2-5-87
Vol. 52 No. 24
Pages 3595-3782

federal register

Thursday
February 5, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Portland, OR, Los Angeles, CA, San Diego, CA, and Houston, TX, see announcement on the inside cover of this issue.

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

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

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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

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

PORTLAND, OR

WHEN: February 17; at 9 am.

WHERE: Bonneville Power Administration Auditorium,
1002 N.E. Holladay Street,
Portland, OR.

RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:

Portland	**503-221-2222**
Seattle	**206-442-0570**
Tacoma	**206-383-5230**

LOS ANGELES, CA

WHEN: February 18; at 1:30 pm.

WHERE: Room 8544, Federal Building,
300 N. Los Angeles Street,
Los Angeles, CA.

RESERVATIONS: Call the Los Angeles Federal Information Center, 213-894-3800

SAN DIEGO, CA

WHEN: February 20; at 9 am.

WHERE: Room 2S31, Federal Building,
880 Front Street, San Diego, CA.

RESERVATIONS: Call the San Diego Federal Information Center, 619-293-6030

HOUSTON, TX

WHEN: March 10; at 9 am.

WHERE: Room 4415, Federal Building,
515 Rusk Avenue, Houston, TX.

RESERVATIONS: Call the Houston Federal Information Center on the following local numbers:

Houston	**713-229-2552**
Austin	**512-472-5495**
San Antonio	**512-224-4471**
New Orleans	**504-589-6696**

Contents

Federal Register
Vol. 52, No. 24
Thursday, February 5, 1987

Separate Parts In This Issue

Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 52, No. 24
Thursday, February 5, 1987

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 308, 318, 320, 327, and 381

[Docket No. 81-013N]

Canning of Meat and Poultry Products; Policy Statement

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Policy statement.

SUMMARY: This document announces the Department's policy about the voluntary use of the final regulations concerning the canning of meat and poultry products which were published December 19, 1986, and which will become effective on June 19, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Bill F. 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: On December 19, 1986, the Department publishing requirements for the canning of meat and poultry products and setting forth the procedures to be used by the Agency in evaluating compliance with these requirements. Since the final rule was published questions have arisen about voluntary use of the rule before the June 19, 1987, effective date. After considering the issues and interests, the Administrator has decided the following:

An establishment may voluntarily become subject to 9 CFR 318, Subpart G, and 9 CFR 381, Subpart X, prior to June 19, 1987; provided, the Agency determines that such establishment is in compliance with all applicable requirements of Subparts G and X. Interested establishments shall submit a written request to Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Subsequently, the Agency will perform an expeditious assessment of the requestor's operation to determine compliance with the regulations. Approvals and denials similarly will be provided in writing with an explanation of the reason(s) for a denial.

Done at Washington, DC, on: February 2, 1987.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 87-2434 Filed 2-4-87; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-178-AD; Amdt. 39-5538]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to certain CASA Model C-212 series airplanes, that requires the installation of a smoke detector system in the main cargo/passenger cabin in those CASA Model C-212 series airplanes that have been converted from passenger to cargo configuration. A smoke detector system is necessary for the cargo configuration in order to alert the crew to impending or existing fire conditions in the main cabin.

DATE: Effective March 9, 1987.

ADDRESSES: The applicable service information specified in this AD may be obtained from Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires installation of a smoke detector system in the main cabin, was published in the **Federal Register** on September 22, 1986 (51 FR 33617).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Modification parts are estimated at $663 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,966.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($983). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of the Part 39 of the Federal Aviation Regulations as follows:

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.

2. By adding the following new airworthiness directive:

CASA: Applies to all CASA Model C-212 series airplanes when converted to a cargo configuration in accordance with CASA Service Bulletin 212-25-35, dated October 23, 1985, or other modifications, certificated in any category. Compliance is required within 9 months after the effective date of this AD, or prior to conversion to a cargo configuration, whichever occurs later. In the cargo configuration, to preclude an undetected fire in the main cabin, accomplish the following, unless previously accomplished:

A. Install a smoke detector system in accordance with CASA Service Bulletin 212-26-06, dated October 23, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 9, 1987.

Issued in Seattle, Washington, on January 26, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-2281 Filed 2-4-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 86-212-NM-AD; Amdt. 39-5535]

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. Embraer Model EMB-120 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Embraer Model EMB-120 series airplanes by individual letters. This AD imposes a maximum operating altitude of 10,000 feet Mean Sea Level (MSL) for airplanes equipped with certain oil coolers which have accumulated more than 200 hours time-in-service. This action is prompted by recent occurrences of failures of the engine oil coolers, which have resulted in excessive oil loss and in-flight engine shutdowns.

DATES: Effective February 17, 1987.

This AD was effective earlier to all recipients of Priority Letter AD 86-21-11, dated October 22, 1986.

ADDRESSES: The applicable service information may be obtained from Embraer Aircraft Corporation, 276 S.W. 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Gil Carter, Aerospace Engineer, Propulsion Branch (ACE-140), FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: On October 22, 1986 the FAA issued Priority Letter AD 86-21-11, applicable to Embraer Model EMB-120 series airplanes, which imposes a maximum operating altitude limitation of 10,000 feet MSL on airplanes equipped with oil coolers, part numbers 160282-1 and 160282-2, which have accumulated more than 200 hours time-in-service. The AD was prompted by several recent occurrences of failures of those part-numbered engine coolers, which have resulted in excessive oil loss and in-flight engine shutdowns. The in-flight failures are a consequence of the cyclic effects of temperature and pressure on the oil cooler. The FAA has determined that the lower temperatures and pressure differentials, which are experienced at lower altitudes, will preclude leakage.

