issued under section 7(c) of the Natural Gas Act (NGA), 15 U.S.C. 717f(c) (1982), or under section 311 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3371 (1982). These remedies may include civil penalties, refunds in the nature of restitution, divestiture, reordering of transportation priority, and limitation or elimination of the pipeline's authority to transport gas sold or brokered by the affiliate.

1. *Transportation under a Natural Gas Act Certificate*.—If a pipeline providing transportation pursuant to a certificate issued under the Natural Gas Act grants an undue preference or advantage to an affiliate, or subjects a nonaffiliate to an undue prejudice or disadvantage, it violates section 4(b) of the NGA, 15 U.S.C. 717c(b) (1982), which prohibits undue discrimination. The pipeline may also violate section 7(c) of the NGA, (1982), which prohibits interstate transportation without a certificate, because such a pipeline may be engaging in uncertificated interstate transportation by exceeding its certificate authority.

Section 16 of the Natural Gas Act, 15 U.S.C. 717o (1982), grants the Commission broad remedial authority to remedy violations. The Commission has the authority under that section to require natural gas companies to pay refunds to: (1) Place persons injured by a violation in the position they would have occupied had the violation not occurred, or (2) provide disgorgement of the violator's unjust enrichment.²⁰ The

²⁰ See *Coastal Oil & Gas Corp. v. FERC*, 782 F.2d 1249, 1253 (5th Cir. 1986); *Cox v. FERC*, 581 F.2d 449 (5th Cir. 1978) (seller who had illegally diverted gas was required to deliver an equivalent volume of gas to the rightful purchaser of the original contract price); *U.S. Steel Corp. v. FPC*, 533 F.2d 1217 (D.C. Cir. 1976) (pipeline customer that took deliveries of gas in excess of the customer's allotment under the pipeline's Commission-approved curtailment plan was required to pay back the gas); *Mesa Petroleum Co. v. FPC*, 441 F.2d 182 (5th Cir. 1971) (seller that has illegally diverted gas required to refund an amount based on the pipeline's costs of replacing the diverted gas).

Commission may look through the corporate form of affiliated corporations joined in a single system in order to remedy undue discrimination. See *South Carolina Generating Co. v. FPC*, 261 F.2d 915, 920 (4th Cir. 1958).

In addition to the remedies authorized by section 16, section 20(a) of the NGA, 15 U.S.C. 717s(a) (1982), authorizes the Commission to seek relief from NGA violations in federal district court whenever it appears that violations of the NGA are occurring or will occur. The Commission may seek an injunction prohibiting violations of the NGA which are occurring or which the Commission reasonably believes may occur, or it may ask the court to require the violator to take some appropriate affirmative action.

Finally, if it appears that undue discrimination may be "knowing and willful" or may violate the federal antitrust laws, the Commission may transmit evidence of such violations to the Department of Justice for appropriate action.

2. *Transportation Under Section 311 of the NGPA*. Pipelines which unduly discriminate while purporting to provide transportation under section 311 of the NGPA also violate NGA standards incorporated in the NGPA. The Commission only authorizes pipelines to transport under section 311 if they do so without undue discrimination. See 18 CFR 284.8(b), 284.9(b) (1986). Pipelines that engage in such discrimination may exceed their authority to transport under that provision. Since such pipelines may not have authority to transport apart from section 311, their transportation of gas in interstate commerce may be altogether unauthorized and may therefore violate section 7(c) of the NGA. Such pipelines, by unduly discriminating, may also violate section 4(b) of the NGA.

Providing unduly discriminatory transportation under section 311 also violates section 504(a)(2) of the NGPA, 15 U.S.C. 3414(a)(2) (1982), which prohibits violations of orders issued under that Act. Because Order No. 436 implements section 311, it is an order issued under the NGPA, and a pipeline that engages in undue discrimination in violation of Order No. 436 thus violates section 504(a)(2).

The remedial provisions of the NGPA parallel those of the NGA. Section 501(a) of the NGPA, 15 U.S.C. 3411(a) (1982), contains language essentially identical to section 16 of the NGA, and section 504(b)(1) of the NGPA, 15 U.S.C. 3414(b)(1) (1982), parallels section 20(a) of the NGA. Thus, case law construing the Commission's remedial authority

under the NGA supports the conclusion that the Commission has independent authority under the NGPA for administratively requiring refunds from, or seeking injunctive relief against, pipelines which unduly discriminate under section 311.

The NGPA also authorizes the Commission to impose appropriate prospective conditions on a pipeline's section 311 transportation. Section 311(c), 15 U.S.C. 3371(c) (1982), expressly permits the Commission to impose terms and conditions on such transportation, and section 501(a) authorizes the Commission to amend previously issued orders, which would include orders authorizing section 311 transportation.

Finally, section 504(b)(6) of the NGPA, 15 U.S.C. 3414(b)(6) (1982), authorizes the Commission to impose civil penalties up to \$5,000 per day for each "knowing" violation of that Act. Section 504(b)(6)(B) defines "knowing" not only as having "actual knowledge" but also as having "the constructive knowledge deemed to be possessed by a reasonable individual under similar circumstances." As in the NGA, the NGPA authorizes the Commission to transmit evidence of violations to the Department of Justice for appropriate action.

D. NGPA Section 501 as a Legal Basis for Enforcing Reporting and Recordkeeping Requirements

The Commission intends to utilize its general authority under NGPA section 501 to prescribe any rule it may find necessary and appropriate to carry out its functions under the NGPA, including appropriate enforcement activity. The Commission will utilize that authority in conjunction with the penalties available under section 504 to ensure that the recordkeeping and reporting requirements of this proposed rule are followed. Thus, even if the transaction that is reported is authorized under section 7 of the NGA, the Commission finds it necessary and appropriate under NGPA section 501 to ensure that the reporting requirement disclose the nature of the transaction. In addition, NGPA authorized transactions under section 311 are not only subject to penalties for failure to meet the reporting requirements promulgated pursuant to section 501 but are also subject to penalties for violations of the substantive transportation authorization itself under NGPA section 504.

There are several rationales of both a legal and practical nature to support the use of the section 501 authority to require the reports and recordkeeping proposed herein for all transportation transactions. First, as a practical matter, stringent enforcement of the reporting

requirements can be more quickly and surely accomplished than determining in a multitude of individual cases whether certain conduct was or was not unduly discriminatory, or whether the standards of behavior proposed in this NOPR were or were not violated. The publication of the reports and records will be a powerful incentive for interstate pipelines to obey the rules as well, since any violation will be easily detectable both by enforcement staff and interested private parties. Knowing violation of the reporting and recordkeeping rules will, in itself, involve the risk of serious and substantial penalties under section 504 of the NGPA, whatever the statutory basis for the transportation involved.

A number of legal rationales support this approach as well. In the first place, in order to implement the NGPA and properly discharge its duties thereunder, the Commission requires information concerning all transactions, whether involving NGA or NGPA transportation. For example, Part 284 of the Commission's regulations provides authorization for all interstate pipelines to transport, on a self-implementing basis, natural gas under NGPA section 311. Even if every eligible pipeline does not utilize the section 311 authorization, the Commission needs the proposed information in any event, in order to properly administer the program. Finally, the information to be collected through the proposed reporting and recordkeeping requirements will be important in determining whether sales by a pipeline's marketing affiliate should retain "first sale" status, as discussed *infra*. This information would be essential in determining this NGPA issue, whether the transportation provided the affiliate was authorized under the NGA or NGPA.

Accordingly, the Commission finds it necessary and appropriate to ground the reporting and recordkeeping requirements herein in its NGPA section 501 authority, and to ensure compliance with said reporting and recordkeeping requirements by application of the civil penalties available under NGPA section 504, whatever the source of the transportation authorization for the transaction.

E. Proposal for "Open Season" Lag Time To Provide More equality of Access to Transportation and Available Volumes for Release

The Commission is particularly concerned that some pipelines may be proving advance notice to their marketing affiliates of their intent to seek certain transportation authorizations, thereby providing an

unfair advantage to the marketing affiliate who can "queue up" in advance of the formal announcement by the pipeline. While past instances of such activity may remain to be proved and remedied in particular cases, the Commission intends to propose a means for preventing such activity in the future.

Under the proposal, before a pipeline can formally announce its intent to become, or to resume a status as an open-access transporter, for example, or to apply for any other significant transportation authorization (or announce the release of significant gas volumes) the pipeline would be required to give the public a type of open-season access to its newly available transportation capacity (or released volumes) after announcing its intent to become an open-access transporter, or to apply for any other significant transportation authorization (or announcing the release of significant gas volumes). The open-season access would be of ten days duration. Any request received during this ten-day block of time from any marketer to utilize the transportation authorization (or purchase the volumes to be released) would be considered to have been received simultaneously with all other applications received during that period.

A pipeline that failed to give notice of such intentions, and provide the open-season, would be in violation of the NGPA for many of the same reasons set forth in Part D, *supra*. A pipeline that intended to elect or resume transportation under Order No. 436, for example, and neglected to give the ten day notice would be in violation of the NGPA. (And favoring an affiliate with advance notice of the release of gas volumes to the market would be a similar NGPA violation.)

This procedure is not intended to have any impact on the first-come, first-served principle established in Order No. 436. It merely augments it to prevent anticompetitive transfers of information to a marketing affiliate. The "first-come, first-served" rule under Order No. 436 would remain in place after the ten-day period had expired, and the effect of the proposal is only to place all persons who express interest in obtaining transportation during the ten day grace period equally "first" with an equal claim on the transportation to be offered.

The Commission requests comments on what types of actions might qualify for open-season treatment.

IV—First Sale Issue

Another core issue in the NOI was the "first sale" status of sales by pipeline

marketing affiliates. Currently, all sales by such affiliates are "first sales". (See § 270.303(c)). The Commission could remove that status so as to subject affiliates' rates and margins to scrutiny under the Natural Gas Act. The Commission concurs with the majority of commenters who argued against this approach. The Commission believes it can regulate the pipeline in such a way that it will not need to regulate the marketing affiliate directly.

The NGA definition of "first sale" in section 2(21) ²¹ takes the form of a general rule followed by an exclusion. Taken on its face, the statutory definition of "first sale" does not encompass sales by marketing affiliates of interstate pipelines because of the exclusion in section 2(21)(B).

However, pursuant to section 2(21)(A)(v) of the NGA, the Commission may define virtually any sale of gas as a first sale in order to prevent circumvention of any maximum lawful price established under the NGA. The Commission exercised its section 2(21)(A)(v) authority in Order No. 58, ²² and Order No. 391 ²³ and determined that in order to prevent circumvention of NGA ceiling prices by affiliates of pipelines and distributors, any sales by an affiliate, that is not itself a pipeline or local distribution company, would be that affiliate's "first sales" under the NGA unless the Commission, on application, determines not to treat such sales as "first sales." (See 18 CFR 270.203(c)).

Most sales by pipeline marketing affiliates are thus not now subject to

NGA jurisdiction and scrutiny because of the Commission's exercise of its authority under section 2(21)(A)(v) of the Natural Gas Policy Act (NGPA), which authorizes the Commission to define any sale as a "first sale" in order to prevent circumvention of any maximum lawful price established under the NGA. Pursuant to this authority, the Commission promulgated § 270.203(c) of its regulations as follows:

(c) *Circumvention rule for certain sales by affiliates.* Any sale by an affiliate of an interstate pipeline, intrastate pipeline, or local distribution company, that is not itself such pipeline or local distribution company, is that affiliate's first sale under the NGA unless the Commission, on application, determines not to treat such sales as a first sale.

This rule, as indicated, had its genesis in the Commission's concern that pipelines or distributors might establish affiliates solely to circumvent NGA price ceilings.

However, section 601 of the NGA provides that the provisions of the Natural Gas Act (NGA) will not apply to "first sales" of natural gas which had not been committed or dedicated to interstate commerce at the time the NGA was enacted or to sales of gas defined in sections 102(c), 103(c) or 107(c) (1) through (4) of the NGA. Section 601 also provides that no person will be deemed a "natural gas company" ²⁴ with respect to any first sale of certain natural gas removed from NGA jurisdiction by NGA section 601.

Since only such "natural gas companies" are subject to regulation under section 1(b) of the Natural Gas Act, ²⁵ the effect of the Commission's § 270.203(c) rule, which grants "first sale" status to affiliate sales, is to eliminate the Commission's NGA jurisdiction for affiliate sales of NGA sections 102(c), 103(c) and 107(c)(1)-(4) gas. This is why certain sales by a pipeline affiliate are not subject to the Commission's NGA jurisdiction and scrutiny.

²⁴ A "natural gas company" means a person engaged in the transportation of natural gas interstate commerce, or the sale in interstate commerce of such gas for resale. 15 U.S.C. 717b(5).

²⁵ "The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural gas companies engaged in such transportation or sale . . ." 15 U.S.C. § 717(b). The NCA applies to sales "for resale" (not direct sales) in interstate commerce. Thus, even if NGA "first sale" status were eliminated for affiliate sales, NGA section 1(b) jurisdiction would not attach to "direct sales" made by the affiliate in interstate commerce, or to "brokering" or "liaison" services not characterizable as a "sale for resale."

The Commission believes that even though the current gas supply situation is one of oversupply, circumvention of NGA maximum lawful prices (MLP's) could still occur in particular cases.

The Commission does not believe that rescinding § 270.203(c) generically would be appropriate. Generic repeal of first sales status would permit possible circumvention of MLP's in particular cases. First sale status simply means that if the marketer sells NGA jurisdictional gas, it requires a sales certificate to do so, and, whether sale is of NGA volumes or not, the sales price cannot exceed any maximum lawful prices that apply under the NGA. Moreover, such an approach would not solve all the problems that can arise.

To conclude, the Commission has determined that any problems arising from operation of § 270.203(c) may be more effectively corrected by regulating the interstate pipeline rather than by rescinding § 270.203(c). The Commission requests comments on such an approach.

V—Conclusion

The Commission has a responsibility to prevent undue discrimination by pipelines in favor of marketing affiliates or any harassment of non-affiliates. The Commission intends to assess NGA civil penalties for violations of the reporting and recordkeeping requirements to deter undue discrimination—by either revealing if it is occurring, or assessing heavy monetary penalties if it is concealed.

The Commission believes that a pipeline that wishes to maintain its merchant function through a marketing affiliate should be able to do so, but only if it competes fairly, lawfully, and without undue discrimination or preference. Only then does it contribute to the economic vitality of the industry and the public interest. The Commission acknowledges therefore, that if the rules delineated here do not in fact lead to marketing without undue discrimination or preference, then the Commission may order divestiture or at least divorcement of pipelines and marketing affiliates.

Under divorcement, pipelines could have marketing affiliates, but would not be allowed to do business with their own affiliates (or, in modified form, would have the amount of business they could transact with an affiliate limited to a certain percentage). Under divestiture, pipelines would be prohibited from having marketing affiliates altogether. In addition, the Commission is seeking comments on whether organizational separation of interstate pipelines and marketing

²¹ 2(21) First Sale.—(A) General Rule.—The term "first sale" means any sale of any volume of natural gas—

(i) To any interstate pipeline or interstate pipeline;

(ii) To any local distribution company;

(iii) To any person for use by such person;

(iv) Which precedes any sale described in clauses (i), (ii) of (iii); and

(v) Which precedes or follows any sale described in clauses (i), (ii), (iii), or (iv) and is defined by the Commission as a first sale in order to prevent circumvention of any maximum lawful price established under this Act.

(B) *Certain Sales Not Included.*—Clauses (i), (ii), (iii), or (iv) of subparagraph (A) shall not include the sale of any volume of natural gas by any interstate pipeline, interstate pipeline, or local distribution company, or any affiliate thereof, unless such sale is attributable to volumes of natural gas produced by such interstate pipeline, interstate pipeline, or local distribution company, or any affiliate thereof.

²² Final Rule Governing the Maximum Lawful Price for Pipeline, Distributor or Affiliate Production, Docket No. RM80-7, 44 FR 66577 November 20, 1979, FERC Stats. & Regs. [Reg. Preambles 1977-81] § 30.101 (1979).

²³ Production Under section 2(21) of the Natural Gas Policy Act of 1978, Docket Nos. RM83-72-000 and RM82-16-000, 49 FR 33849 (Aug. 27 1984), FERC Stats. & Regs. [Reg. Preambles 1982-85] § 30.588 (1984).

affiliates should be required, such that shared personnel and facilities would be prohibited as between the pipeline and affiliate. The Commission acknowledges, with federal and state regulatory agencies that have made the same point in their comments, that where anticompetitive practices damaging to the public interest are clearly proven and resist other remedial action, divestiture is the only certain remedy. We seek further comments on the feasibility and necessity for ordering divestment, divestiture, or organizational separation, as well as on the efficiencies of such marketing affiliate relationships that would militate against such action.

VI—General Legal Authority

The legal authority for each of the substantive prohibitions and guidelines enunciated herein derive generally from NGA sections 4, 5, 7, 8, 10, 14, 16 and 20, and NGPA sections 311, 501 and 504. In addition, they in part derive from the Commission's general tariff regulations and from specific provisions in Order Nos. 436 and 451²⁶ and the Southern Natural Gas Company (Sonat) order (Docket No. CP86-277-001 *et al.*, 36 FERC ¶ 61,275 (1986)), such as "first come, first served," no undue preference for marketing affiliates, no unreasonable refusals to transport released gas, and existing reporting and log-keeping requirements for section 311 and blanket certificate transportation arrangements and selective rate discounts under those arrangements. See, e.g., §§ 284.7, 284.8, 284.9, 284.12, 284.13, 284.106, 284.223, and 250.15 of the Commission's regulations; 50 FR 42,430, 42,434, 42,436-37; 51 FR 22,213; Sonat, 36 FERC ¶ 61,275.

VII—Regulatory Flexibility Act Statement

When the Commission is required by section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553 (1982), to publish a notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 601 through 612 (1982), to prepare and make available for public comment an initial regulatory flexibility analysis. This analysis is prepared unless the Commission certifies, pursuant to section 605(b) of the RFA, that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The RFA is intended to ensure careful and informed agency consideration of rules that may affect small entities and to encourage consideration of alternative

approaches to minimize harm to or burdens on small entities.

In this case, the RFA requires the Commission to analyze only the impacts on small entities that would be subject to this rule. Most interstate natural gas pipelines that would comply with this rule do not fall within the RFA's definition of small entity because of size. Therefore, the Commission certifies that this rule will not, if promulgated, have a "significant economic impact on a substantial number of small entities."

VIII—Paperwork Reduction Act Statement

The information collection provisions in this rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act²⁷ and OMB's regulations.²⁸ The Commission believes that the reporting and recordkeeping requirements proposed herein are essential to the mission of the agency and are essential to the discharge of its duties under and enforcement of the Natural Gas Policy Act of 1978 and the Natural Gas Act. Interested persons can obtain information on the proposed information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 (Attention: Ellen Brown, Information Collection Analysis Branch, (202) 357-8272). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

IX—Comment Procedures

The Commission invites interested persons to submit written comments, data, views, and other information concerning the matters set out in this notice. An original and 14 copies of such comments should be filed with the Commission by July 23, 1987. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM87-5-000. All written submissions will be placed in the Commission's public files and will be available for public inspection through the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

In addition, to the maximum extent practicable, an opportunity for oral presentation of data, views, and arguments shall be afforded, if requested, in accordance with section 502(b) of the NGPA. Any person requesting such an opportunity must do so by July 23, 1987. If any requests for a hearing are received, a notice scheduling a public hearing will be published in the Federal Register at a later date.

List of Subjects in 18 CFR Part 161

Natural gas, reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to add Part 161 and amend Part 250, Chapter I, Title 18, *Code of Federal Regulations* as set forth below.

By direction of the Commission,
Kenneth F. Plumb,
Secretary.

1. Part 161 is added to read as follows:

PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES

Sec.

161.1 Coverage.

161.2 Tariff-related standards.

161.3 Nontariff-related standards.

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107-7352 (1982); No. 12,009, 3 CFR Part 142 (1978).

§ 161.1 Coverage.

This part applies to any interstate natural gas pipeline that is affiliated with a marketing or brokering entity. To determine affiliation the definition in NGPA section 2(27) shall be applied and a 10% voting interest shall be a *prima facie* indicia of sufficient "control" to satisfy the NGPA definition of "affiliate," although, on application, the Commission may determine a lesser percentage amounts to sufficient "control" in a particular case.

§ 161.2 Tariff-related standards.

Any tariff provision to the contrary notwithstanding, the tariff provisions of all interstate natural gas pipelines must be applied in conformance with, and adhere to, the following standards:

(a) All tariff provisions must be implemented in a uniform manner.

(b) Any conditions that are required by a tariff must be strictly enforced as to marketing affiliates, as well as to non-affiliates.

²⁶ 51 FR 22168 (June 18, 1986); see also Order No. 451-A, 51 FR 40762 (December 24, 1986).

²⁷ 44 U.S.C. 3501 through 3520 (1982).

²⁸ 5 CFR 1320.12 (1986).

(c) Tariffs must not provide marketing affiliates with a higher scheduling and curtailment priority for less essential service that would ordinarily have a lower priority.

(d) Tariff provisions must specify what information and format constitute a valid request for transportation service by shippers, and these tariff provisions must clearly and completely specify these requirements.

(e) Interstate pipelines must process all pending requests within a specific period of time, or in accordance with specific milestones, to be specified in advance in their tariff.

(f) Refiling of a pipeline's tariff will be required by [insert date that is 30 days after the effective date of this final rule] to meet the above standards.

§ 161.3 Nontariff-related standards.

All interstate natural gas pipelines must conduct their business in conformance with the following standards:

(a) Interstate pipelines must not dispose of transportation requests by affiliates or provide transportation service in response to such requests before disposing of valid pending transportation requests by non-affiliates which were received by the pipeline prior to the requests of the affiliates.

(b) Interstate pipeline must not reveal to their affiliates any confidential information provided by non-affiliated shippers to secure service; pipelines should not reveal any of their own confidential information to their affiliates solely but should communicate it contemporaneously to all shippers if it is revealed at all.

(c) Information filed with transportation requests must not be made available to marketing affiliate personnel, any other pipeline, or any other shipper, unless it is made available on a not unduly discriminatory basis to all potential shippers.

(d) Interstate pipelines must not provide information to affiliated shippers regarding the availability of capacity for transportation service unless such offer or information is simultaneously communicated generally to all potential shippers, affiliated and non-affiliated, on the pipeline's system. "Potential shippers" include all current transportation and sales customers of the pipeline, and all persons who have pending requests for transportation service or for information regarding transportation service on the pipeline.

(e) Employees of the interstate pipeline and of the marketing affiliate must function independently of each other to the maximum extent possible.

(f) An interstate pipeline must not condition or tie its agreement to release gas subject to take-or-pay relief, to an agreement by the producer (or a customer/end-user) to obtain services from any affiliate of the pipeline, or to an offer by the pipeline to provide or expedite transportation service to its affiliate relating to the released gas.

(g) Pipeline must also confirm, if asked, when independent marketers or producers are selling released gas, so that the pipeline's purchasers may know when these sales are mitigating the pipeline's take-or-pay liability. In this regard, any false or misleading information about take-or-pay, such as where a pipeline or an affiliate states there will be a take-or-pay billing credit that will flow to the pipeline customer if the customer purchases gas from the affiliate, will be considered a violation of this rule's reporting requirements.

(h) Pipeline personnel having contact with any potential shippers must maintain logs showing all requests for transportation and their disposition in accordance with applicable Commission regulations and report those data as required by the regulations.

(i) Interstate pipelines must develop written procedures that will enable shippers and the Commission to determine how the prohibited practices have been eliminated in conformance with the above standards. (Essentially a compliance plan that states how the pipeline plans to implement these requirements and to satisfy the Statement Respecting Prohibited Practices in Part A.)

PART 250—[AMENDED]

2. The authority citation for Part 250 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); Executive Order 12009, 3 CFR 142 (1978); Natural Gas Act, 15 U.S.C. 717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982).

3. Part 250 is amended by adding a new § 250.16 to read as follows:

§ 250.16 Format of compliance plan for transportation services and affiliate transactions.

(a) *Who must file.* An interstate natural gas pipeline that transports natural gas for others pursuant to Subpart B, G, or H of Part 284 or pursuant to NGA section 7(c) certificates, must file FERC Format No. 592 in the manner prescribed by this section if the interstate natural gas pipeline is "affiliated," in any way with a marketing or brokering entity:

(1) The definition in NGA section 2(27) shall be applied to determine whether any person or entity is an "affiliate," or "affiliated," and

(2) A 10 percent voting interest shall be a prima facie indicator of sufficient "control" to meet that definition of "affiliate," although a lesser percentage may be determined, on application, to amount to sufficient "control" in a particular case.

A pipeline that complies with this § 250.16 format of compliance plan is deemed to have complied with the requirement at § 284.13 of the Commission's regulations.

(b) *What to file.* An interstate pipeline must file the following information in the FERC Format No. 592:

(1) A complete list of personnel and facilities shared by the interstate natural gas pipeline and the affiliated marketing or brokering company;

(2) The specific information and format required from a shipper for a valid request for transportation service;

(3) Procedures used to address and resolve complaints by shippers and potential shippers;

(4) Procedures used by the natural gas pipeline to inform affiliated and non-affiliated shippers and potential shippers on the:

(i) Availability and pricing of transportation service, and

(ii) Capacity of the pipeline available for use;

(5) Tariff provisions that contain:

(i) The information and procedures provided in paragraphs (b) (1), (2), (3), and (4) of this section, or

(ii) New tariff provisions that contain information and provisions described in paragraphs (b) (1), (2), (3), or (4) of this section, filed with the Commission by [insert date that is 30 days after the effective date of the final rule in this proceeding.]

(6) A log that contains the following information on all requests for transportation service:

(i) The date of receipt of the request;

(ii) If the request in paragraph (b)(6)(i) of this section is received by mail, the date of the correspondence or other communication, that requested the service;

(iii) The date that the request was accepted as valid;

(iv) The specific affiliation, if any, of the requester with the interstate pipeline, and the extent of the pipeline's affiliation, if any, with the person to be provided transportation service;

(v) The specific affiliation of the requester with the supplier of gas, and the extent of that supplier's affiliation,

with the interstate pipeline from whom service is requested.

(vi) The identity of the shipper making the request for service including designating whether the shipper is a local distribution company, an interstate pipeline, an intrastate pipeline, an end-user or a producer;

(vii) The volumes of gas requested to be transported on a daily basis;

(viii) The source of the gas requested to be transported;

(ix) The date service is requested to commence and terminate;

(x) Every receipt and delivery point between which the gas is requested to be transported and the distance transported;

(xi) Whether the service requested is firm or interruptible;

(xii) The identity of the ultimate end user of the gas;

(xiii) The transportation rates applicable for such service;

(xiv) Whether the gas being transported is subject to take-or-pay relief;

(xv) Whether and by how much the cost of the gas to the affiliated marketer exceeds the price received for the sale of the gas by the affiliated marketer, after deducting associated costs, including those incurred for transportation; i.e., whether the gas is being sold at a loss;

(xvi) Whether the transportation is being requested, offered or provided at discounted rates and duration of the discount requested, offered or provided;

(xvii) the current status of the request, including whether the request is:

(A) Incomplete,

(B) Complete and awaiting service,

(C) Complete, a contract signed, and awaiting commencement of service,

(D) Complete, service has begun and the Commission docket number assigned to the transaction,

(E) Withdrawn, or

(F) Denied and the reason why;

(xviii) The position of the request in the transportation request queue;

(xix) The disposition of the request, including the date the requester was notified of availability of capacity, the date the contract was executed, the date service actually commenced, and any explanation concerning the disposition of the request;

(xx) Any complaints by the shipper or end user concerning the requested or furnished service and the disposition of such complaints.

(c) *When to file.* The information in paragraphs (b)(1) through (b)(6) of this section must be filed initially with the Commission by [insert date that is 30 days from the effective date of the final rule in this proceeding]. Thereafter, the

information filed in paragraphs (b)(1) through (b)(6) of this section must be maintained on a daily basis and filed with the Commission within 15 days after the close of the month in which any changes occur.

(d) *How to file.* (1) Each filing made with the Commission under this section must be made on 9-track magnetic tape or computer disk. The format and specifications for submission of the information prescribed by this section on magnetic tape or computer disk can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol St., NE., Washington, DC 20426.

(2) The magnetic tape or computer disk must be accompanied by one paper printout of the information submitted on the magnetic tape or computer disk. The format for the paper printout can be obtained at the Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426.

(3) The magnetic tape or computer disk, and paper printout, submitted must be accompanied by a cover letter. The cover letter must include the file name, file attribute, and recording density of the magnetic tape submitted by the natural gas pipeline company. The cover letter must also include the subscription provided in § 385.2005(a) of the Commission's regulations.

(4) The subscription provided in paragraph (d)(3) must state, in addition to the requirement in § 385.2005(a), that the paper printout contains the same information as the magnetic tape or computer disk and that the signer has read and knows the contents of the paper printout and that the contents as stated in the printout are true to the best knowledge and belief of the signer.

(5) The Commission will return all magnetic tapes submitted by natural gas pipeline companies within 30 days after their receipt.

(e) *Where to file.* (1) The magnetic tape or computer disk and accompanying paper printout and cover letter must be submitted to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

(2) Hand deliveries of a magnetic tape or computer disk and accompanying paper printout and cover letter may be made to: Office of the Secretary, Federal Energy Regulatory Commission, Room 3110, 825 North Capitol Street, NE., Washington, DC 20426.

(f) *Public access.* (1) An interstate pipeline must maintain and make available to the public at its principal place of business during regular business hours one paper copy of:

(i) All filings with the Commission under this section, and

(ii) The log specified in paragraph (b)(6) of this section.

(2)(i) An interstate pipeline must provide by mail any item requested in paragraph (b) of this section within seven calendar days of a written request by a member of the public.

(ii) The interstate pipeline may charge the cost of postage and fifteen cents per page photocopied or per computer printout page provided.

(iii) An interstate pipeline must provide the public with 24-hour access, by electronic means, to the data required to be maintained in paragraph (b)(6) of this section.

(g) *Penalty for failure to comply.* (1) Any person who knowingly violates the requirements of § 250.16 or § 284.13 of this chapter shall be subject, pursuant to sections 311(c), 501, and 504(b)(6) of the Natural Gas Policy Act of 1978, to a civil penalty, which the Commission may assess, of not more than \$5,000 for any one violation.

(2) For purposes of this paragraph, in the case of a continuing violation, each day of the violation shall constitute a separate violation.

Note.—Appendixes A through D will not appear in the Code of Federal Regulations.

Appendixes

Appendix A.—List of Commenters by Industry Group

Appendix B.—Alphabetical List of Commenters

Appendix C.—Summary of Comments by Industry Group

Appendix D.—Anecdotal Examples of Alleged Abuses

Appendix A—List of Commenters by Industry Group

Major Producers (Group 1)

Champlin Petroleum Company, Shell Gas

Trading Company, and Standard Oil

Production Company (Champlin et al.)

Conoco, Inc. (Conoco)

Exxon Corporation (Exxon)

Indicated Producers (IP)

Natural Gas Supply Association (NCSA)

Phillips Petroleum Company and Phillips 66

Natural Gas Company (Phillips)

Texaco, Inc. (Texaco)

Independent Producers (Group 2)

Bracken Energy (Bracken)

Crescent Drilling & Development, Inc.

(Crescent)

Energy Development Corporation (EDC)

Hanover Energy, Inc. (Hanover)

Independent Petroleum Association of

Mountain States (IPAMS)

Mesa Limited Partnership (Mesa)

Nearburg Producing Company (Nearburg)

Ohio Gas Producers Group (OGPG)

Ohio Petroleum Producer's Association, Inc.

(OPPA)

Producer Associations (Producer Associations)
 Samson Resources Company (Samson)
 Southwestern Energy Company (S.W. Energy)
 Texas Independent Producers and Royalty Owners Association (TIPRO)
 Yates Petroleum Corporation (Yates)

Interstate Pipelines (Group 3)

ANR Pipeline and Colorado Interstate Gas Company (ANR/CIG)
 Columbia Gas Transmission Corporation (Col. Trans.)
 Consolidated Natural Gas Company (Con. Nat.)
 El Paso Natural Gas Company (El Paso)
 Interstate Natural Gas Association of America (INGAA)
 Mountain Fuel Resources, Inc. (Mountain Fuel)
 National Fuel Gas Supply (National Fuel)
 Natural Gas Pipeline Company of America and United Gas Pipeline Company (NGPCA/United)
 Northern Natural Gas Company (Northern)
 Northwest Central Pipeline Corporation (NW Central)
 Northwest Pipeline Corporation (Northwest)
 Panhandle Eastern Pipeline Company, Trunkline Gas Company, and Panhandle Trading Company (Panhandle *et al.*)
 Southern Natural Gas Company (SONAT)
 Tenneco Inc. (Tenneco)
 Tennessee Gas Pipeline Company, A Division of Tenneco Inc. (Tennessee)
 Texas Eastern Gas Service Company and Texas Eastern Transmission Corporation (Texas Eastern)
 Texas Gas Transmission Corporation (Texas Gas)
 Transco Gas Company (Transco)
 Transwestern Pipeline Company and Pacific Atlantic Marketing, Inc. (Transwestern *et al.*)

Intrastate Pipelines (Group 4)

Delhi Gas Pipeline Corporation (Delhi)
 Producer's Gas Company (Producer's Gas)
 Seagull Energy Corporation (Seagull)

Local Distribution Companies (Group 5)

American Gas Association (AGA)
 American Public Gas Association (APGA)
 Associated Gas Distributors (AGD)

Cincinnati Gas & Electric Co., Union Light, Heat and Power Company, Lawrenceburg Gas Company (CG&E *et al.*)
 City Gas Company, Madison Gas & Electric Company *et al.* (CGC/Madison)
 City of Wilcox, Arizona and Arizona Electric Power Cooperative, Inc. (Wilcox, *et al.*)
 Columbia Gas Distribution Companies (Col. Distr.)
 Consolidated Edison Company of New York, Inc. (Con.Ed.)
 Delta Natural Gas (Delta)
 Interstate Power Company (Interstate Power)
 Iowa-Illinois Gas & Electric Company (Iowa-Illinois)
 Laclede Gas Company (Laclede)
 Memphis Light, Gas and Water Division (Memphis)
 Northern Indiana Public Service Company (NIPSCO)
 Pacific Gas and Electric Company (PG&E)
 Peoples Natural Gas Company (Peoples Nat.)
 Piedmont Natural Gas Company (Piedmont)
 Public Service Company of Colorado, Western Gas Supply Company, and Cheyenne Light, Fuel, & Power Company (PSCC *et al.*)
 Public Service Electric & Gas Company (PSEG)
 Southern California Gas Company (SCGS)
 United Distribution Companies (United)

Industrial Consumers (Group 6)

American Paper Institute, Inc. (American Paper)
 Chemical Manufacturers Association (CMA)
 Columbia Nitrogen Corporation, and NIPRO Inc. (Col./NIPRO)
 Fertilizer Institute (FI)
 Process Gas Consumers Group, American Iron and Steel Institute, Association of Businesses Advocating Tariff Equity and the Georgia Industrial Group (Process Gas *et al.*)
 Southwestern Electric Power Company (SEPC)
 Viskase Corporation (Viskase)

Public Entities (Group 7)

Public Utilities Commission of the State of California (CPUC)
 Illinois Commerce Commission (Ill. C.C.)
 Indiana Utility Consumer Counselor (IUCC)
 United States Department of Justice (Justice)
 Maryland Peoples Counsel (MPC)

The National Association of Regulatory Utility Commissioners (NARUC)
 Minnesota Department of Public Service (Minnesota)
 New Jersey Department of Commerce & Economic Development, Division on Energy Planning & Conservation (New Jersey)
 Energy and Minerals Department of the State of New Mexico (New Mexico)
 Public Service Commission of the State of New York (New York)
 The Consumers' Counsel, State of Ohio (Ohio)
 Pennsylvania Office of Consumer Advocate (POCA)
 Pennsylvania Public Utility Commission (PPUC)
 Public Service Commission of Wisconsin (PSC-Wis.)
 Federal Trade Commission Staff (FTC)

Affiliated Marketers (Group 8)

Enron Gas Marketing, Inc. (Enron)
 SNG Trading, Inc. (SNG)
 Tenngasco (Tenngasco)

Independent Marketers (Group 9)

Agland Energy Services, Inc. (AES)
 Association of Independent Gas Marketers (AIGM)
 Citizens Energy Corporation, Citizens Gas Supply Corporation, Sunshine Energy Company, Yankee Resources, Inc., and Yankee Pipeline Company (Citizens *et al.*)
 Consolidated Fuel Supply, Inc. (Con Fuel)
 End Users Supply System (End Users)
 Energy Marketing Exchange, Inc. (EME)
 Entrade Corporation (Entrade)
 Hadson Gas Systems, Inc. (Hadson)
 Industrial Energy Services Company (IES)
 Nagasco, Inc. (Nagasco)
 Natural Gas Clearing House (NGCH)
 PeopleService, Inc. (PeopleService)
 Producer-Marketer Transportation Group (P-M)
 Production Gathering Company (PGCo)
 Resource Group (RG)
 Tejas Power Corporation (Tejas)
 Vesta Energy Company (Vesta)
 Yankee Gas Company (Yankee)

Other/Not Identified (Group 10)

D.M. Bumgarner (Bumgarner)
 Ellis C. Nash (Nash)

Appendix B—Alphabetical List of Commenters

Name	Abbreviation and Industry Group Code
1. Agland Energy Services, Inc.	AES-9
2. American Gas Association	AGA-5
3. American Paper Institute, Inc.	American Paper-6
4. American Public Gas Association	APGA-5
5. ANR Pipeline and Colorado Interstate Gas Company	ANR/CIG-3
6. Associated Gas Distributors	AGD-5
7. Association of Independent Gas Marketers	AIGM-9
8. Braken Energy	Bracken-2
9. D.M. Bumgarner	Bumgarner-10
10. Public Utilities Commission of the State of California	CPUC-7
11. Champlin Petroleum Company, Shell Gas Trading Company and Standard Oil Production Company	Champlin, <i>et al.</i> -1
12. Chemical Manufacturers Association	CMA-6
13. Cincinnati Gas & Electric Co., Union Light, Heat and Power Company, Lawrenceburg Gas Company	CG&E, <i>et al.</i> -5
14. Citizens Energy Corporation, Citizens Gas Supply Corporation, Sunshine Energy Company, Yankee Resources, Inc. and Yankee Pipeline Company	Citizens, <i>et al.</i> -9