This AD requires installation of a placard on the instrument panel to indicate to the pilot that the maximum operating altitude is 10,000 feet MSL. Terminating action for this requirement is replacement of the engine oil cooler with a modified design engine oil cooler, part number 160282-3 or subsequent.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

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

2. By adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A.: Applies to Embraer Model EMB-120 series airplanes; serial numbers 120004, 120006 through 120028, 120033, and 120034; equipped with engine oil coolers, part numbers 160282-1 or 160282-2, which have accumulated more than 200 hours time-in-service; certificated in any category. Compliance is required within the next 10 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent oil loss and in-flight engine shutdown, accomplish the following:

A. Fabricate and install on the instrument panel near the altimeter, in full view of the pilot, a placard that reads: "MAXIMUM OPERATING LIMITATION 10,000 FEET MSL.

B. Installation of engine oil cooler, part number 160282-3 or subsequent, constitutes terminating action for the requirements of this AD.

This amendment becomes effective February 17, 1987, as to all persons, except those persons to whom it was made immediately effective by Priority

Letter AD 86-21-11, issued October 22, 1986.

Issued in Seattle, Washington, on January 26, 1987.

Frederick M. Issac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-2283 Filed, 2-4-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 86-CE-59-AD; Amendment 39-5533]

Airworthiness Directives; Helio Models H-700 and H-800 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) applicable to Helio Models H-700 and H-800 airplanes which requires repetitive inspection of the composite material main landing gear legs for delamination and replacement of delaminated gear legs with FAA-approved metallic legs. Reports of delamination and failure of the composite material landing gear legs on Models H-700 and H-800 airplanes have been received. This action is necessary to prevent failure of a landing gear leg and possible loss of the airplane.

EFFECTIVE DATE: March 9, 1987.

Compliance: As required in the body of the AD.

ADDRESSES: Copies of STC SA2171CE applicable to this AD may be obtained from Clarence H. Brent, P.O. Box 486, Pittsburg, Kansas 66762. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Douglas W. Haig, Aerospace Engineer, ACE-120W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD requiring repetitive inspection of the composite main landing gear legs for delamination and replacement of delaminated gear legs with FAA-approved metallic legs on certain Helio Models H-700 and H-800 airplanes was published in the **Federal Register** on November 26, 1986 (51 FR 42852). The proposal resulted from one accident and one incident involving the composite main landing gear legs of the Helio H-700 and H-800 airplanes. A Helio H-800 was involved in an accident when one of the gear legs failed during a landing. In the second case, a Model H-700 was found with a wing sagging. The case was delamination of one of the main landing gear legs. Analysis established that the most likely cause of delamination was shear failure due to bolt tipping. Although redesign of the attachment of the gear legs to the fuselage and the gear leg to the axle assembly to alleviate the bolt tipping is a possibility, it is not likely as the manufacturer is no longer in business. The only fix when one gear has delamination is to replace both landing gear legs with FAA-approved metal parts.

Since the condition described is likely to exist or develop in other Helio H-700 and H-800 airplanes of the same design, the AD requires repetitive inspection of the main landing gear legs for delamination at 100 hour time-in-service (TIS) intervals, and replacement of both legs if either leg has delamination. At this time, the only known FAA-approved replacement landing gear is per STC SA2171CE.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change, except for minor editoral clarifications.

The FAA has determined there are approximately 18 airplanes affected by the proposed AD. A cost of $30 per airplane per year is estimated to conduct the required inspection. Installation of STC SA2171CE, if required, would cost approximately $3,000 per airplane. Since the cost of replacing failed or unserviceable parts is not included in the total cost computation for purposes of classifying a rulemaking action in accordance with Executive Order 12291, the total estimated cost to the private sector for this action is $540 annually for the repetitive inspections.

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 Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDMENT]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

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.

2. By adding the following new AD:

Helio: Applies to Models H-700 and H-800 airplanes (all serial numbers) certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To assure airworthiness of the composite main landing gear legs, accomplish the following:

(a) Within the next 100 hours TIS after the effective date of this AD and each 100 hours TIS thereafter, remove landing gear fairings, if installed, and visually inspect the edges of the composite main landing gear legs for evidence of delamination. Delamination is evidenced by longitudinal splitting between the fiberglass plies. This could occur anywhere along the span of the landing gear leg. If any delamination is found, prior to further flight, install FAA-approved right and left metallic landing gear legs.

Note.—On the effective date of this AD, the only know FAA-approved replacement landing gear is per STC SA2171CE.

(b) If, in between the inspections required in paragraph (a) above, it is observed that the wings do not appear level, or one side of the airplane appears to be drooping, prior to further flight, conduct the inspections and replacement, if necessary, required in paragraph (a) of this AD.

(c) The inspection required in paragrphs (a) and (b) are no longer required when FAA-approved metallic landing gear legs have been installed.

(d) Ferry permits issued in accordance with FAR 21.197 and equivalent methods 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; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on March 9, 1987.

Issued in Kansas City, Missouri, on January 22, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-2278 Filed 2-4-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 86-CE-31-AD; Amendment 39-5532]

Airworthiness Directives; Pilatus Britten-Norman Limited, Model BN-2T Islander Airplanes Incorporating Engine Vibration Isolators Manufactured by Barry Controls

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to all Pilatus Britten-Norman Limited, Model BN-2T Islander airplanes incorporating engine vibration isolators manufactured by Barry Controls, which could develop cracks and deterioration in the elastomer core assemblies, and/or cracks on the isolator mounting brackets, at the intersection of each main rib with the elastomer core location rim. This AD defines the inspections and corrective actions for both the isolator brackets and the elastomer core assemblies. The action will eliminate the possibility of high engine vibrations and possible propeller whirl flutter, which could result in loss of the airplane.

DATES: *Effective Date:* March 9, 1987.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

ADDRESSES: Pilatus Britten-Norman Limited, Mandatory Service Bulletin (MSB) No. BN-2/SB.172, Issue 2, dated June 2, 1986, applicable to this AD may be obtained from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, England. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Harvey A. Chimerine, Foreign FAR 23 Section, Central Region, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection and corrective actions for both the isolator brackets and the elastomer core assemblies on certain Pilatus Britten-Norman Limited, Model BN-2T Islander airplanes was published in the Federal Register on August 15, 1986 (51 FR 29259). The proposal resulted from service experience showing that on Pilatus Britten-Norman Limited, Model BN-2T Islander airplanes incorporating engine vibration isolator mounting brackets manufactured by Barry Controls, Barry Part No. 44-9115-0100, were experiencing cracking at the intersection of each main rib with the elastomer core location rim. In addition, some of the elastomer core assemblies, Barry Part No. R20700-2, were developing cracks in the elastomer itself. Failure of the vibration isolators will increase engine vibration levels into the airframe and possibly induce propeller whirl flutter. This AD action will eliminate the possibility of high engine vibrations and possible propeller whirl flutter, which could result in loss of the airplane.

Consequently, Pilatus Britten-Norman Limited issued Service Bulletin No. BN-2/SB.172, Issue 2, dated June 2, 1986, which defines inspections and introduces corrective actions for both the engine vibration isolator mounting brackets and the elastomer core assemblies.

The Civil Airworthiness Authority of the United Kingdom (CAA-UK), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Great Britain, Classified this Pilatus Britten-Norman Limited, Service Bulletin BN-2/SB.172, Issue 2, dated June 2, 1986, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under United Kingdom of Great Britain registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA-UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of Pilatus Britten-Norman Limited, Service Bulletin No. BN-2/SB.172, Issue 2, dated June 2, 1986, and the mandatory classification of this service bulletin by the CAA-UK, and concluded that the condition addressed by Pilatus Britten-Norman Limited, Service Bulletin No. BN-2/SB.172, Issue 2, dated June 2, 1986, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change. The FAA has determined that this regulation involves 100 airplanes at an approximate annual cost of $640 for each airplane, for a total cost of $64,000 to the private sector.

The cost of compliance with the proposed AD is so small that it will not have a significant financial impact on any small entities operating these airplanes.

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 Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the FAR as follows:

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.

2. By adding the following new AD:

Pilatus Britten-Norman Limited: Applies to Model BN-2T Islander (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent the possibility of high engine vibrations and possible propeller whirl flutter, accomplish the following:

(a) Within 100 hours time-in-service (TIS) after the effective date of this AD and at each 500 hours TIS thereafter:

(1) Inspect the isolator mounting brackets, Barry Part No. 44-9115-0100, for cracks in accordance with the "Inspection (Part A)—Forged Brackets" paragraph of Pilatus Britten-Norman (PBN) Limited Service Bulletin (S/B) No. BN-2/SB.172, Issue 2, dated June 2, 1986, and:

(i) If a cracked "thick-ribbed" (0.190 inches) bracket is found, prior to further flight, replace the bracket with a similar serviceable part or

(ii) If a cracked "thin-ribbed" (0.150 inches) bracket is found, prior to further flight, replace all three brackets as an engine mounting set with "thick-ribbed" brackets in accordance with the "Rectification (Part B)—Forged Brackets" paragraph of PBN S/B No. BN-2/SB.172, Issue 2, dated June 2, 1986.

(b) Within 100 hours TIS after the effective date of this AD, and at each 100 hours TIS thereafter:

(1) Inspect the Barry-manufactured elastomer cores, and:

(i) If Part Number (P/N) K20700-2 is installed, prior to further flight, replace such cores with stiffer serviceable cores P/N R20700-15; or,

(ii) If P/N R20700-15 is installed, inspect for cracks, tears, or delamination in accordance with the "Inspection and Rectification of Elastomer Cores (Part C)" paragraph of PBN S/B No. BN-2/SB.172, Issue 2 dated June 2, 1986, and if defective, prior to further flight, replace with a serviceable core.

(c) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance of the airplane.

(d) Aircraft may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(e) An equivalent means to compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, England; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on March 9, 1987.

Issued in Kansas City, Missouri, on January 22, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-2279 Filed 2-4-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-CE-43-AD; Amdt. 39-5529]

Airworthiness Directives; British Aerospace Models HP.137 Jetstream MK.1, Jetstream Series 200, and Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) Models HP.137 Jetstream MK.1, Jetstream Series 200, and Jetstream Model 3101 airplanes, which requires the identification of the flap torque shaft assembly and limits the in-service life of the flap torque shaft assembly to 18,000 landings or the equivalent as a result of BAe fatigue tests. This AD provides instructions for determining the "in-service life" and labeling the flap torque shaft assemblies in service.

DATES: *Effective Date:* March 7, 1987. *Compliance:* Required as indicated after the effective date of this AD, unless already accomplished.

ADDRESSES: BAe Mandatory Service Bulletin (MSB) 27-JA840421 dated January 14, 1986, and Service Bulletin (S/B) 27-JM7500 dated January 23, 1986, applicable to this AD may be obtained from British Aerospace, Engineering Department, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041; Telephone (703) 435-9100. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Brussels Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone 513.38.30; or Mr. Harvey Chimerine, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include an AD requiring the identification of the flap torque shaft assembly and a limit on the in-service life of the torque shaft assembly to 18,000 landings or the equivalent as a result of BAe fatigue tests on certain BAe Models HP.137 Jetstream MK.1, Jetstream Series 200, and Jetstream Model 3101 airplanes, was published in the **Federal Register** on October 17, 1986 (51 FR 37041). The proposal resulted from BAe-conducted fatigue tests. Consequently, British Aerospace issued BAe S/B 27-JN7500 dated January 23, 1986, and MSB 27-JA840421 dated January 14, 1986, which details procedures for the identification of these assemblies by individual serial number to facilitate the recording of the expired life of an individual component, and includes instructions for determining the "in-service life" and labeling of flap torque shaft assemblies in service used in BAe Models HP.137 Jetstream MK.1, Jetstream Series 200, and Jetstream Model 3101 airplanes, and which are now being restricted to 18,000 landings or the equivalent.