Name	Abbreviation and Industry Group Code
15. City Gas Company, Madison Gas & Electric Company, <i>et al.</i>	CGC/Madison-5
16. Columbia Gas Distribution Companies	Col. Distr.-5
17. Columbia Gas Transmission Corporation	Col. Trans.-3
18. Columbia Nitrogen Corporation and NIPRO, Inc.	Col/NIPRO-6
19. Conoco, Inc.	Conoco-1
20. Consolidated Edison Company of New York, Inc.	Con. Ed.-5
21. Consolidated Fuel Supply, Inc.	Con. Fuel-9
22. Consolidated Natural Gas Company	Con. Nat.-3
23. Crescent Drilling & Development, Inc.	Crescent-2
24. Delhi Gas Pipeline Corporation	Delhi-4
25. Delta Natural Gas Company, Inc.	Delta-5
26. El Paso Natural Gas Company	El Paso-3
27. End Users Supply System	End Users-9
28. Energy Development Corporation	EDC-2
29. Energy Marketing Exchange, Inc.	EME-9
30. Enron Gas Marketing, Inc.	Enron-8
31. Entrade Corporation	Entrade-9
32. Exxon Corporation	Exxon-1
33. Federal Trade Commission Staff	FTC-7
34. Fertilizer Institute	FI-6
35. Hadson Gas Systems, Inc.	Hadson-9
36. Hanover Energy, Inc.	Hanover-2
37. Illinois Commerce Commission	Ill. C.C.-7
38. Independent Petroleum Association of Mountain State	IPAMS-2
39. Indiana Utility Consumer Counselor	IUCC-7
40. Indicated Producers	IP-1
41. Industrial Energy Services Company	IES-9
42. Interstate Natural Gas Association of America	INGAA-3
43. Interstate Power Company	Interstate Power-5
44. Iowa/Illinois Gas & Electric Company	Iowa-Illinois-5
45. United States Department of Justice	Justice-7
46. Laclede Gas Company	Laclede-5
47. Maryland Peoples Counsel	MPC-7
48. Memphis Light, Gas and Water Division	Memphis-5
49. Mesa Limited Partnership	Mesa-2
50. Minnesota Department of Public Service	Minnesota-7
51. Mountain Fuel Resources, Inc.	Mountain Fuel-3
52. Nagasco, Inc.	Nagasco-9
53. Ellis C. Nash	Nash-10
54. The National Association of Regulatory Utility Commissioners	NARUC-7
55. National Fuel Gas Supply	National Fuel-3
56. Natural Gas Clearing House	NGCH-9
57. Natural Gas Pipeline Company of American and United Gas Pipeline Company	NGPCA/United-3
58. Natural Gas Supply Association	NGSA-1
59. Nearburg Producing Company	Nearburg-2
60. New Jersey Department of Commerce & Economic Development, Division Energy Planning & Conservation	New Jersey-7
61. Energy and Minerals Department of the State of New Mexico	New Mexico-7
62. Public Service Commission of the State of New York	New York-7
63. Northern Indiana Public Service Company	NIPSCO-5
64. Northern Natural Gas Company	Northern-3
65. Northwest Central Pipeline Corporation	NW Central-3
66. Northwest Pipeline Corporation	Northwest-3
67. The Consumers' Counsel, State of Ohio	Ohio-7
68. Ohio Gas Producers Group	OGPG-2
69. Ohio Petroleum Producers Association, Inc.	OPPA-2
70. Pacific Gas and Electric Company	PG&E-5
71. Panhandle Eastern Pipeline Company, Trunking Gas Company, and Panhandle Trading Company	Panhandle Eastern <i>et al.</i> -372.
72. Pennsylvania Office of Consumer Advocate	POCA-7
73. Pennsylvania Public Utility Commission	PPUC-7
74. PeopleService, Inc.	PeopleService-9
75. Peoples Natural Gas Company	People Nat.-5
76. Phillips Petroleum Company & Phillips 66 Natural Gas Co.	Phillips-1
77. Piedmont Natural Gas Company	Piedmont-5
78. Process Gas Consumers Group, American Iron and Steel Institute, Association of Businesses Advocating Tariff Equity, and the Georgia Industrial Group	Process Gas <i>et al.</i> -6
79. Producer Associations	Producer Associations-2
80. Producer-Marketer Transportation Group	P-M-9
81. Producer's Gas Company	Producer's Gas-4
82. Production Gathering Company	PGCo.-9
83. Public Service Company of Colorado, Western Gas Supply Company, and Cheyenne Light, Fuel, & Power Company	PSCC <i>et al.</i> -5

Name	Abbreviation and Industry Group Code
84. Public Service Electric & Gas Company.....	PSEG-5
85. Resource Group.....	RG-9
86. Samson Resources Company.....	Samson-2
87. Seagull Energy Corporation.....	Seagull-4
88. SNG Trading, Inc.	SNG-8
89. Southern California Gas Company	SCGC-5
90. Southern Natural Gas Company.....	Sonat-3
91. Southwestern Electric Power Company.....	SEPC-6
92. Southwestern Energy Company.....	S.W. Energy-2
93. Tejas Power Corporation.....	Tejas-9
94. Tenneco Inc.....	Tenneco-3
95. Tennessee Gas Pipeline Company, A Division of Tenneco Inc.....	Tennessee-3
96. Tenngasco.....	Tenngasco-8
97. Texaco, Inc.....	Texaco-1
98. Texas Eastern Gas Services Company and Texas Eastern Transmission Corporation.....	Texas Eastern-3
99. Texas Gas Transmission Corporation.....	Texas Gas-3
100. Texas Independent Producers and Royalty Owners Association.....	TIPRO-2101
101. Transco Gas Company.....	Transco-3
102. Transwestern Pipeline Company and Pacific Atlantic Marketing, Inc.....	Transwestern <i>et al.</i> -3
103. United Distribution Companies.....	United-5
104. Vesta Energy Company.....	Vesta-9
105. Viskase Corporation.....	Viskase-6
106. City of Wilcox, Arizona and Arizona Electric Power Cooperative, Inc.	Wilcox <i>et al.</i> -5
107. Public Service Commission of Wisconsin.....	PSC-Wis.-7
108. Yankee Gas Company.....	Yankee-9
109. Yates Petroleum Corporation.....	Yates-2

Appendix C—Summary of Comments by Industry Group

A. Major Producers

Most commenters in this group urge that the Commission promptly issue a Notice of Proposed Rulemaking proposing regulations to mitigate pipeline/marketing affiliate abuses that stifle competition.¹ The comment of Indicated Producers includes a statement by Robert C. Means of Swanson Energy Group with data intended to show that the growth of marketing affiliates is "due to their affiliation with the interstate pipelines which transport the gas they market,"² and a statement by a former president of an independent marketer that "describes specific ways in which the affiliation of marketers with transporting interstate pipelines results in anticompetitive opportunities and behavior." These producers recommend: (1) Increased reporting requirements for affiliated transactions; (2) prohibitions of disclosure of inside information by interstate pipelines to their marketing affiliates; (3) an expedited complaint procedure;³ and (4) express prohibitions of certain activities by interstate pipelines in favor of their marketing affiliates.⁴

¹ IP at 3. [Abbreviation conventions are listed in Appendixes A & B].

² IP at 2.

³ "Backed with a presumption of undue discrimination or preference when interstate pipelines transport for their marketing affiliates on better terms or deny equal access to a nonaffiliate." IP at 4.

⁴ The prohibited activities would include "preferences for capacity, for discounted rates, for interruption of transportation, for provision of services such as balancing, construction of facilities, and backhaul and exchange arrangements." IP at 4.

Another commenter,⁵ an association of companies which produce and market 90% of all domestic natural gas, also requests that the Commission adopt an expedited complaint procedure and impose additional reporting requirements upon all interstate pipelines that have an affiliated marketing or brokering company, and submits suggested forms for such reports.

Other commenters in the major producer group filed supplemental comments to express their particular concerns. One commenter is concerned that the fifteen indicated producers "took no position on whether the sale for resale by a pipeline affiliate is a first sale under the Natural Gas Act when the affiliate is not selling gas produced by itself or an affiliate."⁶ This commenter urges the Commission to avoid "heavy-handed" regulation and states that "the only time when there is need for Commission intervention to prevent abuse is when there is an affiliation between a transporting major interstate pipeline and the marketer."⁷ The commenters urge the Commission to find that "first sales treatment of sales by affiliates of major interstate pipelines is not appropriate where (1) the affiliate is not selling its own production (or the production of an affiliate) and (2) implementation of the sale requires transportation through the system of the sister pipeline."⁸

Another major producer, while generally supporting Indicated Producers' comments, believes that some of Indicated Producers' proposed regulations "would require public disclosure of proprietary information and are

therefore undesirable while others are simply burdensome and would accomplish little."⁹ The commenter suggests that rather than promulgating extensive additional regulations, the Commission should be able to remedy any problems of undue discrimination or preference without "an elaborate new regulatory scheme."¹⁰

Yet another major producer, while believing the Commission's concerns regarding the potential for unduly discriminatory and preferential treatment by interstate pipelines of their own marketing affiliates are fully warranted, urges the Commission *not* to amend its regulations to remove the first sale status of such affiliates (at least as to non-owned production), thus subjecting them to NGA regulation of their interstate sales.¹¹ Another commenter in this group warns that if the Commission concludes that NGA jurisdiction over interstate sales for resale of purchased gas by pipeline marketing affiliates is necessary, any such regulation "should apply to only situations where the pipeline and marketing affiliate transactions involve gas which is to be transported over the affiliated pipeline."¹² The commenter urges the Commission to eschew detailed reporting requirements, anti-discrimination rules, and case by case complaints because of the potential for "regulatory collapse" in trying to deal with possibly numerous complaints related to frequent short term transactions. Instead, the commenter urges action on a generic basis and a clarification, by the

⁵ NGSA.

⁶ Champlin *et al.* at 2.

⁷ Champlin *et al.* at 3.

⁸ Champlin *et al.* at 2.

⁹ Exxon at 1-2.

¹⁰ Exxon at 3.

¹¹ Texaco at 2.

¹² Phillips at 3.

Commission, of "where it does and does not assert NGA sales jurisdiction."¹³

B. Independent Producers

Independent Producers generally support the goals of the NOI and as one commenter puts it "ask only for the opportunity to seek a buyer for whatever quantity of gas we may be fortunate enough to develop and have it transported to that buyer in a fair and equitable manner."¹⁴ Another states its hope that "the Commission will take actions necessary to restore producer confidence and participation in the natural gas marketplace . . . [and] whatever action the Commission decides to take, it must make clear and concise to provide the regulatory stability needed to plan energy related exploration and production activities."¹⁵

One commenter asks that the NOI be expanded to deal with a particular form of abuse—namely, "performance by the pipeline (or an affiliate) of activities or functions not directly subject to regulation, but which have a direct effect on regulated activities and obligations."¹⁶

Another urges the Commission "not to heavily regulate pipeline marketing affiliates."¹⁷ Instead, this commenter urges the Commission to adopt a policy "requiring free disclosure of affiliate contracts, operating conditions, and the availability of capacity [as well as] an expedited complaint procedure applying antitrust principles and granting limited remedies . . . to prospectively equalize discriminatory or anticompetitive conditions."¹⁸

One commenter, representing certain small producers in the mountain states, suggests in its summary of position that the Commission avoid the term "undue discrimination." Because the Natural Gas Act (Section 4) expressly prohibits "any undue preference or advantage," the commenter would translate that mandate as "no discrimination." period.¹⁹ This commenter does not claim that pipelines should be precluded from participating, through marketing affiliates, in the evolving natural gas markets, but that cases of abuse may arise under the current system of Order No. 436 implementation.²⁰ These small producer commenters say that the Commission has avoided having pipelines and LDC's "bite the Order 436 bullet" (and the *Maryland Peoples Counsel decision*) by extending the grace period for interim section 311 transportation and by approving non-traditional "blanket" section 7(c) transportation certificates.²¹ To remedy this

state of affairs, the commenters urge the Commission to promulgate a strong set of "per se" rules and by establishing coherent guidelines avoid the time-consuming case-by-case complaint approach; coupled with the new "generic" rules would be "vigorous oversight and enforcement."²²

Finally, a number of Texas small producer and royalty owner commenters suggest that the Commission (1) Add "fair dealing" conditions to all section 7(c), section 311 and blanket transportation certificates; (2) require pipelines and marketing affiliates to disclose important data to third parties if the data is made available to the affiliate by the pipeline; (3) carefully prevent cross-subsidization in the course of rate case and rate design reviews; (4) institute an actively enforced audit program requiring logs be kept of shipper transportation requests and requests of information made of the pipeline by the marketing affiliate; and (5) institute "sting operations" where enforcement agents pose as independent marketers with penalties for violators to include revocation of transportation certificates and referral to the Department of Justice.²³ Similarly, another large group of independent producers recommend that the following be adopted as an interpretive rule: "Any conduct that would be regarded by a person familiar with the natural gas industry as conferring on the affiliate an advantage over other independent marketers or suppliers is 'undue discrimination.'" ²⁴ Possible penalties for violation would include: (1) Loss of "first come, first served priority" for transportation arranged by the marketing affiliate; (2) loss of authority for the pipeline to transport gas brokered by the marketing affiliate; (3) removal of circumvention rule treatment of the affiliate's sales for resale; (4) crediting of all marketing affiliate revenues; or (5) divestiture.²⁵

C. Interstate Pipelines

Many interstate pipeline commenters are of the view that existing regulations governing pipelines are sufficient to correct any perceived abuses and that additional direct regulation of marketing affiliates would be unnecessary and redundant.²⁶ Other pipelines are concerned that now that they have at last implemented the Order No. 436 program, the "rules of the game" may suddenly change again.²⁷ The most such

commenters appear to suggest by way of remedies are an expedited complaint procedure and supplemental reporting requirements, "narrowly-drawn."²⁸

The highlights of pipeline comments are as follows. One commenter whose system extends from Texas to the Midwest and Western Rockies states that: (1) The issues of abuse are principally "hypothetical," (2) the growth of affiliates have been a natural outgrowth of a Commission-fostered environment, (3) antitrust policy does not condemn pipeline affiliate relationships, and (4) rather than pursue a rulemaking with *per se* rules, the Commission should understand that the market is in transition and continue only to scrutinize particular practices in particular cases.²⁹

The interstate pipeline trade association makes the following seven points and provides a paper by Dr. Alfred E. Kahn which speaks of "a moral obligation on the part of the Commission to permit the pipelines to work off their heavy take or pay obligations, incurred in good faith * * *."³⁰ The commenter's points to support its objection to a generic rule are that: (1) The existence of pipeline marketing affiliates is consistent with the pro-competitive market envisioned by the Commission; (2) the Commission in this NOI has focused only on allegations of anti-competitive practices by pipeline marketing affiliates without soliciting information or comments relative to producer marketing affiliates and independent brokers or information regarding the benefits to consumers from the pipeline affiliates; (3) the allegations regarding discriminatory transportation access do not warrant a generic rule; (4) the allegations regarding discriminatory transportation rates have been adequately considered by the Commission in Order No. 436 and no further action is required; (5) while certain insider information such as transportation rates and capacity, should be available to all marketers on a nondiscriminatory basis, competitive information, such as pipeline supply, margins, prices, markets, etc., is justifiably deemed proprietary and should not be released; (6) all sales by marketing affiliates are first sales under the jurisdiction of the NGPA, as implemented by the Commission's regulations and exempt from NGA jurisdiction and pure brokers of gas are not jurisdictional under either the NGA or the NGPA; and (7) the Commission has no authority to enforce the antitrust laws.³¹

Another commenter asserts that the supposed advantages of pipeline affiliates should be balanced against the independent marketers' advantages. The focus on the supposed advantages of pipeline affiliated marketers, according to this commenter,

²⁸ El Paso at 10. See also Panhandle *et al.* at 4. The Commission should promulgate only "the minimum rules for a truly level and competitive playing field. *Id.* National Fuel Gas Supply at 2 "urges the Commission to refrain from adopting substantive rules on the basis of unsworn allegations of discrimination."

²⁹ ANR/CIG at Exec. Summ. 1-5. See also Northern at 2.

³⁰ INGAA at 1.

³¹ INGAA at 1-4.

²² IPAMS at 4-5. IPAMS, like Mesa, also concur with the statement filed by the Independent Petroleum Association of America.

²³ TIPRO at 2.

²⁴ Producer Associations at Exec. Summ. 2.

²⁵ *Id.*

²⁶ See, e.g., Sonat at 8; Con. Nat. at 2 adopting comments of United Distribution Companies; Mountain Fuel at 1, adopting comments of INGAA and urging that the Commission conclude the NOI with a finding of "no reasonable showing that pipeline marketers will in any significant way distort the markets * * * or harm the ultimate end-users * * *." *Id.* at 12.

²⁷ See, e.g., El Paso at 8. See also Northern at 2: "Imposition of burdensome regulatory requirements on affiliated marketers would be tantamount to reducing the very competition the Commission is fostering through Order Nos. 436, 380 and 451.

¹³ Phillips at 3.

¹⁴ EDC at 2. See also Mesa at 1 adopting comments of Independent Petroleum Association of America; OPA at 1.

¹⁵ TIPRO at 3.

¹⁶ Yates at 3.

¹⁷ S.W. Energy at 8.

¹⁸ S.W. Energy at 8.

¹⁹ IPAMS at 3.

²⁰ IPAMS at 3-4, citing its own formal complaint in IPAMS v. Panhandle Eastern, Docket No. CP86-534, as a case in point.

²¹ IPAMS at 4.

ignores the "competitively significant advantages of producer and LDC affiliated marketers." The commenter states further that producer and LDC affiliates have key information advantages, to the extent there is potential for undue discrimination in transportation services, these can be handled by existing regulation, and balancing problems and cross-subsidization issues are red herrings.³²

Two major interstate pipelines filing joint comments point to the take-or-pay relief benefits afforded by flexible use of affiliated marketers and emphasize that the current "radical transformation" in the industry is the result of changes in regulatory policy embodied in the Commission's own Order Nos. 380 and 436. The commenters therefore believe that the problems identified in the NOI reflect "short-term apprehensions as to the transition or start-up of Order No. 436 transportation and can be addressed through: (1) Formulation of proper tariff provisions, including "use it or lose it" provisions and appropriate request procedures to limit overbooking of capacity and other potential problems; (2) expansion of reporting requirements (with due regard to the competitive sensitivity of such information) to include non-price terms and establishment of a standard format; (3) scrutiny of cost allocation and the treatment of penalty payments in pipeline rate proceedings; and (4) to the extent necessary, specification of procedures for the processing by the pipeline of complaints by shippers and for the detailing of pipeline policy in any problem areas.³³

In fact, virtually all interstate pipeline commenters echo the theme of good faith adaptation to a changing market structure occasioned by the recent regulatory intervention of the Commission in Order Nos. 380, 436, and 451, which the commenters believe, in conjunction with existing law, engender sufficient regulatory safeguards to contain the abuses hypothesized in the NOI.³⁴

Commenters indicate that they may already have voluntary "guidelines" in place, setting out their policy for according affiliated and non-affiliated marketers equal treatment.³⁵

One commenter asks (and others imply) that the Commission "not be diverted from the real tasks before it: to define what nondiscriminatory transportation means, and to address the take-or-pay issue."³⁶

One commenter proposes that the Commission as a part of a notice of proposed rulemaking issued subsequent to this inquiry propose as guidelines to be adopted in its regulations examples of practices constituting *prima facie* cases of undue discrimination by interstate pipelines. These guidelines would not constitute *per se* rules, however, but would serve primarily to assist all involved in determining what actions are presumed to be inappropriate and remove uncertainty from the marketplace.

In addition to such guidelines, the commenter suggests that the Commission modify the existing reporting requirements for pipelines providing self-implementing transportation to include: (1) Filing of executed transportation agreements or summaries of key provisions hereof; (2) identification of any corporate affiliation between the transporting pipeline and any entity contractually related to the transaction; and (3) procedures establishing when pipelines should disseminate information about significant changes on their system affecting transportation and to whom such information should be provided. The commenter also urges that expedited procedures for deciding cases of alleged undue discrimination be established either internally by the pipeline, or at a technical industry advisory committee with authority delegated by the Commission similar to existing Commission "Boards" for production-related costs and oil pipelines matters.³⁷

Consistent with other interstate pipeline commenters, one last approach suggested, given ongoing Commission regulations and antitrust protections already in place, is for the Commission to: (1) Continue to develop standards to define, implement, and enforce Order No. 436; (2) refrain from imposing regulatory restrictions on pipeline market affiliates or attempting to restructure pipelines' corporate organization; and (3) direct attention to the resolution of take-or-pay problems in the wake of Order No. 380, and establish the policy basis for direct billing.³⁸

D. Intrastate Pipelines

Intrastate pipeline commenters emphasize that any regulations which may be promulgated only be made applicable to interstate pipeline affiliates.³⁹ Moreover, these commenters emphasize there is a wide diversity among interstate pipelines and affiliates so that uniform, generic rules applied to all of them would not be appropriate.⁴⁰ These commenters suggest

that an expedited complaint procedure, perhaps in the nature of a show cause order directing a prompt response to specific allegations of abuse, would be the wisest course of action.⁴¹

In short, these commenters believe that any *per se* rule regarding marketing affiliates of interstate pipelines would be "overly broad, * * * unnecessary and economically inefficient" ⁴² and would work a special hardship on many companies and limit their ability to compete. One commenter strongly objects to any prohibition against the sharing of officers, employees and facilities, saying this would work a special hardship on small companies, and strongly objects to suggestions that the margins of marketing affiliates be regulated, and notices of rate change be filed, saying that "it is difficult to imagine information that would be more valuable to a marketer's competitors than margin, * * * (and that) prior rate notice would serve no purpose and would hamper business transactions."⁴³

E. Local Distribution Companies

Local distribution company (LDC) commenters run the gamut from supportive of the NOI ⁴⁴ to cautious or negative toward any action to restrict what they consider the beneficial aspects of marketing affiliates of interstate pipelines.⁴⁵

One commenter representing numerous distribution companies suggests that the Commission has "prejudged" the NOI allegations and states that it "does not believe the Commission can or should regulate the marketing affiliates or interstate pipelines. Instead, the Commission can continue to use its Natural Gas Act powers over transportation by interstate pipelines to prevent undue discrimination against any shipper."⁴⁶ This commenter recommends that the Commission take three steps: (1) Require interstate pipelines with marketing affiliates to publish procedures for processing transportation requests and handling disputes;⁴⁷ (2) form an "Advisory

³² Seagull at 16; Producer's Gas at 6.

³³ Seagull at 4; Producer's Gas at 6. Another commenter, Delta, is an entity with solely intrastate marketing activities which, even though it might derive some benefit from blanket regulation of interstate affiliated marketers, opposes such regulation, however, as "ill-conceived and out of line with the Commission's market responsive, pro-competition focus" and because "federal regulation of affiliated marketers might serve as a model for similar regulation at the state level." Delta at 3.

³⁴ Seagull at 5-6.

³⁵ See, e.g., Laclede at 2; Peoples Nat. at 11; PSCC et al. at 1-2.

³⁶ See, e.g., Memphis at 2-4; APGA at 1; SCGS at 34-35; United at 33; Nipsco at 4 ("the proposed rules create just as many, if not more, anticompetitive problems with the bias now to be shifted strongly in favor of the producers' marketing affiliates.")

³⁷ AGA at 2. See also Nipsco at 2 ("Commission has already prejudged this issue."), support AGA comments.

³⁸ AGA at 3. The procedures would include (a) how requests for transportation will be handled; (b) how the pipeline will disseminate information on available capacity; (c) how complaints may be filed with the pipeline; and (d) how the pipeline will

Continued

³² Mountain Fuel at 2.

³³ NGPCA/United at 5-6.

³⁴ See, e.g., Northern, N-W Central, Tenneco, Tennessee, Texas Eastern, and Transwestern.

³⁵ See, e.g., Northern at 3 and Transco at its Appendix C.

³⁶ Tennessee at 3. Transco also submits perceived marketing affiliate "problems" really involve the inequities caused by the "first-come, first-served" principles of Order No. 436 coupled with the "grandfathering" of earlier 311 transportation as mandated by Order No. 436 because this method of capacity allocation is based in part on historical accident and therefore arbitrarily discriminates against those potential shippers that did not have transportation arrangements in place prior to October 9, 1985, while granting shippers with "grandfathered" arrangements (often an affiliate) a

degree of market power because of the value attributable to these relatively high priority arrangements.

³⁷ Transco at Exec. Summ. 3-4.

³⁸ Transwestern at 3.

³⁹ Producers' Gas at 3 ("the Commission lacks jurisdiction to regulate the marketing affiliates of intrastate pipelines.")

⁴⁰ Producers' Gas 5 ("alleged abuses * * * can be better dealt with on a case by case basis, in response to specific complaints, and in a forum where specific facts can be raised and adjudicated."); Seagull at 4-5 ("the Commission should limit its oversight to such reporting requirements as are needed to monitor the activity.")

Committee;" and (3) establish expedited procedures to resolve meritorious claims based on recommendations of the Advisory Committee or the Commission's own review.⁴⁸ This commenter believes that competitive forces are the best "regulators" of the marketplace, that marketing affiliates of interstate pipelines provide valuable services to the industry and its consumers, and that by regulating affiliated marketers, the Commission would interpose itself in the marketplace and actually lessen competition.⁴⁹ Another commenter representing certain LDCs proposes a similar procedure to prevent and to resolve disputes that may arise. This commenter's proposal would require: (1) The adopting by the pipeline of the Policy Statement or Code of Conduct to govern the pipeline's relationship with all gas marketing entities and to facilitate the timely evaluation and completion of gas transportation transactions; and (2) the adoption by the FERC of an expedited complaint resolution procedure responsive to problems arising from transportation service involving gas sold by or through gas marketing entities.⁵⁰

The majority of the LDC commenters urge the Commission to resist precipitous action and avoid wide-ranging *per se* rules but instead proceed under its NGA section 4 and 5 authority to prescribe the just and reasonable practices of jurisdictional pipeline companies.⁵¹ One commenter, however, does recommend adopting of *per se* rules (1) regarding reservation of firm transportation: A rule to disallow reservation of firm transportation unless accompanied with coinciding firm market to utilize such transportation; and (2) regarding balancing requirements and penalties: A rule that (i) the pipeline and affiliate cannot borrow/loan gas beyond applicable tolerances in the pipeline's tariff, and (ii) they would be required to report cases where the limits were exceeded, stating the circumstances and justification therefor.⁵²

process and resolve those complaints. The complainant could still go directly to the Commission or file an antitrust action in the courts.

⁴⁸ AGA at 3. The committee would have a rotating membership from all segments of the gas industry and other interested parties.

⁴⁹ AGA at 6-7.

⁵⁰ AGD at 2-3. See also SCGS at 3, recommending that the Commission consider requiring each pipeline adopt a written statement of policy, and having Commission staff undertake non-binding mediation of claims of discrimination before the filing of a formal complaint at the Commission. This commenter also finds that it has not been harmed by the activities of marketing affiliates and "opposes prohibition or excessive over-regulation of interstate pipeline marketing affiliates." SCGS at 2-3.

⁵¹ See, e.g., United at 4-5.

⁵² People Nat. at 3-5. In addition, this commenter suggests, in outline form, other reporting requirements to deal with perceived problems as follows:

A. *Insider Information*—(1) *Released Gas*: (a) Require annual or quarterly report of gas supplies to be released; (b) reports to include affected producers and available pipeline capacity and

Another commenter in this group suggests that given the positive benefits attributable to the existence of pipeline affiliated marketers (such as take-or-pay relief), "allegations of pipelines favoring their marketing affiliates are best examined on a case-by-case basis, utilizing existing regulations."⁵³ Yet there are LDC advocates for "new procedures" because "with the time required to pursue a complaint under existing Commission procedures, it is not possible to obtain a decision before the term of many transactions expire."⁵⁴ With this in mind, another commenter suggests that the Commission take the following three-part action—with somewhat more "teeth" in it than the voluntary policy statements and advisory committee approaches mentioned previously. Specifically, the commenter recommends the following: One, the Commission should require pipelines to file with the Commission (with copies to all existing shippers of gas on its pipeline and to all jurisdictional sales customers) on the 15th day of each month a statement showing (a) how the pipeline allocated its capacity during the preceding month and (b) how the pipeline proposes to allocate its capacity during the immediately following month, in each case specifically identifying any capacity that was or will be allocated to affiliates. These reports should contain such other data as may be required to permit potential contractors for firm and interruptible transportation to fairly compete with pipeline affiliates for available pipeline capacity. Two, the Commission should institute procedures for expedited hearings of all complaints that allege that the pipeline is engaged in a discriminatory allocation of its pipeline capacity. In any case in which a pipeline affiliate is transporting gas to the exclusion of a non-affiliate, the burden of proof should be on the pipeline to show that the affiliate is not being given preferential treatment. And three, appropriate remedies should be adopted to provide sufficient disincentives for a pipeline to give preferential treatment to its affiliates. These

receipt points to move gas; (c) make such filing a condition precedent to filing proceeding for actual abandonment authority as to particular supplies. (2) *Overall Available Pipeline Capacity and Receipt Points*: Require periodic reporting so all competitors have equal opportunity to put together viable transportation packages.

B. *Contract Rates, Terms, and Conditions*—(1) Need for reporting requirements in addition to present flex rate reporting requirement; (2) *Sales below cost*: Must be reported because this practice undercuts competitors who must recoup full costs.

C. *In-House Pipeline Operations and Procedures*—(1) Serious problems with disparate treatment accorded affiliates and other competitors. (2) *Various possible minimum solutions*: (a) Require publication of written procedures as to contract processing, curtailment, etc.; (b) require reporting of contracts between pipelines and affiliates.

⁵³ See, e.g., PG&E at 2-3.

⁵⁴ PSEG at 4.

remedies should include a provision that all revenues received by an affiliate receiving preferential treatment should be considered revenues of the pipeline for purposes of the Natural Gas Act.⁵⁵

F. Industrial Consumers

One commenter states that the overriding concern of the paper industry, of which it is a part, is that "this proceeding should not distract or deter the Commission from acting in other proceedings to implement Order No. 436."⁵⁶ Another, representing chemical manufacturers, opposes using rate of return regulation on interstate pipeline marketing affiliates or mandating their divestiture because such measures run counter to the goals of Order No. 436. The commenter does believe that any new regulations can be modeled on those in the securities and telecommunications industries and should adhere to two principles: they should be: (1) Subject to periodic review and (2) applicable to the regulated entity, the interstate pipeline.⁵⁷

Other commenters also oppose utility-type regulation of gas marketers affiliated with interstate pipelines and urge the Commission "not to impose undue regulatory burdens on any gas marketer, including those affiliated with interstate pipelines."⁵⁸ As one commenter states, it is not at this stage

⁵⁵ Piedmont at 3.

⁵⁶ American Paper at 1. The commenter further urges that as the Commission implements Order No. 436, the open access transportation tariffs of the interstate pipelines be made as reasonable and as uniform as possible and that the Commission prohibit marketing affiliates and others from brokering transportation capacity.

⁵⁷ CMA at 2-4. CMA believes the following regulations are necessary: (1) Interstate pipelines should be prohibited from directly or indirectly subsidizing their affiliates. Physical aspects such as office space, staff or services should be separated; (2) Interstate pipelines should follow a formal release procedure when announcing capacity availability and transportation rates. Preferential access to this information should be prohibited; (3) Preferential treatment regarding gas offerings and rates for service by interstate pipelines should be prohibited; (4) Because the above regulations do not address existing pipeline marketing affiliate market dominance, some redress should be provided for advantages previously attained. The Commission should give the first come, first serve rights currently owned by the pipeline marketing affiliate's to their customers. The customers would then have the choice to continue service with the affiliate, choose another marketer, or provide market services for themselves.

⁵⁸ FI at 2-3. See also Col/NIPRO at 1 ("marketing affiliates provide important services to natural gas consumers, promote competition . . . and service the public interest.") This commenter urges caution in response to independent marketers' allegations of anticompetitive conduct, lest any new regulations aid the independents to control the gas marketing business. Such allegations should be considered "under the Commission's existing procedures and under the antitrust laws," suggests the commenter, Col/NIPRO at 2.

committed to any one program as "the solution" to discrimination in the pipeline industry, believes that many forms of discrimination are not revealed in the data currently required by the Commission, but asks the Commission to work toward "a sound and fair response" in the NOI.⁵⁹

Lastly, a commenter, representing certain industrial groups, supports the goals of the NOI but stresses that the present need is for preventive rather than corrective action, and suggests that the Commission should focus on "eliminating the incentives for pipelines and their affiliates to abuse their special relationships. Policing action, rather than price regulation or divestiture, is more appropriate," according to this commenter.⁶⁰

G. Public Entities

Several public entity commenters take no position on issues raised in the NOI, or variously state in their own way a common theme—that the extent and effect of anticompetitive dangers are difficult to measure at this time, and that the threshold question is whether pipeline marketing affiliates "enhance—or at least do not impede—the goal of beneficial competition."⁶¹

One entity, however, representing state utility commissions, hopes the Commission proceeds through "issuance of a notice of proposed rulemaking to the promulgation of regulations restricting anticompetitive pipeline behavior."⁶² In this vein, another state office commenter urges action against pipeline marketing affiliates which it characterizes as "a significant threat to . . . competitive natural gas market and Order 436."⁶³ Yet another commenter terms the affiliate relationship a "potential escape hatch" from Order No. 436 and the goal of nondiscriminatory access.⁶⁴

Among those commenters submitting more extensive comments, one leans toward taking no action at this time,⁶⁵ three are essentially

non-committal,⁶⁶ and three urge the Commission to act.⁶⁷

One western state commenter, for example, contends that affiliated marketers and independent brokers balance each other's influence and what is needed is *not* regulation to restrict one type of marketer "but simply reasonable regulations to ensure that access to the gas transportation network is truly open and nondiscriminatory."⁶⁸

One commenter recommends "against further consideration of regulating affiliates,"⁶⁹ although it also "takes no position on what type of remedy, if any, is appropriate, since we do not have a sufficient factual basis upon which to make a recommendation."⁷⁰ Another does not believe the Commission should regulate marketers generally, but suggests regulation by specific "devices" to assure open markets, or when specific abuses have been proved.⁷¹

⁶⁰ Justice at 3 ("apparently discriminatory practices may also reflect efficiencies inherent in pipeline integration into marketing * * *; in considering the alleged practices and what to do about them, the Commission should balance efficiencies against the competitive harm that results from the discriminatory practices."); Ill. C.C. at 2 ("regulation of affiliated marketers should only occur by specific devices needed to open markets, or, when specific abuses of the affiliated relation have been proved."); FTC at 17 ("it must also be recognized that retention of the status quo (i.e., allowing regulated pipelines to own unregulated marketing affiliates) represents a fourth alternative.") The other alternatives mentioned by the FTC are (1) regulating the margins and prices of marketing affiliates (which it disfavors); (2) requiring divestiture (which it views as a last resort); and (3) prohibiting an affiliate marketer from using its affiliated pipeline for transportation (which it favors if evidence of abuse is clear).

⁶¹ IUC at 1 ("provide distinct limits of acceptable conduct."); Minnesota at 3 ("pipelines marketing affiliate is the perfect vehicle for the transfer of monopoly power * * *"); MPC at 3 ("certain types of practices clearly are unjustified preferences, and should be prohibited by rule.")

⁶² CPUC at 5. The CPUC also recommends weighing the impact of any proposed rule on the "valuable service" affiliated entities perform in reducing take-or-pay liabilities. *Id.* at 33.

⁶³ Justice at 4.

⁶⁴ Justice at 4. The Department notes the Commission does have the authority to impose any remedies under consideration but that there is no factual basis upon which to make a recommendation, although that basis may be provided in this proceeding. *Id.*

⁶⁵ Ill. C.C. at 2-3. The "specific devices" use the existing rate making or conditioning powers of the Commission and some suggestions include: Rationing capacity to all users; developing additional price-differentiated grades of services; requiring revenues for affiliated marketers be shown in rate proceedings as the full or maximum rate, whether or not a discount has been allowed that affiliate; whenever a new service is proposed requiring 30 days advance notice to all users; developing fair balancing penalties that penalize only when transporter events which are also extreme events in the pipelines' own operations occur; applying a "minimal necessary information test" such that pipelines need not be told the identity of producer and end user to decide if capacity exists between two metering points on its line. Finally, the commenter suggests that "strong disaffiliation devices could be reserved for specific cases where anticompetitive behavior has been proven." *Id.* at 3.

One state commenter urging action now suggests three primary ways in which the Commission can exercise its authority and prevent anticompetitive effects: "by focusing its regulatory oversight on pipelines' capacity, by regulating the gas-related activities of pipelines' affiliates, or by prohibiting corporate self-dealing by pipelines."⁷²

Another commenter seeking action now requests that the Commission either must "comprehensively regulate the activities of affiliated marketing companies to ensure that they do not siphon off competitive opportunities from the pipeline's system supply, or shift to the pipeline's system supply their above-average cost gas. * * * Alternatively, to avoid the potential for creation of marketing affiliates to evade such regulations, the Commission may prohibit pipelines from creating marketing affiliates."⁷³

H. Affiliated Marketers

These commenters unanimously believe that affiliated pipeline marketers provide useful and valuable services to consumers and the natural gas industry, that any perceived problems are transitory and will correct themselves as Order No. 436 is given time to take effect, and that any new regulations or rulemaking are unnecessary and unwise.⁷⁴

One commenter states that complaints should be dealt with on a case-by-case basis, that the situations of abuse alleged by Minnesota's Energy Issues Information Office, Hadson Gas Systems, Inc., and others are hypothetical and unsupported, and that the Commission should take no action to modify its regulations, but instead should terminate this proceeding.⁷⁵ Another stresses that "it is inappropriate to shackle marketing affiliates with pervasive Federal regulation which will serve only to confer unfair competitive advantages upon their unregulated competitors. Such regulation will serve only to create a bifurcated market in which affiliated will be placed at a competitive disadvantage," says the commenter.⁷⁶

It also urges that the Commission terminate this proceeding and instead remedy only proven violations of certificates and tariffs under the NGA, NGPA, and existing discrimination rules under Order No. 436, and "refer alleged violations of the antitrust laws to these agencies responsible for their enforcement."⁷⁷

Yet another commenter also stresses the state of transition in the industry following adoption of Order Nos. 380, 436, and 451 and urges the Commission to avoid the urge to reply on regulatory edicts to control market behavior, and encourages the Commission to weight current antitrust principles, since attacks on vertical integration (which marketing affiliates exemplify) have been

⁷² Minnesota at 3.

⁷³ MPC at 1-2.

⁷⁴ Enron at 15-16; SNG at 2-4; Tenngasco at 2-3.

⁷⁵ Enron at 2.

⁷⁶ SNG at 2.

⁷⁷ SNG at 3.

⁵⁹ SEPC at 2, 14-16, *see also* Viskase at 2, deferring to the Commission's expertise to provide freely accessible energy.

⁶⁰ Process Gas, *et al.* at 5. The Industrial Group commenters also note that "the market obviously benefits from participation by all competitors, including affiliated companies." Process Gas, *et al.* at 4.

⁶¹ *See, e.g.*, IUC at 3; Justice at 2-4 ("the Department takes no position on what type of remedy, if any, is appropriate, since we do not yet have a sufficient basis upon which to make a recommendation.") *Id.* at 4. *See also* New Mexico at 2 ("no comments will be offered at this time").

⁶² NARUC at 3.

⁶³ POCA at 58.

⁶⁴ Ohio at 9.

⁶⁵ CPUC at 2-3 ("increased competition brings with it as a natural consequence increased friction between competitors * * * (which is not) necessarily indicative of a flaw in the gas market which requires regulatory action.")

disfavored by the courts for years.⁷⁸ This commenter urges application of a rule of reason analysis requiring factual analysis and rejects *per se* rules for handling claims of undue discrimination. The commenter also asks that the Commission continue granting first sales status to marketing affiliates, suggests that revocation of such status would hinder marketing affiliates' ability to compete, while conferring unfair competitive advantages on other suppliers, and that such a position is not supportable from either a legal or policy standpoint. Furthermore, the commenter believes such a decision "would have a major impact not only on marketing affiliates of interstate pipelines, but also on affiliates of intrastate pipelines and local distribution companies."⁷⁹

I. Independent Marketers

The independent marketer commenters generally describe abuses they allege to have experienced. (see Appendix D) coupled with requests for a variety of remedies.⁸⁰ Few suggest that divestiture be ordered as a remedy, except as a last resort,⁸¹ and one leading commenter rejects divestiture outright.⁸²

One commenter, while acknowledging that it "cannot provide the Commission with large numbers of documented abuses,"⁸³ does document the alleged abuse it suffers at the hands of Panhandle Trading Company by attaching its initial brief in the hearing on its complaint, docketed at CP86-232-000 *et al.* The commenter believes "the Commission should incorporate the record of that proceeding into this Notice of Inquiry, since it is the only case involving these issues where discovery has been completed and a hearing held." This commenter believes that "many of the direct sales transactions currently being entered into by pipeline affiliated marketers * * * are, in actuality, sales by the pipeline itself, because there is not a legitimate separate entity."⁸⁴ This commenter suggests remedies including: (1) Requiring a pipeline affiliated marketer to meet certain standards of separate organizations for its sales not to be treated as sales of the pipeline; (2) requiring certain logging and reporting requirements to assure that preferential treatment is not extended, even to a fully separated pipeline affiliated marketer; and (3) establishing an expedited complaint

procedure to deal with instances of apparent favoritism.⁸⁵

Commenters propose remedial rules ranging from the simple to the complex. One commenter proposing a "simple" solution believes that the alternative of establishing a set of elaborate rules to govern the conduct of pipelines is at best difficult to do effectively and may be infeasible given the subtle nature of many of the problems.⁸⁶ This commenter states that the simplest effective solution to the problems caused by affiliated marketing companies is "to prohibit blanket or self-implementing carriage by interstate pipelines where the marketing affiliate is the shipper or is associated in any capacity with the transaction. Under such a rule, pipelines could continue to operate marketing affiliates, but the affiliates would have to utilize unaffiliated pipelines for transportation for their transactions."⁸⁷

One commenter proposes a "nine-point program" of recommended remedies that encompasses virtually all suggestions made by other independent marketer commenters. The recommendations are that:

1. The Commission must effectively ban the abuse of material inside information by requiring that marketing affiliates be "held separate" from the pipeline. Thus the marketing affiliate must be physically and organizationally separated from the regulated pipeline company.

2. Marketing companies affiliated with an interstate pipeline must be limited to less than fifty percent of the total volumes transported by that pipeline for others.

3. Selective rate discounting to benefit a marketing affiliate must be prohibited.

4. The marketing affiliate's preferred access to released gas must be removed by requiring prior public notice of the intent to release and by enforcing a three month "cooling off" period in which the pipeline would be precluded from transporting any released gas on behalf of its marketing affiliate. In addition, any pipeline seeking to direct bill its customers for take-or-pay buyout costs must make public a list of all of its "problem contracts" so that other marketers can help the pipeline mitigate its take-or-pay liability.

5. Pipelines must be prohibited from providing firm transportation for their marketing affiliate until after the customers' CD reduction and conversion requests are filed with the Commission.

6. All tie-in arrangements involving pipeline transportation must be banned.

7. The Commission should impose an express obligation on interstate pipelines to treat all marketers in a fair, commercially even-handed manner.

⁷⁸ Enbridge, Exec. Summ. at 3-4. The commenter suggests the pipeline maintain a log of all inquiries, including the response and time of response.

⁷⁹ Citizens *et al.* at 5-6.

⁸⁰ Citizens *et al.* at 4-5. (footnote omitted). See also NGCH at 3 ("FERC should remedy the situation by banning unregulated Marketing operations on the parent or affiliated pipeline's system.") If this remedy is not adopted, the commenter states that "it is insufficient for FERC to merely issue prospective guidelines for transactions between a parent pipeline and its marketing affiliate because the illicit gains from the past undue discrimination are already in place." NGCH at 3.

⁸¹ "Sweetheart deals" or "cross favoritism" among pipelines must be prohibited.

⁸² The Commission must put an end to all operational favoritism shown to affiliates, whether in the selective enforcement of contract quality specifications, transportation request forms, contract minimums or any other type of operational preference.

In addition, the commenter recommends the establishment of a staff review board to mediate disputes and recommend action to the Commission, as well as "an annual Notice of Inquiry" in which all interested persons could participate, to allow continued scrutiny of industry developments.

As one representative commenter puts it, "the Commission should not regulate any more than the law and market require."⁸³ Nevertheless, because of abuses perceived as real by the commenter, it requests: (1) An integrated program of regulations to control and monitor the conduct of, and business relationships between, pipelines and their affiliated marketers; (2) that the program should be clearly spelled out in a Commission policy statement as well as in specific regulations; (3) that the program should be enforced and the enforcement provisions should be given adequate teeth; and (4) that the regulatory program should be imposed directly on pipelines transporting natural gas in interstate commerce, not on their marketing affiliates.

Appendix D—Anecdotal Examples of Alleged Abuses¹

I. Hadson Gas Systems, Inc. Gives the Following Examples:

1. An independent production company had been selling to the marketing affiliate of a major interstate pipeline company in 1986. In the fall of 1986, the marketing affiliate reduced the price they were willing to pay to the producer to such an extent that the producer chose to shut in the gas rather than accept the reduced price. As a result, the producer began to explore alternative markets for its gas.

During this period, two marketers entered into discussions with the producer and reached an agreement to purchase the supply.

At this point, the marketer's personnel contacted the pipeline to request information regarding the transportation rate that would apply to move this gas to market. The identification of the receipt point at which the gas would enter the pipeline's facilities was sufficient to identify the producer in question.

Within a couple of days of the marketer's request for rate information from the pipeline, Hadson alleges that the producer was contacted by the pipeline's marketing affiliate and offered the price that they had been receiving prior to the reduction. Moreover,

⁸³ Hadson at 2-3. (Emphasis in original.)

⁸⁴ Hadson at 4. Another commenter also includes an extensive menu of remedies as does Hadson. See People Service at 4-6 for its proposed remedies.

⁸⁵ P-M at 4-5.

⁸⁶ *Id.*

⁸⁷ It should be noted that several commenters affirmatively state that they have not encountered discrimination or anticompetitive practices at the hands of pipeline marketing affiliates.

⁷⁸ Tenggascio at 3. Implementation of existing tariffs and regulations provide "more than adequate protection with regard to the alleged abuses" according to this commenter. *Id.* at 2.

⁷⁹ Tenggascio at 2.

⁸⁰ See, e.g., Citizens *et al.*; Enbridge; Hadson; RG Vesta; and Yankee.

⁸¹ One commenter urges the Commission to "order the prohibition of cross-subsidized marketers," which may or may not imply a call for divestiture. See AES at 4. Another suggests that a "clear and simple separation of pipelines and marketing affiliates is required." Con. Fuel at 8.

⁸² Hadson at 1: "Hadson does not endorse Commission action to require total divestiture of the marketing affiliates by interstate pipelines." (Emphasis in original).

⁸³ Enbridge, Exec. Summ. at 1.

⁸⁴ Enbridge, Exec. Summ. at 3. Accordingly, the commenter maintains it is a violation of the pipeline's filed tariffs for it to make sales at prices other than its tariffs.

the producer informed the marketer that the marketing affiliate had explained to them that the reason why the affiliate had been able to raise the price was because its affiliated pipeline had agreed to "flex" the transportation rate down for service to the marketing affiliate, thereby making possible an increased netback to the producer.

2. In the summer of 1986, one of Hadson's current employees was employed as an independent consultant putting together supply packages to offer on the market. During the period of June and July 1986, this person attempted to purchase gas from one of the major integrated production companies for resale to an independent gas marketing company. The consultant approached an interstate pipeline company to arrange for transportation of the gas. Within a short time, Hadson states that the pipeline company's marketing affiliate contracted with the same producer and offered to buy the gas itself.

3. Hadson asserts that a more subtle abuse of inside information is illustrated by the new procedures put into effect November 1, 1986 by a major pipeline serving California. Under the new procedures, transportation customers, whether LDCs or end-users served through LDCs, must nominate to the pipeline the receipt point and volumes at each receipt point into the pipeline that they want transported. The customers must then call the pipeline dispatcher every day, after which the pipeline calls the marketer involved in each transaction and asks whether appropriate deliveries are being made into the pipeline system to conform to the customer's request that morning. While the pipeline will confirm the level of deliveries at certain points where capacity is restricted, it will not confirm deliveries at any other points.

As a result, Hadson alleges that the marketer is dependent on that producer for verifying that appropriate deliveries have been made at each receipt point into the pipeline.

If deliveries into the pipeline at the receipt points are not in balance with the customers' daily requests, then the marketer is exposed to balancing penalties.

While in this case the pipeline's own marketing affiliate was subject to the same requirements, the affiliated marketing company had the advantage of viewing the information collected by the pipeline as to actual deliveries into the system. The preferred access to information means that the balancing requirements, although facially neutral as between affiliated and independent marketers, were in fact discriminatory in Hadson's view.

Hadson believes this case also illustrates the operational problems caused by requirements for daily load balancing. The exclusionary effect is so great, according to Hadson, that the burden should be placed on the pipeline to justify the need for such daily balancing before penalties can be imposed.

4. Hadson has encountered the practice by a major "downstream" pipeline of requiring that it be informed of any changes in the receipt points at which gas enters the facilities of the upstream pipelines. To illustrate the absurdity, as well as the danger

perceived by Hadson in this practice, it poses this hypothetical situation: Assume an ongoing transportation arrangement with a pipeline located nearly a thousand miles from the producer. Assume further that the shipper wishes to substitute a new receipt point on an upstream pipeline that has no affiliation with the pipeline in question. The downstream pipeline will refuse to allow the gas to be received into its system in the Ohio Valley unless and until it has been told at what point in Louisiana the gas is to enter the facilities of the upstream pipeline.

In effect, Hadson asserts that this means that the downstream pipeline exercises a veto over the decisions of the producer, the marketer, the customer, and the upstream pipeline unless and until valuable commercial information is turned over to the downstream pipeline for its own use.

5. Under the General Terms and Conditions of one pipeline's tariff, the minimum volume for self-implementing transportation service under the appropriate rate schedule is 1,000 Mcf per day. The tariff states the pipeline may accept transactions of less than 1,000 Mcf minimum. While the minimum volume stated in the tariff is not itself discriminatory, Hadson states it has been informed by one of its customers that the pipeline has told the customer that transportation of volumes below 1,000 Mcf per day is not available unless the gas is purchased from the pipeline's marketing affiliate.

6. The marketing affiliate of a major pipeline had been buying gas from a producer for a relatively long period (perhaps two years). During that period of time, there had been no concerns raised by the pipeline or its marketing affiliate as to the water content of the gas stream. In the summer of 1986, the producer began selling the gas to Hadson. Within a very short time (perhaps a week), the pipeline sent personnel to test the gas stream. It was found that the gas contained more water than the contract specifications allowed. The pipeline required Hadson to shut the production in until the gas could be brought into compliance with the contract specifications. Yet this was the same production that the pipeline company had been accepting without any objection for nearly two years, according to Hadson, as long as the gas was being sold to the pipeline's affiliate.

7. In November 1986, Hadson personnel learned that a major pipeline serving the West Coast was discounting its transportation rate to \$0.17 per unit for transportation to a large distribution company buying gas from the pipeline's affiliate, while charging the full rate to all others. When Hadson inquired as to the basis of the discount, Hadson was told that the reason had to do with the distributor purchasing gas from the pipeline's affiliated marketing company. It seems that the affiliate had purchased supplies for the month of November of 1986 on the assumption that prices would generally rise that month, making it possible to sell the higher priced gas and still make the necessary return.

Unfortunately for the marketing affiliate, prices in November dropped. Accordingly,

the pipeline affiliate reduced its transport rate to try to recover the difference. Hadson asserts there is no reason to believe the pipeline would provide such a discount to everyone in order to bail out an independent marketer in the same situation.

II—Entrade Also Cites Other Instances of Abuse by Six Unnamed Pipelines. According to Entrade:

1. Pipeline I in several instances delayed transportation requests while its pipeline affiliated marketer contacted the supplier to attempt to buy the gas;

2. Pipeline II already had transportation agreements in place with its affiliate at the time it "opened" for transportation and immediately provided service for some LDC customers even though some of the LDC's had not provided "on behalf of" letters normally required for NGPA section 311 transportation.

3. Pipeline III also began delivering gas immediately for its affiliate once it opened for section 311 transportation although Entrade's customer had to get in line and wait its turn.

4. Entrade already had a transportation request on file when Pipeline IV opened for interim section 311 transportation, but pipeline IV had invoked very stringent credit requirements which Entrade is still attempting to negotiate. Meanwhile, the pipeline's marketing affiliate is moving substantial volumes of gas.

5. Pipeline V requires Entrade to list each receipt point and volumes for each receipt point, and has a "use-it-or-lose-it" provision for each receipt point. However, contracts for the pipeline's affiliate simply list "various receipt points" and allow unlimitedly flexible rates "to be calculated monthly." Also, Pipeline V will not authorize transportation for anyone except its affiliate on the basis of capacity.

6. When Entrade requests transportation from Pipeline VI for gas purchased directly from producers, there is a delay of up to several months before transportation begins; when Entrade purchases gas from the pipeline's affiliated marketer for the same end user, transportation is available the next day.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-87-1309; FR-2255]

Minimum Property Standards (MPS) for Housing—Water Supply Systems

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulation relating to the applicability of the chemical and bacteriological standards of local health authorities to HUD-insured one- and two-family dwellings. This proposal provides that in the absence of local standards, those of the appropriate State agency would apply. This revision would simplify the requirements for water supply systems while furthering the Department's policy of relying on acceptable State and local building codes.

DATES: Comments must be received by August 7, 1987.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mark W. Holman, Manufactured Housing and Construction Standards Division, Room 9156, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-6584. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department in 1985 published a final rule (50 FR 39586, September 27, 1985) which adopted a changed structure for HUD's Minimum Property Standards (MPS) for one- and two-family dwellings. That rule advised that, among other things, the Department now will rely upon acceptable local or State building codes to provide the health and safety criteria for HUD's single family construction standards.

The final rule contained a section entitled "Water supply systems" which provides that:

The chemical and bacteriological standards of the local health authority shall apply. In the absence of such standards, the maximum contaminant levels of EPA shall apply. A water analysis may be required by either the health authority or the HUD Field Office. [See 24 CFR 200.926d(f)(1)(ii) at 50 FR 39599.]

This proposed rule would amend that section by removing the phrase "the maximum contaminant levels of EPA" and by substituting therefor the language "those of the appropriate State agency". This change is consistent with the Department's policy of relying,

wherever possible, on standards used in acceptable State and local codes.

The Department also is using this rule to inform readers of a necessary change to HUD Handbook 4910.1 "MPS for Housing". (The MPS for one- and two-family dwellings found in 24 CFR Chapter II are referenced in 4910.1.) Paragraphs 615-2.2 and 615-8.2 of the Handbook contain language that would be removed from § 200.926d(f)(ii) by this rule. In pertinent part, the language of paragraphs 615-2.2b and 615-8.2 reads—

The chemical and bacteriological standards of the health authority shall apply. In the absence of such standards, the maximum contaminant levels of the Environmental Protection Agency shall apply.

This language will be changed to conform to the proposed revision of § 200.926d(f)(1)(ii). As changed, the language of paragraphs 615-2.2b and 615-8.2 will read, in part,

The chemical and bacteriological standards of the health authority shall apply. In the absence of such standards, those of the appropriate State agency shall apply.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule would not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would

remove language that provides for the applicability of Federal (EPA) standards with respect to water supply systems in favor of using standards of the appropriate State agency. This change would not impose any economic burden on small entities.

This rule was listed in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14377), under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.117.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum Property Standards, Incorporation by reference.

Accordingly, the Department would amend 24 CFR Part 200 as follows:

PART 200—INTRODUCTION

1. The authority citation for Part 200 would continue to read as follows:

Authority: Titles I and II of the National Housing Act (12 U.S.C. 1701 through 1715z-18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart G is issued under sec. 214, Housing and Community Development Act of 1980, as amended by sec. 329, Housing and Community Development Amendments of 1981 (42 U.S.C. 1436a).

2. Section 200.926d would be amended by revising paragraph (f)(1)(ii) to read as follows:

§ 200.926d Construction requirements.

(f)(1) * * *

(ii) The chemical and bacteriological standards of the local health authority shall apply. In the absence of such standards, those of the appropriate State agency shall apply. A water analysis may be required by either the health authority or the HUD Field Office.

Dated: May 26, 1987.

Thomas T. Demery,
Assistant Secretary for Housing, Federal
Housing Commissioner.

[FR Doc. 87-12967 Filed 6-5-87; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 842, and 843

Petition To Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Federal Inspection and Enforcement Authority

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

ACTION: Notice of decision on petition for rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is making available to the public its final decision on a petition for rulemaking from the Mining and Reclamation Council of America (now part of the National Coal Association) and the Regulatory Assistance Program. The petitioners requested that OSMRE repeal existing regulations authorizing Federal notices of violation in States with approved regulatory programs and establish a uniform standard of review for evaluating State responses to ten-day notices. On May 29, 1987, the Director made a decision to grant that part of the petition which requests a uniform standard of review of State responses to ten-day notices and deny that part of the petition concerning repeal of OSMRE's authority to issue notices of violation in oversight.

ADDRESS: Copies of the petition and other relevant materials comprising the administrative record of this petition are available for public review and copying at OSMRE, Administrative Record, Room 5315, 1100 "L" Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. George Stone, Chief, Branch of Inspection and Enforcement, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343-4295.

SUPPLEMENTARY INFORMATION:**I. Petition for Rulemaking Process**

Pursuant to section 201(g) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), any person may petition the Director of OSMRE for a change in OSMRE's regulations. Under the applicable regulations for rulemaking petitions, 30 CFR 700.12, if the Director determines that the petition has a reasonable basis, the Director shall publish a notice in the *Federal Register* seeking comments on the

petition, and may hold a public hearing, conduct an investigation, or take other action to determine whether the petition should be granted. If the petition is granted, the Director initiates a rulemaking proceeding. If the petition is denied, the Director notifies the petitioner in writing setting forth the reasons for denial. Under 30 CFR 700.12(d), the Director's decision constitutes the final decision of the Department of the Interior.

II. Petition Submitted by the Mining and Reclamation Council of America and the Regulatory Assistance Program on May 30, 1986

OSMRE received a letter dated May 30, 1986 transmitting a petition for rulemaking on behalf of the Mining and Reclamation Council of America (now part of the National Coal Association) and the Regulatory Assistance Program to amend OSMRE's existing regulations under 30 CFR Parts 701, 842, and 843 concerning Federal inspections and enforcement when a State regulatory program is in effect and to establish a uniform standard of review for evaluating State responses to ten-day notices.

The petitioners are the Mining and Reclamation Council of America, a national trade association, and the Regulatory Assistance Program, comprised of the Alabama Coal Association, Coal Operators and Associates, Facts About Coal in Tennessee, Illinois Coal Association, Indiana Coal Council, Kentucky Coal Association, the Ohio Coal and Energy Association, Ohio Mining and Reclamation Association, Pennsylvania Coal Mining Association and West Virginia Mining and Reclamation Association.

On July 30, 1986, OSMRE published a notice in the *Federal Register* (51 FR 27197) requesting comments on the petition and announcing its intent to hold a conference during the comment period for the purpose of exchanging views on two topics: (1) OSMRE's use of ten-day notices and Federal notices of violation, and (2) criteria and procedures for substituting Federal enforcement and withdrawing approval of a State regulatory program under SMCRA. The conference was held on August 13 and 14, 1986, and the comment period closed on September 29, 1986. OSMRE received 35 comments during the public comment period.

For the reasons discussed in the appendix to this notice, the Director is granting the petition in part, with respect to establishing a ten-day notice review standard. OSMRE will initiate rulemaking on this subject. The Director

is denying that part of the petition seeking repeal of OSMRE's authority to issue Federal notices of violation in States with approved regulatory programs. Therefore, no rulemaking will occur on this issue.

The Director's letter to the petitioners on this rulemaking petition appears as an appendix to this notice. This letter reports the Director's decision to the petitioners. It also contains a summary description of the issues raised by the petitioners, a discussion of the applicable statutory provisions and regulatory background, an analysis of and response to the petitioners' reasons why the petition should be granted, and a summary of the comments on the petition.

Dated: May 29, 1987.

Brent Wahlquist,

Assistant Director, Program Policy Office of Surface Mining Reclamation and Enforcement.

Mr. Daniel R. Gerkin,

Senior Vice President, National Coal Association, 1130 17th Street, NW., Washington, DC 20036

Dear Mr. Gerkin: This letter is in response to the May 30, 1986 petition for rulemaking submitted to the Office of Surface Mining Reclamation and Enforcement (OSMRE) on behalf of the Mining and Reclamation Council of America (now part of the National Coal Association) and the Regulatory Assistance Program (petitioners). The petition requests that OSMRE repeal all existing regulations which authorize the issuance of Federal notices of violation in States with approved regulatory programs and establish a uniform standard of review for OSMRE's evaluation of State responses to ten-day notices.

On July 30, 1986, OSMRE published a notice in the *Federal Register* (51 FR 27197) requesting public comments on the petition. OSMRE also sponsored a conference in Washington, DC, on August 14, 1986, to have an exchange of views on OSMRE's use of ten-day notices and Federal notices of violation in States with approved regulatory programs. The proceedings and relevant supporting documents from the conference were entered into the Administration Record for the petition.

After careful consideration of the positions and arguments presented in both the petition and public comments, I have decided to grant the petitioners' request to propose establishing a uniform standard of review for OSMRE's evaluation of State responses to ten-day notices. OSMRE will initiate a rulemaking proceeding on this subject. I am denying the petitioners' request with respect to the repeal of existing regulations which authorize the issuance of Federal notices of violation in States with approved regulatory programs. Therefore, no rulemaking proceeding will be initiated on this subject. The reasons for my decision are discussed in the enclosed analysis. As provided in 30 CFR

700.12(d), my decision constitutes the final decision for the Department of the Interior.

Sincerely,
Jed D. Christensen,
Director.

Mining and Reclamation Council of America Regulatory Assistance Program

Petition for Rulemaking Decision Analysis

I. Background

On May 30, 1986, the Mining and Reclamation Council of America (now part of the National Coal Association) and the Regulatory Assistance Program petitioned the Director of the Office of Surface Mining Reclamation and Enforcement (OSMRE) to: (1) Repeal the existing regulations which authorize Federal notices of violation (NOV's) in States with approved regulatory programs; and (2) amend the Federal regulations to establish a uniform standard of review for OSMRE's evaluation of State responses to ten-day notices (TDN's).

Section 201(g) of the Surface Mining Control and Reclamation Act (the Act) and 30 CFR 700.12 provide that any person may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of a rule promulgated under the Act. The Federal regulations at 30 CFR 700.12 require the petition to set forth the facts, technical justification and law which require the issuance, amendment or repeal of a regulation. 30 CFR 700.12(b). Based on this information, the Director shall determine if the petition provides a reasonable basis for the proposed action. The Federal regulations further provide that facts, technical justification or law previously considered in a petition or rulemaking on the same issue shall not provide a reasonable basis. 30 CFR 700.12(c). If a reasonable basis exists, a Federal Register notice must be published seeking comments from the public on the proposed change. The Director may hold a public hearing or conduct other investigations or proceedings in order to determine whether the petition should be granted. If the petition is granted, the Director is required to commence a rulemaking proceeding. 30 CFR 700.12(d)(1). If the petition is denied, the Director is required to notify the petitioner in writing of the reasons for denial. 30 CFR 700.12(d)(2).

On July 30, 1986, OSMRE published a notice in the Federal Register requesting comments on the petition because of the public interest in the petition. In the notice, OSMRE announced its intent to hold a conference during the comment

period for the purpose of exchanging views on: (1) The effectiveness of the agency's use of TDN's and Federal NOV's, and (2) the criteria for substituting Federal enforcement for, or withdrawing approval of, State regulatory programs. The notice stated that the conference proceedings and supporting documents would be entered into the Administrative Record on the petition (51 FR 27197).

The conference was held in Washington, DC on August 13 and 14, 1986, and the comment period closed on September 29, 1986. OSMRE received 35 public comments on the petition from coal companies and coal mining associations, State government agencies, environmental groups, and others. These public comments have been made a part of the Administrative Record.

After thorough analysis of the arguments and positions presented by the petitioners and public commenters, and after reviewing OSMRE's use of TDN's and NOV's in primacy States, the Director has decided to grant the petition in part and deny it in part for the reasons discussed below.

II. Substance of the Petition

The petitioners' proposals will be discussed separately. First, they requested the repeal of regulations authorizing Federal NOV's in States with approved regulatory programs (primacy States). Second, they requested the adoption of a uniform standard of review for OSMRE's evaluation of State responses to TDN's. With regard to the regulations authorizing Federal NOV's in primacy States, the petitioners assert that OSMRE lacks statutory authority to issue such NOV's, and that issuance of Federal NOV's undermines primacy, unfairly places operators between two disputing regulatory authorities, fails to resolve underlying programmatic problems, and renders superfluous the other tools provided by the Act to resolve problems. With respect to the petitioners' second request, they assert that lack of a TDN review standard has led to disparate treatment of coal operators and States, substitution of OSMRE's judgment for that of the State, and a lack of deference to the State's discretion in the interpretation and enforcement of its regulatory program.

III. Applicable Statutory Provisions

OSMRE's statutory obligations with respect to the evaluation and enforcement of approved State regulatory programs are set forth under a number of sections in the Act. The key provisions are set forth in sections 201, 504, 517 and 521. Section 201(c)

authorizes the Secretary, acting through OSMRE, to make those investigations and inspections necessary to ensure compliance with the Act, and to promulgate such regulations as may be necessary to carry out the purposes and provisions of the Act. Section 504(b) provides that if a State is not enforcing any part of its State program, the Secretary may provide for Federal enforcement of that part of the State program, under the provisions of section 521.

Section 517 specifies that the Secretary shall make such inspections of any coal mining operations as are necessary to evaluate the administration of approved State programs. Section 521(a)(1) provides that if the Secretary has reason to believe that any person is in violation of the Act, he must notify the State regulatory authority. It further provides that the Secretary shall order an immediate Federal inspection if the State fails, within ten days after notification, to take appropriate action to cause the violation to be corrected or to show good cause for such failure. Section 521(a)(2) specifies when the Secretary or authorized representative is required to issue an order ceasing surface coal mining and reclamation operations. Section 521(a)(3) specifies when the Secretary or authorized representative is required to issue an NOV.

Finally, section 521(b) provides that the Secretary shall enforce all or any part of a State program upon a finding that the State has failed to enforce effectively and has not demonstrated its capability and intent to do so.

IV. Regulatory Background

OSMRE's first rulemaking on its enforcement authority in oversight occurred in 1978 with the publication of the proposed permanent program regulations. 43 FR 41662 (September 18, 1978). The proposed regulations provided that a violation observed during a Federal oversight inspection should be deferred to the State and the operator so that the State could take appropriate action to cause correction of the violation. The preamble to the proposed rule explained that a violation observed in a primacy State:

Should be reported in writing to the State regulatory authority and the person responsible for the violation but that no notice of violation may be issued. An alternative approach which was considered, was to provide that a Federal inspector could simply issue a notice of violation to the operator under these circumstances. Comment is invited as to whether the proposal language is a correct interpretation of the Act and the legislative history.

(Emphasis added.) 43 FR 41795.

In 1979, OSMRE promulgated final regulations at 30 CFR 843.12(a)(2) which require it to issue an NOV in a primacy State if the State fails within ten days after notification to take appropriate action or show good cause for such failure. The preamble to the final regulation stated that:

A major issue was raised with respect to the authority of the Office to issue notices of violation during the permanent program. The proposed regulation § 843.12(d) provided for mere reporting of a violation to the State and the operator, rather than the issuance of a notice of violation, when a violation is found by OSM in a State with an approved State program. The preamble to the proposed regulations stated, however, that OSM was considering the alternative approach of issuing regular notices of violation and invited comments on how to correctly interpret the Act and the legislative history. 44 FR 15302, March 13, 1979.

OSMRE received numerous comments on the issue, including extensive comments on the legislative history. OSMRE concluded that although the legislative history "does give conflicting statements on this issue * * * the Office reads the legislative history, when considered in conjunction with the Act, as allowing OSM to issue notices of violation, at least in some circumstances, during a State program." *Id.*

OSMRE considered the argument that because section 521(a)(3) does not specifically include Federal oversight inspections among those requiring the issuance of NOV's, the "point of the Federal inspection in such a situation is to gather information for a section 521(b) proceeding (OSM taking over all or a portion of a State program)." OSMRE rejected this argument, however, because:

* * * as a practical matter, it would leave a large gap in the enforcement scheme of the Act. The Office's ability to take over a part of a State program as a result of the State's refusal or inability to take action in isolated cases may be limited and may require a great deal of time. If this is true, then during the interim violations which are not imminent hazards could go totally unpunished and unabated. It should be pointed out that some of these notice-of-violation situations could be potentially serious or widespread, even though a hazard to life or significant environmental harm was not "imminent" at the time of the Federal inspection. There is no reason to believe that Congress intended that such a gap exist in the permanent program or that Congress intended OSM to sit idly by while these violations ripen into imminent hazards so that OSM can act under the provisions of section 521(a)(2) of the Act. *Id.*

OSMRE concluded that:

As a legal matter, issuance of notices of violation fills a void or gap in the Federal enforcement scheme—a gap between the uncorrected violation and the prerequisite showing for Section 521(b) proceedings to take over enforcement of a State program.

Id.

In 1981, OSMRE proposed amendments to the enforcement regulations as part of its extensive program of regulatory reform. OSMRE proposed to remove Federal NOV authority in oversight and stated:

This proposed change is intended to raise the question whether * * * OSM's recourse may be with the State rather than the permittee * * *. OSM may lack authority to issue citations directly to permittees except in those limited circumstances * * * (which) justify issuance of a cessation order under section 521(a)(2) of the Act.

46 FR 58467, December 1, 1981.

OSMRE noted that, alternatively, it was considering retaining NOV authority and again solicited public comment on both the advisability of and authority for either removing or retaining the requirement. *Id.* at 58468.

In 1982, OSMRE entered into a settlement agreement which obligated it to prepare a supplemental environmental impact statement (EIS) on a number of proposed regulations, including the authority to issue NOV's in oversight of approved State programs. *National Wildlife Federation v. Watt*, Civ. No. 82-0320, April 16, 1982 (D.D.C.). OSMRE again solicited public comment on NOV authority by a notice published in the *Federal Register* on May 13, 1982. 47 FR 20631. On August 16, 1982, OSMRE promulgated final inspection and enforcement rules, but noted that it was deferring action on the issue of NOV authority in oversight pending preparation of the supplemental EIS. 47 FR 35630.

On March 3, 1983, OSMRE announced in a Statement of Policy that "(u)pon examination of the issue, the Department has concluded that the regulation contained at 30 CFR 843.12(a)(2) was properly and lawfully promulgated; therefore there is no need to reconsider the issue." 48 FR 9199.

V. Petitioners' Statement of Facts and Law in Support of the Petition Regarding Regulations Authorizing Federal Notices of Violation (NOV's) in Primacy States

The petitioners assert that OSMRE should repeal the regulations authorizing Federal NOV's in primacy States because (1) the Act does not authorize the issuance of Federal NOV's in primacy States, except under section 521(b), and (2) sound policy reasons dictate the use of other tools to ensure compliance. The petitioners state that

the administrative history of the issue indicates doubt in OSMRE's mind as to its statutory authority because the 1978 proposed rules did not include the authority for issuing Federal NOV's in primacy States, and because OSMRE revisited the issue in 1981. The petitioners also analyze the Act and the legislative history, and cite case law to support their contention that OSMRE lacks the authority to issue NOV's in primacy States.

Furthermore, the petitioners state that use of Federal NOV's ignores the range of policy options available to OSMRE to compel States to implement and enforce their programs, such as requiring a State to amend its program when the program is found to be deficient, requiring an operator to revise a permit when the permit is found to be defective, and initiating the process leading to the Federal enforcement of all or part of a State program as provided in section 521(b). These oversight tools, argue the petitioners, would address the typical situations in which OSMRE now issues Federal NOV's. These situations include disagreement with the State's interpretation of its program or the manner in which the State compels abatement, alleged discrepancies in State-issued permits, deficiencies in the approved program, and programmatic enforcement issues. Therefore, the petitioners assert that OSMRE not only does not have, but has substituted for more appropriate responses, the authority to issue Federal NOV's.

Petitioners contend that the existing regulations should be repealed because OSMRE's use of Federal NOV's when legitimate disputes exist between a State regulatory authority and OSMRE, subjects operators to Federal enforcement when they have relied in good faith on the State's interpretation. Moreover, the petitioners contend that OSMRE's substitution of its judgment for the State's on a case-by-case basis has resulted in reluctance on the part of OSMRE to address programmatic or systematic problems in approved State programs.

VI. Response to Petitioners' Assertions Regarding Federal NOV Authority

A. Summary of Reasons for Denial Regarding Federal NOV Authority

1. The petition presents arguments on law previously considered in rulemaking (1979, 1982, 1983) and therefore fails to provide a sufficient basis under 30 CFR 700.12 for reopening the issue in a proposed rulemaking. In this instance, administrative finality clearly outweighs the benefits of proposing repeal.

2. Some commenters have supported the petition based on the argument that use of Federal oversight NOV's should be revisited because of the experience gained in oversight or that circumstances have changed over the years. However, neither the commenters nor the petitioners have provided any new information such as statistics or case facts sufficient to persuade the Director that NOV's issued in primacy States are symptomatic of generic program deficiencies.

3. OSMRE (with support of some States) believes that NOV authority is beneficial because it acts as an intangible deterrent which contributes to operator cooperation with State regulatory authorities and enhanced compliance with State program requirements.

4. To the extent that the problems associated with the use of NOV's as alleged in the petition could occur, these can be resolved through adopting a ten-day notice (TDN) review standard, defining good cause, and issuing other appropriate guidance.

5. Federal NOV authority is needed for OSMRE to comply with two court orders. In accordance with the terms of the January 31, 1985 Order in *Save Our Cumberland Mountains, Inc. v. Clark*, No. 81-2134 (D.D.C. 1985), OSMRE is required to issue Federal NOV's where any State does not suspend or revoke improvidently issued permits. In addition, under the terms of another case of the same name, *Save Our Cumberland Mountains, Inc. v. Clark*, No. 81-2238 (D.D.C. 1985), OSMRE is required to issue Federal NOV's directly at certain sites in Virginia and in Kentucky, where the State fails to take appropriate action on a TDN.

6. OSMRE's oversight NOV statistics do not show a pervasive use of Federal NOV's in primacy States. The number has decreased each year since 1984 and is expected to continue to decline, especially if proposed ten-day notice review standards are implemented. In fiscal year 1986, a total of 67 oversight NOV's were issued. Of these, 62 (93%) were issued in four States, the remaining 5 issued in three States and none were issued in the other 17 States.

7. It is unlikely that the procedures established in 30 CFR Part 733 for substituting Federal enforcement of State programs and withdrawing approval of State programs can be significantly streamlined. Therefore, such a process represents a lengthy and impractical approach to resolving problems on site-by-site basis. Moreover, such a practice is likely to result in greater confusion and Federal intervention than if a limited number of NOV's were judiciously issued.

B. Analysis

OSMRE's legal authority to issue Federal NOV's in primacy States has been considered in two past rulemakings, as discussed above under "Regulatory Background." After careful consideration of the Act, the legislative history, and public comments during both rulemakings, OSMRE determined that it has the authority to issue Federal NOV's in primacy States.

Neither rulemaking was challenged in court as provided for in Section 526 of the Act. The petitioners have presented the same legal arguments that were considered previously in the two earlier rulemakings on this issue.

Legislative History

The petitioners attempt to refute OSMRE's conclusion in 1979 as to the conflicting nature of the legislative history. However, no new material was provided. Moreover, petitioners' analysis of the Act's legislative history is incomplete. In fact, the legislative history of the Act contains a number of passages indicating that Congress foresaw the probability that the Secretary would need to take enforcement action on a mine-by-mine basis, including issuance of NOV's, to ensure compliance with the standards of the Act in situations not meriting Federal enforcement of all or part of a State's program. The final Senate Report on the Act introduces its discussion of the Federal enforcement provision with the following:

The Federal enforcement system contained in this section, while predicated upon the States taking the lead with respect to program enforcement, at the same time provides sufficient Federal back-up to reinforce and strengthen State regulation as necessary. *Federal standards are to be enforced by the Secretary on a mine by mine basis for all or part of the State as necessary without a finding that the State regulatory program should be superseded by a Federal permit and enforcement program.*

S. Rep. 95-128, 95th Cong. 1st Sess. at 88 (1977) (emphasis added). That Senate report adopts, verbatim, a statement contained in a prior House of Representatives Committee report, H.R. Rep. 94-896, 94th Cong. 2d Sess. at 119 (1976). Similarly, in its report on section 404(b) of S.7 (identical to 504(b), 30 U.S.C. 1254(b), in the final version of the Act), the Senate stated:

The committee fully intends that under subsection 404(b) the Secretary will use the enforcement authority granted him under subsections 421(a)(1) through (4) [these sections are identical to 521(a)(1) through (4) 30 U.S.C. 1271(a)(1) through (4)] in the final version of the Act, if a State with an

approved program fails to enforce against an operator who is violating the Act.

S. Rep. 95-128, 95th Cong. 1st Sess. at 72 (1977) (emphasis added). The reference to a single operator supports OSMRE's position that in a State with an approved program, enforcement by OSMRE may be on a mine-by-mine basis rather than requiring the Secretary first to take over all or part of a State's program.