The Civil Aviation Authority-United Kingdom (CAA-UK), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom, classified this BAe MSB 27-JA840421 dated January 14, 1986, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA-UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of BAe MSB 27-JA840421 dated January 14, 1986, and S/B 27-JM7500 dated January 23, 1986, and the mandatory classification of these service bulletins by the CAA-UK, and concluded that the condition addressed by BAe MSB 27-JA840421 dated January 14, 1986, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change except for minor editorial corrections and clarifying the instruction for recording the total accumulated number of landings. The FAA has determined that this regulation involves 50 airplanes at an approximate one-time cost of $1,050 for each airplane, or a total one-time fleet cost of $52,500.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

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 Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

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.

2. By adding the following new AD:

British Aerospace: Applies to Models HP.137 Jetstream MK.1, Jetstream Series 200 and Jetstream Model 3101 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failure of the flap torque shaft assembly, accomplish the following:

(a) Within 100 hours time-in-service (TIS):

(1) Modify the flap torque shaft assembly by securing a "Modification and Serial Number Plate" to the flap torque shaft which includes part number and serial number (assigned by British Aerospace (BAe)) in accordance with the provisions of Section 2, "Accomplishment Instructions" of BAe S/B 27-JM7500 dated January 23, 1986.

(2) On airplanes with flap torque shaft assemblies having 17,900 or more landings on the effective date of this AD, within the next 100 landings, replace the flap torque shaft assembly with an airworthy part of the same part number modified as per paragraph (a)(1) above and modified in accordance with the provisions of Section 2, "Accomplishment Instructions," Part A, "Torque Shaft Assembly Installed on In-servie Aircraft" of BAe MSB 27-JA840421 dated January 14, 1986.

(3) On airplanes with flap torque shaft assemblies having less than 17,900 landings on the effective date of this AD, replace the flap torque shaft assemblies before accumulating 18,000 landings, with an airworthy part of the same part number modified as per paragraph (a)(1) above and modified in accordance with the provisions of Section 2, "Accomplishment Instructions," Part A, "Torque Shaft Assembly Installed on In-service Aircraft" of BAe MSB 27/JA840421 dated January 14, 1986.

(4) Upon any removal of a flap torque shaft assembly, whether life expired or for other reasons, enter date of removal and total number of accumulated landings on the lower portion of plate P/N S778/2.

(b) If the actual number of landings is unknown for the purpose of complying with this AD, one landing may be substituted for each ½ flight hour unless the operator substantiates a different flight hours to landings ratio. This substantiation must be submitted to and approved by the Manager, Aircraft Certification Staff, AEU-100, address below.

(c) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium.

All persons affected by the directive may obtain copies of the documents referred to herein upon request to British Aerospace, Engineering Department, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041; Telephone (703) 435-9100; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on March 7, 1987.

Issued in Kansas City, Missouri, on January 21, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-2280 Filed 2-4-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 86-AGL-32]

Establishment of Transition Area, Cumberland, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Cumberland, Wisconsin, transition area to accommodate a new NDB Runway 09 Standard Instrument Approach Procedure (SIAP) to Cumberland Municipal Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 U.t.c. April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, December 2, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Cumberland, Wisconsin transition area (51 FR 43385).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Cumberland, Wisconsin, transition area to accommodate aircraft utilizing an NDB Runway 09 SIAP.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal

Aviation Regulations (14 CFR Part 71) is amended as follows:

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

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

2. Section 71.181 is amended as follows:

Cumberland, WI [New]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Cumberland Municipal Airport (lat. 45°30'25"N., long. 91°58'45"W.); and within 3 miles each side of the 262° bearing from the Cumberland NDB extending from the 5 mile radius to 8.5 miles west of the airport.

Issued in Des Plaines, Illinois, on January 20, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87-2277 Filed 2-4-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Commission

15 CFR Parts 374, 375, and 399

[Docket No. 60852-6152]

Exports to the People's Republic of China; Revision of Advisory Notes

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those commodities subject to Department of Commerce export controls. The "Advisory Notes" in various entries of the CCL list those commodities covered by a particular entry that are more likely to be approved for export than others.

This rule amends several Advisory Notes covering exports to the People's Republic of China (PRC) of various commodities, including the following:

Equipment for the manufacture or testing of electronic components and materials;

Radio relay communication equipment;

Lasers and laser systems;

Electronic measuring, calibrating, counting, testing, or time interval measuring equipment;

Radio spectrum analyzers;

Electronic component assemblies, sub-assemblies, printed circuit boards, substrates and microcircuits; and

Recording or reproducing equipment and specially designed components therefor.

These amendments to the Advisory Notes result from the review of the system of strategic export controls maintained by the United States and certain allied countries through the Coordinating Committee (COCOM).

In addition, this rule amends the "permissive reexports" provision of the Export Administration Regulations. Reexports are permitted from a COCOM country to the PRC of equipment meeting requirements set forth in Advisory Notes for Country Groups Q, W, and Y, as well as the Advisory Notes for the PRC.

Also, a clarification is added to the Regulations stating that the inclusion of the contract title and contract number on a Chinese End-Use Certificate is optional. Such information may be used by the PRC, but the Department of Commerce will not require it.

EFFECTIVE DATE: This rule is effective February 5, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian or John Black, Office of Technology and Policy Analysis, Export Administration, Telephone (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

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 that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. 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 is also 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. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, International Trade Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. 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.

4. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625-0001.

List of Subjects in 15 CFR Parts 374, 375 and 399

Exports, reporting and recordkeeping requirements.

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

PART 374—[AMENDED]

PART 375—[AMENDED]

1. The authority citation for Parts 374 and 375 continues to read as follows:

Authority: Pub. L. 97-72, 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).

2. Paragraph (j) of § 374.2 is revised to read as follows:

§ 374.2 Permissive reexports.