Case Law

The case law cited by the petitioners also does not refute OSMRE's earlier conclusion that the rules establishing Federal NOV authority find support in the Act. The principal case relied upon by the petitioners, *Clinchfield Coal Company v. Hodel*, No. 85-0113-A (W.D.Va. 1985), was reversed by the U.S. Court of Appeals for the Fourth Circuit since the filing of the petition. See *Clinchfield Coal Company v. DOI*, No. 85-2205 (4th Cir. 1986). The petitioners also rely upon a 1981 decision in *In Re: Permanent Surface Mining Regulation Litigation*, 653 F.2d 514 (D.C. Cir. 1981) (en banc), cert. denied, 454 U.S. 822 (1981). This case was decided prior to OSMRE's 1982 and 1983 reconsideration of Federal NOV authority and should not be viewed now as new material to be considered by OSMRE. Moreover, that decision does not address the issue of whether rules establishing Federal NOV authority are lawful and a proper exercise of the Secretary's rulemaking authority. In short, the cases referred by the petitioners have been reviewed by OSMRE and do not provide a sufficient basis for the Secretary to propose repeal of NOV authority.

Turning to the petitioners' other assertions, OSMRE does not agree, nor have the petitioners provided persuasive evidence, that the use of Federal NOV's has rendered superfluous other oversight tools, unnecessarily placed coal operators in the middle of policy or program interpretational disputes between OSMRE and the States, or failed to resolve underlying programmatic problems. Neither the petitioners nor public commenters have provided facts or quantitative analysis sufficient to support these contentions.

In order to illustrate the use of Federal NOV's, OSMRE offers the following perspective regarding the number of oversight NOV's issued during fiscal years (October 1-September 30) 1984, 1985, and 1986.

	Fiscal year		
	1984	1985	1986
Federal Oversight Inspections.....	2900	2700	2600
NOV's issued.....	117	82	67
Percent of Federal Oversight Inspections resulting in NOV's.....	4%	3%	2.5%
Number of States where NOV's were issued (24 primacy States).....	13	10	7

These figures clearly do not represent a pervasive use of Federal NOV's in primacy States nor do they reflect trends or patterns indicating the existence of underlying systemic State program deficiencies. The vast majority, nearly 97%, of Federal oversight inspections do not result in the issuance of Federal NOV's. Moreover, the number of oversight NOV's issued has declined during the last three years by 40 percent. Most of the oversight NOV's were issued as a result of differences between OSMRE and the States in isolated and site-specific cases. There is a significant difference between the existence of isolated violations and the need to require a State program amendment, substitute Federal enforcement, or withdraw State program approval for programmatic, widespread or systemic problems. Federal NOV authority is appropriate in such instances.

Also, contrary to the petitioners' assertions, OSMRE has used the other tools provided under the Act when it has been appropriate to do so. OSMRE has withdrawn program approval in one State (49 FR 38874, October 1, 1984), Substituted Federal enforcement in another (48 FR 14674, April 12, 1984), and initiated, but later resolved, the same process in a third State (51 FR 4724, February 7, 1986). In addition, OSMRE has required amendments to approved programs on several occasions based on its oversight evaluations. Thus, OSMRE has not used NOV's as a substitute for these other tools when a program amendment is required or when there is reason to believe a State is not effectively administering, implementing, or enforcing any part of its approved program.

In addition to the topics raised in the petition, deterrence is an aspect of the rules which, although not quantifiable, is an important reason for retaining OSMRE's NOV authority in primacy States. The ability of OSMRE to take enforcement action where States fail to act appropriately serves to assure overall compliance with the Act, both by the States and operators. The rulemaking petition has not dispelled the validity of this premise. OSMRE firmly believes that judicious use of NOV authority under prescribed criteria for appropriate action by States will

continue to enhance compliance in a non-intrusive manner.

In summary, the facts and law presented by the petitioners do not provide sufficient reasons for OSMRE to propose repeal of the regulations.

VII. Petitioners' Statement of Facts and Law in Support of the Petition Regarding Standard of Review for OSMRE's Evaluation of State Responses to TDN's

The petitioners have requested that OSMRE establish a standard of review for OSMRE's evaluation of State responses to TDN's. The absence of a standard, according to the petitioners, has led to disparate treatment of coal operators and States, substitution of OSMRE's subjective judgment for the judgment of the State regulatory authority, and a lack of deference to the State's discretion in the interpretation and enforcement of its regulatory program. The petitioners assert that this practice is contrary to the principle of State primacy and contravenes both the intent and purpose of the statute.

The petitioners requested the Director to establish a specific standard for OSMRE's evaluation of TDN's. The standard suggested by the petitioners is that the State regulatory authority will not be deemed to have failed to either take appropriate action to cause the violation to be corrected or to have shown good cause for such failure, unless a finding is made that the State's response or action was arbitrary and capricious and an abuse of its discretion under the applicable State program.

VIII. Analysis and Response Regarding TDN Criteria and Standard of Review

Section 521(a) of the Act requires the Secretary to order an immediate Federal inspection if "the State regulatory authority fails within ten days after notification to take appropriate action to cause said violation to be corrected or to show good cause for such failure and transmit notification of its action to the Secretary." This statutory requirement is implemented at 30 CFR 842.11(b)(1). Neither the Act nor the Federal regulations define "appropriate action" or "good cause." OSMRE declined in 1982 to specify what "appropriate action" means. 47 FR 35627, August 16, 1982.

Since that time, however, it has been OSMRE's experience that the maturation of the State programs and the development of the oversight process would make definitions of those terms useful in evaluating State responses to TDN's. As the petitioners note, the very language of section 521(a)(1) connotes the discretionary nature of the State action. OSMRE

believes that implementing by regulation a standard of review to evaluate a State's response is a worthy concept which would reinforce State primacy. The concept is also appealing from a management perspective in that all OSMRE field offices would apply the same standards, thus providing consistency and even-handed treatment of all operators and all State regulatory authorities.

During fiscal years 1984, 1985, and 1986, OSMRE issued approximately 740, 640, and 830 ten-day notices, respectively, for alleged violations in States with approved regulatory programs. In each of these years, approximately 10 percent of the TDN's resulted in the issuance of Federal NOV's because OSMRE determined that the States had failed to take appropriate action to cause violations to be corrected or failed to show good cause for such failure. These determinations, however, rested with the discretion of each of thirteen Field Office Directors without the benefit of formalized guidance. OSMRE believes that a uniform standard would serve to ensure consistent determinations of what constitutes appropriate action or a showing of good cause for not taking corrective action.

Therefore, OSMRE will grant this portion of the petition and will initiate a rulemaking proceeding to propose a uniform TDN review standard.

IX. Public Comment

OSMRE received 35 comments on this petition for rulemaking. Twenty-eight coal companies and coal associations sent comments which strongly supported the petition in full and essentially reiterated the same arguments the petitioners presented. The coal associations emphasized the need to reconsider the issue of NOV authority because circumstances have changed over the years as a result of the experience gained by both the States and OSMRE in their oversight relationship.

Five State regulatory authorities sent comments generally supporting the petition and providing three additional recommendations. One State recommended that OSMRE retain its NOV oversight authority in primacy States, but establish a TDN review standard which ensures consistency in determining whether State TDN responses constitute appropriate action or a showing of good cause for inaction. This recommendation parallels the Director's final decision on the petition. Another State recommended that OSMRE establish a separate method of

conflict resolution, such as an independent review panel within each Field Office or region to review those TDN issues where a dispute exists between the State and OSMRE. OSMRE believes that an independent review panel would be impractical given the TDN procedural timeframes imposed under section 521 of the Act, and furthermore, that by granting the petitioners' request to establish a TDN review standard, such potential conflicts between the States and OSMRE will be minimized. Finally, one State recommended that the Federal regulations be revised to require OSMRE to notify the State when a TDN response is considered inappropriate action or a failure to show good cause before a Federal NOV is issued. Several OSMRE Field Offices transmit such notification on a routine basis. However, OSMRE will consider requiring this of all its Field Offices in the rulemaking process for establishing a TDN review standard or through policy, as appropriate.

A consortium of environmental groups submitted comments which strongly opposed granting the petition. It presented legal arguments supporting the retention of NOV authority based on its interpretation of the Act, the legislative history, and case law. With respect to the petitioners' request for a TDN review standard, it asserted that the relief sought was unnecessary because the petitioners failed to provide sufficient evidence that many NOV's are issued because of disagreements between the State and OSMRE over the interpretation of, or deficiencies in, State programs or State issued permits. OSMRE believes that imposition of a TDN review standard will not interfere with its enforcement obligations under the Act in primacy States but, rather, will better enable it to fairly assess State TDN responses and limit unnecessary intervention in primacy States as Congress intended.

X. Final Decision

Based upon the foregoing reasons, analysis, and comments, I am denying the petition with respect to repeal of OSMRE regulations authorizing issuance of NOV's in oversight. Petitioners have not persuaded me that the issues that concern them, previously considered in two rulemakings on the same subject, warrant revision of the regulations. I have decided to grant that portion of the petition requesting OSMRE to establish a standard of review to evaluate State responses to TDN's. Therefore, OSMRE will initiate rulemaking to propose such a standard.

As provided in 30 CFR 700.2(d), my decision constitutes the final decision for the Department of the Interior.

[FR Doc. 87-12921 Filed 6-5-87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 87-09]

Regatta; Gateway Power Boat Regatta, Long Island Sound off Greenwich, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish Special Local Regulations for the annual Gateway Power Board Regatta. This event, sponsored by the Gateway Power Boat Association, involves high speed power boats racing within a rectangular race area on Long Island Sound, off Greenwich, Connecticut. This year the race is scheduled for Saturday, August 8, 1987. This regulation is needed to provide for the safety of participants and spectators on navigable waters during this event.

DATES: Comments must be received on or before July 8, 1987.

ADDRESSES: Comments should be mailed to Commander (b), Third Coast Guard District Office, Building 110, Governors Island, New York, NY 10004-5098. The comments and any other materials referenced in this notice will be available for inspection and copying at the Boating Safety Division Office, Building 110, Governors Island, New York, NY. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas A. Dlhopsky, (212) 668-7974.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1 87-09) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comment received before the expiration of the comment period will be considered

before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The comment period for this proposed rulemaking is less than the normal 45 days because of the time constraints involved. Due to the shortened comment period, verbal comments submitted by telephone are acceptable.

Drafting Information

The drafters of this notice are Mr. Lucas A. Dlhopsky, project officer, Third Coast Guard District Boating Safety Division, and LCDR R.F. Duncan, project attorney, First Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Gateway Power Boat Regatta is sponsored by the Gateway Power Board Association of Greenwich, Connecticut. This power boat race will be held on Long Island Sound in an area south of Greenwich, Connecticut. This event has been held for the past ten years and, is consequently well known to boaters and residents in the area. This is the third year that a special local regulation will be issued for this event. Approximately 50 to 60 power boats ranging in length from 20 to 50 feet will race 6 to 8 laps around an 11 mile rectangular course at speeds between 75 and 110 miles per hour (mph). This National Power Boat Association (NPBA) sanctioned race will take place between 9:30 a.m. and 3:30 p.m. on Saturday, August 8, 1987. If postponed due to weather, the race will be held on Sunday, August 9, 1987 during the same times. In order to minimize possible conflicts with other marine activities the local Coast Guard Group office has coordinated this event with other area boating clubs and with the Greenwich Police Department. Race headquarters are located at the Showboat Inn in Greenwich Harbor. The race participants will transmit to the race course area under Coast Guard escort at approximately 10 mph. The race course area will be marked by sponsor provided patrol craft. Spectator vessels will be kept outside the regulated area and a buffer zone will be maintained by the sponsor's 20 to 25 patrol vessels. Coast Guard and local authority patrol vessels will also be on scene to help provide for the safety of the event. The Coast Guard recommends that all vessels transiting the Sound use extreme caution and pass to the west, east or south of the regulated area. In order to provide for the safety of

spectators and participants on navigable waters, the Coast Guard will restrict the movement of vessels in the regulated area during this event.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Early coordination with local marine interests has provided ample time for mariners to adjust plans and schedules so other activities would not be adversely affected by this event. The 1986 race drew an estimated 500 spectator craft to the area. A similar number expected this year should have a favorable impact on commercial facilities providing services to the spectators. The waters around the race course are used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible. The race course coordinates have been selected so that marine traffic would have access to Greenwich Cove, Captains Harbor and all other shore points adjacent to the race course.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding a temporary § 100.35-109 to read as follows:

§ 100.35-109 Gateway Power Boat Regatta, Long Island Sound off Greenwich, Connecticut.

(a) *Regulated Area.* Long Island Sound, off Greenwich, Connecticut in the rectangular area described by the following points:

Longitude	40 degrees
Longitude	73 degrees
Latitude	40 degrees
Longitude	73 degrees
Latitude	40 degrees
Longitude	73 degrees
Latitude	40 degrees
Longitude	73 degrees

57 minutes	23 seconds North
38 minutes	42 seconds West
56 minutes	06 seconds North
38 minutes	28 seconds West
57 minutes	50 seconds North
33 minutes	01.5 seconds West
59 minutes	04 seconds North
35 minutes	11 seconds West

(b) *Effective Period.* This regulation will be effective from 9:30 a.m. to 3:30 p.m. on Saturday, August 8, 1987. In the event of postponement due to weather this regulation will be in effect during the same times on Sunday, August 9, 1987.

(c) *Special Local Regulations.* (1) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(2) The regulated area will be closed to all spectator and general vessel traffic during the effective period. No person or vessel shall enter or remain in the regulated area when it is closed unless authorized by the sponsor or the Coast Guard Patrol Commander.

(3) Race participants shall not exceed 10 mph when transiting between race headquarters and the regulated area.

(4) All spectator vessels shall remain at least 50 yards from the participants when they are transiting to or from the regulated area and race headquarters. The location designated for spectator vessels during the power boat race is an area north of a line parallel to and approximately 1000 yards south of a line connecting buoys N "2" (SW of Great Captain Island) and Bell "1" (SE of "Hen and Chickens"). This area will be adjusted at the discretion of the Coast Guard Patrol Commander.

(5) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(6) For any violation of this regulation, the following maximum penalties are authorized by law:

- (i) \$500 for any person in charge of the navigation of a vessel.
- (ii) \$500 for any owner of a vessel actually on board.
- (iii) \$250 for any other person.
- (iv) Suspension or revocation of a license for a licensed officer.

Dated: May 27, 1987.

R.L. Johanson,

Rear Admiral (Lower Half), U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 87-12985 Filed 6-5-87; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-87-11]

Special Local Regulations; Stroh's Montreux Detroit Jazz Festival Fireworks, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish special local regulations for the Stroh's Montreux Detroit Jazz Festival Fireworks Display. This event will be held on the Detroit River on 03 September 1987 from 9:45 P.M. to 10:15 P.M. In case of inclement weather, the event will be held on 04 September 1987. The regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: Comments must be received on or before July 15, 1987.

ADDRESSES: Comments should be mailed to Commander (inc), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199. The comments will be available for inspection and copying at the Ice Navigation Center, Room 2007A, 1240 East 9th Street, Cleveland, OH. Normal office hours are between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: CWO Gerald M. Trackim, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-3982.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 09-87-11) and the specific section of the proposal to which their comments apply.

and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are CWO Gerald M. Trackim, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Stroh's Montreux Detroit Jazz Festival Fireworks Display will be conducted on the Detroit River on 03 September 1987. This event will have falling ash and debris and an unusually large concentration of spectator boats which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group Detroit, MI).

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-0911 to read as follows:

§ 100.35-0911 Stroh's Montreux Detroit Jazz Festival fireworks display, Detroit River.

(a) *Regulated area.* (1) The following area will be closed to vessel navigation or anchorage for vessels of 65 feet in length or greater from 7:00 p.m. (local time) until 11:00 p.m. on 03 September 1987:

The U.S. waters of the Detroit River between the Ambassador Bridge and the downstream end of Belle Isle.

(2) The following portion of the Detroit River will be closed to all vessel traffic, from 8:00 p.m. (local time) until 11:00 p.m. on 03 September 1987:

The area bound on the south by the International Boundary, on the west by 083 degrees 03 minutes West, on east by 083 degrees 02 minutes West, and the north by the U.S. shoreline.

(b) *Special local regulations.* (1) Vessels under 65 feet shall begin clearing the shipping channels at 11:00 p.m. local or when the fireworks display ends, whichever comes first.

(2) Fireworks barges will be moved to positions in the Detroit River after 6:30 p.m. on 03 September 1987, and will be removed immediately after the fireworks display. The barges will be located within 950 feet of the U.S. riverbank opposite each of the following landmarks: COBO Hall, Veterans Memorial Bldg., and the Ford Auditorium. Vessel masters shall pass with caution. Each barge will be marked in accordance with rule 30 of the Inland Rules of the road for a vessel at anchor, and a fixed white light on each corner of the barges will be shown at night and an orange buoy with horizontal white bands will mark each special mooring.

(3) If the weather on 03 September 1987 is inclement, the fireworks display and the river closure will be postponed until 7:00 p.m. to 11:00 p.m. on 04 September 1987. If postponed, notice will be given on 03 September 1987 over the U.S. Coast Guard Radio Net.

(4) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on Channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a "no wake" speed to reduce the

wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(5) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) This section is effective from 7:00 p.m. on September 03, 1987, to 11:00 p.m. on 04 September, 1987.

Dated: May 28, 1987.

A.M. Danielsen,

Adm. U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 87-12983 Filed 6-5-87; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CCGD09 87-07]

Drawbridge Operation Regulations; Detroit River (Trenton Channel), MI

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Wayne County Engineer and Grosse Ile Toll Bridge Company, the Coast Guard is considering a change to the operating regulations of the Wayne County highway bridge, mile 5.6 and Grosse Ile Toll bridge, mile 8.8 across the Trenton Channel on the Detroit River at Grosse Ile, Michigan, by permitting the number of openings for pleasure craft to be limited during certain times. This change is being considered because random bridge openings for the passage of pleasure craft cause land traffic tie-ups. This action should accommodate the needs of vehicular traffic while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before July 23, 1987.

ADDRESSES: Comments should be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199-2060. The comments and other materials referenced in this notice will be available for inspection and copying at 1240 East Ninth Street, Room 2083D, Cleveland, Ohio. Normal office hours are between the hours of 6:30 a.m. and 3:00 p.m., Monday through Friday.

except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT:

Robert W. Bloom, Jr., Chief, Bridge Branch, telephone (216) 522-3993.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Ninth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed operating regulations may be changed in light of comments received.

Drafting Information

The drafters of these regulations are Fred H. Mieser, project officer, and LCDR C. V. Mosebach, project attorney.

Discussion of Proposed Regulations

Presently, the Grosse Ile Toll bridge is required to open on signal for the passage of vessels at all times. The Wayne County highway bridge is required to open on signal for the passage of vessels from March 16 through December 14; from December 15 through March 15, the draw is required to open on signal if at least a five hour advance notice is given.

The Proposed operating regulations would allow the owners of the Grosse Ile Toll bridge to operate their bridge on a regulated schedule for pleasure craft by opening the draw for these vessels only from three minutes before to three minutes after the hour and half-hour between the hours of 7 a.m. and 11 p.m., seven days a week and holidays; from 11 p.m. to 7 a.m. the draw would open on signal. For commercial vessels, the draw would open on signal at all times.

In addition to the existing five hour advance notice requirement to have the Wayne County highway bridge opened for the passage of vessels during the winter months, December 15 through March 15, the bridge would be regulated for the passage of pleasure craft from March 16 through December 14 by allowing the bridge owner to open the draw for these vessels only from three minutes before to three minutes after the quarter and three-quarter hour from 7 a.m. to 11 p.m., seven days a week and holidays; however, there would be no

openings required for pleasure craft during the peak traffic times of 7:45 a.m., 8:45 a.m., 4:15 p.m. and 5:15 p.m., Monday through Friday, except holidays. For commercial vessels the draw would be required to open on signal at all times during the March 16 through December 14 regulated periods of time.

This change has been requested by the owners of both highway bridges because random bridge openings for the passage of pleasure craft cause land traffic tie-ups. Bridgetender logs for both bridges show that there are as few as six minutes between bridge openings for the passage of pleasure craft with many openings occurring from seven to ten minutes apart. Traffic counts for the Wayne County highway bridge show there are more than 200 vehicles passing over the bridge in a fifteen minute period and more than 300 vehicles passing over the bridge during peak traffic periods. An increase in water levels on the Great Lakes is also causing the bridges to open for some pleasure craft that could otherwise pass through the draws without requiring an opening.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Commercial vessels would be unaffected except during the winter months when the Wayne County bridge would be unattended and the bridge would open upon receipt of an advance notice. The periods of time when the bridges open for pleasure craft on a regulated schedule should relieve the problem of land traffic tie-ups due to random bridge openings for these vessels while still allowing recreational boaters to navigate the river. Also, the period of time the Wayne County bridge is unattended is an existing regulation that will not add any new requirements for vessels transiting the Trenton Channel. Since the impact of this proposal is expected to be so minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing it is proposed that Part 117 of Title 33 of the

Code of Federal Regulations be amended as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. It is proposed that Part 117 be amended by revising § 117.631, under the listing for the State of Michigan to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.631 Detroit River (Trenton Channel).

(a) The draw of the Grosse Ile Toll bridge, mile 8.8, at Grosse Ile, shall operate as follows:

(1) Between the hours of 7 a.m. and 11 p.m., seven days a week and holidays, the draw need open only from three minutes before to three minutes after the hour and half-hour for pleasure craft; for commercial vessels, during this period of time, the draw shall open on signal as soon as possible.

(2) Between the hours of 11 p.m. and 7 a.m., the draw shall open on signal for pleasure craft and commercial vessels.

(b) The draw of the Wayne County highway bridge, mile 5.6, at Grosse Ile, shall operate as follows:

(1) From March 16 through December 14—

(i) Between the hours of 7 a.m. and 11 p.m., seven days a week and holidays, the draw need open only from three minutes before to three minutes after the quarter and three-quarter hour for pleasure craft, with no opening required at 7:45 a.m., 8:45 a.m., 4:15 p.m. and 5:15 p.m., Monday through Friday, except holidays; for commercial vessels, during these periods of time, the draw shall open on signal as soon as possible.

(ii) Between the hours of 11 p.m. and 7 a.m., the draw shall open on signal for pleasure craft and commercial vessels.

(2) From December 15 through March 15, no bridgetenders are required to be on duty at the bridge and the bridge shall open on signal if at least a five hour advance notice is given.

(c) At all times, the bridges listed in this section shall open as soon as possible for public vessels of the United States, state or local government vessels used for public safety and vessels in distress.

Dated: May 27, 1987.

A.M. Daniels,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 87-12984 Filed 6-5-87; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 34

Medical Examination of Aliens (AIDS)

AGENCY: Centers of Disease Control, Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: Elsewhere in this issue of the Federal Register we are amending the regulations concerning the medical examination of aliens. We are doing so by adding acquired immunodeficiency syndrome (AIDS) to the list of "dangerous contagious diseases" currently codified at 42 CFR 34.2(b).

In this Notice of Proposed Rulemaking we propose to amend the same regulations further. We would substitute human immunodeficiency virus (HIV) infection for AIDS on the same list—because any person infected with HIV, with or without clinical manifestations of AIDS, is assumed to be capable of transmitting the virus. We would also modify the scope of the medical examination to include a serologic test for HIV infection, and we would require that this test be performed as part of the medical examination conducted in the country of origin.

DATES: Written comments are invited and must be received on or before August 7, 1987.

ADDRESS: Comments should be addressed in writing to the Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333. Comments received will be available for public inspection between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) in Room 201C, 1680 Tullie Circle, Atlanta, Georgia. All relevant comments received during the comment period will be considered in developing the final rule.

FOR FURTHER INFORMATION CONTACT: Dr. Laurence S. Farer, Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329-1286, or FTS 236-1286.

SUPPLEMENTARY INFORMATION: Section 212(a) of the Immigration and Nationality Act (U.S.C. 1182(a)), lists six medical grounds for exclusion of aliens. The first five grounds pertain to certain mental conditions, narcotic drug addiction, and chronic alcoholism. The sixth ground excludes aliens with a "dangerous contagious disease." A seventh ground refers to exclusion based on the inability to earn a living,

when it is necessary for the alien to earn a living, and when the examining physician has certified a physical defect, disease, or disability.

The scope of the medical examination required of aliens seeking admission into the United States and the definition of "dangerous contagious disease" are specified in "Medical Examination of Alien Regulations" contained in 42 CFR Part 34. A medical examination is mandatory for applicants for permanent resident status, fiancé(e)s of U.S. citizens and their children, and refugees. For aliens seeking temporary admission (nonimmigrant visas), medical examination may be required at the discretion of a consular officer overseas or an immigration inspector at a U.S. port of entry if there is reason to suspect that an excludable condition exists. The amended regulations (published elsewhere in this issue of the Federal Register (list eight diseases which qualify as "dangerous contagious diseases" under section 212(a)(6) of the Immigration and Nationality Act; aliens with these diseases are excludable from the United States. The eight diseases are: Acquired immunodeficiency syndrome (AIDS), chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, infectious syphilis, infectious leprosy, and active tuberculosis.

Sections 004.9 and 795.8 of the "International Classification of Diseases," 9th Revision, Clinical Modification, dated October 1, 1986, now classify infection due to HTLV-III/LAB (HIV) as a disease category. HIV infection is manifested by a spectrum of diseases, including AIDS. All persons with AIDS have HIV infection. This NPRM proposes that HIV infection be substituted for AIDS on the list of "dangerous contagious diseases," because any person infected with HIV is assumed to be capable of transmitting the virus. HIV infection, the cause of AIDS, is spread by sexual contact, needle-sharing, transfusion of blood or blood products, and perinatally from infected mother to newborn. It is not spread by casual contact. The spread of AIDS by certain high risk sexual practices is not unlike several other diseases currently on the list of "dangerous contagious diseases" in the regulations implementing our responsibilities under the Immigration and Nationality Act.

It should be stressed that the proposal to substitute HIV infection for AIDS is being made specifically in the context of the requirement of the Immigration and Nationality Act. This substitution is not being made on the basis of any new scientific knowledge about the transmission of HIV infection or the

natural history of AIDS, nor should any such interpretation be drawn. This substitution does not alter existing HIV infection or AIDS prevention and control activities in this country. All existing Public Health Service recommendations and guidelines on the prevention and control of HIV infection and AIDS remain in full effect as currently written.

It is also proposed that the scope of the medical examination of aliens will be modified to require a serologic test to detect HIV infection. Persons infected with HIV develop antibody against the virus, and presence of confirmed antibody is tantamount to a diagnosis of current and persistent infection with HIV, even though many infected people have no clinical evidence of disease. In situations where medical examinations are required, a negative result on a sensitive and specific test for HIV antibody would be recognized as a condition for obtaining a permanent or immigrant visa or for determining admissibility as a permanent resident of the U.S. (The only exception would be the case of a person with diagnosed AIDS in the terminal stage who may no longer be seropositive.) In the event of a positive test result, a further supporting test such as the Western blot blood test or an equally reliable test shall be required to assure accurate results. This action will allow medical examiners to certify to consular and immigration officers the results of serologic tests for HIV. PHS guidelines to medical examiners will include information about determining the acceptability of tests in this area of rapidly advancing science. These guidelines will also deal with testing for other types of HIV, including HIV-2 (terminology not yet approved by the International Committee for the Taxonomy of Viruses), if they should present a significant public health risk.

A positive HIV test, when supported by the Western blot antibody test or an equally reliable test, would be sufficient grounds for denying admission. This action will allow the Department of State to deny visas and the Immigration and Naturalization Service to deny admission to aliens who are subject to medical examination and who are certified as having a positive HIV antibody test.

The provision of § 34.4(a)(3)(ii) for permitting medical examination procedures to be completed at U.S. ports of entry will be modified to specifically exclude serologic testing for HIV infection from the provisions of this subsection. The existing § 34.4(a)(3)(ii) provides for a chest X-ray for

tuberculosis and/or a serologic test for syphilis to be completed at the time of examination at the U.S. port of entry, if X-ray or serologic test facilities are not available at the time of examination in the community where the examination is made. There are rare instances when X-ray facilities or laboratory facilities are not available overseas to screen for active tuberculosis or infectious syphilis. Since active tuberculosis is waivable and treated syphilis is not excludable, the completion of these procedures at a U.S. port of entry has not presented any hardship for aliens found to have these conditions. However, since HIV infection will not be waivable for permanent admission to the United States, and because HIV infection is not treatable, to allow screening and exclusion from the U.S. after arrival at U.S. port of entry would create great hardship on those aliens found to be positive.

This proposed rule does not conflict with the report of a World Health Organization consultation on international travel and human immunodeficiency virus held in Geneva March 2-3, 1987 (WHO Weekly Epidemiologic Record, March 20, 1987). This consultation addressed issues related to international travel and not to decisions individual countries might make with respect to the admission of permanent immigrants.

The Secretary has determined that this proposed amendment will not significantly impact on a substantial number of small entities and therefore does not require preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act, Pub. L. 96-354.

The Secretary has also determined that this proposed amendment is not a "major rule" under Executive Order 12291. Thus, a regulatory impact analysis is not required because it will not:

- (1) Have an annual effect on the economy of \$100 million or more;
- (2) Impose a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or
- (3) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 42 CFR Part 34

Human Immunodeficiency Virus (HIV), Immigration, Medical examination of aliens.

It is therefore proposed to amend Title 42 of the Code of Federal Regulations as set forth below.

Dated: May 12, 1987.

Robert E. Windom,
Assistant Secretary for Health.

Approved: May 23, 1987.

Otis R. Bowen,
Secretary.

PART 34—MEDICAL EXAMINATION OF ALIENS

1. The authority citation for 42 CFR Part 34 continues to read as follows:

Authority: Sec. 215, 58 Stat. 690, as amended, sec. 234, 66 Stat. 198; 42 U.S.C. 216, 8 U.S.C. 1224; secs. 322, 325, 58 Stat. 696, as amended, 697 as amended, secs. 212, 326, 66 Stat. 182, as amended, 200; 42 U.S.C. 249, 252, 8 U.S.C. 1182, 1226.

2. Section 34.2(b) of Part 34 is revised to read as follows:

§ 34.2 Definitions.

(b) *Dangerous contagious disease.*
Any of the following diseases:

- (1) Chancroid.
- (2) Gonorrhea.
- (3) Granuloma inguinale.
- (4) Human immunodeficiency virus (HIV) infection.
- (5) Leprosy, infectious.
- (6) Lymphogranuloma venereum.
- (7) Syphilis, infectious stage.
- (8) Tuberculosis, active.

3. Paragraphs (a)(1) introductory text, and (iii), the first sentence of (2), (3), and (5) of § 34.4 are revised to read as follows:

§ 34.4 Scope of Examinations.

(a) * * *

(1) *Persons subject to requirement for chest X-ray examination and serologic tests.* Except as provided in paragraph (a)(2) of this section, a chest X-ray examination for tuberculosis and a serologic test for syphilis and a serologic test for HIV shall be required as part of the examination of:

(iii) All other applicants for a nonimmigrant visa who are required by a consular authority to have a medical examination if such X-ray examination and serologic tests are considered necessary by the medical examiner.

(2) *Exceptions.* Neither a chest X-ray examination nor serologic tests for syphilis and HIV shall be required if the alien is under the age of 15: *Provided*, That a tuberculin test may be required where there is evidence of contact with a known case of tuberculosis or other

reason to suspect infection with tuberculosis and a chest X-ray examination required in the event of a positive reaction, and a serologic test where there is reason to suspect infection with syphilis or HIV. * * *

(3) *How and where performed.* (i) All X-ray ray films used in medical examinations performed under the regulations in this part shall be at least 70mm. in size. In case of abnormal findings in the lungs, a full-sized film (approximately 14 x 17 inches; 35.6 x 43.2 cm.) shall be used on which to base the diagnosis. The serologic test for HIV shall be a sensitive and specific test, confirmed when positive by a test such as the Western blot blood test or an equally reliable test.

(ii) When necessary X-ray and laboratory facilities are not available to the medical examiner, the applicant shall furnish a chest X-ray film, a reading thereof, and serologic test reports in order that the medical examination may be completed. If X-ray or serologic test facilities necessary for the completion of the examination of a visa applicant or of an applicant for conditional entry are not available in the community where the examination is made, the medical examiner shall so state on the medical examination form and the procedures will be completed at the time of examination at the U.S. port of entry. *Exception:* Provisions of this paragraph do not pertain to serologic testing for HIV, which must be performed as part of a medical examination conducted abroad.

(iii) The X-ray reading and serologic test reports for syphilis and HIV shall be included in the medical examination report. When the medical examiner's conclusions are based on a study of more than one X-ray film, the medical examination report shall include at least a summary statement of findings in the earlier films, followed by a complete reading of the last film, and dates and details of any laboratory tests for tuberculosis.

(5) *Failure to present records.* If, on examination at the time determination of admissibility is to be made at the U.S. port of entry, no X-ray film or medical examination report, including X-ray reading and serologic test results for syphilis and HIV, is presented in accordance with the provisions of this paragraph, a medical hold shall be issued pending completion of any necessary examination procedures.

[FR Doc. 87-12989 Filed 6-5-87; 8:45 am]

BILLING CODE 4160-18-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA)

Title: High-Technology Branch Plants as Labor-Oriented Industries in the U.S. South

Form Number: Agency—NA; OMB—NA

Type of Request: New collection

Burden: 720 respondents; 72 reporting hours

Needs and Uses: Much of the nonmetropolitan South is experiencing an industrialization process led by branch plants, many of which are assembly components of high-technology manufacturers. Relatively little is known about their locational needs, especially regarding labor types. The EDA needs specific survey data on these needs to assist in attracting manufacturing to distressed areas.

Affected Public: Small businesses or organizations

Frequency: One time

Respondent's Obligation: Voluntary

OMB Desk Officer: Don Arbuckle, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: June 2, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-12918 Filed 6-5-87; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration

Title: Export Trading Companies

Contract Facilitation Service

Form Number: Agency—ITA-4094P; OMB—0625-0120

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 5,500 respondents; 733 reporting hours

Needs and Uses: The purpose of the Export Trading Company Act of 1982 is to increase United States exports of products and services. Many U.S. firms have never exported because of lack of knowledge of the international marketplace. The Contract Facilitation Service is designed to facilitate contact between producers of exportable goods and firms offering export trade services.

Affected Public: State or local governments; businesses or other for-profit institutions; non-profit institutions; small businesses or organizations

Frequency: On occasion and once every year-and-a-half

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: John Griffin, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffin, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Federal Register

Vol. 52, No. 109

Monday, June 8, 1987

Dated: June 2, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-12919 Filed 6-5-87; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-580-010]

Certain Rectangular Welded Carbon Steel Pipes and Tubes From Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain rectangular welded carbon steel pipes and tubes from Korea that was in effect prior to October 1, 1984. The review covers one exporter of this merchandise and the period October 24, 1983 through September 30, 1984. The review indicates the existence of dumping margins during the period.

Since inadequate information was received in response to our questionnaire, we used the best information available for assessment purposes.

On October 21, 1985, the Department of Commerce published in the **Federal Register** (50 FR 42583) the final results of an administrative review and revocation of the antidumping duty order on certain rectangular welded carbon steel pipes and tubes from Korea, effective October 1, 1984. Therefore, no antidumping duties cash deposits are required on this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 8, 1987.

FOR FURTHER INFORMATION CONTACT:

G. Leon McNeill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 337-3601/5255.

SUPPLEMENTARY INFORMATION:**Background**

On May 11, 1984, the Department of Commerce ("the Department") published in the *Federal Register* (49 FR 20045) an antidumping duty order on certain rectangular welded carbon steel pipes and tubes from Korea. We began this review of the antidumping duty order under our old regulations. After the promulgation of our new regulations, the petitioner requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation of the antidumping duty administrative review in the *Federal Register* on July 9, 1986 (51 FR 24883). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of rectangular welded carbon steel pipes and tubes currently classifiable under items 610.3955 and 610.4976 of the Tariff Schedules of the United States Annotated.

The review covers one manufacturer/exporter of Korean rectangular welded carbon steel pipes and tubes to the United States, Union Steel Mfg. Co., Ltd., and the period October 24, 1983 through September 30, 1984. Union Steel Mfg. Co., Ltd. failed to respond to the Department's questionnaire for shipments to the U.S. occurring between October 24, 1983 and April 29, 1984, and made no shipments between April 30, 1984 and September 30, 1984. Therefore, we used the best information available, which was the rate from the fair value investigation.

Preliminary Results of the Review

As a result of our review we preliminarily determine that a margin of 1.47 percent exists for the period October 24, 1983 through September 30, 1984.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the

results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the Customs Service.

The Department revoked the antidumping duty order on certain rectangular welded carbon steel pipes and tubes from Korea, effective October 1, 1984 (50 FR 42583, October 21, 1985). This administrative review, covering the period October 24, 1983 through September 30, 1984, does not affect the revocation of the antidumping duty order. Therefore, we will instruct the Customs Service to continue to liquidate entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to antidumping duties.

This administrative review and notices are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: June 1, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-13003 Filed 6-5-87; 8:45 am]

BILLING CODE 3510-DS-M

**President's Export Council;
International Competitiveness and
Productivity Subcommittee; Open
Meeting**

A meeting of the President's Export Council Subcommittee on International Competitiveness and Productivity will be held June 29, 1987, 10:00 a.m.-12:00 p.m. and 12:40 p.m.-2:30 p.m. in Room 4830 of the Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. The Council's purpose is to advise the President on matters relating to United States export trade.

Open Session

The Subcommittee will discuss the role of the private-sector and the role of government in increasing U.S. competitiveness. Under consideration will be steps to increase productivity, decrease capital-related costs, and other related matters.

The meeting will be open to the public with a limited number of seats available. For further information, reservations to attend the meeting, or copies of the minutes, contact Laureen Daly (202) 377-1125.

Dated: June 2, 1987.

Wendy H. Smith,

Director, President's Export Council.

[FR Doc. 87-13006 Filed 6-5-87; 8:45 am]

BILLING CODE 3510-DR-M

**National Oceanic and Atmospheric
Administration**

**New England Fishery Management
Council; Public Meeting**

AGENCY: National Marine Fisheries Services, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting at the Ashworth Hotel, Hampton Beach, New Hampshire, to discuss reports of the lobster, groundfish, foreign fishing and enforcement oversight committees; discuss the status of scallop, surf clams/ocean quahogs and large pelagics; discuss possible amendments to the Magnuson Fishery Conservation and Management Act, the domestic observer policy, a report on the uniform standards, as well as discuss other fishery management and administrative matters. The Council also may convene a closed session (not open to the public) to discuss personnel and/or national security matters. The public meeting will convene June 9, 1987 at approximately 2 p.m. and will adjourn on June 10 at approximately 3 p.m.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, MA 01906; telephone: (617) 231-0422.

Dated: June 3, 1987.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 87-12996 Filed 6-5-87; 8:45 am]

BILLING CODE 3510-22-M

**North Pacific Fishery Management
Council; Public Meetings**

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has scheduled public meetings of its workgroups and committee as follows:

**Bering Sea/Aleutian Island Groundfish
Plan Team**

Will convene June 10, 1987, at 9 a.m., at the National Marine Fisheries Service (NMFS), Northwest and Alaska Fisheries Center, Building 4, Seattle, WA, to review the Resource Assessment

Document for 1986 and to consider changes for 1987.

Crab Plan Team

Will convene June 10-11, 1987, at the Alaska Department of Fish and Game offices on Raspberry Road, Anchorage, AK, to review the latest draft of the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan, and to discuss alternative management strategies.

Workgroup on Catcher/Processor Reporting Requirements

Will convene June 19, 1987, at 9 a.m., at NMFS, Northwest and Alaska Fisheries Center, Building 4, Room 2143, Seattle, WA, to review draft reporting regulations proposed by the NMFS.

Policy and Planning Committee

Will convene June 16-17, 1987, at the Sheraton Hotel, Room 305, Anchorage, AK, to discuss permit review procedures for 1988; review the Secretary of Commerce's proposed uniform standards for the Regional Fishery Management Councils, and to review a draft halibut allocation policy.

FOR FURTHER INFORMATION CONTACT:

North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274-4563.

Dated: June 3, 1987.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 87-12997 Filed 6-5-87; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council has appointed a committee, comprised of groundfish industry representatives, to discuss possible cut-off dates for inclusion should a limited entry program be developed for the west coast groundfish fishery, and to consider other issues relevant to limited entry. The committee's public meeting will convene June 18, 1987, at 9 a.m. at the Pacific Council's offices, Room 330 (address below).

FOR FURTHER INFORMATION CONTACT:

Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue, Suite 420, Portland OR 97201; telephone: (503) 221-6352.

Dated: June 3, 1987.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 87-12998 Filed 6-5-87; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Roberts Laboratories, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Roberts Laboratories, Inc. having a place of business in Eatontown, NJ 07724 an exclusive right in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Application 7-017,701, "New Antineoplastic System—L Specific Amino Acid Nitrogen Mustards." The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted within the above specified 60-day period and should be addressed to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 87-12957 Filed 6-5-87; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment; Export Visa Arrangement and Exempt Certification for Textiles and Textile Articles of Cotton, Man-Made and Other Vegetable Fibers and Silk Blends Produced or Manufactured in Pakistan

June 2, 1987.

The Chairman of the Committee for

the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 8, 1987. For further information contact Pamela Smith, International Trade Specialist (202) 377-4212.

Background

A CITA directive dated May 27, 1983 (48 FR 25257), as amended, established a new export visa arrangement and exempt certification for certain cotton textiles and cotton textile products in Categories 300-369 and man-made fiber work gloves in Category 631pt. (only TSUSA numbers 704.3215, .8525, .8550 and .9000), produced or manufactured in Pakistan. The Governments of the United States and Pakistan have exchanged letters further amending the export visa arrangement and exempt certification to include shipments of textiles and textile articles of cotton, man-made fibers, other vegetable fibers, blends of any of the foregoing fibers and blends containing silk, but not including garments which contain 70 percent or more silk by weight, or textile products other than garments which contain 85 percent or more silk by weight, in Categories 300-369, 600-670 and 800-899. Effective on June 8, 1987, textiles and textile articles in the foregoing categories which are exported on and after June 8, 1987 and which are not eligible for exemption noted in the exempt certification requirements noted below must be accompanied by a valid and correct visa or exempt certification as described in the enclosed letter to the Commissioner of Customs. Shipments of merchandise in Categories 400-469 do not require a visa. Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. \$250 or less do not require a visa or exempt certification for entry and shall not be charged to restraints.

Interested persons are advised to take all necessary steps to ensure that textiles and textile articles of cotton, man-made fibers, other vegetable fibers, blends of the foregoing fibers and silk blends, produced or manufactured in Pakistan and exported on and after June 8, 1987, which are to be entered or withdrawn from warehouse for consumption in the United States will meet the requirements set forth in this

notice and the notice published on May 27, 1983, as amended.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

June 2, 1987.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on May 27, 1983, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, which established an export visa requirement for certain cotton and man-made fiber textile products, produced or manufactured in Pakistan.

Effective on June 8, 1987, you are directed to prohibit entry into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of textiles and textile articles of cotton, man-made fibers, other vegetable fibers, blends of any of the foregoing fibers and blends which contain silk, not including garments which contain 70 percent or more silk by weight, or textile products other than garments which contain 85 percent or more silk by weight, in Categories 300-369, 600-670 and 800-899, produced or manufactured in Pakistan and exported on and after June 8, 1987 from Pakistan for which the Government of Pakistan has not issued an appropriate visa or exempt certification fully described below.

A visa must accompany each commercial shipment of the aforementioned textiles and textile articles. A circular stamped marking in blue ink will appear on the front of the Pakistan visa form that is printed on a green guilloché patterned background. The Pakistan visa form shall be used in place of the Special Customs Invoice Form 5515, Successor Document or Commercial Invoice. The original of the visa shall not be stamped on the duplicate copies of the Pakistan visa form. The original of the Pakistan visa form with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice may not be used for this purpose.

The visa stamp shall include the standard nine digit visa number (serial number), beginning with one numerical digit for the last digit of the calendar year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO), and six digit numerical serial number identifying the shipment; e.g., 7PK123456.

The stamp shall also include the date the visa was issued, the signature of an official from the authorized issuing authority and the correct category(s), part category(s) or merged category(s), quantity(s), and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the U.S. Tariff Schedules of the United States Annotated (TSUSA).

The visa must not be accepted and entry must not be permitted if the shipment does not have a visa, or if the visa number, date, signature, category(s), merged category(s), part category(s) or unit(s) of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way.

If the quantity indicated on the visa is more than that of the shipment, you shall permit entry and if quotas are in force you shall charge the actual quantity in the shipment to the restraint level (and not the visa quantity).

If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted and a new visa or visa waiver shall be required. If the visa is not accepted then a new visa must be obtained from the Pakistani Government or a visa waiver issued by the U.S. Department of Commerce at the request of the Pakistani Government and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice or visa waiver.

Properly marked commercial sample shipments valued at U.S. \$250 or less, and merchandise imported for the personal use of the importer and not for resale, regardless of value, will not require a visa or exempt certification. You are further directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of textiles and textile articles of cotton, man-made fibers, other vegetable fibers, blends of the foregoing fibers and silk blends, produced or manufactured in Pakistan, notwithstanding the designated shipment or shipments do not fulfill the aforementioned visa requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements.

For certain textiles and textile articles, including (1) handloomed fabrics of the cottage industry, (2) handmade cottage industry products of handloomed fabric, excluding towels and wearing apparel (these products may include some machine stitching), and (3) traditional folklore handicraft products designated as "Pakistan Items," which have been certified exempt from import restraints, a rectangular-shaped stamped marking in blue ink will appear on the front of the original commercial invoice or the original Pakistan visa form, and a visa shall not be required.

Wearing apparel products handmade from handloomed fabric are subject to quota and visa requirements, except wearing apparel designated as "Pakistan Items." In addition, towels made from handloomed fabric are also subject to quota and visa requirements.

The exempt certification must include the date of issuance, signature of an official from an authorized issuing authority and the basis for the exemption. The basis for exemption shall be noted as: (a) Handloomed fabric; (b) handmade textile products; (c) the name of

the particular traditional folklore handicraft product—either "Embroidered Kurta" or "Batwa."

The exempt certification must be issued prior to exportation of the shipment from Pakistan. If the certification is incorrect (i.e., the date of issuance, signature or basis for the exemption is missing, incorrect or illegible, or has been crossed out or altered in any way), then the exempt certification will not be accepted and entry shall not be permitted unless a visa or visa waiver is obtained. Pakistan items and visaed items may not both appear on the same invoice.

The visa and exempt certification stamped markings in use on July 15, 1983 will continue in use. Any change to the stamped markings must be approved by and provided to the United States Government prior to its use, to be effective sixty days after approval. The Government of Pakistan shall notify the United States Government of any changes of official authorized to issue visas or exempt certifications.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated* (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Pakistan and with respect to imports of textiles and textile articles of cotton, man-made fibers, other vegetable fibers, blends of the foregoing fibers and silk blends from Pakistan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the *Federal Register*.

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 87-12917 Filed 6-5-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 24-25 June 1987.

Time of Meeting: 0800-1600 Hours each day.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Subgroup for the Army Biological Defense Program will meet for a classified executive/report-writing session. A final report will be written at this time. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-12910 Filed 6-5-87; 8:45 am]

BILLING CODE 3710-06-M

Army Science Board; Closed Meeting; Change in Date

A change of date for the Closed Meeting of the Army Science Board 1987 Summer Study on Lightening the Force published in Vol. 52 of the *Federal Register*, 18 May 1987, 18596, Column 2, has been changed from 11 June 1987 to 30 June 1987. All other information remains the same.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-12955 Filed 6-5-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 8, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building,

Washington, 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal Law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) agency form number (if any); (4) frequency of collection; (5) the affected public; (6) reporting burden; and/or (7) recordkeeping burden; and (8) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 3, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Application for Fulbright Hays Training Grants: Faculty Research Abroad and Doctoral Dissertation Research Programs.

Agency Form Number: ED 7628.

Frequency: Annually.

Affected Public: Individuals or households; non-profit institutions.

Reporting Burden:

Responses: 670.

Burden Hours: 120,300.

Recordkeeping Burden:

Recordkeeper: 0

Burden Hours: 0.

Abstract: This form will be used by graduate students and faculty members to apply for grants under the Fulbright-Hays fellowship program. The Department uses this information to

make awards to institutions of higher education who administer the program.

Type of Review: New.

Title: Performance Report for the Congressional Teacher Scholarship.

Agency Form Number: E40-31P.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden:

Responses: 57.

Burden Hours: 171.

Recordkeeping Burden:

Recordkeepers: 57.

Burden Hours: 29.

Abstract: This report will be used by State agencies to provide information about the use of program funds under the Congressional Teacher Scholarship Program. The Department uses this information to review and evaluate State performance and to account for the States' use of Federal funds.

Type of Review: New.

Title: Field Test for the National Survey of Instructional Staff.

Agency Form Number: G50-33P.

Frequency: Once only.

Affected Public: Individuals or households; non-profit institutions; small businesses or organizations.

Reporting Burden:

Responses: 744.

Burden Hours: 781.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This questionnaire will collect information from instructional staff at postsecondary education institutions. The Department will use this data to assess the supply of, and demand for instructional staff, and factors that affect the quality of instruction.

[FR Doc. 87-12994 Filed 6-5-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydroelectric Applications Filed With the Commission; Georgia-Pacific Corp.

June 3, 1987.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Amendment of License.

b. Project No.: 2618-001

c. Date Filed: March 3, 1987.

d. Applicant: Georgia-Pacific Corporation.

e. Name of Project: West Branch.
f. Location: West Branch of the St. Croix River, in Washington County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Mr. Kenneth Gordon, Georgia-Pacific Corporation, Woodland, Maine 04964, (207) 427-3311.

i. Comment Date: June 30, 1987.

j. Description of Project: A major license for the West Branch Project No. 2618 was issued on September 4, 1980, to Georgia-Pacific Corporation (12 FERC ¶ 62,157). The licensee proposes to amend the license to include the existing Farm Cove Dam, which is an outlet structure without gates, on the south side of West Grand Lake. The Farm Cove Dam is an earth embankment structure which is 15-foot-high and 515-foot-long and contains a fish-way facility. The licensee does not propose any changes or additions to the dam or installation of any generating units. The Farm Cove Dam was not included in the original license.

k. This notice also consists of the following standard paragraphs: B, C.

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb,

Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-12920 Filed 6-5-87; 8:45 am]

BILLING CODE 6717-01-M

Telecopied Filings

June 1, 1987.

Recently several attempts have been made to file documents with the Commission using the Commission's telecopy machine. These filings have been rejected because they are deficient under the Commission's rules of practice and procedure (18 CFR Part 385). Rule 2001 provides that filings must be submitted to the Secretary by mailing or by hand delivery. Rule 2003 requires that filings must be on unglazed paper. Rule 2004 requires that an original of the filing be provided along with fourteen copies except as otherwise provided by statute, rule or order.

Filings not complying with the rules of practice and procedure will be subject to rejection under Rule 2001.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-12767 Filed 6-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-912-005, et al.]

Natural Gas Certificate Filings; Colorado Interstate Gas Co., et al.

June 2, 1987.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Co.

[Docket No. CP85-912-005]

Take notice that on May 11, 1987, Colorado Interstate Gas Company (Petitioner), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-912-005 a petition to further amend the order issued December 26, 1985, in Docket No. CP85-912-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize: (a) The addition of nine new gas supply receipt points under the transportation service agreement (agreement) dated

September 17, 1985, between Petitioner and Public Service Company of Colorado, (b) the deletion of the Madden receipt point from the agreement, (c) an increase in the maximum volume to be transported under the agreement from 40,000 Mcf of natural gas per day to 60,000 Mcf of natural gas per day, and (d) an extension of the term of the certificate authority for service under the agreement until September 17, 1989, and month to month thereafter, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Specifically, Petitioner requests authorization for the following new receipt points:

Receipt point	Location
Green River.....	Section 10, T15N, R109W, Sweetwater County, WY
Powder River.....	Section 10, T33N, R73W, Converse County, WY
Stauffer Interconnect.....	Section 2, T19N, R104W, Sweetwater County, WY
Kanda.....	Section 24, T18N, R106W, Sweetwater County, WY
Washakie Basin.....	Section 1, T20N, R92W, Sweetwater County, WY
Wilburton.....	Section 28, T34S, R41W, Morton County, KS
Weld County.....	Section 23, T12N, R60W, Weld County, CO
Fulter Federal Exchange.....	Section 7, T36N, R93W, Fremont County, WY
Cimarron.....	Section 13, T18S, R45W, Kiowa County, CO

Comment date: June 23, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corp.

[Docket No. CP87-339-000]

Take notice that on May 7, 1987, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP87-339-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, an additional delivery point, a revised service agreement, and an order granting permission and approval to abandon certain natural gas facilities, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct approximately 5.9 miles of 24-inch pipeline and related facilities in Rockland County, New York, replacing approximately 9.5 miles of 8-inch and 10-inch pipeline and related facilities. Of the 9.5 miles of replaced facilities,

Applicant proposes to abandon in place, 4.7 miles of 8-inch and 10-inch pipeline from Route 202 to Eckerson Land and abandon by sale to Orange and Rockland Utilities, Inc. (Orange and Rockland), 4.8 miles of 8-inch and 10-inch pipeline from Eckerson Lane to West Nyack.

Applicant states the related facility construction consists of an interconnecting measuring facility to be utilized as a new point of delivery to Orange and Rockland which would be constructed at the eastern terminus of the proposed 24-inch pipeline (referred to hereinafter as Buena Vista delivery point), and an interconnecting measuring and regulating facility to be constructed near the western terminus of the proposed pipeline as it connects to Applicant's existing 8-inch pipeline system (referred to hereinafter as Algonquin interconnection). Applicant states this latter facility would replace an existing emergency interconnection with Algonquin Gas Transmission Company (Algonquin).

In addition, Applicant proposes to provide a 1,200 Dt per day increase in Orange and Rockland's sales entitlement under Applicant's Rate Schedule CDS.

The total estimated investment cost of the proposed construction projects is \$8,110,900 including the Commission's filing fees. Applicant states it would finance the proposed construction with internally generated funds.

Specifically, Applicant requests authorization for the following:

- 1(a) The construction and operation of approximately 5.9 miles of 24-inch pipeline located in Rockland County, New York.
- 1(b) The construction and operation of interconnecting piping and measuring facilities for the new Buena Vista delivery point to Orange and Rockland located in Rockland County, New York.
- 1(c) The construction and operation of an interconnecting measuring and regulating facility for the Algonquin interconnection, replacing an existing emergency interconnection with Algonquin located in Rockland County, New York.
- 2(a) The abandonment, in place, of approximately 4.0 miles of 8-inch and 0.7 mile of 10-inch pipeline from Route 202 to Eckerson Land located in Rockland County, New York.
- 2(b) The abandonment by sale to Orange and Rockland of approximately 4.2 miles of 8-inch and 0.6 mile of 10-inch pipeline from Eckerson Land to West Nyack located in Rockland County, New York.

3(a) The abandonment by sale to Orange and Rockland of the Eckerson Lane delivery point located in Rockland County, New York.

3(b) The abandonment by sale to Orange and Rockland of the Spring Valley delivery point located in Rockland County, New York.

3(c) The abandonment by sale to Orange and Rockland of the West Nyack delivery point located in Rockland County, New York.

3(d) The abandonment of the Route 202 regulating facilities located in Rockland County, New York.

Comment date: June 23, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Northwest Pipeline Corp.

[Docket No. CP87-350-000]

Take notice that on May 14, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87-350-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce for the account of Enron Oil and Gas Company (Enron) and requests Commission approval for the selective discounting of its T-2 transportation rate and its Big Piney gathering rate on behalf of Enron, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 125,000 MMBtu of natural gas per day, on an interruptible basis, for the account of Enron pursuant to a gas transportation agreement (transportation agreement) dated April 29, 1987, which provides for transportation service under Rate Schedule T-2 of Northwest's FERC Gas Tariff Volume 1-A. The term of the transportation agreement would commence with the effective date of the regulatory authorization and continue through October 31, 1989, unless mutually extended by both parties. However, the total of the transportation agreement would not exceed three years, it is stated.

Northwest states that Enron owns supplies of natural gas in the Big Piney field located in Wyoming which it would deliver to Northwest at various existing receipt points on Northwest's transportation system. It is explained that Enron's Big Piney gas supplies were previously sold to Northwest pursuant to ten gas purchase contracts. It is further stated that Enron has entered into a settlement/release agreement

dated April 29, 1987 (release agreement) with Northwest which provides for the temporary release of these supplies which would enable Enron to pursue other markets for its supplies and provide Northwest take-or-pay relief. Enron and Northwest have entered into a gathering service agreement (gathering agreement) under which Northwest would gather up to 125,000 MMBtu of natural gas per day from the wells subject to the release agreement for the account of Enron and deliver the subject gas to Northwest's Opal Gasoline Plant in Lincoln County, Wyoming, it is stated.

Northwest proposes to transport Enron's volumes received at Opal under the gathering agreement, through its transmission system and deliver thermally equivalent volumes less any fuel retained in-kind for Enron's account at existing interconnections with Colorado Interstate Gas Company and El Paso Natural Gas Company at the delivery points indicated in the transportation agreement.

It is asserted that the proposed transportation service would enable Enron to compete economically for spot-market sales.

It is stated that the non-jurisdictional gathering agreement provides for gathering services subject to the Big Piney area gathering rate and fuel reimbursement as set forth on Sheet No. 2-B of Volume No. 2 of Northwest's FERC Gas Tariff, and that the transportation agreement provides for service pursuant to Rate Schedule T-2 of Northwest's FERC Gas Tariff, Volume No. 1-A. Northwest proposes to charge Enron for gathering and transportation services at its maximum applicable rates unless Enron is unable to market its gas. Northwest requests authorization to discount first its T-2 transportation rate and second its Big Piney Area gathering rate as necessary to result in a combined gathering and transportation rate, exclusive of fuel, which equals 48 cents per MMBtu, plus one half of the following quantity: market price in dollars per MMBtu, less third party changes in dollars per MMBtu, less fuel deduction in dollars per MMBtu, less \$1.73 per MMBtu. However, Northwest would not reduce its mainline rate below 2.3 cents per MMBtu nor would it reduce its Big Piney Area gathering rate below 10.0 cents per MMBtu, it is stated.

Northwest also requests a waiver of the similarly situated provision of Sheet No. 2-B of its Volume No. 2 Tariff as necessary to allow it to charge discount rates for Enron without the requirement that identical discounted rates be provided to all other customers within

the Big Piney Gathering Area. Northwest contends that the specific circumstances of the instant proposal justifies the need to be able to discount gathering service for Enron.

Comment date: June 23, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corp.

[Docket No. CP87-349-000]

Take notice that on May 14, 1987, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP87-349-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco requests authority: (1) To operate an existing 1.19 mile 16-inch diameter pipeline which crosses the Delaware River near the Pennsylvania/Delaware/New Jersey border, (2) to construct and operate a 1.00 mile 16-inch diameter pipeline to connect the 1.19 mile pipeline to Transco's system in Delaware County, Pennsylvania, and (3) to construct and operate a 1.78 mile 20-inch diameter pipeline to connect the 1.19 pipeline to Transco's pipeline system in Gloucester County, New Jersey. It is stated that the estimated capital cost of the 1.00 mile and 1.78 mile pipelines and appurtenant facilities is \$2,405,000.

Transco states that it plans to construct the pipelines and place them in operation by the 1987-88 winter heating season. Transco further states that the subject facilities would enhance the security of its ability to continue to serve its New Jersey markets in the event the use of an existing 12-inch Delaware River crossing is lost for any reason. Under normal operating conditions, the facilities would provide Transco with an increase in capacity of 9 MMcf per day into New Jersey, it is stated.

Comment date: June 23, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Trunkline Gas Co.

[Docket No. CP87-340-000]

Take notice that on May 12, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP87-340-000 an application pursuant to section 7(b) of the Natural Gas Act and the regulations thereunder for authorization permitting

and approving abandonment of service provided pursuant to a certificate of public convenience and necessity which authorized the receipt, transportation and redelivery of natural gas on behalf of Amoco Production Company (Amoco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that it was authorized in Docket No. CP77-597, dated January 9, 1978, to receive, transport and redeliver natural gas on behalf of Amoco pursuant to, and in accordance with two transportation agreements between Trunkline and Amoco dated August 8, 1977.

Trunkline also states that the authorization in Docket No. CP77-597, provide for a two-part transportation service pursuant to the terms of the transportation agreement. The "A" contract provided for the transportation of Amoco's gas from Ship Shoal Block 292 offshore Louisiana to a point on Trunkline's existing system in Ship Shoal Block 274 offshore Louisiana. This portion of service is provided to Amoco by Trunkline pursuant to Rate Schedule T-29 of Trunkline's FERC Gas Tariff, Original Volume No. 2. The "B" contract provided for the firm transportation of up to 3,000 Mcf per day from Ship Shoal Block 274 offshore Louisiana to a point of interconnection between the facilities of Trunkline and Florida Gas Transmission Corporation (Florida Gas). Trunkline constructed a side valve and appurtenant measuring facilities to effectuate such delivery to Florida Gas. This portion of Trunkline's service is provided to Amoco pursuant to rate Schedule T-30 of Trunkline's FERC Gas Tariff, Original Volume No. 2.

Trunkline further states that Amoco has represented that reserves being transported under these agreements have been depleted. The interconnection with Florida Gas as authorized in Docket No. CP77-597 will remain in place for use with other transportation agreements.

Trunkline states that it specifically requests Commission authorization to abandon service provided under Trunkline's Rate Schedules T-29 and T-30, and to cancel such Rate Schedules effective October 1, 1986, pursuant to a termination letter dated November 20, 1986.

Comment date: June 23, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. United Gas Pipe Line Co.

[Docket No. CP87-361-000]

Take notice that on May 22, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-361-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a direct industrial sale service to Liberty Oil and Gas Corporation, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it has notified this customer by letter dated August 4, 1986, that its firm sales contract would terminate on January 1, 1987. United further states that continuation of the present service is not in the public interest and it requests that the Commission permit the termination of direct sale service to the extent required.

United is not requesting abandonment authority of any facilities. United states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. United states that if such new arrangements are not made, it will file to abandon such facilities.

Comment date: June 23, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice

and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-12975 Filed 6-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-611-000 and CI87-618-000]

Amerada Hess Corp.; Application

June 2, 1987.

Take notice that on May 20, 1987, Amerada Hess Corporation (Amerada Hess) of P. O. Box 2040, Tulsa, Oklahoma 74102, filed an application for a three-year Expedited Partial Limited-Term Abandonment and a three-year Limited-Term Blanket Sales Certificate with Pregranted Abandonment, pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), § 2.76, 2.77, 157.18, 157.30 and 375.307 of the Commission's Regulations and Docket No. RM85-1-000 (Order No. 436).

Amerada Hess states that it has recently executed a series of agreements with Southern Natural Gas Company (Southern) in settlement of all claims and disputes arising under a gas purchase contract (Contract) dated May 16, 1978, as amended, covering interests in Blocks 37, 38, 57, 58, Eugene Island Area, Offshore Louisiana. Pursuant to the terms of the settlement, Southern has agreed to pay Amerada Hess a lump sum settlement in order to resolve all claims concerning Southern's potential liability for any failure to take or pay for gas under the Contract for any time prior to March 1, 1987. Amerada Hess has agreed to reduced purchase requirements, and in return, Southern has agreed to a partial release of gas committed to it under the Contract. Amerada Hess indicates that it will sell released gas to Southern's nominee or other purchasers.

Amerada Hess seeks a partial, three-year-term abandonment authorization of

previously shut-in production. Amerada Hess indicates that in 1986 Southern's takes were less than 24% of the annual contract quantity. The gas qualifies as NGPA sections 102 and 104 gas.

Amerada Hess states that it intends to sell the released production to various purchasers, including SNG Trading, at levels in excess of the recent deliveries to Southern. Amerada Hess also seeks a three-year blanket sales certificate authorizing sales of the abandoned gas with pregranted abandonment.

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 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 and 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 the Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-12931 Filed 6-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI82-213-002]

Amoco Production Co., Petition To Amend Certificate of Public Convenience and Necessity

June 2, 1987.

Take notice that on May 13, 1987, Amoco Production Company (Amoco), of P.O. Box 50879, New Orleans, Louisiana 70150, filed an application pursuant to section 7(c) of the Natural Gas Act for the Commission to issue an Order Amending the Certificate of Public Convenience and Necessity issued July 19, 1982 in Docket No. CI82-213-000 (previously amended by Order issued December 18, 1985 in Docket No. CI82-213-001) permitting Amoco to replace two (2) electric driven compressors with gas engine driven units, and to permit the use of this Certificated Facility to deliver natural gas to Florida Gas Transmission

Company (FGT) under conventional gas sales contracts and to facilitate the transportation of natural gas through FGT's pipeline system for direct sales by Amoco to local distribution companies, pipeline companies, and end-users.

Amoco states that since the issuance of the original Certificate, and the first Amendment thereto, a need has developed to replace two (2) of the electric driven units with gas engine driven units. Amoco indicates that there will be no change in the existing, previously filed Compressor Specifications and that any changes to the Sound Level Data previously furnished have not been quantified.

The original Certificate states that this facility will be used in the transportation of natural gas to Florida Gas Transmission Company (FGT) in satisfaction of Amoco's warranty obligation (FPC Docket No. CI65-584). Amoco states that that obligation has now expired, and Amoco is currently seeking Commission authorization to make conventional sales to FGT and may secure new markets in the FGT service area in the future. Accordingly, Amoco requests authority to utilize this facility to deliver natural gas to FGT under conventional natural gas sales contracts and also to use this facility to facilitate the transportation of natural gas through FGT's pipeline system for sales that Amoco may negotiate with local distribution companies, other pipeline companies, and end-users.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 17, 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. 87-12936 Filed 6-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP84-354-003, CP87-189-000]

Black Marlin Pipeline Co.; Informal Technical Conference

June 2, 1987.

Take notice that an informal technical conference will be held at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on June 18, 1987, at 10:00 a.m. in the above captioned matters.

On December 23, 1986, Black Marlin Pipeline Company (Black Marlin) filed an application to amend the existing certificate of public convenience and necessity issued by the Commission in Docket No. CP84-354-003 on November 17, 1984. By its application, Black Marlin seeks authority to transport additional volumes of natural gas for Enron Industrial Natural Gas Company from an existing point of receipt in Federal High Inland Area, Offshore Texas (HI) Block A-6, and from proposed points of receipt in HI Block 171 and in State Tract 98-L, High Island Area Offshore, Galveston County, Texas (State Tract 98-L), to an existing point or points of delivery in Texas City, Galveston County, Texas. In Docket No. CP87-189-000, Shell Offshore, Inc. (SOI) requests that the Commission institute a proceeding pursuant to sections 5 (e) and (f) of the Outer Continental Shelf Lands Act (OCSLA). SOI alleges that Black Marlin has violated the nondiscriminatory access provisions of the OCSLA. Any issue associated with the above listed docket numbers may be discussed at this informal, technical conference.

All parties to this proceeding, the Commission staff, and interested members of the public are invited to attend. However, mere attendance at the conference will not confer party status. Any person wishing to become a party to this proceeding must file a motion to intervene in accordance with Rule 214 of the Commission's rules of practice and procedure.¹

FOR FURTHER INFORMATION CONTACT:

Randy P. Parker, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426 (202) 357-8569

Louis J. Sacher, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426 (202) 357-8861

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-12937 Filed 6-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-579-000]

Cabot Corp.; Application

June 2, 1987.

Take notice that on May 11, 1987, Cabot Corporation (Cabot), of P.O. Box 9901, Amarillo, Texas 79105, filed an application pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717c and 717f (1982), and Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR Parts 154 and 157 (1986), for a blanket certificate authorizing Cabot to make sales for resale of surplus residue gas processed at Cabot's Walton Plant in Winkler County, Texas, with pregranted abandonment authorization. Cabot requests such authorization for the remaining life of the reserves in question. Cabot also requests waiver of the Commission's requirements for filing and maintaining rate schedules and for waiver of other reporting requirements under the Commission's Regulations during the period of the certificate.

Cabot also requests, pursuant to § 157.28 of the Commission's Regulations, that the Commission promptly grant Cabot temporary authorization to sell natural gas for resale in interstate commerce, with pregranted abandonment.

Cabot was previously authorized to abandon the sale to Transwestern Pipeline Company of the surplus residue gas processed at Cabot's Walton processing plant in Docket No. CI87-202-000 by order issued February 27, 1987, in *Kerr-McGee Corporation, et al.*, Docket No. G-12235-003, *et al.*

Any person desiring to be heard or to make any protest with reference to said application should on or before June 17, 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. 87-12932 Filed 6-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-442-000, *et al.*]

Enron Oil & Gas Co.; Application

June 2, 1987.

Take notice that on April 7, 1987, Enron Oil & Gas Company (Enron), of P.O. Box 1188, Houston, Texas 77251, filed an application pursuant to section 7 of the Natural Gas Act (NGA) and § 154.92(d) of the Commission's Regulations under the Natural Gas Act (18 CFR 154.92(d)), to continue certain sales of natural gas in interstate commerce previously made by Holly Energy, Inc. (Holly), all as more fully shown on the attached Appendix "B" and in the application, which is on file with the Commission and open to public inspection.

By various assignments Belco Development Corporation (Belco) acquired all of Holly's right, title and interest in certain oil and gas leases, in certain lands in Lea and Eddy Counties, New Mexico, Weld County, Colorado, Pecos and Upton Counties, Texas, and McKenzie County, North Dakota, effective June 1, 1984.

By Certificate of Ownership and Merger merging BelNorth Petroleum Corporation, Belco Development Corporation and HNG Oil Company into Enron Oil & Gas Company dated December 10, 1986, Belco was merged into Enron effective December 31, 1986.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 17, 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 and 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

¹ 18 CFR 385.214 (1986).

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.

APPENDIX B

Docket No.	Contract name	Purchaser	Location, field county, State	Contract date	Base price \$/MMBtu	Other adjustments \$/MMBtu	Est. sales MMBtu monthly
C187-442-000	Luther Haugen Unit	Williston Basin Interstate Pipeline Company.	Boxcar Butte (Red River) Pool, McKenzie County, North Dakota.	06-14-77	2.623	.01 Gathering .131 Tax	860
C187-443-000	West Law Unit	Williston Basin Interstate Pipeline Company.	Boxcar Butte (Red River) Field, McKenzie County, North Dakota.	06-14-77	2.623	.01 Gathering .131 Tax	163
C187-444-000	North Dakota State Unit #2	Williston Basin Interstate Pipeline Company.	Boxcar Butte (Red River) Pool, McKenzie County, North Dakota.	06-14-77	2.623	.01 Gathering .131 Tax	6,000
C187-445-000	Sheep Federal	Williston Basin Interstate Pipeline Company.	Boxcar Butte (Red River) Pool, McKenzie County, North Dakota.	04-26-76	2.623	.01 Gathering .131 Tax	2,000
C187-446-000	Louis Dinner	Panhandle Eastern Pipe Line Company.	Weld County, Colorado	05-24-76	2.623	.1085 Tax	5,862
C187-447-000	Vanderhoff	Panhandle Eastern Pipe Line Company.	Hambert Field, Weld County, Colorado.	05-05-77	2.623	.1085 Tax	
C187-448-000	Armstrong "CT"	Transwestern Pipeline Company	Eagle Creek East Field, Eddy County, New Mexico.	11-01-73	2.217	.2574 Tax	4,500
C187-449-000	Vandiver "DO" Lease	Transwestern Pipeline Company	Eddy County, New Mexico	05-01-80	2.623	.0012 Gathering .2703 Tax	15,600
C187-450-000	Caskey "EV"	Transwestern Pipeline Company	Eagle Creek Field, Eddy County, New Mexico.	02-08-79	2.623	.0012 Gathering .2703 Tax	471
C187-451-000	Terry "FU"	Transwestern Pipeline Company	Cotton Creek Field, Eddy County, New Mexico.	02-08-79	4.816	.0012 Gathering .3456 Tax	120
C187-452-000	Moore "FO"	Transwestern Pipeline Company	Cemetery Field, Eddy County, New Mexico.	02-08-79	4.816	.3456 Tax	14
C187-453-000	Federal "CZ"	Transwestern Pipeline Company	Eagle Creek Field, Eddy County, New Mexico.	02-08-79	2.623	.2703 Tax	367
C187-454-000	Federal "FC"	Transwestern Pipeline Company	Eddy Uno Field, Eddy County, New Mexico.	02-08-79	4.816	.0012 Gathering .3456 Tax	10
C187-455-000	Federal "BZ"	Transwestern Pipeline Company	Eagle Creek Strawn Field, Eddy County, New Mexico.	02-08-79	4.816	.3456 Tax	90
C187-456-000	Arco "EC" No. 2	Transwestern Pipeline Company	Eagle Creek Field, Eddy County, New Mexico.	06-08-79	2.623	.0012 Gathering .2703 Tax	42
C187-457-000	Arco "EC" No. 1	Transwestern Pipeline Company	Eagle Creek Field, Eddy County, New Mexico.	05-01-80	2.623	.0012 Gathering .2703 Tax	465
C187-458-000	Pan American	El Paso Natural Gas Company	Gomez NW Field, Pecos County, Texas.	12-05-66	1.243	.09 Tax	31,400
C187-459-000	McKay-Shell and Dorothy McKay	El Paso Natural Gas Company	Lusk Field, Lee County, New Mexico.	02-12-80	2.623	.0333 Tax	1,047
C187-460-000	Hinkle Federal No. 1 and No. 4	El Paso Natural Gas Company	High Nitro Field, Eddy County, New Mexico.	03-01-80	4.816	.3456 Tax	
C187-461-000	Yates-Williamson	El Paso Natural Gas Company	Burton Flat East Field, Eddy County, New Mexico.	01-17-80	2.263	.2269 Tax	800
C187-462-000	Amacker No. 1	El Paso Natural Gas Company	Amacker-Tippett Field, Upton County, Texas.	02-01-86	2.20	.16 Tax	160

[FR Doc. 87-12433 Filed 6-5-87; 8:45 am]
BILLING CODE 6717-01

[Docket No. C185-633-004]

Tenneco Oil Co. et al.; for Renewal and Expansion of Limited-Term Abandonment Authority, for Amendment of Certificate of Public Convenience and Necessity, and Request for Expedited Action

June 2, 1987.

In the matter of Tenneco Oil Co., Houston Oil & Minerals Corp., Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd., TINCO, Ltd., and Tenneco West, Inc.

Take notice that on May 21, 1987, pursuant to sections 4 and 7 of the Natural Gas Act (NGA), 15 U.S.C. 717-717z, and Part 157 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), Tenneco Oil Company, Houston Oil & Minerals Corporation, Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd., TINCO, Ltd., and

Tenneco West, Inc. (hereinafter referred to collectively as Tenneco Oil), filed an application to renew and amend its Order Permitting and Approving Limited-term Abandonments and Granting Certificates, issued on October 29, 1985, in Docket Nos. C185-633-000, et al. (October 29th Order), as amended on March 28, 1986, (i) to extend the term thereof through March 31, 1988, and (ii) to expand such authorization to cover all categories of gas under the Natural Gas Policy Act of 1978 (NGPA) subject to Natural Gas Act (NGA) jurisdiction, without regard to applicable price.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 17, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure. All protests filed with the Commission will be considered by it in determining the appropriate actions to

be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-12934 Filed 6-5-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. C187-467-000, et al.]

Texaco Producing Inc.; Application

June 2, 1987.

Take notice that on April 8, 1987, Texaco Producing Inc. (Applicant), of P.O. Box 52332, Houston, Texas 77052, filed an application pursuant to the provisions of the Natural Gas Act, for

certificates of public convenience and necessity as successor-in-interest of Dome Petroleum Corporation to continue to sell gas covered by the gas purchase contracts listed in the attached Exhibit "B", which is on file with the Commission and open to public inspection.

Effective December 31, 1986, Texaco Oils Inc. was merged into Texaco Producing Inc.

On November 1, 1983, Texaco Oils Inc. acquired by assignment the interest of Dome Petroleum Corporation in certain properties described in contracts identified in Exhibit "B." Applicant, therefore, requests authorization to continue the sales of natural gas previously made by Dome Petroleum

Corporation pursuant to its small producer certificate in Docket No. CS78-60.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 17, 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.

Exhibit "B"

Pursuant to §§ 157.24(b) and 57.25 of the Commission's Regulations under the Natural Gas Act, Applicant incorporates herein by reference the following gas sales contracts and instruments of assignment filed contemporaneously herewith as part of applicant's Rate Schedule:

Docket No.	Contract No.	Contract Date	Field	County State	Purchaser
C187-467-000	161153	10-13-61	South Blanco, Pictured Cliffs	Rio Arriba, New Mexico	El Paso.
C187-468-000	161154	01-30-63	South Blanco, Pictured Cliffs	Rio Arriba/San Doval, New Mexico	El Paso.
C187-469-000	161155	05-03-72	Blanco, Mesa Verde	Rio Arriba/San Doval, New Mexico	El Paso.
C187-470-000	161156	10-18-73	Aztec Fruitland, South Blanco, Pictured Cliffs, Ballard Pictured Cliffs	Rio Arriba/San Juan, New Mexico	El Paso.
C187-471-000	161157	06-24-74	Basin Dakota	San Juan, New Mexico	El Paso.
C187-472-000	161158	10-16-64	Ignacio Blanco	La Plata, Colorado	El Paso.
C187-473-000	161159	09-07-65	Ignacio Blanco	La Plata, Colorado	El Paso.
C187-474-000	161160	12-19-77	Pictured Cliffs Formation	San Juan, New Mexico	El Paso.