* * * * *

(j) Reexports from a COCOM country to the People's Republic of China that meet the requirements set forth in "Advisory Notes" for the People's Republic of China or for Country Groups Q, W, and Y in the Commodity Control List (Supplement No. 1 to § 399.1) and are licensed for shipment by that country.

§ 375.6 [Amended]

3. Section 375.6 is amended by adding "(optional)" immediately before the semicolon in paragraph (b)(1).

PART 399—[AMENDED]

4. The authority citation for Part 399 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 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, Sepetember 8, 1986); Pub. L. 99-440 (October 2, 1986); E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.1 Supplement No. 1 [Amended]

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1355A is amended by revising the introductory text of the "Advisory Note for the People's Republic of China" to read: "Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of equipment, as follows, for use in silicon semi-conductor manufacturing:"

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1520A is amended by revising the phrase "19 GHz" in paragraphs (a) and (b) of the "Advisory Note for the People's Republic of China" to read "20 GHz".

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1522A is amended by adding paragraph (c) of the "Advisory Note for the People's Republic of China" to read:

(c) Equipment specially designed for medical applications incorporating ND:YAG lasers covered by paragraph (a)(vi) of ECCN 1522A;

8. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1529A is amended by adding the words "or sweep generators" after the words "network analyzers" in paragraph (b) of the "Advisory Note for the People's Republic of China" and by revising the phrase "18 GHz" to read "20 GHz" in paragraphs (c) and (d) of the "Advisory Note for the People's Republic of China."

9. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1533A is amended by revising the word "incorporating" to read ", including those with" in paragraph (a) of the "Advisory Note for the People's Republic of China."

10. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1564A is amended by revising the phrase "8 bit" to read "12 bit" in paragraphs (g)(2) and (3) of the "Advisory Note for the People's Republic of China."

11. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1568A is amended by revising the phrase "8 bit" to read "12 bit" in paragraphs (b) and (c) of the "Advisory Note for the People's Republic of China."

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1572A is amended by revising the number "12,992" to read "13,125" in paragraph (c)(1) of the "Advisory Note for the People's Republic of China."

Dated: February 2, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-2347 Filed 2-4-87; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3205]

International Masters Publishers Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Los Angeles mail-order seller of recipe cards to honor cancellation and return and requests in a timely manner and prohibits respondent from misrepresenting it return cancellation policies.

DATE: Complaint and Order issued January 14, 1987.[1]

FOR FURTHER INFORMATION CONTACT: Jerome M. Steiner, Jr., San Francisco Regional Office, Federal Trade Commission, 901 Market St., San Francisco, CA 94130 (415) 995-5220.

SUPPLEMENTARY INFORMATION: On Thursday, November 6, 1986, there was published in the **Federal Register**, 51 FR 40336, a proposed consent agreement with analysis In the Matter of International Masters Publishers Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: S 13.10 Advertising falsely or misleadingly: 13.10-1 Availability of merchandise and/or services; 13.185 Refunds, repairs, and replacements. Subpart—Corrective Actions and/or Requirements: 13.533 Corrective actions and/or requirements: 13.533-20 Disclosures; 13.533-55 Refunds, rebates, and/or credits.

List of Subjects in 16 CFR Part 13

Mail order, Recipe cards, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 87-2338 Filed 2-4-87; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th St. & Pa. Ave., NW., Washington, DC 20580.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 87-16]

Amendment to the Customs Regulations Concerning the Coastwise Transportation of Certain Articles by Vessels of the Ivory Coast

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to add the Ivory Coast to the lists of nations which permit vessels of the U.S. to transport certain articles specified in section 27, Merchant Marine Act of 1920, as amended, between their ports.

Customs has been furnished satisfactory evidence that the Government of the Ivory Coast places no restrictions on the transportation of certain specified articles by vessels of the U.S. between ports in that country. This amendment provides reciprocal privileges for vessels registered in the Ivory Coast.

EFFECTIVE DATE: The reciprocal privileges for vessels registered in the Ivory Coast became effective on December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Hegland, Carriers, Drawback & Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Section 27, Merchandise Marine Act of 1920, as amended (46 U.S.C. 883) (the "Act"), provides generally that no merchandise shall be transported by water, or by land and water, between points in the U.S. except in vessels built in and documented under the laws of the U.S. and owned by U.S. citizens. However, the 6th proviso of the Act, as amended by Pub. L. 89-194 (79 Stat. 823, T.D. 66-176) and Pub. L. 90-474 (82 Stat. 700, T.D. 68-227), provides that upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the U.S., reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the U.S. will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), lists those nations found to extend reciprocal privileges to vessels of the U.S. for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks. Section 4.93(b)(2), Customs Regulations (19 CFR 4.93(b)(2)), lists those nations found to extend reciprocal privileges to vessels of the U.S. for the transportation of equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and certain equipment for use with these barges; certain empty instruments of international traffic; and certain stevedoring equipment and material.

On December 29, 1986, the Department of State advised the Director, Carriers, Drawback and Bonds Division, of the Customs Service Headquarters, that the Government of the Ivory Coast places no restrictions on the transportation of the articles listed in the Act by vessels of the U.S. between ports in the Ivory Coast. The effective date of such notification was December 31, 1986.

The Carriers, Drawback and Bonds Division is of the opinion that satisfactory evidence has been furnished to establish the reciprocity required in § 4.93(b). Therefore, the Director of that Division has determined that, effective retroactively to December 31, 1986, the Ivory Coast should be added to the lists of nations set forth in § 4.93(b) (1) and (2).