[FR Doc. 87-12935 Filed 6-5-87; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Executive Resources and Performance Review Board; Appointment of Members

As required by the Civil Service Reform Act of 1978 (Pub. L. 95-454), Chairman Dennis R. Patrick has appointed Mr. Gerald W. Brock, Chief of the Common Carrier Bureau, to the Executive Resources and Performance Review Board.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 87-12962 Filed 6-5-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1662]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

June 2, 1987.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street,

NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed June 19, 1987, June 23, 1987. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Columbia, Greenwood, Hartsville, Lexington and North Augusta, South Carolina) (MM Docket No. 86-72, RM's 5073, 5240, 5404, 5405 & 5406)

Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Freedom and Morgan Hill, California) (MM Docket No. 86-100, RM-5031)

Number of petitions received: 2

Subject: Amendment of the Amateur Radio Service Rules to Expand the Privileges Available to Novice Operators. (PR Docket No. 86-161, RM's 5022, 5023, 5024, 5025, 5038, 5251, 5281 & 5282)

Number of petitions received: 1

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-12961 Filed 6-5-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0604]

Modification to Federal Reserve ACH Service

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Modification to the Federal Reserve ACH Service.

SUMMARY: The Board has modified the procedure used by Federal Reserve Banks to recover the value of float generated in automated clearing house ("ACH") operations due to nonstandard holiday closings by eliminating the exception procedure for institutions that object to receiving debits on mandatory nonstandard holidays.

EFFECTIVE DATE: July 2, 1987.

FOR FURTHER INFORMATION CONTACT: Julius Oreska, Manager, (202/452-3878) Division of Federal Reserve Bank Operations; Elaine M. Boutilier, Senior Attorney (202/452-2418) Legal Division; or for the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452-3544); Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION: On June 12, 1986, the Board adopted a modification to the float recovery

procedures used by Reserve Banks when processing ACH debits on days when a receiving institution is closed due to a mandatory nonstandard holiday (a state or local holiday not observed on a regional or national basis). 51 FR 21421. This policy states that if a receiver of an ACH debit transaction is closed on a nonstandard holiday, the Reserve Bank will debit the receiver's account as though the institution were open or assess the cost of the float through an explicit charge or an as-of adjustment. Nevertheless, if, after consultation with its Reserve Bank, an institution still objects to receiving debits on mandatory nonstandard holidays, the Reserve Bank will not charge the institution on such days, but will use the preexisting procedures for recovering the ACH float that results. The policy became effective on April 1, 1987.

On May 14, 1987, NACHA, the national trade association for depository institutions participating in the ACH service, adopted a rule requiring its member institutions to accept debit charges to their reserve or clearing accounts for debit transactions settling on legal state holidays when the institutions are required to be closed. Under Reserve Bank operating circulars, NACHA rules are incorporated by reference and therefore apply to all ACH participants. Because the NACHA rule change requires its members to accept the debit charges on nonstandard holidays, there was a question whether the Board's exception procedure in its policy would preempt the NACHA rule.

Because industry practice appears to call for payment of ACH debit on mandatory nonstandard holidays, the Board has determined to modify its policy to conform with the rule adopted by NACHA. Therefore, the exceptions procedure will no longer apply.

By order of the Board of Governors, June 2, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-12902 Filed 6-5-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87M-0158]

CooperVision, Inc.; Premarket Approval of Models 2000, 2300, and 2500 Nd:YAG Ophthalmic Lasers for Iridotomy

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by CooperVision, Inc., Santa Clara, CA, for premarket approval, under the Medical Device Amendments of 1976, of Models 2000, 2300, and 2500 Nd:YAG Ophthalmic Lasers. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by July 8, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-8221.

SUPPLEMENTARY INFORMATION: On January 16, 1987, CooperVision, Inc., Santa Clara, CA 95051, submitted to CDRH a supplemental application for premarket approval of Models 2000, 2300, and 2500 Nd:YAG Ophthalmic Lasers. Models 2000, 2300, and 2500 Nd:YAG Ophthalmic Lasers are neodymium:yttrium-aluminum-garnet (Nd:YAG) ophthalmic lasers that are indicated for performing an iridotomy (hole in the iris).

On February 26, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 20, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21

U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the *Federal Register*. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 8, 1987, file with the Documents Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 27, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87-12971 Filed 6-5-87; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body

scheduled to meet during the month of July 1987:

Name: National Advisory Council on Health Professions Education

Date and Time: July 27-28, 1987, 9:00 a.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Purpose: The Council advises the Secretary with respect to the administration of programs of Financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The open portion of the meeting will cover welcome and opening remarks, report of the Administrator, Health Resources and Services Administration, report of the Director, Bureau of Health Professions, financial management update, discussion on Council issues and priorities, and update on: Peer review procedures, minority initiatives, the impact on health professions education of investor owned health care delivery systems, a report on the socioeconomic status of the health professions applicant pool, a report on Osteopathic medicine, a review of Council resolutions and future agenda items. The meeting will be closed July 28, 1987, for the remainder of the meeting for the review of grant applications for two year schools and Family Medicine Departments. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92-463.

Anyone requiring information regarding the subject Council should contact Mr. Robert Belsley, Executive Secretary, National Advisory Council on Health Professions Education, Room 8C-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6880.

Agenda Items are subject to change as priorities dictate.

Dated: June 3, 1987.

Jackie E. Baum,
Advisory Committee Management Officer,
HRSA.

[FR Doc. 87-12968 Filed 6-5-87; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Recombinant DNA Advisory Committee Working Group on Revision of the NIH Guidelines; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee Working Group on Revision of the NIH Guidelines at the Linden Hill Hotel, Wimbledon Room, 5400 Pooks Hill Road, Bethesda, Maryland 20814, on June 22, 1987, from approximately 9 a.m. to adjournment at approximately 5 p.m. to discuss revisions to the NIH Guidelines for Research Involving Recombinant DNA Molecules proposed by the U.S. Department of Agriculture. This meeting will be open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee Working Group on Revision of the NIH Guidelines, Office of Recombinant DNA Activities, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, telephone (301) 770-0131.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule technique could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: June 2, 1987.

Betty J. Beveridge,
Committee Management Officer, NIH.

[FR Doc. 87-12979 Filed 6-5-87; 8:45 am]

BILLING 4140-01-M

Public Health Service

Privacy Act of 1974; Alteration of System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service is publishing a notice of a major alteration to the system of records 09-15-0037, "Public Health Service (PHS) Scholarship and National Health Service Corps (NHSC) Scholarship Programs, HHS/HRSA/BHCDA." The altered 09-15-0037 system of records will be renamed the "Public Health Service (PHS) and National Health Service Corps (NHSC) Health Care Provider Records System, HHS/HRSA/BHCDA."

DATE: PHS invites interested parties to submit comments on the proposed new routine uses on or before July 8, 1987. PHS has sent a Report of Altered System to the Congress and to the Office of Management and Budget (OMB) on May 28, 1987. The alteration of this system of records will be effective 60 days from the date submitted to OMB, and the proposed routine uses will be effective July 8, 1987, unless PHS receives comments which would result in a contrary determination.

ADDRESS: Please address comments to the HRSA Privacy Act Coordinator, Department of Health and Human Services, Room 14A-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-3780. This is not a toll-free number. We will make comments received available for public inspection at the above address during normal business hours, 8:30 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Joseph J. Jacobs, M.D., Deputy Associate Director for Policy, Bureau of Health Care Delivery and Assistance, HRSA, Room 7A-39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-1470. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Bureau of Health Care Delivery and Assistance (BHCDA), Health Resources and Services Administration (HRSA), currently maintains two Privacy Act systems of records concerning the recruitment and monitoring of PHS and NHSC scholarship recipients. These systems of records are 09-15-0027, entitled "National Health Service Corps (NHSC) and Indian Health Service (IHS) Pre-Application Recruitment and Provider File, HHS/HRSA/BHCDA,"

and 09-15-0037, entitled "Public Health Service (PHS) Scholarship and National Health Service Corps (NHSC) Scholarship Programs, HHS/HRSA/BHCDA."

A. To improve the administrative management controls and maintenance of these record systems, we are proposing a major alteration of the 09-15-0037 record system by (1) combining system of records 09-15-0027 with 09-15-0037, and augmenting the latter system notice appropriately to describing the merged system; (2) changing the system name to "Public Health Service (PHS) and National Health Service Corps (NHSC) Health Care Provider Records System, HHS/HRSA/BHCDA"; and (3) deleting records system 09-15-0027.

In addition, we are expanding the "Categories of Records in the System" and the "Purpose" sections to provide for the collection and maintenance of additional records (1) concerning an individual's educational background, previous professional employment, and performance and credentialing history as a licensed health professional, and (2) concerning the repayment/delinquent/default status of an individual who has received funds under the PHS or NHSC scholarship programs. HRSA will use these records (1) to verify information provided on NHSC and PHS application and associated forms to determine if an individual is suitable for employment in or assignment to a medical facility located in a health manpower shortage area or in a medically underserved population area, (2) to verify that all claimed professional background and employment data are valid and all claimed credentials are current and in good standing, and (3) to assist BHCDA officials in the collection of overdue debts owed under the PHS and NHSC scholarship programs.

B. In conjunction with the proposed major alteration to the 09-15-0037 record system, we are combining and renumbering the existing 09-15-0027 and 09-15-0037 routine uses (numbers 1 through 5), and are proposing to add thirteen new routine uses. They are as follows:

1. The proposed new routine use number 6 will permit HRSA to disclose records to Department contractors and subcontractors for the purpose of assisting BHCDA program officials in collecting, compiling, aggregating, analyzing, and refining records used in administering the NHSC program. The contractors and subcontractors are required to maintain Privacy Act safeguards with respect to such records.

2. The proposed new routine use number 7 will permit HRSA to disclose records to Department contractors and subcontractors for the purpose of recruiting, screening, and matching health professionals for employment in or assignment to a medical facility located in a health manpower shortage area or in a medically underserved population area, such as Indian Health Service (IHS) medical facility sites, and community health centers. Department contractors and subcontractors will be authorized (1) to verify biographic data supplied by NHSC recruits on application and associated forms for the purpose of evaluating the applicant's professional qualifications, experience, and suitability, and (2) to provide professional suitability evaluation information to NHSC officials, prospective employers, or to site representatives, for the purpose of appraising the applicant's professional qualifications and suitability for site assignment. The contractors and subcontractors are required to maintain Privacy Act safeguards with respect to such records.

3. It is the policy of PHS and HRSA to communicate with State medical licensing boards about the professional performance histories of all health professionals who apply for and/or who obtain employment in or assignment to medical facilities located in a health manpower shortage area or a medical underserved population area. This will include health professionals, whether practicing, resigned, or retired, who have been terminated because of incompetence and whose professional health care activities so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of private sector patients. Therefore, the proposed new routine use number 8 will permit HRSA to disclose records, consisting of names, Social Security numbers, employment history, educational data, accreditation, licensing, and professional qualification data, to State or local government medical licensing boards and/or to the Federation of State Medical Boards or a similar nongovernment entity which maintains records concerning individuals' employment histories or concerning the issuance or retention of licenses or registrations necessary to practice a health professional occupation or specialty. The purpose of this disclosure will be (1) to enable HRSA to obtain information relevant to a decision concerning a health professional's accomplishments, professional and

personal background, qualifications, and experience to determine the individual's suitability for employment/assignment or retention as a health service provider in a medical facility located in a health manpower shortage area or in a medically underserved population area, and (2) to inform State medical licensing boards or the appropriate nongovernment entities about the health care practices of a practicing, terminated, resigned, or retired health services provider whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of private sector patients.

Prior to making any decisions or any further disclosures under this routine use, HRSA will take the following steps to verify any conflicting or adverse information it has received: (1) Contact the State medical licensing board, credentialing body, or other information sources for additional information; (2) contact the individual identified and request him/her to correct or update the information or to supply additional documentation; and (3) seek additional verifying information from other credentialing bodies when possible.

Following verification, the information collected will be reviewed to determine whether the conflicting or adverse information is relevant to the individual's effectiveness as a health professional. If a positive determination is made, the individual's file will be provided to the appropriate NHSC program official or personnel office for action consistent with existing policies and procedures. When the conflicting or adverse information is found irrelevant, the explanation of the discrepancies will be sent to the subject individual with notice that the information will be placed in his/her record file and/or personnel file to preclude repeating such a review in the future.

4. The proposed new routine use number 9 will permit HRSA to disclose to private parties such as present and former employers, references listed on application and associated forms, other references, and educational institutions. The purpose of such disclosures is to evaluate an individual's professional accomplishments, performance, and educational background, and to determine if an applicant is suitable for employment in or assignment to a medical facility located in a health manpower shortage area or in a medically underserved population area.

5. The Debt Collection Act of 1982 requires Federal agencies to implement procedures for the collection of overdue debts owed to the Federal Government. Within HRSA, record system 09-15-0045, entitled "HRSA Loan Repayment/Debt Management Records System, HHS/HRSA/OA," covers debt management activities for individuals who have been determined to be delinquent in repaying their loans. However, some debt management activities also will be carried out under the 09-15-0037 record system. For example, prior to determining if NHSC scholarship recipients are unable to repay their scholarship loans, BHCDA officials counsel them in repayment efforts. To assist HRSA and BHCDA officials in identifying, locating, and collecting from delinquent borrowers, we are proposing to add nine new routine uses for the purpose of managing debts owed under the PHS and NHSC scholarship programs.

The proposed new routine uses numbers 10 through 18 will permit HRSA to disclose necessary information to other Federal agencies, the Department of the Treasury, consumer reporting agencies, debt collection bureaus, and other private and public parties. The purposes of such disclosures are (1) to determine the delinquent debtors' creditworthiness and their ability to repay their debts, (2) to aid in the collection of debts owed under the NHSC program, (3) to locate delinquent debtors, and (4) to assist HRSA in its debt management activities.

Prior to making any actual disclosure under routine use number 11, which will permit disclosure to another Federal agency for salary and administrative offsets, HRSA will take the following due process steps: (1) Verify the existence of the debt, and (2) take reasonable action to locate the debtor to send written notice to him/her that the claim is overdue; that the agency intends to disclose information to another Federal agency; of what the disclosure(s) will consist; and what his/her rights are with respect to the claim as set forth in Guidelines issued by the Office of Management and Budget (48 FR pages 15556 and 15559, April 11, 1983). For example, HRSA will allow the debtor to examine agency documentation of the debt, and will provide an opportunity for the individual to enter into a written agreement satisfactory to the agency for repayment of any outstanding debts.

Before making any disclosures to debt collection agencies, HRSA will obtain assurance from such agencies that they will comply with the Fair Credit

Reporting Act (15 U.S.C. 1681 *et seq.*) and with any other applicable Federal law governing the provision of consumer credit information. Assurances to this effect will be incorporated in service contracts between the Government and debt collection agencies. The service contracts will contain a provision subjecting the contractors to section (m) of the Privacy Act, which provides that such contractors are liable under the criminal provisions of the Privacy Act as "employees of the (Federal) agency."

C. We are also making additional minor revisions to the 09-15-0037 record system notice to improve clarity and specificity, and to incorporate normal updating changes. Such revisions include, but are not limited to, the following:

1. We have updated the "System Location" section to indicate that records are located at contractor sites and that partial records are located at DHHS Regional Offices. A list of contractor sites and DHHS Regional Offices is available upon request from the Policy-Coordinating Official listed in the "System Manager(s) and Address" section.

2. We have updated the "Authority" section to include the authorities under the Debt Collection Act of 1982 which provide for the implementation of debt management activities and collection of Social Security numbers, and the authorities which authorize verification of an individual's suitability for employment.

3. We have revised the "Safeguards" section to clarify authorized users, and to add a statement that contractors and subcontractors must comply with the Privacy Act.

4. We have updated the "System Manager(s) and Address" section to include the title and location of the Policy-Coordinating Official.

5. We have updated the "Notification Procedures" section to include the procedures for obtaining individual records by making requests in person or by mail.

The 09-15-0037 system notice was last published in the *Federal Register* on November 24, 1986 (51 FR 42509-42510). We are republishing the system notice in its entirety below to incorporate the proposed changes. The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the changes have become effective.

Dated: May 29, 1987.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09-15-0037

SYSTEM NAME:

Public Health Service (PHS) and National Health Service Corps (NHSC) Health Care Provider Records System, HHS/HRSA/BHCDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Health Services Scholarships, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Division of National Health Service Corps, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Parklawn Computer Center, Food and Drug Administration, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

Records are also located at contractor sites. A list of contractor sites where individually identifiable data are currently located is available upon request to the Policy-Coordinating Official, at that individual's address shown in the "System Manager(s) and Address" section of this notice.

Partial records are also located at Department of Health and Human Services (HHS) Regional Offices. A list of Regional Offices where individually identifiable data are currently located is available upon request to the Policy-Coordinating Official.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for, who have been approved to receive, who are receiving, and who have received funds under the PHS and NHSC scholarship programs; individuals who have volunteered for service in the NHSC; scholarship recipients who are fulfilling their PHS and/or NHSC scholarship obligations; and individuals who include an interest in employment in or an assignment to a medical facility located in a health manpower shortage area or a medically underserved population area, including public and Federal medical facilities, such as community health centers, Indian Health Service (IHS)

medical facilities, and other federally sponsored public health centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, Social Security number, scholarship application and associated forms, employment data, professional performance and credentialing history of licensed health professionals; preference for site-selection; personal, professional, and demographic background information; progress reports (which include related data, correspondence, and professional performance information consisting of continuing education, performance awards, and adverse or disciplinary actions); payroll forms, deferment and placement data; and repayment/default status information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 333 of the Public Health Service Act, as amended (42 U.S.C. 254f), Assignment of Corps Personnel;

Section 338 of the Public Health Service Act, as amended (42 U.S.C. 294t), National Health Service Corps Scholarship Program;

Section 338C of the Public Health Service Act, as amended (42 U.S.C. 294v), Private Practice;

Section 202 of Title II of Pub. L. 92-157 (42 U.S.C. 3505d), National Health Manpower Clearinghouse;

Debt Collection Act of 1982, Pub. L. 97-365 (5 U.S.C. 5514 note);

Section 4 of the Debt Collection Act of 1982, Pub. L. 97-365 (5 U.S.C. 5514 note), Requirement That Applicant Furnish Taxpayer Identifying Number; and

Section 215(a) of the Public Health Service Act, as amended (42 U.S.C. 216(a)), for PHS commissioned officers, and 5 U.S.C. 3301 for civil service employees, both of which authorize verification of an individual's suitability for employment.

PURPOSE(S):

The purposes of this system of records are: (1) To select applicants for the PHS and NHSC scholarship programs; (2) to monitor scholarship-related activities, such as payment tracking, deferment of service obligation, default, placement, and claims determination; (3) to select and match PHS and NHSC scholarship recipients, NHSC volunteers, and other individuals for assignment to or employment with a private or group practice or to a medical facility located in a health manpower shortage area or a medically underserved population area, including other public and federally sponsored medical programs, such as IHS medical facilities and community health centers; (4) to monitor services

provided by NHSC or PHS health providers; (5) to maintain records on and to verify individuals' educational background, previous and current professional employment data, and performance history information to verify that all claimed background and employment data are valid and all claimed credentials are current and in good standing; and (6) to assist Bureau of Health Care Delivery and Assistance (BHCDA) officials in the collection of overdue debts owed under the PHS and NHSC scholarship programs.

Records in this system are also used by HHS Regional Offices and IHS for the purpose of negotiating site assignment, and by PHS for the purpose of recruiting health professionals for PHS programs.

Records may be transferred to system No. 09-15-0045, "Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA," for debt collection purposes when BHCDA officials are unable to collect overdue debts owed under the PHS and NHSC scholarship programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The Health Resources and Services Administration (HRSA) may disclose records to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof, or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. In the event that a system of records maintained by this agency to

carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

4. HRSA may disclose records consisting of names, disciplines, current mailing addresses, and dates of graduation or scholarship recipients to designate coordinators at each school or medicine, osteopathy, and dentistry participating in the scholarship program for the purpose of guiding and informing these recipients about the nature of their forthcoming professional service obligation in health manpower shortage areas or medically underserved population areas.

5. HRSA may disclose records consisting of name of scholarship recipient, professional school he/she is attending, and the date of graduation to health professions associations and other interested health professions groups which have responsibility for coordinating funds paid to students from Federal and other sources.

6. HRSA may disclose records to Department contractors and subcontractors for the purpose of collecting, compiling, aggregating, analyzing, or refining records in the system. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

7. HRSA may disclose records to Department contractors and subcontractors for the purpose of recruiting, screening, and matching health professionals for assignment to or employment in a medical facility located in health manpower shortage areas or medically underserved population areas, including other federally sponsored programs, such as IHS medical facility sites and community health centers. In addition, Department contractors and subcontractors (1) may disclose biographic data and information supplied by potential applicants (a) to references listed on application and associated forms for the purpose of evaluating the applicant's professional qualifications, experience, and suitability, and (b) to a State or local government medical licensing board and/or to the Federation of State Medical Boards or a similar nongovernment entity for the purpose of

verifying that all claimed background and employment data are valid and all claimed credentials are current and in good standing; (2) may disclose biographic data and information supplied by references listed on application and associated forms to other references for the purpose of inquiring into the applicant's professional qualifications and suitability; and (3) may disclose professional suitability evaluation information to NHSC officials, prospective employers, or to site representatives, for the purpose of appraising the applicant's professional qualifications and suitability for site assignment or employment. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

8. HRSA may disclose records consisting of name, Social Security number, employment history, educational data, accreditation, licensing, and professional qualification data to a State or local government medical licensing board and/or to the Federation of State Medical Boards or a similar nongovernment entity which maintains records concerning an individual's employment history or concerning the issuance, retention or revocation of licenses or registrations necessary to practice a health professional occupation or specialty. The purposes of this disclosure are (1) to enable HRSA to obtain information relevant to a decision concerning a health professional's accomplishments, professional and personal background qualifications, and experience to determine the individual's suitability for employment, retention, or termination as a health services provider in a medical facility located in a health manpower shortage area or a medically underserved population area, and (2) to inform medical licensing boards or the appropriate nongovernment entities about the health care practices of a practicing, terminated, resigned, or retired health services provider whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of private sector patients.

9. HRSA may disclose information from this system of records to private parties such as present and former employers, references listed on application and associated forms, other references, and educational institutions. The purpose of such disclosures is to evaluate an individual's professional

accomplishments, performance, and educational background, and to determine if an applicant is suitable for employment in/assignment to a medical facility located in a health manpower shortage area or a medically underserved population area.

10. HRSA may disclose information from this system of records to a consumer reporting agency (credit bureau) to obtain a commercial credit report for the following purposes:

- a. To establish creditworthiness of a scholarship applicant; and
- b. To assess and verify the ability of a debtor to repay debts owed to the Federal Government.

Disclosures are limited to the individual's name, address, Social Security number and other information necessary to identify him/her; the funding being sought or amount and status of the debt; and the program under which the application or claim is being processed.

11. HRSA will disclose from this system of records a delinquent debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose, as follows:

- a. To another Federal agency so that agency can effect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset.

- b. To another Federal agency so that agency can effect an authorized administrative offset; i.e., withhold money, other than Federal salaries, payable to or held on behalf of debtors.

- c. To the Treasury Department, Internal Revenue Service (IRS), to request a debtor's current mailing address to locate him/her for purposes of either collecting or compromising a debt, or to have a commercial credit report prepared.

12. HRSA may disclose information from this system of records to another agency that has asked the Department to effect a salary or administrative offset to help collect a debt owed to the United States. Disclosure is limited to the individual's name, address, Social Security number, and other information necessary to identify the individual, to information about the money payable to or held for the individual, and to other information concerning the offset.

13. HRSA may disclose to the Treasury Department, Internal Revenue Service (IRS), information about an individual applying for a loan under any loan program authorized by the Public

Health Service Act to find out whether the loan applicant has a delinquent tax account. This disclosure is for the sole purpose of determining the applicant's creditworthiness and is limited to the individual's name, address, Social Security number, other information necessary to identify him/her, and the program for which the information is being obtained.

14. HRSA will report to the Treasury Department, Internal Revenue Service (IRS), as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectable—either because the time period for collection under the statute of limitations has expired, or because the Government agrees with the individual to forgive or compromise the debt.

15. HRSA will disclose to debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt, information necessary to identify a delinquent debtor. Disclosure will be limited to the debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose.

16. HRSA will disclose information from this system of records to any third party that may have information about a delinquent debtor's current address, such as a U.S. post office, a State motor vehicle administration, a professional organization, an alumni association, etc., for the purpose of obtaining the debtor's current address. This disclosure will be strictly limited to information necessary to identify the individual, without any reference to the reason for the agency's need for obtaining the current address.

17. HRSA may disclose information from this system of records to other Federal agencies that also provide scholarship funding at the request of these Federal agencies in conjunction with a matching program conducted by these Federal agencies to detect or curtail fraud and abuse in Federal scholarship programs, and to collect delinquent loans or benefit payments owed to the Federal Government.

18. HRSA will disclose from this system of records to the Department of Treasury, Internal Revenue Service (IRS): (1) A delinquent debtor's name, address, Social Security number, and other information necessary to identify the debtor; (2) the amount of the debt; and (3) the program under which the debt arose, so that IRS can offset against the debt any income tax refunds which may be due to the debtor.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C 158a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of these disclosures are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these part of their credit records, and (2) to enable HRSA to improve the quality of loan and scholarship decisions by taking into account the financial reliability of applicants. Disclosure of records will be limited to the individual's name, Social Security number (SSN), and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are maintained in file folders, computer tape, discs, and punched cards.

RETRIEVABILITY:

Names, Social Security numbers, or other identifying numbers.

SAFEGUARDS:

1. Authorized Users: Access is limited to authorized personnel in the performance of their duties. Authorized personnel include: System managers and their staff, NHSC headquarters and Regional Office officials, financial and fiscal management personnel, computer personnel, and NHSC contractors—all of whom are responsible for administering the scholarship programs.

2. Physical Safeguards: Magnetic tapes, discs, other computer equipment, and other forms of personal data are stored in areas where fire and life safety codes are strictly enforced. All automated and nonautomated documents are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas. ADP remote stations are locked during non-standard working hours. Twenty-four hour, seven-day security guards perform random checks on the physical security of the data and the storage areas. Backup files are maintained in an off-site facility with controlled entrances and exits.

3. Procedural Safeguards: A password is required to access the terminal and a data set name controls the release of data to authorized users only. All users

of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised office. Codes by which automated files may be accessed are changed periodically. This procedure also includes deletion of access codes when employees leave. New employees are briefed and the guard office is notified of all staff members authorized to be in secured areas during non-standard working hours. This list is revised as employees are gained or lost.

Access to records is strictly limited to those staff members trained in accordance with the Privacy Act and ADP security procedures. Contractors are required to maintain, and are also required to ensure that subcontractors maintain, confidentiality safeguards with respect to these records. Contractors and subcontractors are instructed to make no further disclosure of the records except as authorized by the System Manager and permitted by the Privacy Act. All individuals who have access to these records receive the appropriate ADP facilities for the purpose of ensuring that ADP security clearances. NHSC personnel make site visits to ADP security procedures continue to be met. Privacy Act and ADP system security requirements are specifically included in contracts. System Managers oversee compliance with these requirements.

4. Implementing Guidelines: The safeguards described above were established in accordance with DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual; and the DHHS Information Resources Management Manual, Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Applications of individuals not selected for participation in a scholarship program are retained for 6 months, then destroyed by shredding. Applications, contracts, and other records of NHSC scholarship recipients are retained through the completion or other disposition of the scholarship service obligation, then sent to the Federal Records Center for an additional 7-year retention period and destroyed in accordance with Federal Records Center disposal standards. Automated historical tapes are sent to a Federal Records Center and the initial records are destroyed in accordance with the HRSA Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Policy-Coordinating Official: Director, Bureau of Health Care Delivery and Assistance, HRSA, 5600 Fishers Lane, Rockville, MD 20857.

Scholarship Applicants/Recipients: Director, Division of Health Services Scholarships, Bureau of Health Care Delivery and Assistance, HRSA, 5600 Fishers Lane, Rockville, Md 20857.

Placement/Assignment: Director, Division of National Health Service Corps, Bureau of Health Care Delivery and Assistance, HRSA, 5600 Fishers Lane, Rockville, Md 20857.

NOTIFICATION PROCEDURES:

To find out if the system contains records about you, contact the Policy-Coordinating Official. The Policy-Coordinating Official will then refer the requester to the appropriate System Manager or Regional Office.

Requests in person: A subject individual who appears in person at a specific location seeking access to or disclosure of records relating to him/her shall provide his/her name, current address, Social Security number or other identifying numbers, dates of enrollment in the scholarship program, and at least one piece of tangible identification such as driver's license, passport, or voter registration card. Identification papers with current photographs are preferred but not required. If a subject individual has no identification but is personally known at an agency employee, such employee shall make a written record verifying the subject individual's identity. Where the subject individual has no identification papers, the responsible agency official shall require that the subject individual certify in writing that he/she is the individual who he/she claims to be and that he/she understands that the knowing and willful request or acquisition of a record concerning an individual under false pretenses is a criminal offense subject to a \$5,000 fine.

Requests by mail: A written request must contain the name and address of the requester, Social Security number or other identifying numbers, and his/her signature which is either notarized to verify his/her identity or includes a written certification that the requester is the person he/she claims to be and that he/she understands that the knowing and willful request or acquisition of records pertaining to an individual under false pretenses is a criminal offense subject to a \$5,000 fine. In addition, the following information is needed: Dates of enrollment in the scholarship program, and current enrollment status, such as pending

application approval, deferment of service obligation, or shortage area placement.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also provide a reasonable description of the record being sought.

Requesters may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the Policy-Coordinating Official, provide a reasonable description of the record, specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals whose records are contained in the system; educational institutions attended; internship and/or residency training progress reports; NHSC Site Selection Questionnaires; NHSC Private Practice Option Agreements; Bureau of Health Professions Area Resources File tapes; PHS Commissioned Personnel Operations Division and U.S. Office of Personnel Management personnel records; health professional associations; DHHS contractors/subcontractors; consumer reporting agencies/credit bureaus; other Federal agencies, including but not limited to the Department of the Treasury, the Internal Revenue Service (IRS), and the U.S. Postal Service; State or local government medical licensing board and/or the Federation of State Medical Boards or a similar nongovernment entity; and third parties who provide references concerning the subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 87-12988 Filed 6-5-87; 8:45 am]

BILLING CODE 4160-15-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Ethyl Acrylate

The HHS' National Toxicology Program today announces the availability of the toxicology and

carcinogenesis studies of ethyl acrylate, a monomer used to produce polymers and copolymers for use in latex paints, textiles, paper coatings, fabric finishes, dirt release agents, and specialty plastics.

Toxicology and carcinogenesis studies of ethyl acrylate were conducted by administering this chemical in corn oil by gavage to groups of 50 male and 50 female F344/N rats and B6C3F₁ mice at doses of 100 or 200 mg/kg per day for 103 weeks.

Under the conditions of these studies, ethyl acrylate was carcinogenic for the forestomach of F344/N rats and B6C3F₁ mice, causing squamous cell carcinomas in male rats and male mice, squamous cell papillomas in male and female rats and male mice, and squamous cell papillomas or carcinomas (combined) in male and female rats and mice. Evidence for carcinogenicity was greater in males than in females. Ethyl acrylate also caused irritation of the forestomach mucosa in male and female rats and mice.

Copies of *Toxicology and Carcinogenesis Studies of Ethyl Acrylate in F344/N Rats and B6C3F₁ Mice (Gavage Studies)* (TR 259) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541-3991. FTS: 629-3991.

Dated: June 3, 1987.

David P. Rall,
Director.

[FR Doc. 87-12980 Filed 6-5-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[DES 87-17]

Availability of Draft Environmental Impact Statement; Innoko National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a draft environmental impact statement (EIS) for the proposed Comprehensive Conservation Plan and Wilderness Review for Innoko National Wildlife Refuge, Alaska.

SUMMARY: The U.S. Fish and Wildlife Service has prepared, for public review, a Draft Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review (CCP/EIS/WR) for the Innoko National Wildlife Refuge, Alaska, pursuant to section 304(g)(1),

1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The Draft CCP/EIS/WR describes three alternatives for managing the refuge and the environmental consequences of implementing each alternative. The document also reviews the suitability of all the federal lands in the refuge for possible wilderness designation and inclusion in the National Wilderness Preservation System.

DATES: Public meetings will be held in Holy Cross, Anvik, Grayling, Shageluk, and McGrath, Alaska, during June and July 1987. A public hearing will be held in Anchorage, Alaska at the Fairview Recreation Center on July 8, 1987, beginning at 7:00 p.m. All comments and testimony, both oral and written, will be accepted until August 10, 1987, for consideration in the preparation of the Final CCP/EIS/WR.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained by contacting Mr. Knauer.

Copies of the Draft CCP/EIS/WR are available for public review at the office of the Regional Director, at the above address; at the Innoko National Wildlife Refuge Office, Box 69, McGrath, Alaska 99627, and at the following locations:

- U.S. Fish and Wildlife Service, Division of Refuge Management, U.S. Department of the Interior Bldg., 18th & C Streets, NW., Washington, DC 20240
- U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE Multnomah Street Suite 1692, Portland, OR 97232
- U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue SW., Room 1306, Albuquerque, NM 87103
- U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111
- U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Bldg., 75 Spring Street, Atlanta, GA 30303
- U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158
- U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225

Dated: June 1, 1987.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 87-12928 Filed 6-5-87; 8:45 am]

BILLING CODE 4310-55-M

[FES 87-22]

Availability of Final Environmental Impact Statement; Kanuti National Wildlife, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a final environmental impact statement (EIS) for the proposed Comprehensive Conservation Plan and Wilderness Review for Kanuti National Wildlife Refuge, Alaska.

SUMMARY: The U.S. Fish and Wildlife Service has prepared a Final Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review (CCP/EIS/WR) for the Kanuti National Wildlife Refuge, Alaska, pursuant to section 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The final CCP/EIS/WR describes three alternatives for managing the refuge and the environmental consequences of implementing each alternative. The document also reviews the suitability of all the Federal lands in the refuge for possible wilderness designation and inclusion in the National Wilderness Preservation System.

DATES: A record of decision will be issued no sooner than July 17, 1987.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained by contacting Mr. Knauer.

Copies of the final CCP/EIS/WR are available at the office of the Regional Director, at the above address; at the Kanuti National Wildlife Refuge, Box 20, 101 12th Avenue, Fairbanks, Alaska 99701, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, U.S. Department of the Interior, 18th & C Streets, NW., Washington, DC 20240
U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE Multnomah Street, Suite 1692, Portland, OR 97232

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue SW., Room 1306, Albuquerque, NM 87103

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158

U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Boulevard, Lakewood, CO 80225

Dated: June 2, 1987.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 87-12929 Filed 6-5-87; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[AA-680-07-4131-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

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 the Bureau's clearance officer at the phone number list below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Mineral Materials Disposal, 43 CFR Part 3600.

Abstract: Respondents supply information and data necessary to process applications for the removal of mineral materials from the public lands.

Bureau Form Number: 3600-4, 3600-5.

Frequency: Upon application.

Description of Respondents: Entities applying for a permit or contract to remove mineral materials from the public lands.

Annual Responses: 6,250.

Annual Burden Hours: 1,250.

Bureau clearance officer: Richard Iovaine, 202-653-8853.

Robert H. Lawton,

Assistant Director, Energy and Mineral Resources.

April 16, 1987.

[FR Doc. 87-12911 Filed 6-5-87; 8:45 am]

BILLING CODE 4310-84-M

[WY-030-07-4322-12]

Rawlins District Advisory Council Meeting; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rawlins District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 that a meeting of the Rawlins District Advisory Council will be held. The meeting will consist of briefings on the Rangeland Monitoring Program, Land Exchange Proposals and Volunteer Projects. A tour of the South Pass area will be taken.

DATE: July 9, 1987.

ADDRESS: The Lander Resource Area Office, 125 Sunflower, Lander, Wyoming.

FOR FURTHER INFORMATION CONTACT: Gordon Warren, Public Information Officer, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301 (307)324-7171.

SUPPLEMENTARY INFORMATION: The meeting will begin at 7:30 a.m. in the Lander Resource Area Office. The tour will begin at 8:30 at the Lander Resource Area Office. The purpose of the tour is to view recreational and historical developments in the South Pass area. The tour will conclude back at the Lander Resource Area Office at 3:30 p.m. and will be followed by a public comment period.

The meeting is open to the public. Anyone interested in attending the meeting must notify the District Manager by July 2, 1987. Written statements also may be filed before the meeting for the Board's consideration.

Summary minutes will be available for review within 30 days after the meeting at the Rawlins District Office. Copies of the minutes may be obtained for the cost of duplication.

Richard Bastin,

District Manager.

[FR Doc. 87-12912 Filed 6-5-87; 8:45 am]

BILLING CODE 4310-22-M

[U-51659-C]

Proposed Reinstatement of Terminated Oil and Gas Lease; Grand County, UT

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease U-51659-C for lands in Grand County, Utah, was timely filed and required rentals and royalties accruing from November 1, 1986, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of \$5 per acre and 16% percent, respectively. The \$500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease U-51659-C as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective November 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-12908 Filed 6-5-87; 8:45 am]

BILLING CODE 4310-DQ-M

Office of Surface Mining Reclamation and Enforcement**Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act**

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 the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Abandoned Mine Lands Inventory Update Form.

Abstract: This form will be used to select and apportion money to State/

Tribes with the most serious problem areas for reclamation.

Bureau Form Number: OSMRE-76.

Frequency: Annual.

Description of Respondents: State Governments.

Annual Responses: 1,200.

Annual Burden Hours: 4,800.

Bureau clearance officer: Darlene Grose-Boyd, (202) 343-5447.

Dated: May 9, 1987.

Carson W. Culp,

Assistant Director, Budget and Administration.

[FR Doc. 87-12913 Filed 6-5-87; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION**Television Receivers From Japan; Request for Comments Concerning the Institution of a Section 751(b) Review Investigation**

AGENCY: United States International Trade Commission.

ACTION: Request for comments regarding the institution of a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. AA1921-66, Television Receiving Sets from Japan.

SUMMARY: The Commission invites comments from the public on whether changed circumstances exist sufficient to warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) to review the Commission's affirmative determination in investigation No. AA1921-66, regarding television receivers from Japan. The purpose of the proposed 751(b) review investigation, if instituted, would be to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of liquid crystal display televisions (LCD TVs) from Japan if the antidumping order regarding such merchandise were to be modified. LCD TVs are provided for in items 684.98 and 685.04 of the Tariff Schedules of the United States.

FOR FURTHER INFORMATION CONTACT: Daniel Leahy (202-523-1376), Office of Investigations U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the

Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION: On March 4, 1971, the Commission determined that an industry in the United States was being injured by reason of imports of television receivers, monochrome and color, from Japan which the Department of Treasury had determined were being, or were likely to be sold at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on March 9, 1971, a dumping finding with respect to television receivers from Japan was published in the **Federal Register** as Treasury Decision 71-76 (36 FR 4597).

On April 28, 1987, the Commission received a request, pursuant to section 751(b) of the Act, to modify T.D. 71-76 to exclude LCD TVs from the scope thereof. This request is filed by counsel on behalf of Casio Computer Co., Ltd., Casio, Inc., Citizen Watch Co., Ltd., Hitachi, Ltd., Hitachi Sales Corporation of America, Hitachi Sales Corporation of Hawaii, Inc., Matsushita Electrical Industrial Co., Ltd., Matsushita Electric Corporation of America, NEC Corporation, NEC Home Electronics (U.S.A.), Inc., Seiko Epson Corporation, Sharp Corporation, Sharp Electronics Corporation, Toshiba Corporation, and Toshiba America, Inc.