By Treasury Department Order 165-25 the Secretary of the Treasury has delegated authority to the Commissioner of Customs to prescribe regulations relating to §§ 4.22, 4.81a(b), 4.93 (b)(1) and (b)(2), 4.94(b), and 10.59(f), Customs Regulations (19 CFR 4.22, 4.81a(b), 4.93 (b)(1) and (b)(2), 4.94(b), and 10.59(f)). These sections relate to lists of nations entitled to preferential treatment in Customs matters because of reciprocal privileges accorded to vessels and aircraft of the U.S. Subsequently, by Customs Delegation Order No. 66 (T.D. 82-201), dated October 13, 1982, the Commissioner delegated this authority to the Assistant Commissioner (Commercial Operations), who redelegated this authority to the Director, Office of Regulations and Rulings, who then redelegated it to the Director, Regulations Control and Disclosure Law Division.

Finding

On the basis of the information received from the Secretary of State, as described above, it is determined that the Government of the Ivory Coast places no restrictions on the transportation of the articles specified in the 6th proviso of section 27 of the Merchant Marine Act of 1920, as amended, by vessels of the U.S. between ports in the Ivory Coast. Therefore, reciprocal privileges are accorded as of December 31, 1986, to vessels registered in the Ivory Coast.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this is a minor amendment in which the public is not particularly interested and there is a statutory basis for the described extension of reciprocal privileges, notice and public procedure pursuant to 5 U.S.C. 553(b)(B) are unnecessary. In accordance with 5 U.S.C. 553(d)(1), a delayed effective date is not required because this amendment grants an exemption.

Inapplicability of Regulatory Flexibility Act

This document is not subject to the provisions of 5 U.S.C. 603, 604, as added by section 3 of Pub. L. 96-354, the Regulatory Flexibility Act." That Act does not apply to any regulations such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Bruce J. Friedman, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Cargo vessels, Maritime carriers, Vessels.

Regulations Amendments

To reflect the reciprocal privileges granted to vessels registered in the Ivory Coast, Part 4, Customs Regulations (19 CFR Part 4), is amended in the following manner:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624; 46 U.S.C. 3, 2103; § 4.93 also issued under 19 U.S.C. 1322(a); 46 U.S.C. 883.

§ 4.93 [Amended]

2. Section 4.93 (b)(1) and (b)(2), Customs Regulations (19 CFR 4.93 (b)(1), (b)(2)), are amended by adding "Ivory Coast", in appropriate alphabetical order to the lists of nations entitled to reciprocal privileges.

Dated: January 27, 1987.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 87-2408 Filed 2-4-87; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 85F-0517]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of perfluoroalkyl acrylate

copolymer as a component of paper and paperboard in contact with aqueous and fatty food. This action responds to a petition filed by Minnesota Mining & Manufacturing Co.

DATES: Effective February 5, 1987; objections by March 9, 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: Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 9, 1985 (50 FR 50233), FDA announced that a petition (FAP 5B3870) had been filed by Minnesota Mining & Manufacturing Co., 3M Center, St. Paul, MN 55144, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of the polymer reaction product of: ethanaminium, *N,N,N*-trimethyl-2-[2-methyl-1-oxo-2-propenyl)-oxy], chloride; 2-propenoic acid, 2-methyl-, oxiranylmethyl ester; 2-propenoic acid, 2-ethoxyethyl ester; and 2-propenoic acid, 2[[(heptadecafluorooctyl) sulfonyl] methylamino]ethyl ester, as a water and oil repellant for paper and paperboard. For regulatory purposes FDA is regulating this material as "perfluoroalkyl acrylate copolymers" and is specifying the materials used to manufacture the copolmer.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use is safe, and the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before March 9, 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.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 176.170(a)(5) by alphabetically inserting a new item in the list of substances to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * *	* *
Perfluoroalkyl acrylate copolymer (CAS Reg. No. 92265-81-1) containing 35 to 40 weight percent fluorine, produced by the copolymerization of ethanaminium, *N,N,N*-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)-oxy]-, chloride; 2-propenoic acid, 2-methyl-, oxiranylmethyl ester; 2-propenoic acid, 2-ethoxyethyl ester; and 2-propenoic acid, 2[[heptadecafluoro-octyl)sulfonyl] methyl amino]ethyl ester.	For use only as an oil and water repellant at a level not to exceed 0.5 percent by weight of the finished paper and paperboard in contact with nonalcoholic foods under conditions of use C, D, E, F, G, or H described in table 2 of paragraph (c) of this section.
* * *	* *

* * * * *

Dated: January 20, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-2455 Filed 2-4-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1306

Refilling of Prescription for Controlled Substances in Schedules III and IV

Note.—The following document was originally published January 16, 1987, on page 1903. It is being republished due to subsequent OMB review and approval. The substance of the document is the same; however, the effective date has been changed.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: The final rule amends 21 CFR 1306.22 to allow additional refills of an original prescription authorized by the prescribing practitioner, as long as the number of refills, including those authorized on the original prescription,

do not exceed the five refill limitation nor extend beyond six months from the date of issue of the original prescription.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, State and Industry Section, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537 (202-633-1216).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the **Federal Register** on June 16, 1986 (51 FR 21773) to amend 21 CFR 1306.22. This proposed rulemaking provided opportunity for interested parties to submit comments or objections in writing on or before August 15, 1986.

Eleven comments were received in response to the notice of proposed rulemaking. A letter dated August 8, 1986 from the American Medical Association stated that the AMA supports the proposed change, but strongly recommended that the impact of the proposed change be monitored closely to ensure that it does not result in increased illicit diversion. The comments dated June 27, 1986 from the National Association of Chain Drug Stores, Inc. and July 10, 1986 from the Retired Persons Services, Inc., AARP Pharmacy Service were in support of the proposal. Comments dated June 26, 1986 from the Georgia Pharmaceutical Association, Inc. support the proposal and the concept of allowing refill information to be maintained on the back of the prescription or "on another appropriate document." Additional support for the proposal was received in comments dated July 8, 1986 from the South Carolina Board of Pharmacy which noted that the change will save the pharmacist and the patient valuable time. Comments of July 7, 1986 from Jack Eckerd Corporation support the proposal, noting that it is in keeping with safe pharmaceutical practice for non-controlled substances and will permit pharmacists to provide more efficient care to their patients. Comments of July 1, 1986 from Pay Less Northwest Drug Stores, Inc. support the proposal, indicating that the real benefit of the proposed amendment would be to establish a single source reference to monitor refill activity, which better detects possible abuse or too frequent refill activity. Super X Drug Stores in their comments of July 2, 1986 support the proposal, as well as La Verdiere's Super Drug Stores comments on August 21, 1986 which stated that in addition to saving time, it would make for a much more efficient patient reference system.

The only negative comments received were from the State of New Jersey Department of Health, Division of Narcotic and Drug Abuse Control dated July 3, 1986 and from the State of New Jersey Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy dated August 8, 1986. They expressed concern that the new regulation on the refilling of prescriptions for Schedule III and IV controlled substances would not have any significant impact upon the reduction in paperwork for a pharmacist. They also stated that the educational process of instructing pharmacists about the new regulations would not be cost effective.

It is the opinion of the DEA that the revision will reduce the paperwork required of dispensing pharmacists since they will not be required to prepare a new prescription for each additional refill authorized by the prescribing practitioner. The pharmacist will be permitted to record the refill authorization on the reverse of the original prescription. The new regulation reduces the number of records to which a pharmacist must refer when dispensing a controlled substance to an individual patient. It also establishes a single source document from which to monitor refill activity, thereby more easily detecting abuse and/or frequent refilling. DEA has an instructional booklet available for pharmacists that will be updated to inform them about the new regulations.

States are not obliged to change their requirements. If they wish to maintain more stringent requirements to address their particular concerns, it is certainly within their purview. When both Federal and state laws and regulations address the same area of concern, the more stringent requirements will apply.

The Deputy Assistant Administrator hereby certifies that this final rule will have no significant impact upon small businesses whose interests must be considered under the Regulatory Flexibility Act, 5 U.S. 601, et seq. It will in fact reduce records required by a dispensing pharmacy.

Pursuant to sections 3(c)(3) and 3(e)(2)(B) of the Executive Order 12291, this action has been submitted for review by the Office of Management and Budget, and approval of that Office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

Therefore, pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b) as delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistance Administrator hereby orders that Part 1306 of Title 21, Code of Federal Regulations be amended as follows:

List of Subjects in 21 CFR Part 1306

Drug traffic control, Prescription requirements.

PART 1306—[AMENDED]

1. The authority for Part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 829, and 871(b).

2. Section 1306.22 is amended by revising paragraph (a) to read as follows:

§ 1306.22 Refilling of prescriptions.

(a) No prescription for a controlled substance listed in Schedule III or IV shall be filled or refilled more than six months after the date on which such prescription was issued and no such prescription authorized to be refilled may be refilled more than five times. Each refilling of a prescription shall be entered on the back of the prescription or on another appropriate document. If entered on another document, such as a medication record, the document must be uniformly maintained and readily retrievable. The following information must be retrievable by the prescription number consisting of the name and dosage form of the controlled substance, the date filled or refilled, the quantity dispensed, initials of the dispensing pharmacist for each refill, and the total number of refills for that prescription. If the pharmacist merely initials and dates the back of the prescription it shall be deemed that the full face amount of the prescription has been dispensed. The prescribing practitioner may authorize additional refills of Schedule III or IV controlled substances on the original prescription through an oral refill authorization transmitted to the pharmacist provided the following conditions are met:

(1) The total quantity authorized, including the amount of the original prescription, does not exceed five refills nor extend beyond six months from the date of issue of the original prescription.

(2) The pharmacist obtaining the oral authorization records on the reverse of the original prescription the date, quantity of refill, number of additional refills authorized, and initials the prescription showing who received the authorization from the prescribing practioner who issued the original prescription.

(3) The quantity of each additional refill authorized is equal to or less than the quantity authorized for the initial filling of the original prescription.

(4) The prescribing practitioner must execute a new and separate prescription for any additional quantities beyond the five refill, six-month limitation.

* * * * *

Dated: January 22, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-2291 Filed 2-4-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200, 203, 220, and 228

[Docket No. R-87-1189; FR-1927]

Mortgage Insurance—Claims Without Conveyance of Title; Bidding Requirements for Foreclosure Sales; Correction of Effective Date

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule; correction of effective date.

SUMMARY: This document corrects the effective date contained in a final rule authorizing the Secretary to permit mortgagees to submit claims for the payment of mortgage insurance benefits on foreclosed single family properties without conveying title to the foreclosed properties to the Secretary. The rule was published in the **Federal Register** on January 13, 1987 (52 FR 1320).

EFFECTIVE DATE: April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Fred W. Pfaender, Director, Single Family Servicing Division, Office of Single Family Housing, Department of Housing and Urban Development, Room 9180, 451 Seventh Street, SW., Washington, DC 20410, telephone No. (202) 755-6672. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Accordingly, the following correction is made in FR Doc. 87-552 appearing on page 1320 in the issue of January 13, 1987:

On page 1320, third column, the effective date is corrected to read "**EFFECTIVE DATE:** April 1, 1987."

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: January 30, 1987.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 87-2299 Filed 2-4-87; 8:45 am]

BILLING CODE 4210-27-M

24 CFR Parts 203, 204, 250, 251, and 255

[Docket No. R-87-1306; FR-2252]

Eligibility Requirements: Mortgagee Approval

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule adopts as final an interim rule setting forth HUD approval requirements for mortgagees participating in its mortgage insurance programs. Certain revisions are made in the interim rule in order to further simplify these eligibility requirements and to clarify the text by consolidating related provisions.

EFFECTIVE DATE: March 17, 1987.