Written Comments Requested

Pursuant to § 207.45(b)(2) of the Commission's rules of practice and procedure (19 CFR 207.45(b)(2)), the Commission requests comments concerning whether the following alleged changed circumstances are sufficient to warrant institution of a review investigation: In 1983, Japanese television producers introduced LCD TVs into the U.S. market. The domestic television industry produces only cathode ray tube televisions (CRT TVs) with screen sizes no smaller than 13 inches. LCD TVs differ from CRT TVs in several significant respects: (1) LCD TVs are produced using completely different technology from that applicable to CRT TVs; (2) LCD TVs are far smaller and lighter than CRT TVs, and use self-contained power sources; (3) unlike CRT TVs, which are designed for in-home viewing, LCD TVs are truly portable, and are therefore used primarily outside the home; and (4) LCD TVs are marketed differently than CRT TVs, through different retail outlets from CRT TVs, and are priced in a manner than is not competitive with CRT TVs. Therefore, LCD TVs do not compete with CRT TVs and, hence, their importation and sale do not materially

injure or threaten material injury to the U.S. television industry.

Written Submission

In accordance with § 201.8 of the Commission rules (19 CFR 201.8), the signed original and 14 copies of all written submissions must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436. All comments must be filed no later than 30 days after the date of publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under § 201.6 of the Commission's rules (19 CFR 201.6). Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly marked at the top "Confidential Business Data." The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Copies of the request for review of the injury determination and any other documents in this matter are available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the office of the Secretary to the Commission; telephone 202-523-0161.

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: June 2, 1987.

[FR Doc. 87-12909 Filed 6-5-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31030]

Department of Water and Power of the City of Los Angeles; Acquisition and Operation Exemption—The Nevada Northern Railway Co.

The Department of Water and Power of The City of Los Angeles has filed a notice of exemption to acquire and operate certain properties of the Nevada Northern Railway Company. The properties consist of: the line between Cobre Junction and McGill Junction, NV (milepost 0.0 to milepost 128), a total distance of 128 miles. Any comments must be filed with the Commission and served on Gregory B. Thorpe, O'Melveny & Myers, 400 South Hope Street, Los Angeles, CA 90071-2899, (213) 669-6000, and John K. Maser III,

Donelan, Cleary, Wood & Maser, P.C., 1275 K Street, NW., Suite 850, Washington, DC 20005-4006, (202) 371-9500.¹

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 1, 1987.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-12905 Filed 6-5-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Pollution Control; Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 29, 1987 a proposed consent decree in *United States v. Louis Serafini, et al.*, was lodged with the United States District Court for the Middle District of Pennsylvania. The proposed consent decree provides a comprehensive remedial program to abate contamination at a hazardous waste site in Scranton, Pennsylvania. The decree provides that the four settling defendants will undertake a complete clean-up of the site and to pay in advance for operation and maintenance of the site thereafter in accordance with requirements set forth by the Environmental Protection Agency. The settlement also provides for the repayment to the United States of \$500,000 in past costs.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of

Justice, Washington, DC 20530, and should refer to *United States v. Louis Serafini, et al.*, D.J. Ref. 90-11-3-43.

The proposed consent decree may be examined at the Office of the United States Attorney, Room 309, Federal Building, North Washington Ave. and Linden Street, Scranton, PA 18503, at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, 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. In requesting a copy, please enclose \$11.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Thomas E. Hookano,

Deputy Assistant Attorney General, Lands and Natural Resources Division.

[FR Doc. 87-12914 Filed 6-5-87; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-51)]

NASA Advisory Council (NAC), Space Applications Advisory Committee (SAAC); Cancellation of Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting Cancellation.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT 52 FR 20477, Notice Number 87-48, June 1, 1987.

PREVIOUSLY ANNOUNCED TIMES AND DATES OF MEETING June 16, 1987, 9 a.m. to 4 p.m.; June 17, 8:30 a.m. to 12 p.m. Meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Ray J. Arnold, Code EE, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1707).

June 2, 1987.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 87-12951 Filed 6-5-87; 8:45 am]

BILLING CODE 7510-01-M

¹ The Railway Labor Executives' Association (RLEA) filed an unsupported request for labor protection claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. The United Transportation Union joins in its request. Since this transaction involves an exemption from 49 U.S.C. 10901, only a showing of exceptional circumstances will justify the imposition of labor protective conditions. RLEA's request is denied, because the requisite showing has not been made. See *Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985).

[Notice 87-50]**Intent To Grant an Exclusive Patent License**

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Philip A. Studer, Silver Spring, Maryland, a limited, exclusive, royalty-bearing, revocable license to practice the following inventions:

U.S. Patent No. 3,569,804 "Direct Current Motor With Stationary Armature and Field"; issued March 9, 1971.

U.S. Patent No. 3,694,041 "Electric Motive Machine Including Magnetic Bearing"; issued September 26, 1972.

U.S. Patent No. 3,865,442 "Magnetic Bearing"; issued February 11, 1975.

U.S. Patent No. 4,000,929 "Magnetic Bearing System"; issued January 4, 1977.

U.S. Patent No. 4,027,212 "Three Phase Full Wave DC Motor Decoder"; issued May 31, 1977.

U.S. Patent No. 4,077,678 "Energy Storage Apparatus"; issued March 7, 1978.

U.S. Patent No. 4,387,935 "Linear Magnetic Bearing"; issued June 14, 1983.

U.S. Patent No. 4,315,197 "Linear Magnetic Motor/Generator"; issued February 9, 1982.

U.S. Patent No. 4,405,286 "Actively Suspended Counter-Rotating Machine"; issued September 20, 1983.

U.S. Patent No. 4,381,875 "Magnetic Bearing and Motor"; issued May 3, 1983.

The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentation. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATE: Comments to this notice must be received by August 7, 1987.

ADDRESS: National Aeronautics and Space Administration, Code GP Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Marchant, (202) 453-2420.

Dated: May 29, 1987.

John E. O'Brien,
General Counsel.

[FR Doc. 87-12952 Filed 6-5-87; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-313, License No. DPR-51, EA 86-151]

**Arkansas Power and Light Co.,
Arkansas Nuclear One, Unit 1; Order
Imposing Civil Monetary Penalty****I**

Arkansas Power and Light Company (licensee) is the holder of Operating License No. DPR-51 (license) issued by the Nuclear Regulatory Commission (NRC/Commission) on May 21, 1974. The license authorizes the licensee to operate Arkansas Nuclear One in accordance with the conditions specified therein.

II

A special inspection of the licensee's activities was conducted on January 6 through 31, 1986. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated November 12, 1986. The Notice stated the nature of the violation, the provision of the NRC's requirement that the licensee had violated, and the amount of the civil penalty proposed for Violation I. The licensee responded to Violation I of the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated December 12, 1986.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that Violation I occurred as stated and that the penalty proposed for this violation in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars (\$50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Assistant General Counsel for Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV; and the NRC Resident Inspector.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in Violation I of the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above and

(b) Whether, on the basis of such violation, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 1st day of June 1987.

James M. Taylor,
Deputy Executive Director for Regional Operations.

Appendix—Evaluations and Conclusions

On November 12, 1986, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC Safety System Functional Inspection (SSFI). A civil penalty of \$50,000 was proposed for Violation I set out in the Notice. Arkansas Power and Light Company responded to Violation I of the Notice by letter on December 12, 1986. In

its response the licensee admits that the violation occurred as stated, but argues that certain factors mitigated the seriousness of the violation, and requests mitigation of the proposed civil penalty. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

Restatement of Violation I

10 CFR Part 50, Appendix B, Criterion III, Design Control, requires, in part, that the design control measures shall provide for verifying or checking the adequacy of design, such as by the performance of design reviews, by the use of alternate or simplified calculation methods, or by the performance of a suitable testing program.

Contrary to the above, design control measures for design change package DCP 82-D-1050 failed to properly assess or verify the adequacy of design regarding the potential for a single failure, loss of one power supply, to cause the simultaneous blowdown of both steam generators during a main steam line break accident, a situation outside the plant's design basis. This condition was caused when the design change package was implemented during the Unit 1 1984 refueling outage without certain check valves, the purpose of which was to prevent the simultaneous blowdown.

This is a Severity Level III violation (Supplement I).

Civil Penalty—\$50,000.

Summary of Licensee's Response

The licensee admits that the Violation I did occur as stated, in that an inadequate safety evaluation was performed to identify the specific emergency feedwater (EFW) single failure scenario for the situation without certain check valves. The decision to delete the check valves was based on the desire to improve overall system reliability.

The licensee presents arguments related to the safety significance of the violation. The licensee asserts that, while the design basis of EFW system does consider the loss of offsite power, the design basis does not consider a Main Steam Line Break (MSLB) concurrent with a loss of offsite power. Therefore, it would be consistent with the plant's design basis for the scenario described not to consider the loss of offsite power and thus give credit for the operation of the EFW and main feedwater systems.

The licensee further states that even without the check valves, the EFW system would have performed adequately during anticipated transients and accident scenarios and that a

number of long-term measures were available to isolate the steam generators, provide water to the steam generators, or use feed and bleed to achieve safe shutdown. In addition, the licensee asserts that the calculated containment peak pressure would not be increased and the results of the analysis are bounded by current FSAR analyses. Offsite dose consequences were calculated by the licensee to be less than 7% of the 10 CFR Part 100 thyroid limits, even assuming no mitigation of the accident for 48 hours.

NRC Evaluation of Licensee's Response

While it may be that the design basis of the EFW system does not consider a MSLB concurrent with a loss of offsite power, the NRC staff believes that the plant's design basis did consider a MSLB concurrent with a single failure, namely the loss of one power supply. This formed the basis of the violation.

Section 14.2.2.1 of the Arkansas Nuclear One, Unit 1 Final Safety Analysis Report describes the accident analysis for a main steam line failure. Section 14.2.2.1.3.1 states that the Emergency Feedwater Instrumentation and Control System is designed to protect against the consequences of a simultaneous blowdown of both steam generators. Section 14.2.2.1.3.3 further states that "Additional information regarding potential single failures in the emergency feedwater during recovery from a steam line break is included in Table 10-1." Table 10-1 describes the capability of the EFW system to adequately perform its function under the single failure criteria and specifically the loss of Bus A3 which results in the loss of all AC "red" power. The design basis of the EFW system was not met in the matter at hand in that, when the check valves were deleted from the design, the simultaneous blowdown of both steam generators was not prevented under the circumstances of a main steam line break and the loss of Bus A3, as it should have been as described in Section 14.2.2.1 and Table 10-1 of the FSAR. The design change package, DCP 82-D-1050, was issued and implemented without evaluating the potential for the simultaneous blowdown of both steam generators, a violation of 10 CFR Part 50, Appendix B, Criterion III.

The licensee asserts that the check valves were deleted to improve the overall EFW system reliability; however, in doing so this created the potential for the simultaneous blowdown of both steam generators during a steam line break, a situation which clearly was intended by design to be prevented. The design change failed

to properly evaluate a single failure scenario to ensure that the EFW system would function as intended.

The licensee contends that, even without check valves installed, the consequences of the steam line break accident were within the capability of the plant's systems and structures, relying on manual operator actions. While it appears that these consequences were within the capability of the plant, the staff generally does not give credit for manual actions for systems which were designed to function automatically. In addition, at the time the design change package was issued and implemented, there had been no evaluation performed to ensure that the EFW system would function during postulated accident and single failure scenarios, specifically the steam line break accident with the failure of Bus A3. Without such evaluation and without the check valves installed, the plant was placed in a condition outside its design basis and one for which it was not known whether the EFW system could perform its intended function under all postulated events. This was cause for significant regulatory concern.

Based on the above discussion, the NRC staff considers that the violation did occur as stated in the Notice, that the single failure scenario described in the violation is a design basis event for a main steam line break, and the violation is appropriately categorized as a Severity Level III violation.

Summary of Request for Mitigation of Civil Penalty

The licensee asserts that, after the SSFI identification of concerns which in part formed the basis for Violation I, an immediate review was performed and notification to the NRC was made. Further, immediate actions were taken to install swing check valves in the steam supply lines and initiate procurement and design efforts to obtain lift check valves.

The licensee contends that, prior to and subsequent to the identification of the deficiency, the licensee had recognized the need to improve the design modification process, the 10 CFR 50.59 review program and the training of engineers, and had initiated major improvements in these areas.

The licensee also contends that it has demonstrated good performance in the general area of design control and that the violation was somewhat isolated to the specific instance rather than indicative of an overall programmatic failure of the design change process.

NRC Evaluation of Licensee's Response

The NRC views the licensee's actions in reporting the design discrepancy as prudent and appropriate. However, as the discrepancy was identified by the NRC, mitigation for prompt identification and reporting is not warranted.

While the licensee installed check valves in the steam lines and took other corrective actions to address the programmatic concerns, these actions were not so unusually prompt and extensive as to warrant mitigation of the civil penalty.

The NRC SSFI team did view the design of the emergency feedwater (EFW) system to be sound in general; however, the SSFI team also identified significant concerns. The licensee's performance in the design control area warrants neither mitigation nor escalation of the proposed civil penalty based on Category 2 and 3 SALP ratings in the areas of operations, maintenance, and surveillance for the past rating periods with a single Category 1 rating in operations in the latest SALP. Therefore, mitigation of the civil penalty was not considered appropriate.

NRC Conclusion

After careful consideration of the licensee's response, the NRC staff concludes that the violation is significant in that the plant was placed in a condition outside its design basis and the violation is appropriately classified as a Severity Level III violation. The staff also concludes that the licensee has not provided a sufficient basis for mitigation of the civil penalty. Accordingly, the proposed civil penalty in the amount of Fifty Thousand Dollars (\$50,000) should be imposed.

[FR Doc. 87-13002 Filed 6-5-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-335]

Florida Power and Light Co., St. Lucie Plant, Unit No. 1; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-67, issued to Florida Power and Light Company (the licensee), for operation of the St. Lucie Plant, Unit No. 1, located in St. Lucie County, Florida.

Identification of Proposed Action

The amendment would consist of a change to the operating license to extend the expiration date of the

operating license for the St. Lucie Plant, Unit No. 1, from July 1, 2010 to March 1, 2016. The license amendment is responsive to the licensee's application dated February 28, 1986, as supplemented by letters dated November 14, 1986, and April 15, 1987. The Commission's staff has prepared an Environmental Assessment of the proposed action, entitled "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Date of Facility Operating License No. DPR-67, Florida Power and Light Company, St. Lucie Plant, Unit No. 1, Docket No. 50-335," dated.

Summary of Environmental Assessment

The Commission's staff has reviewed the potential environmental impact of the proposed change in the expiration date of the operating license for the St. Lucie Plant, Unit No. 1. This evaluation considered the previous environmental studies, including (1) the "Final Environmental Statement Related to the St. Lucie Plant, Unit No. 1," June 1973, (2) the "Final Environmental Statement Related to Operation of the St. Lucie Plant, Unit No. 2," April 1982, and (3) more recent NRC policy. The Unit No. 2 Final Environmental Statement was used because it contained updated demographic information.

Radiological Impacts

The staff considered the radiological impacts expected as a result of a hypothetical design basis accident at St. Lucie Plant, Unit No. 1, and from normal plant operation including the impact of revised population estimates. In 1982, the staff evaluated the regional demography and found the land area within a 25 mile radius, as indicated by the population statistics, to be flat with dense vegetation, including pine tree and fresh water marshes typical of Florida Coastal swamps. The population within 50 miles of the plant was 310,000 in 1970; 573,048 in 1981; with 1,006,452 projected for the year 2000 and 1,710,139 projected for the year 2030. The entire area is experiencing a large population growth which is expected to continue until limited either by physical constraints such as traffic congestion and the availability of potable water, or by zoning restrictions. The outer boundary of the low populations zone (LPZ) is at a nominal distance of 1 mile from the plant. Based on the 1968 census, the LPZ population was about 1,980; 10,326 in 1981; 12,506 (estimated) in 1983; and the projected resident population for the LPZ for 2030 is 83,599. The nearest population center with more than 25,000 people is the City of Fort

Pierce, Florida, whose nearest boundary is about 4 miles northwest of the site. The staff concludes that, based upon these population estimates, the current Exclusion Area Boundary, Low Population Zone, and the nearest population center distances will likely be unchanged from those used for licensing the unit. Therefore, the conclusion reached in the staff's Safety Evaluation in 1973 that St. Lucie Unit 1 meets the requirements of 10 CFR Part 100 remains unchanged.

Station radiological effluents to unrestricted areas during normal operation have been well within Commission regulations regarding "as-low-as-is-reasonably-achievable" (ALARA) limits, and are indicative of future releases. In addition, the additional years of operation will not increase the annual public risk from reactor operation.

With regard to normal plant operation, the licensee complies with Commission guidance and requirements for keeping radiation exposures "as-low-as-is-reasonably-achievable" (ALARA) for occupational exposures.

The environmental impacts attributed to transportation of fuel and waste to and from the St. Lucie Plant, Unit No. 1, with respect to normal conditions of transportation and possible accidents in transport, would be bounded as set forth in Summary Table S-4 of 10 CFR 51.52, and the values in Table S-4 would continue to represent the contribution of transportation to the environmental costs associated with the reactor.

Non-Radiological Impacts

The Commission has concluded that the proposed extension will not cause a significant increase in the impacts to the environment and will not change any conclusions reached by the Commission in the Final Environmental Statement for Unit No. 1.

Finding of No Significant Impact

The Commission's staff has reviewed the proposed change to the expiration date of the St. Lucie Plant, Unit No. 1, Facility Operating License relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the Commission's staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment dated February 28, 1986, as supplemented on November 14, 1986, and April 15, 1987, (2) the Final Environmental Statement related to the St. Lucie Plant, Unit No. 1, dated June 1973, (3) the Final Environmental Statement Related to Operation of the St. Lucie Plant, Unit No. 2, dated April 1982, and (4) the Environmental Assessment dated May 29, 1987. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington DC 20555 and at the Indian River Junior-College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Dated at Bethesda, Maryland, this 3rd day of June 1987.

For the Nuclear Regulatory Commission,
Lester S. Rubenstein,
Director, Project Directorate II-2, Division of
Reactor Projects-I/II.

[FR Doc. 87-13000 Filed 6-5-87; 8:45 am]

BILLING CODE 7590-01-M

Public Service Electric & Gas Co., et al., Hope Creek Generating Station; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-354]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a proposed exemption to 10 CFR Part 50, Appendix J, Paragraph III.D.3 for Facility Operating License No. NPF-57 issued to the Public Service Electric & Gas Company, et. al. (the licensee) for operation of the Hope Creek Generating Station, located in Salem County, New Jersey.

Environmental Assessment

Identification of Proposed Action

This proposed exemption would suspend the requirement to conduct Type C leakage testing at intervals no greater than 24 months, as stated in 10 CFR Part 50, Appendix J, Paragraph III.D.3, for 27 containment isolation valves until the first refueling outage which is scheduled to begin on February 1, 1988.

The proposed exemption is responsive to the licensee's application for exemption dated April 3, 1987 as supplemented by letter dated May 8, 1987.

The Need for the Proposed Action

The proposed exemption from the regulation is required in order to allow continued operation of the plant until the first refueling outage, when the plant

will be shut down for extensive maintenance and surveillance testing activities. Without this exemption, a forced shutdown, beginning on June 11, 1987, and lasting about three weeks, would be required in order to perform the necessary surveillance tests.

Environmental Impacts on the Proposed Action

There are no environmental impacts of the proposed action. During the period of the extension, the plant will continue with normal operations. The plant will be shut down, and the containment isolation valve Type C leakage tests will be performed while the plant is shut down for the first refueling outage. The surveillance tests will be performed at that time, in every other respect, the same as if they had been performed during an outage prior to June 11, 1987. The staff has reviewed the information provided by the licensee and finds that postponing these leakage tests until the first refueling outage would have little effect on containment integrity. No changes are being made in the allowable amounts and no significant changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

Alternative to the Proposed Actions

Since we have concluded that there is no measurable environmental impact associated with the granting of the proposed exemption, any alternative to this exemption will have the same or greater environmental impact.

The principal alternative would be to deny the exemption which would require a shutdown beginning no later than June 11, 1987. A shutdown of approximately three weeks would be required to perform the leakage tests.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement" related to the operation of the Hope Creek Generating Station, dated December 1984.

Agencies and Persons Consulted

The NRC staff performed the entire review of the licensee's position and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated April 3, 1987, as supplemented by letter dated May 8, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Pennsville Public Library, 190 South Broadway, Pennsville, New Jersey 08070.

Dated at Bethesda, Maryland, this 2nd day of June 1987.

For the Nuclear Regulatory Commission,
Walter R. Butler,
Director, Project Directorate I-2, Division of
Reactor Projects.

[FR Doc. 87-13001 Filed 6-5-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available Form: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549.

Extension

File No. 270-287, Form S-4

File No. 270-288, Form F-4

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for an extension of clearance of the following forms: Form S-4 and Form F-4. The forms provide a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of publicly-traded securities provide investors and the marketplace with adequate information in the area of business combinations. There have been 505 S-4 respondents and 3 F-4 respondents at 1472 hours per form.

Submit comments to OMB Desk Officer, Mr. Robert Neal (202) 395-7340, Office of Information and Regulatory Affairs, Commerce & Lands Branch,

Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-12944 Filed 6-5-87; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Extension

Rule 17Ad-10

File No. 270-265

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for reinstatement of OMB approval Rule 17Ad-10 (17 CFR 240.16Ad-10) promulgated under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) requiring transfer agents to create and maintain accurate securityholder files. Twenty-two hundred recordkeepers incur a total of 44,000 burden hours to comply with the rule.

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395-7340, Office of Information and Regulatory Affairs, Room 3228, NEOB, Washington, DC 20503.

June 1, 1987.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-12945 Filed 6-5-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24528; File No. SR-PSE-87-07]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² the Pacific Stock Exchange, Inc. ("PSE" or "Exchange"), on March 30, 1987, submitted to the Securities and Exchange Commission ("Commission") a proposal to allow the display of multiple-series orders and stock/option orders on the Autex Trading Information System ("Autex").

The proposed rule change was published for comment in Securities

Exchange Act Release No. 24366 (April 20, 1987), 52 FR 13782. No comments were received.

The PSE proposes to implement a six-month test³ of the dissemination of certain indications of market interest through Autex. The Exchange proposes to include in the test a total of ten stock options in two trading crowds. Participation in the test would not be mandatory for brokers or market makers. The proposal would permit brokers and market makers to display indications of interest for multiple-series orders and stock/option orders through Autex terminals located on the Exchange floor.⁴ Under the proposal, once a floor broker or market maker expressed an indication of interest in one of these types of orders at the trading post and received no reciprocal interest, he would be able to ask the Exchange staff to disseminate the interest through the Autex system.

Currently, there is no way to disseminate electronically indications of interest for multiple-series orders (*e.g.*, spreads, straddles, and combination orders) from the options floor. This also is true for indications of stock/option order interest (*e.g.*, covered writes, conversion and reverse conversion orders). These types of more complicated orders are of interest generally to professional and institutional entities.

The Autex program would facilitate the process that the floor brokers already undertake, but would do so in a more efficient manner. Instead of the floor broker having to manually contact each of the upstairs customers that might be interested in the order, those customers would be able to receive the indication of interest through the Autex system. The floor broker's time therefore would be saved by not having to contact those customers, and the then could devote more of his time to other orders on the floor. In addition, the floor broker still would be able to contact manually any customer.

Finally, the PSE proposal would not jeopardize the effectiveness or operation of any of the rules or obligations that currently regulate Exchange floor activity.⁵

³ Because the PSE is unsure whether this program would be used enough to justify permanent status, it requested a six-month pilot program. If the program meets the Exchange's expectations, the PSE anticipates submitting a future rule filing requesting permanent status.

⁴ The PSE has informed the Commission that its agreement with Autex is not exclusive, *i.e.*, that other vendors could contract with the PSE for installation of their terminals in the same manner as Autex.

⁵ The PSE proposal would not conflict with the Plan for Reporting of Consolidated Options Last

Accordingly, 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(b)(5)⁶ and the rules and regulations thereunder. The pilot use of Autex should facilitate execution of complex orders, while enabling market makers and floor brokers to spend more time in the trading crowd.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: May 29, 1987.

[FR Doc. 87-12946 Filed 6-5-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15761/File No. 812-6631]

The Penn Mutual Life Insurance Co. et al.; Application

June 1, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

Applicants: The Penn Mutual Life Insurance Company ("Penn Mutual"), Penn Mutual Variable Life Account I (the "Account"), and Penn Mutual Equity Services, Inc. ("PMES").

Relevant 1940 Act Sections and Rules: Exemption request under section 6(c) of the Act from sections 2(a)(32), 22(c), 27(c)(1), and 27(d) of the Act and Rules 6e-3(T)(b)(12)(ii), 6e-3(T)(b)(13)(iv), and 22c-1 thereunder.

Filing Date: The application was filed on February 18, 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

Sale Reports and Quotation Information administered by the Options Price Reporting Authority ("OPRA"). The OPRA plan does not cover the "special orders" that would be displayed over the Autex system. See Securities Exchange Act Release No. 17638 (March 18, 1981). The Commission notes, however, that in the event that more than one options exchange (or more than one vendor at an exchange) seeks to disseminate indications of interest for the same multiple-series or stock/option orders, consolidation of that information, through OPRA or otherwise, might be desirable.

⁶ 15 U.S.C. 78f (1984).

⁷ 15 U.S.C. 78s(b)(2) (1984).

¹ 15 U.S.C. 78s(b)(1) (1984).

² 17 CFR 240.19b-4 (1986).

ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on June 26, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants 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. Penn Mutual and the other Applicants, Independence Square, Philadelphia, Pennsylvania 19172.

FOR FURTHER INFORMATION CONTACT: Clifford E. Kirsch, Staff Attorney, at (202) 272-3032 or Lewis B. Reich, Special Counsel, at (202) 272-2061 (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, (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations and Statement of Fact

1. Penn Mutual is planning to issue certain flexible premium variable life insurance contracts ("Contracts") through the Account, which is registered under the Act as a unit investment trust.

2. The Account will, through its subaccounts, invest in the funds of Penn Series Funds, Inc.

3. The Contract requires an initial premium payment of at least \$5,000 and permits additional premiums to be paid under various circumstances. The application, through incorporation by reference of the registration statement for the Contract, states that additional premium payments may be made in three different circumstances, provided they do not cause the Contract to fail to qualify as life insurance under Federal income tax law. First, additional payments will always be accepted if necessary to prevent the contract from lapsing. Second, an additional payment may be made that does not result in an immediate increase in the death benefit, if the payment is at least \$250. Third, an additional payment may be made that does result in an immediate increase in the death benefit, if evidence of insurability is furnished satisfactory to Penn Mutual and the additional payment is at least \$250.

4. No charges are deducted from the initial premium prior to its investment in the Account. During the first nine

contract years, a monthly deduction is made against the Contract's investment base to reimburse Penn Mutual for the payment of state and local premium taxes attributable to initial premiums on the Contracts. Penn Mutual expects to incur an average state and local premium tax rate of 2.25%. Instead of deducting this 2.25% charge from the initial premium prior to its allocation to the Account, the entire premium is invested and the 2.25% charge is deducted from the investment base in 108 equal monthly installments over the first nine contract years. A Contract may be surrendered in whole for its cash surrender value while the insured is living. If the Contract is surrendered prior to the collection of the full 2.25% charge for premium taxes (i.e., during the first nine contract years), the Company will deduct the previously uncollected portion from the Contract's cash surrender value. In the event that subsequent premium payments are made under a Contract the 2.25% charge for premium taxes will be deducted prior to investment of the additional premium in the Account.

5. Applicants assert that it is not completely clear whether any further exemption beyond those granted by Rule 6e-3(T) is required in order to permit the uncollected portion of the charge for premium taxes to be deducted upon surrenders of the Contract during the first nine contract years. Rule 6e-3(T)(b)(13)(iii)(E) allows the deduction of amounts for premium taxes from the cash value of a flexible premium variable life insurance contract if certain conditions are fulfilled, as they are with respect to the Contracts. Nothing in rule 6e-3(T) specifically prohibits the deduction of such amounts from cash value prior to a surrender. Nonetheless, to avoid any question as to full compliance with the Act, Applicants seek relief from sections 2(a)(32), 22(c), 27(c)(1), and 27(d) and Rules 6e-3(T)(b)(12)(ii), 6e-3(T)(b)(13)(iv), and 22c-1.

6. Applicants submit that imposition of the charge for premium taxes in the form of a deferred charge is much more favorable to contractowners than a charge that is deducted entirely from premiums, which is a more conventional way of making this charge. First, the amount of the contractowner's investment in the Account is not reduced as it would be were this charge taken prior to the allocation of the premium to the Account. Second, the total amount charged to any contractowner is no greater than if this charge is taken in full prior to the allocation of the initial premium. Third, contractowners are advantaged because the cost of insurance charges deducted

monthly from the amounts credited to them in the Account will be lower than they would have been had this charge been deducted in full prior to the allocation of the premium to the Account.

7. Applicants also argue that it is appropriate and equitable to deduct any uncollected portion of the charge upon surrender of the Contract. The charge for premium taxes is not contingent. Because the full charge is eventually deducted from the investment base of all Contracts, including those that are never surrendered, it is equitable that the uncollected portion of the premium tax charge be deducted upon early surrender. Were such uncollected portions not deducted upon early surrenders, the nonsurrendering contractowners would be forced to inequitably subsidize the premium taxes attributable to contractowners that surrendered their Contracts during the first nine contract years.

8. Penn Mutual represents that it does not anticipate making a profit on the deferred premium tax charge. Penn Mutual also represents that the amount of the charge is the same as it would have been had it been imposed as a front-end charge. In particular, this charge does not take into account the time value of money (which would increase the charge to factor in the investment cost to Penn Mutual of deferring the charge). Thus, the contractowners will obtain the advantages from the deferral of this charge without incurring any additional cost.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-12947 Filed 6-5-87; 8:45 am]

BILLING CODE 8010-0-M

SMALL BUSINESS ADMINISTRATION

Minority Small Business and Capital Ownership Development, Management and Technical Assistance Application Announcement

SUMMARY: The U.S. Small Business Administration, Office of Minority Small Business and Capital Ownership Development (MSB&COD) announces that it is soliciting applications under its 7(j) Program to provide management and technical assistance services nationally to cover 81 separate geographical areas. Projects for each area are to operate for a 12 month period beginning October 1, 1987, and will range from approximately

\$14,000 to \$250,000 with a total cost for these projects not to exceed \$4,500,000.

Specific awards made under this announcement may consist of project periods up to, but not beyond thirty-six (36) months of performance. The project periods may consist of up to three (3) twelve (12) month budget periods. Approximately one third of the awards will be for a one year period with no options; one third will be for one year with the possibility of a twelve month option and the remaining one-third will be for a one year period with the possibility of two-twelve month options.

Each additional twelve (12) month budget period beyond the original award will be exercised at the option of the Government, based on satisfactory performance of the applicant. Applicant will be advised of the Government's intent to exercise any options by letter from the SBA's Office of Procurement and Grants Management approximately three (3) months prior to the expiration of the previous twelve (12) month budget period.

All awards will be subject to the availability of funds.

The announcement number is MSB-88-002-01.

Funding Instrument

The funding instruments, as defined by the Federal Grants and Cooperative Agreements Act of 1977 (31 U.S.C. 6304/6305) will be cooperative agreements.

Program Description

The SBA provides management and technical assistance services to eligible small businesspersons under two Programs, 7(j)(1-9) and 7(j)(10). Cooperative agreements awarded under both programs will be on a competitive basis to small business consulting firms. Firms which are eligible to receive services offered under 7(j)(1-9) are existing or potential businesspersons who are economically and/or socially disadvantaged or who are located in areas of high concentration of unemployed, or who participate in activities authorized by section 7(i) of the Small Business Act, as amended.

Applicants applying for 7(j)(1-9) awards must be capable of providing assistance in such areas as accounting, production, engineering and technical assistance, feasibility studies, market analyses, specialized services, government contracts, advertising assistance, computer programming services, and data processing services. Small businesspersons certified by the SBA as 8(a) are eligible to receive assistance under the 7(j)(10) Program. Applicants responding to one of the geographical areas under 7(j)(10) must

be capable of providing services in such cases as loan packaging, the development of business plans, financial counseling, surety bond and construction management assistance, computer programming services, government contracts, and areas of specialized assistance particularly germane to specific 8(a) firms. All Applicants responding to any one of the geographical areas listed in the announcement must have had an office physically located within that geographical area for a period of one year prior to the release date of the announcement. No partial applications will be accepted for consideration. Important—"a separate application must be submitted for each geographical area as specified in our program announcement. Any multiple/combined submissions for two or more geographical areas will be rejected from consideration." Applicants must submit their application/proposal on or before June 5, 1987, at 5:00 p.m., local time, at the respective SBA Regional Office.

Eligible Applicants

This announcement is a total 100% small business set-aside. Any concern making application for services is classified as small if its average annual sales or receipts for its preceding three (3) fiscal years do not exceed \$3.5 million.

Application Materials

Applications will be forwarded to interested participants upon telephone request, (Contact Ms. Bernita Kane at (202) 653-5689 or Ms. Lillian Harris at (202) 653-6439) or upon written request to the U.S. Small Business Administration, Office of Minority Small Business and Capital Ownership Development, Office of Private Industry Programs, 1441 L Street NW., Room 602, Washington, DC 20416. All awards will be announced in the *Federal Register* and the *Commerce Business Daily*.

Evaluation and Award Process

All proposals received as a result of this announcement will be evaluated by SBA review panels. The awarding of MSB&COD Cooperative Agreements is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Disposition of Proposal

Notification of awards will be made by the Grants Management Officer. Organizations whose proposals are unsuccessful will be sent an awards list advising them of the successful awardees. Nothing in this announcement shall be construed as

committing MSB&COD to divide available funds among all qualified applicants.

(59.007 Management and Technical Assistance for Disadvantaged Businesspersons)

James Abdnor,
Administrator.

[FR Doc. 87-12907 Filed 6-5-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending May 29, 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. 44898

Parties:

Members of International Air Transport Association

Date Filed: May 29, 1987

Subject: Increase Rates ex-China

Proposed Effective Date: June 1, 1987

Docket No. 44901

Parties:

Members of International Air Transport Association

Date Filed: May 29, 1987

Subject: Amend GCR and SCR

proportional rates to/from Brazil

Proposed Effective Date: June 15, 1987

Docket No. 44905

Parties: Allegis Investors Group and The Boeing Company

Date Filed: May 29, 1987

Subject: Petition of The Allegis Investors Group to assert jurisdiction over and require approval of the acquisition of control of the Allegis Corporation by the Boeing Company.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-12950 Filed 6-5-87; 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 Ending May 29, 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. 44900

Date Filed: May 28, 1987

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 11, 1987

Description: Conforming Application of Continental Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations, requests a certificate of public convenience and necessity which will authorize Continental to carry local passengers, property and mail between London, England and Frankfurt, Federal Republic of Germany from October 29 through May 14 of each year, commencing October 29, 1987.

Docket Nos. 43782 and 44547

Date Filed: May 29, 1987

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 26, 1987

Description: Amendment to the Application of Pakistan International Airlines Corporation pursuant to section 402 of the Act requesting foreign air carrier permits, to conform

to the revised authority requested in its exemption application in Docket 44512—i.e., to amend its permit only in the following respects: (1) To add Toronto, Canada to PIA's Pakistan-United States route; and (2) to allow PIA to serve Toronto and Montreal, Canada as either intermediate or beyond points.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-12949 Filed 6-5-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-87-10]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued; Socata et al.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections.

The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before June 29, 1987.

ADDRESS: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. 3, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 2, 1987.

Leonard R. Smith,

Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25207	Socata	§§ 145.71 and 145.73	To allow Socata to perform preventive maintenance, maintenance, rebuilding, alteration and optional equipment fitting on Socata's manufactured aircraft under an FAA type certificate.
25219	Presidential Airways, Inc.	§§ 121.371 (a)121.378	To allow Presidential Airways, Inc., to use Airmotive of Ireland to maintain model JT8D engines used on Presidential's Boeing aircraft.
25181	Arrow Air	§§ 43.3 and 43.7	To allow Arrow Air to use aircraft parts purchased from Iberia Airlines and KLM Royal Dutch Airlines which have not been maintained or approved for return to service by persons prescribed by §§ 43.3 and 43.7.
22469	Parks College of St. Louis University	Part 141	An extension of Exemption No. 3495 to allow petitioner's aviation students to graduate from the appropriate courses when they have been trained to a specific standard rather than having met the minimum flight time requirement of Part 141.
23647	Embry-Riddle Aeronautical University	§ 141.65	An extension of Exemption No. 3859 to allow petitioner to continue to recommend graduates of its certificated flight instructor courses for flight instructor certificates and ratings without taking the Federal Aviation Administration (FAA) written or flight tests.
25201	United States Air Force Academy	§ 61.73(b)(1)	To allow the Air Force Academy cadet soaring instructors to obtain an FAA commercial pilot certificate without the rated military pilot requirement.
21802	Sowell Aviation Company, Inc.	§ 141.65	An extension of Exemption No. 4551 to allow petitioner to recommend graduates of its FAA-approved certification courses for flight instructor and airline transport pilot certificates and ratings without taking the FAA written test in accordance with the provisions of Subpart D of Part 141.
19475	Flight Safety International	§§ 61.63(d) (2) and (3), 61.157(d)(1) and (e)(1), and 121.407(a)(1)(i).	An extension of Exemption No. 2854 to allow petitioner to determine pilot competency using Phase I and Phase II simulators.
15590	Embry-Riddle Aeronautical University	Part 141, Appendixes A, C, D, F, and H	An extension of Exemption No. 2329 to allow petitioner to graduate students when they have been trained to a performance standard instead of requiring minimum total flight time. This exemption does not allow a reduction of the minimum solo cross-country flight time.
25210	Air Transport Association of America	§§ 63.39(b) (1) and (2) and 121.425(a)(2) (i) and (ii).	To allow petitioner's member airlines and any other qualifying Part 21 certificate holder to permit checking of certain highly qualified flight engineer candidates using advance pictorial means in place of static aircraft for preflight inspections and to complete the normal procedures checks in simulators or approved training devices rather than actual aircraft.
25227	Northwest Airlines, Inc.	§ 121.433(c)	To allow petitioner to merge the recurrent training of former Republic Airlines pilots with its 1988 annual recurrent training.

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
25185	Messerschmidt-Bolkow-Blohm GmbH.....	§ 145.73	To allow petitioner, a certificated foreign repair station and original aircraft manufacturer, to perform inspection, maintenance, repair, alteration, and conversion of Airbus A300-B4-203 aircraft.

[FR Doc. 87-12893 Filed 6-5-87; 8:45 am]

BILLING CODE 4910-B-M

Maritime Administration**Determination of Ship Values for War Risk Insurance****AGENCY:** Maritime Administration, Department of Transportation.**ACTION:** Determination of ship values for war risk insurance, effective January 1, 1987.

SUMMARY: Pursuant to the procedure stated at 46 CFR 309.1, the required biannual notice is hereby given of the stated valuations of individual vessels upon which interim binders for war risk hull insurance have been issued. The valuations set forth herein constitute just compensation for the vessels to which they apply, and have been computed in accordance with sections 902(b) and 1209(a)(2) of the Merchant

Marine Act, 1936, as amended (46 U.S.C. 1242(b), and 1289(a)(2)). The authority to make these vessel valuations was delegated to the Maritime Administrator by the Secretary of Transportation by DOT Order 1100.60 (August 6, 1981). Such stated valuations apply to vessels covered by interim binders for war risk hull insurance, Form MA-184, prescribed by 46 CFR Part 308. In accordance with Public Law 99-59, authority to issue such war risk insurance will expire on June 30, 1990.

The interim binders listed below shall be deemed to have been amended as of January 1, 1987, by inserting in the space provided therefore, or in substitution for only value appearing in such space, the stated valuations of the respective vessels that appear on the list. Such stated valuations shall apply with respect to insurance attached during the

period January 1, 1987 to June 30, 1987 inclusive, subject to reservation by the Maritime Administration of the right to revise the values assigned herein. The assured shall have the right, within 60 days after the date of publication of this notice, or within 60 days after the attachment of the insurance under the interim binder to which a specific valuation applies, whichever date is later, to reject such valuation and proceed as authorized by 46 U.S.C. 1289(a)(2).

(Catalog of Federal Domestic Assistance Program No. 20.803 War Risk Insurance)

By Order of the Maritime Administrator.

Dated: June 2, 1987.

James E. Saari,

Secretary.

BILLING CODE 4910-81-M

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FEDERAL REGISTER LIST OF SHIP VALUATIONS

BINDER NO.	VESSEL NAME	OFFICIAL NO.	VALUATION 1.1.87
3624	CG-481 THRU CG-660	543481-543660	\$ 20000
3457	CHARLES LYKES	577636	\$ 10000000
3350	CHARLESTON	248095	\$ 7150000
3685	CHARLOTTE LYKES	668349	\$ 6500000
3215	CHELSEA	562416	\$ 3000000
3144	CHEERY VALLEY	557503	\$ 3000000
3286	CHESTNUT HILL	577738	\$ 4000000
3394	CHEVRON ARIZONA	588320	\$ 10900000
2985	CHEVRON CALIFORNIA	541563	\$ 10625000
3308	CHEVRON COLORADO	577358	\$ 10900000
3372	CHEVRON LOUISIANA	584696	\$ 10900000
2992	CHEVRON MISSISSIPPI	542850	\$ 10625000
3309	CHEVRON OREGON	566080	\$ 10900000
3310	CHEVRON WASHINGTON	570709	\$ 10900000
3626	COAST RANGE	638709	\$ 34700000
3104	CORONADO	553623	\$ 3000000
3704	COVE LEADER	279938	\$ 2600000
3702	COVE LIBERTY	644295	\$ 2600000
370	COVE TRADER	279438	\$ 1565000
2944	DELAWARE SEA	245058	\$ 840000
2806	EDGAR M. QUEENY	528567	\$ 5000000
3531	EDWARD RUTLEDGE	625873	\$ 22000000
2086	ELIZABETH LYKES	500702	\$ 975000
3658	ENERGY INDEPENDENCE	657540	\$ 52800000
2980	EXPORT FREEDOM	541414	\$ 4000000
3065	EXPORT PATRIOT	548442	\$ 4000000
2593	EXXON BALTIMORE	282272	\$ 1425000
3056	EXXON BATON ROUGE	524619	\$ 9000000
3465	EXXON BENICIA	600478	\$ 28000000
2595	EXXON BOSTON	283784	\$ 1495000
3668	EXXON CHARLESTON	658493	\$ 76000000
2601	EXXON HOUSTON	297151	\$ 3180000
2603	EXXON JAMESTOWN	275519	\$ 1630000
2610	EXXON LEXINGTON	276270	\$ 1630000
2606	EXXON NEW ORLEANS	298216	\$ 3180000
3460	EXXON NORTH SLOPE	600477	\$ 28000000
3057	EXXON PHILADELPHIA	526792	\$ 9000000
3058	EXXON SAN FRANCISCO	523626	\$ 9000000
2609	EXXON WASHINGTON	273896	\$ 1630000
3708	FALCON CHAMPION	663105	\$ 20000000
3709	FALCON COUNTESS	536850	\$ 4800000
3710	FALCON DUCHESS	533611	\$ 4800000
3711	FALCON LADY	531154	\$ 4800000
3712	FALCON LEADER	658555	\$ 20000000
3713	FALCON PRINCESS	538811	\$ 4800000
3293	FREDERICKSBURG	629297	\$ 6100000
3540	FREEPORT I	514966	\$ 5300000
3541	FREEPORT II	516720	\$ 5300000
3538	GALE B.	292748	\$ 11600000

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9.70

FEDERAL REGISTER LIST OF SHIP VALUATIONS

BINDER NO.	VESSEL NAME	OFFICIAL NO.	VALUATION 1.1.87
3686	ADABELLE LYKES	668348	\$ 6500000
3537	ALISON C.	513704	\$ 1300000
3647	AM. VETERAN(AUSTRAL MOON	530142	\$ 5000000
2764	AMERICA SUN	523846	\$ 9855000
2812	AMERICAN APOLLO	529004	\$ 4285000
2869	AMERICAN AQUARIUS	530999	\$ 4285000
2583	AMERICAN ASTRONAUT	520694	\$ 4285000
3360	AMERICAN HERITAGE	577343	\$ 4000000
2446	AMERICAN LANCER	514261	\$ 4000000
2550	AMERICAN LARK	518444	\$ 4000000
2485	AMERICAN LIBERTY	516464	\$ 4000000
2518	AMERICAN LYNX	517450	\$ 4000000
3644	AMERICAN MARKETER	547303	\$ 6500000
3645	AMERICAN MERCHANT	547388	\$ 6500000
3641	AMERICAN MONARCH	519937	\$ 705000
3648	AMERICAN RESOLUTE	612715	\$ 9000000
3639	AMERICAN SPITFIRE	518434	\$ 705000
3640	AMERICAN TITAN	515976	\$ 705000
3395	AMERICAN TRADER	530139	\$ 11000000
3642	AMERICAN TROJAN	517617	\$ 1200000
3654	AMOCO COLUMBIA	648470	\$ 5250000
3609	AMOCO FLORIDA	640014	\$ 10200000
3610	AMOCO GEORGIA	643069	\$ 8785000
3607	AMOCO RICHMOND	644241	\$ 5250000
3611	AMOCO SOUTH CAROLINA	645759	\$ 10000000
3495	ARCO ALASKA	614544	\$ 30000000
3048	ARCO ANCHORAGE	548424	\$ 19000000
3518	ARCO CALIFORNIA	623291	\$ 30000000
233	ARCO ENDEAVOR	277623	\$ 1150000
3194	ARCO FAIRBANKS	559400	\$ 19000000
3604	ARCO INDEPENDENCE	586633	\$ 45000000
3142	ARCO JUNEAU	556666	\$ 19000000
2900	ARCO PRUDHOE BAY	536496	\$ 10435000
2948	ARCO SAG RIVER	539313	\$ 10435000
3469	ARGONAUT	601377	\$ 9000000
1716	ASHLEY LYKES	292191	\$ 1540000
3385	ATIGUN PASS	586128	\$ 28000000
3608	ATLANTA BAY	646348	\$ 5250000
3337	AUSTRAL RAINBOW	530141	\$ 5000000
3464	BAY RIDGE	600128	\$ 39300000
3357	BEAVER STATE	572359	\$ 4000000
3522	BENJAMIN HARRISON	624457	\$ 22000000
3315	BIEHL TRADER	582451	\$ 3750000
3316	BIEHL TRAVELER	584627	\$ 3750000
3628	BLUE RIDGE	633428	\$ 34700000
3270	BOSTON	511485	\$ 520000
1414	BRINTON LYKES	288699	\$ 1540000
3408	BROOKS RANGE	586130	\$ 28000000
3623	CG-461 THRU CG-480	543461-543480	\$ 20000

1

FEDERAL REGISTER LIST OF SHIP VALUATIONS

05/08/87
9.70

BINDER NO.	VESSEL NAME	OFFICIAL NO.	VALUATION 1.1.87
2556	GALVESTON	248242	\$ 715000
2421	GENEVIEVE LYKES	513140	\$ 975000
3346	GLACIER BAY	526588	\$ 10215000
2791	GOLDEN GATE	526972	\$ 8940000
3512	GOLDEN MONARCH	566090	\$ 4000000
2861	IOS 3301MARTHA R. INGRAM	531048	\$ 3500000
2935	IOS 3302 CAROL G. INGRAM	538231	\$ 3500000
2108	ISLANDER	292810	\$ 620000
387	JAMES LYKES	280564	\$ 1500000
1304	JEAN LYKES	287103	\$ 1500000
3366	JOE SEVIER	500799	\$ 360000
389	JOHN LYKES	282772	\$ 1500000
390	JOSEPH LYKES	281326	\$ 1500000
3491	KAUAI	621042	\$ 4600000
3456	KENAI	586127	\$ 21630000
3398	KEYSTONE CANYON	586129	\$ 28000000
598	KEYSTONER	266730	\$ 750000
3287	KITTANNING	579572	\$ 4000000
3622	LB-726 THRU LB-966	550598-562966	\$ 20000
1352	LESLIE LYKES	287416	\$ 1500000
2403	LETITIA LYKES	512187	\$ 975000
3256	LONG BEACH	248240	\$ 1145000
2062	LOUISE LYKES	299938	\$ 975000
1356	MANHATTAN	287253	\$ 5000000
2763	MANUKAI	524219	\$ 15000000
2803	MANULANI	528400	\$ 15000000
3492	MAOI	618705	\$ 775000
3687	MARGARET LYKES	668349	\$ 6500000
2814	MARINE CHEMIST	529399	\$ 4500000
2777	MARINE DUVAL	245851	\$ 1220000
2133	MARINE FLORIDIAN	246836	\$ 1220000
1812	MARINE TEXAN	247563	\$ 1000000
1513	MARJORIE LYKES	289873	\$ 1540000
3539	MARTHA B.	299786	\$ 2700000
2109	MAUNALEI	246343	\$ 765000
2649	MAUNAWILI	246984	\$ 1145000
3152	MOBIL ARCTIC	542026	\$ 19000000
2442	MOBIL MERIDIAN	286479	\$ 1670000
3301	MORMACSKY	578288	\$ 3150000
3302	MORMACSTAR	569257	\$ 3150000
3303	MORMACSTAR	573770	\$ 3150000
2799	MOUNT VERNON VICTORY	284178	\$ 1565000
2800	MOUNT WASHINGTON	293097	\$ 1575000
1243	NANCY LYKES	286650	\$ 1500000
3348	NEW YORK	569583	\$ 9205000
3656	NEW YORK SUN	628783	\$ 26140000
3282	NEWARK	511486	\$ 715000
3259	OAKLAND	248076	\$ 1145000
3577	OGDEN HUDSON	642151	\$ 42400000

FEDERAL REGISTER LIST OF SHIP VALUATIONS

05/08/87
9.70

BINDER NO.	VESSEL NAME	OFFICIAL NO.	VALUATION 1.1.87
3471	OGDEN LEADER	520839	\$ 500000
2614	OGDEN WABASH	520728	\$ 5000000
3515	OGDEN YUKON	547919	\$ 10485000
2745	OMI CHAMPION	523341	\$ 5000000
3470	OMI CHARGER	522864	\$ 5000000
3576	OMI DYNACHEM	638899	\$ 42400000
2591	OMI WILLAMETTE	518738	\$ 5000000
2827	OVERSEAS ALASKA	529795	\$ 9015000
3672	OVERSEAS ALICE	514928	\$ 4050000
2862	OVERSEAS ARCTIC	530877	\$ 9015000
3378	OVERSEAS CHICAGO	583412	\$ 15600000
3409	OVERSEAS HARRIETTE	590624	\$ 4800000
3533	OVERSEAS JUNEAU	553137	\$ 19000000
3406	OVERSEAS MARILYN	590623	\$ 3000000
3377	OVERSEAS NATALIE	287156	\$ 4800000
3386	OVERSEAS NEW YORK	588001	\$ 15600000
3383	OVERSEAS OHIO	586647	\$ 15600000
3671	OVERSEAS VALDEZ	517186	\$ 4050000
3480	OVERSEAS VIVIAN	518125	\$ 4050000
3399	OVERSEAS WASHINGTON	588955	\$ 15600000
3260	PANAMA	248241	\$ 1145000
3472	PETERSBURG	291990	\$ 1570000
2560	PHILADELPHIA	516541	\$ 715000
3655	PHILADELPHIA SUN	638073	\$ 29250000
2844	PITTSBURGH	247275	\$ 1000000
3277	PORTLAND	511487	\$ 715000
2501	PRESIDENT ADAMS	517120	\$ 2000000
2740	PRESIDENT CLEVELAND	521866	\$ 2000000
3690	PRESIDENT EISENHOWER	673003	\$ 27500000
3689	PRESIDENT F.D. ROOSEVELT	674310	\$ 27500000
2447	PRESIDENT FILLMORE	513860	\$ 3500000
3483	PRESIDENT GRANT	530138	\$ 11000000
3485	PRESIDENT HOOVER	530137	\$ 11000000
2526	PRESIDENT JACKSON	517717	\$ 2000000
3030	PRESIDENT JEFFERSON	544900	\$ 6500000
3121	PRESIDENT JOHNSON	552109	\$ 6500000
1947	PRESIDENT KENNEDY	296779	\$ 3285000
3677	PRESIDENT LINCOLN	651627	\$ 30000000
3041	PRESIDENT MADISON	546725	\$ 6500000
2416	PRESIDENT MCKINLEY	512593	\$ 3500000
3678	PRESIDENT MONROE	655397	\$ 30000000
3120	PRESIDENT FIERCE	552108	\$ 6500000
2398	PRESIDENT TAFT	511653	\$ 3500000
2565	PRESIDENT TAYLOR	518517	\$ 2000000
3484	PRESIDENT TYLER	530140	\$ 11000000
2359	PRESIDENT VAN BUREN	509581	\$ 3500000
3679	PRESIDENT WASHINGTON	653424	\$ 30000000
2622	PRESIDENT WILSON	520392	\$ 2000000
3705	PRIDE OF TEXAS	634621	\$ 9000000

FEDERAL REGISTER LIST OF SHIP VALUATIONS

05/08/87
9.70

BINDER NO.	VESSEL NAME	OFFICIAL NO.	VALUATION 1,1,87
3361	WA-1-001/0302--0304/0450	551001	\$ 20000
3362	WA-2-0451-2-0575	567451	\$ 25000
3621	WA-3-0576 THRU WA-3-0725	608 13-608862	\$ 30000
2928	WESTERN SUN	268798	\$ 1300000
411	ZDELLA LYKES	282126	\$ 1500000

FEDERAL REGISTER LIST OF SHIP VALUATIONS

05/08/87
9.70

BINDER NO.	VESSEL NAME	OFFICIAL NO.	VALUATION 1,1,87
3396	PRINCE WILLIAM SOUND	570108	\$ 19040000
3147	ROBERT E. LEE	557033	\$ 6500000
2162	RUTH LYKES	502928	\$ 975000
2846	SAN PEDRO	248238	\$ 1000000
2918	SANSINENA II	535020	\$ 10320000
3423	SANTA ADELA	504015	\$ 975000
2752	SANTA JUANA	502726	\$ 975000
3453	SEA-LAND ADVENTURE	594073	\$ 10000000
3100	SEA-LAND CONSUMER	552818	\$ 7500000
3488	SEA-LAND DEFENDER	604246	\$ 25000000
3513	SEA-LAND DEVELOPER	604247	\$ 25000000
2868	SEA-LAND ECONOMY	532410	\$ 6350000
3534	SEA-LAND ENDURANCE	606062	\$ 25000000
3489	SEA-LAND EXPLORER	604248	\$ 25000000
3514	SEA-LAND EXPRESS	604249	\$ 25000000
3527	SEA-LAND FREEDOM	606065	\$ 25000000
3516	SEA-LAND INDEPENDENCE	606061	\$ 25000000
3529	SEA-LAND INNOVATOR	606064	\$ 25000000
3451	SEA-LAND LEADER	594374	\$ 10000000
3487	SEA-LAND LIBERATOR	604245	\$ 25000000
3526	SEA-LAND MARINER	606066	\$ 25000000
3450	SEA-LAND PACER	593980	\$ 10000000
3486	SEA-LAND PATRIOT	604244	\$ 25000000
3452	SEA-LAND PIONEER	594375	\$ 10000000
3131	SEA-LAND PRODUCER	552819	\$ 7500000
2867	SEA-LAND VENTURE	531478	\$ 6350000
3517	SEA-LAND VOYAGER	606063	\$ 25000000
3688	SHELDON LYKES	668350	\$ 6500000
1428	SHIRLEY LYKES	289283	\$ 1540000
3627	SIERRA MADRE	641804	\$ 34700000
3344	SOHIO INTREPID	533270	\$ 9855000
3345	SOHIO RESOLUTE	535357	\$ 9855000
982	SOLON TURMAN	285889	\$ 1500000
2489	SPIRIT OF LIBERTY	516521	\$ 4050000
3707	SPIRIT OF TEXAS	653210	\$ 9000000
3415	SS MAUI	591709	\$ 37375000
2755	ST. LOUIS	515620	\$ 1000000
3706	STAR OF TEXAS	642934	\$ 9000000
3148	STONEWALL JACKSON	557034	\$ 6500000
3413	STUYVESANT	584459	\$ 39300000
3606	TALLAHASSEE BAY	640635	\$ 5250000
2927	TEXAS SUN	283897	\$ 1590000
3536	THERESA F.	516158	\$ 1300000
405	THOMPSON LYKES	283413	\$ 1500000
3431	THOMPSON PASS	586131	\$ 28000000
3391	TONSINA	585629	\$ 22000000
3657	TROPIC SUN	275583	\$ 1430000
2270	VALLEY FORGE	505786	\$ 3875000
3652	VIRGINIA BAY	642492	\$ 10200000

[FR Doc. 87-12974 Filed 6-5-87; 8:45 am]
BILLING CODE 4910-81-C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Income Taxes; 1988 Electronic Filing Program; Forms 1040, 1040A, and 1040EZ Returns

AGENCY: Internal Revenue Service, Treasury.

ACTION: Electronic filing program.

SUMMARY: In 1988 the Internal Revenue Service plans to continue the program to file individual income tax returns electronically. Accepted return preparers will be permitted to transmit, electronically, their clients' individual income tax returns for 1987. Most commonly used forms and schedules will be accepted.

Electronic returns can be accepted from preparers in 16 district areas, 10 of which include the whole state.

Taxpayers in all 16 areas can elect to have their refunds directly deposited in their bank, savings and loan, or credit union account.

Interested parties should contact the Electronic Filing Coordinator for detailed specifications. Addresses for each district area are listed below. The nationwide telephone number for electronic filing information is 1-800-424-1040.

DATE: All applications for participation must be received by September 15, 1987.

ADDRESS:

District Director, 2345 Fair Oaks Blvd.,
Sacramento, CA 95825

District Director, 55 South Market St.,
San Jose, CA 95113

District Director, Leo O'Brien Federal
Bldg. Clinton Ave., & North Pearl St.,
Albany, NY 12207

District Director, 111 W. Huron St.,
Buffalo, NY 14202

District Director, Federal Bldg. & Court
House, 517 E. Wisconsin Ave.,
Milwaukee, WI 53202

District Director, 550 Main St.,
Cincinnati, OH 45202

District Director, 320 Federal Place,
Greensboro, NC 27401

District Director, 400 North 8th St.,
Richmond, VA 23240

District Director, 2120 North Central,
Phoenix, AZ 85004

District Director, 575 NR. Pennsylvania
St., Indianapolis, IN 46204

District Director, 601 W. Broadway,
Louisville, KY 40202

District Director, 465 South 400 East,
Salt Lake City, UT 84111

District Director, 1100 Commerce St.,
Dallas, TX 75242

District Director, 915 Second Ave.,
Seattle, WA 98174

District Director, 500 22nd. St., South,
Birmingham, AL 35233

District Director, Federal Office Bldg.,
106 South 15th. St., Omaha, NE 68102.

SUPPLEMENTARY INFORMATION: In 1988 Forms 1040, 1040A and 1040EZ can be filed electronically. Forms 1040 can include Schedules A, B, C, D, E, R, SE, and Forms W-2, W-2P, W-2G, 2106, 2119, 2441, 3903, 4562, 6198, 6251, 6252, 8283, 8582, 8598, 8606.

The district areas to be included in the 1988 program are Albany, New York; Birmingham, Alabama; Buffalo, NY; Cincinnati, Ohio; Dallas, Texas; Greensboro, North Carolina; Indianapolis, Indiana; Louisville, Kentucky; Milwaukee, Wisconsin; Omaha, Nebraska; Phoenix, Arizona; Richmond, Virginia; Salt Lake City, Utah; Seattle, Washington; Sacramento, California; and San Jose, California. The entire states that are included in the program area are Alabama, North Carolina, Indiana, Kentucky, Wisconsin, Nebraska, Arizona, Virginia, Utah and

Washington. In addition in all sixteen districts taxpayers will be permitted to elect to have their refunds directly deposited into their bank, saving and loan or credit union accounts.

The principal advantages of electronic filing are (1) most taxpayers will receive refunds two or three weeks faster than if their returns had been filed in the form of paper documents; (2) returns preparers will be able to serve their clients more efficiently; (3) the cost to IRS of processing, storing and retrieving these returns will be reduced substantially, and (4) taxpayers participating in direct deposit will obtain their refunds quickly and more conveniently.

A participating electronic filer must meet the following qualifications to be accepted:

1. Intend to electronically transmit at least 100 tax year 1987 returns in 1988.

Note.—If you intend to transmit less than 100 returns, you must transmit through a commercially accepted system.

2. Have substantial communication experience under IBM 3780 RJE bi-synchronous protocol at 4800 BAUD through a dial-up modem or associated with another firm which has such experience.

3. Have an office in one or more of the designated IRS district offices included for 1988.

Note.—Software firms who plan to develop software packages for use by participating electronic filers only, do not need to be located within one of the designated districts.

4. Comply with the acceptance procedures; and

5. Observe all requirements of the Revenue Procedure.

Electronic preparation offices must be located within the following districts and counties:

District office	Areas included	Service center
Albany, NY	Counties of Albany, Clinton, Columbia, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Saratoga, Schoenectady, Schoharie, St. Lawrence, Sullivan, Ulster, Warren and Washington.	Cincinnati.
Birmingham, AL	Entire State of Alabama	Do.
Buffalo, NY	Counties of Allegany, Broome, Cattaraugus, Cayuga, Chautauque, Chemung, Chenango, Cortland, Delaware, Erie, Genesee, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming and Yates.	Do.
Cincinnati, OH	Counties of Adams, Athens, Brown, Butler, Clark, Clermont, Clinton, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Guernsey, Hamilton, Highland, Hocking, Jackson, Knox, Lawrence, Licking, Madison, Marion, Meigs, Miami, Montgomery, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Preble, Ross, Scioto, Union, Vinton, Warren and Washington.	Do.
Dallas, TX	Counties of Anderson, Andrews, Angelina, Archer, Armstrong, Bailey, Baylor, Borden, Bowie, Briscoe, Brown, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Donley, Eastland, Ector, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Franklin, Gaines, Garza, Glasscock, Gray, Grayson, Gregg, Hale, Hall, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Henderson, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Hutchinson, Irion, Jack, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Lipscomb, Loving, Lubbock, Lynn, Martin, Martin, Menard, Midland, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Potter, Rains, Randall, Reagan, Red River, Roberts, Rockwall, Runnels, Rusk, Sabine, San Augustine, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terry, Counties of Throckmorton, Titus, Tom Green, Upshur, Upton, Van Zandt, Ward, Wheeler, Wichita, Wilbarger, Winkler, Wise, Wood, Yoakum and Young.	Ogden.
Greensboro, NC	Entire State of North Carolina	Cincinnati.
Indianapolis, IN	Entire State of Indiana	Do.
Louisville, KY	Entire State of Kentucky	Do.
Milwaukee, WI	Entire State of Wisconsin	Do.
Omaha, NE	Entire State of Nebraska	Ogden.
Phoenix, AZ	Entire State of Arizona	Do.
Richmond, VA	Entire State of Virginia	Cincinnati.

District office	Areas included	Service center
Sacramento, CA.....	Counties of Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Medocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba.	Ogden
San Jose, CA.....	Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne and Ventura.	Do.
Salt Lake City, UT.....	Entire State of Utah.....	Do.
Seattle, WA.....	Entire State of Washington.....	Do.

While there is no geographic restriction on the taxpayers participating in electronic filing, active solicitation of business outside of the districts is prohibited. Taxpayers who reside outside of the designated districts

must appear in person at a preparer's office within the designated districts.

Roberta Moore,

Acting Chief, Quality Assurance and Project Development Branch.

[FR Doc. 87-12745 Filed 6-5-87; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register

Vol. 52, No. 109

Monday, June 8, 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).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, June 10, 1987.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Riding Mower Briefing at CPSC ES Lab

The staff will brief the Commission on the status of the riding mower project.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

June 3, 1987.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 87-13007 Filed 6-3-87; 5:05 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 11, 1987.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. FY 89 Planning Issues

The Commission will consider fiscal year 1989 planning issues.

2. Cost Benefit Analysis in Compliance Matters

The staff will brief the Commission on the use of cost benefit analysis and other economic considerations in carrying out its compliance and enforcement activities.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office

of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

June 3, 1987.

[FR Doc. 87-13008 Filed 6-3-87 5:05 p.m.]

BILLING CODE 6355-01-M

FEDERAL COMMUNICATIONS COMMISSION

June 3, 1987.

FCC To Hold Open Commission Meeting, Wednesday, June 10, 1987

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, June 10, 1987, which will commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Private Radio—1—Trunking in the private land mobile radio services. Summary: The FCC will consider whether to initiate an inquiry concerning trunking in the private land mobile radio services.

Private Radio—2—Title: Reorganization and revision of Part 87 of the rules governing the aviation services. Summary: In this Notice of Proposed Rule Making the FCC will consider whether to revise and reorganize Part 87 of the rules governing the aviation services.

Common Carrier—1—Title: Amendments of Part 69 of the Commissions Rules relating to Enhanced Service Providers. Summary: The Commission will consider the exemption from access charges as applied to enhanced service providers.

Common Carrier—2—Title: In the Matter of Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to utility Poles. Summary: The FCC will consider the methodology by which just and reasonable pole attachment rates are calculated and the procedural rules for filing pole attachment complaints.

Common Carrier—3—Title: In the Matter of Revisions to part 21 of the Commission's Rules regarding the Multipoint Distribution Service. Summary: The FCC will consider rules regarding the provision of Multipoint Distribution Service on a common carrier or non-common carrier basis.

Mass Media—1—Title: Reconsideration of Declaratory Ruling regarding Permissible Uses of the Direct Broadcast Satellite Service, *Memorandum Opinion and Order* in DBS-DR-1, 1 FCC Rcd 966 (1986). Summary: The Commission considers the petition for partial reconsideration of the above Order, filed by GTE Spacenet Corporation, which requests the imposition of reporting requirements on DBS operators

and a specified sunset for the provisions adopted in the Order.

Mass Media—2—Title: Preparation for an International Telecommunication Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605-1705 kHz band. Summary: The Commission will consider a Third Notice of Inquiry requesting comments to assist the Commission in developing recommendations for United States proposals to the Second Session, to be held in the Spring of 1988.

This meeting may be held the following day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Congressional and Public Affairs, telephone number (202) 632-5050.

Issued: June 3, 1987.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-13076 Filed 6-4-87; 2:39 pm]

BILLING CODE 6712-01-M

UNITED STATES PAROLE COMMISSION

DATE AND TIME: Friday, June 5, 1987—11:30 a.m. eastern daylight-savings time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815. By conference telephone call.

STATUS: Closed pursuant to vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Record review on an application for a certificate of exemption under 29 U.S.C. section 1111.

CONTACT PERSON FOR MORE INFORMATION: Rockne Chickinell, Attorney, Office of General Counsel, United States Parole Commission, (301) 492-5959.

Dated: June 3, 1987.

Patrick J. Glynn,

General Counsel, United States Parole Commission.

[FR Doc. 87-13046 Filed 6-4-87; 11:26 am]

BILLING CODE 4410-01-M

SECURITIES AND EXCHANGE COMMISSION Agency Meeting.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [Vol. 52 No. 108].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW.,
Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday,
June 2, 1987.

CHANGE IN THE MEETING: Additional
items.

The following additional items will be
considered at an open meeting on
Thursday, June 11, 1987, at 10:00 a.m.

1. Consideration of whether to approve or
disapprove proposed rule changes submitted
by the New York and Pacific Stock
Exchanges relating to the listing of stock
having unequal voting rights, and whether to
adopt a rule pursuant to section 19(c) of the
Securities Exchange Act of 1934 which would
amend the rules of national securities
exchanges and associations concerning the
listing or authorization for quotation or
reporting of securities of an issuer that has
issued any security having unequal voting
rights. For further information, please contact
Sharon Lawson at (202) 272-2910 or Ellen K.
Dry at (202) 272-2843.

2. Consideration of a release approving
proposed rule changes by the American and
New York Exchanges that would permit the
exchanges to waive or modify certain of their
listing standards for foreign companies. For
further information, please contact Robert J.
Sevigny at (202) 272-2409.

3. Consideration of rule amendments
governing the designation of National Market
System Securities and changes to the
National Association of Securities Dealers
Transaction Reporting Plan, including the
addition of certain corporate governance
requirements. For further information, please
contact William M. Harter, Jr. at (202) 272-
2414.

Commissioner Cox, as duty officer,
determined that Commission business
required the above changes.

At times changes in Commission
priorities require alterations in the
scheduling of meeting items. For further
information and to ascertain what, if
any, matters have been added, deleted
or postponed, please contact: Kevin S.
Forgarty at (202) 272-3195.

Shirley E. Hollis,
Assistant Secretary.

June 4, 1987.

[FR Doc. 87-13132 Filed 6-4-87; 4:35 pm]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1388]

TIME AND DATE: 10 a.m. (e.d.t.),
Wednesday, June 10, 1987.

PLACE: TVA West Tower Auditorium,
400 West Summit Hill Drive, Knoxville,
Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on
May 27, 1987.

Action Items

Old Business

1. Supplement No. 1 to Personal Services
Contract No. TV-70530A with Manpower
Temporary Services, Chattanooga,
Tennessee, for Temporary Clerical Services,
Requested by Division of Property and
Services.

New Business

A—Budget and Financing

A1. Adoption of Supplemental Resolution
Authorizing 1987 Services C Power Bonds.

A2. Resolution Authorizing the Chairman
and Other Executive Officers To Take
Further Action Relating to Issuance and Sale
of 1987 Series C Power Bonds.

B—Purchase Awards

B1. Req. 17—Long Term Spot and Term
Coal for Kingston Steam Plant.

B2. Invitation GA-466360—Economizer
Elements for Bull Run Fossil Plant.

B3. Req. YD-763262-02—Indefinite
Quantity Term Agreement for Purchase and
Support of IBM Software for ADP Equipment
Management Branch.

C—Power Items

C1. Lease and Amending Agreement
with Tri-County Electric Membership
Corporation Covering Arrangements for
Single-Point 161-kV Delivery at the Summer
Shade 161-kV substation for Distributor's
Summer Shade Area Loads.

C2. Cooperative Research Agreement No.
TV-72502A with Gas-Cooled Reactor
Associates Covering Arrangements for
Participation in Phase II of the Modular High
Temperature Gas-Cooled Reactor
Demonstration Project Definition Study.

D—Personnel Items

D1. Supplement No. 3 to Consulting
Contract No. TV-71027A with Roy B.
McCauley Associates, Worthington, Ohio, for
Technical Welding and Quality Assurance

Advice in Connection with Weld Evaluation
Project at Watts Bar Nuclear Plant,
Requested by Office of Nuclear Power.

D2. Supplement No. 14 to Personal Services
Contract No. TV-49113A with Engineering
Analysis, Inc., Huntsville, Alabama, for
Assistance in the Field of Hydrodynamic
Computer Modeling, Requested by Division
of Air and Water Resources.

E—Real Property Transactions

E1. Filing of Condemnation Cases.

F—Unclassified

¹ F1. Designation and Appointment of
James E. Fox as Assistant Secretary of TVA.

¹ F2. Appointment of Kathy J. White as
Treasurer of TVA.

F3. Appointment of Terrell M. Burkhart as
Assistant Treasurer of TVA.

F4. Supplement No. 2 to Contract No. TV-
70287A with Campbell County Chamber of
Commerce Covering Arrangements for
Cooperation in Economic Development
Projects in Campbell County, Tennessee.

F5. Supplement No. 5 to Subagreement No.
15 to Memorandum of Agreement No. TV-
23928A Between TVA and U.S. Department
of the Army, Corps of Engineers, Covering
Arrangements for TVA To Perform
Engineering and Design Work for
Rehabilitation of Wilson Auxiliary Lock.

F6. Amendment No. 1 to Interagency
Contract (TV-71237A) Between TVA and the
U.S. Department of the Army for
Reimbursable Services Related to Purification
of Methylphosphonic Dichloride.

F7. Supplement No. 6 to Interagency
Agreement (TV-59928A) Between TVA and
Agency for International Development
Covering Arrangements for TVA's Assistance
in the Bioenergy Program.

CONTACT PERSON FOR MORE

INFORMATION: Alan Carmichael, 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.

Dated: June 3, 1987.

W.F. Willis,

General Manager.

[FR Doc. 87-13012 Filed 6-4-87; 8:58 am]

BILLING CODE 8120-01-M

¹ Item approved by individual Board members.
This would give formal ratification to the Board's
action.

Corrections

Federal Register

Vol. 52, No. 109

Monday, June 8, 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

National Oceanic and Atmospheric Administration

[Docket No. 70475-7075]

Financial Assistance for Research and Development Projects to Strengthen and Develop the U.S. Fishing Industry

Correction

In notice document 87-12587 beginning on page 20962 in the issue of Wednesday, June 3, 1987, make the following correction:

On page 20970, in the first column, beginning in the second line from the bottom, the sentence should read "1. *Deadline.* The NMFS will accept applications for funding under the program between June 3, 1987, and August 3, 1987".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-400003; FRL-3174-9(a)]

Notice of the First Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles

Correction

In notice document 87-8753 beginning on page 12866 in the issue of Friday, April 17, 1987, make the following corrections:

1. On page 12866, in the first column, in the third line from the bottom, "TS-79" should read "TS-799".

2. On the same page, in the second column, in the quoted material, in the seventh line, delete "their known or", and also delete the entire eighth line.

3. On page 12869, in the first column, in the first complete paragraph, in the fifth line, insert "for the" after "file".

4. On the same page, in the second column, in the second table, in the left column of the table, the 11th entry should read "79345".

5. On the same page, in the third column, in the second table, in the right column of the table, the first entry should read "2,4-Dinitrophenol".

BILLING CODE 1505-01-D

Test Report Federal Reserve

Monday
June 8, 1987

Part II

Department of Defense

Office of the Secretary

Public Information Collection
Requirement Submitted to OMB for
Expedited Review; Notice

DEPARTMENT OF DEFENSE**Office of the Secretary****Public Information Collection
Requirement Submitted to OMB for
Expedited Review**

SUMMARY: Recently, the Defense Contract Audit Agency (DCAA) completed several audits of defense contractors' automated inventory control systems, generally referred to as Material Requirements Planning (MRP) Systems. As a result of findings in those audits, a letter was sent by DCAA to selected companies on or about May 5, 1987, concerning common deficiencies DCAA found in such systems. The letter requested these contractors to provide an action plan for conducting an assessment of their MRP systems to ensure that costing and regulatory deficiencies are not present.

The Department is requesting OMB approval of this information collection on an expedited basis. Therefore, we are extending the date for responding to the Agency's May 5, 1987, letter and requesting that any comments on the information collection be submitted to OMB within 7 days of this notice. The Department anticipates requiring responses to its request for information

within 5 days of approval of this information collection request.

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 33).

Each entry contains the following information: (1) Type of submission; (2) title of information collection and form number, if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

New**MRP System**

The Defense Contract Audit Agency (DCAA) is requesting that defense contractors review their Material Requirements Planning (MRP) systems and provide an assessment of what procedures/controls exist to ensure that costing and regulatory deficiencies are

not present and, if necessary, an action plan to correct cited deficiencies. This one time request will be used to determine if deficiencies exist, and the contractual actions to be taken to protect the Government's interest.

Major Defense Contractors
Responses 200
Burden Hours 24,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. John van Santen, Assistant Director, Resources, Defense Contract Audit Agency, Cameron Station, Alexandria, Virginia 22304-6178, telephone (202) 274-7308.

Linda M. Lawson,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
June 5, 1987.

[FR Doc. 87-13163 Filed 6-5-87; 10:32 am]

BILLING CODE 3810-01-M

Reader Aids

Federal Register

Vol. 52, No. 109

Monday, June 8, 1987

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List June 5, 1987.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is \$595.00 domestic, \$148.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, CHOICE, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	\$9.00	Jan. 1, 1987
3 (1986 Compilation and Parts 100 and 101)	11.00	Jan. 1, 1987
4	14.00	Jan. 1, 1987
5 Parts:		
1-1199	25.00	Jan. 1, 1987
1200-End, 6 (6 Reserved)	9.50	Jan. 1, 1987
7 Parts:		
0-45	25.00	Jan. 1, 1987
46-51	16.00	Jan. 1, 1987
52	23.00	Jan. 1, 1987
53-209	18.00	Jan. 1, 1987
210-299	22.00	Jan. 1, 1987
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9 Parts:		
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150-999	13.00	Jan. 1, 1987
1000-End	19.00	Jan. 1, 1987
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150-399	25.00	Apr. 1, 1986
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1-399	10.00	Apr. 1, 1986
400-499	22.00	Apr. 1, 1986
500-End	24.00	Apr. 1, 1987
21 Parts:		
1-99	12.00	Apr. 1, 1987
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170-199	16.00	Apr. 1, 1987
200-299	5.50	Apr. 1, 1987
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1, 1-1 to 1-10.....	13.00	⁶ July 1, 1984	Complete 1987 CFR set.....	595.00	1987
1, 1-11 to Appendix, 2 (2 Reserved).....	13.00	⁶ July 1, 1984	Microfiche CFR Edition:		
3-6.....	14.00	⁶ July 1, 1984	Complete set (one-time mailing).....	155.00	1983
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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.

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