FOR FURTHER INFORMATION CONTACT: Andrew Zirneklis, Office of Lender Activities and Land Sales Registration, Department of Housing and Urban Development, Room 9146, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6924 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department published an interim rule revising its mortgagee approval requirements in the **Federal Register** (45 FR 50561) on July 30, 1980. The revision was largely a restating and updating of existing regulations HUD requirements. However, there were significant new provisions including (1) requiring mortgagees to implement and maintain a quality control plan, (2) requiring mortgagee payment of application and annual fees, (3) making limited partnerships eligible as approved mortgagees, (4) prohibiting the use of non-approved mortgagees as authorized agents after July 30, 1983, (5) requiring an adjusted net worth of at least $100,000 for nonsupervised mortgagees, (6) requiring nonsupervised mortgagees to establish a warehouse line of credit, and (7) establishing more detailed requirements for loan correspondents.

More than 25 individuals and organizations submitted comments on the interim rule within the public comment period. A section-by-section discussion of the more recurrent and significant public comments on the interim rule, and the changes made by this final rule, follows.

Section 203.1 Approval of Mortgagees.

One comment on this section concerned the prohibited payments language in revised § 203.1(b) of the interim rule. It recommended that mortgagees be permitted to compensate a person who provided a service related to a loan transaction, regardless of whether any other compensation was received from the mortgagor, seller, builder or any other person. In justification, the commenter stated that this would permit the mortgagee to train and utilize personnel in outlying areas, thus providing a worthwhile service to home buyers and more effective coverage for HUD programs.

The Department does not accept this recommendation since it would nullify its policy against the payment of referral fees by a mortgagee. It should be noted that paragraph 203.1(b) already allows for the payment by a mortgagee of such "compensation as may be approved by the Commissioner" for services actually performed and, with respect to rural or outlying areas, HUD currently permits mortgagees to compensate licensed real estate brokers for actual services performed in preparing a HUD-FHA loan application if certain criteria are met. This compensation may be in addition to any real estate commission to be received. The Department believes that this policy, as currently set forth in Mortgagee Letter 83-17, adequately meets the concerns expressed by the commenter concerning outlying areas.

A second comment suggested that mortgagees be permitted to pay referral fees to individuals who serve in an originating capacity for multifamily projects, have no identity of interest with a mortgagor, his agent, or the mortgagee and receive no other compensation in connection with the transaction. We do not accept this recommendation as there would be a significant additional administrative burden placed on the Department with respect to reviewing each multifamily transaction to determine whether an identity of interest exists and whether other compensation was received.

Except for nonsubstantive, clarifying language changes made in paragraph 203.1(b) and a reference in paragraph (a) to the fact that additional approval is required for direct endorsement or coinsuring mortgagees, there are no changes in this section from the interim rule.

Section 203.2 Approval requirements.

Several comments were received with respect to this section. One comment objected to the wording of § 203.2(a)(2), requiring employment of "trained personnel competent in all aspects of mortgage lending", saying that it is nonspecific and possibly subject to unduly restrictive interpretation by HUD for compliance purposes.

We have revised the language in this paragraph to provide that mortgagees are required to employ trained personnel competent to perform assigned responsibilities. Individual employees are not required to be trained in all aspects of a mortgagee's lending activities. This clarifies the intent of HUD under the existing regulation; no change in policy is reflected in the revision.

One comment concerned § 203.2(a)(6)—compliance with HUD servicing requirements under Subpart C of Part 203. It suggested that since some mortgagees do not service mortgages, the language in this requirement should be clarified. We believe that the language contained in Subpart C already clearly sets forth the exact extent and nature of a mortgagee's servicing responsibilities. The reference in § 203.2(a)(6) (which is now designated as 203.2(f)) is only intended to provide mortgagees servicing insured mortgages with notice that noncompliance with HUD servicing requirements under Subpart C constitutes a basis for the withdrawal of mortgagee approval by the Department.

Another comment, concerning the Yearly Verification Report required by § 203.2(a)(8) (now designated as 203.2(h)), recommends that the content of the report be specified. Also, there was concern that the requirement may be unnecessarily burdensome. The Department has specified the reporting requirements of this section in HUD Handbook 4060.1, Mortgagee Approval Handbook. There is minimal burden because HUD generates the report and all the mortgagee must do is to confirm the information. The information is necessary to maintain the Department's computerized list of all approved mortgagees, which is used in the collection of annual "user fees" from mortgagees and in sending timely communications to mortgagees concerning HUD program requirements and other necessary information. The Department will retain this requirement unchanged.

Two comments concerned the Quality Control Plan required by § 203.2(a)(10) (now designated as 203.2(j)). Both comments suggested that requirements concerning quality control be set forth in a handbook rather than by regulation. This, in fact, is the case. The Department has set forth the guidelines for an acceptable Quality Control Plan in HUD Handbook 4060.1. The Department does not adopt the suggestion of eliminating from the regulations any reference to this requirement. A regulatory provision is necessary for purposes of notice and enforcement.

Three comments were received with respect to the fee provisions of § 203.2(a)(11) (now designated as 203.2(k)). Two comments objected to the fee requirement on the grounds that the payment of application and annual fees by mortgagees would ultimately raise the cost of the loan transaction to the consumer and that the payment of mortgage insurance premiums should cover the costs involved in administering the mortgagee approval program. A third comment suggested that if fees are required, the Department should increase the present permissible one percent loan origination fee that mortgagees may collect from the borrower. The Department does not accept the suggestions put forth by the first two comments. Based on our operating experience, the required $300 application fee and $200 annual fee has not raised significantly the cost of a HUD-insured mortgage transaction and these fees have helped to defray the costs of approving and supervising mortgagees. The third comment is considered beyond the scope of this final rule.

One comment was received suggesting that the indictment or conviction of the mortgagee applicant (or any officer, partner, director, principal or employee of the applicant) of an offense which reflects upon the responsibility, integrity or the ability of the mortgagee to participate in HUD programs as an approved mortgagee should be a basis for rejecting an application. The Department has adopted this comment in the new § 203.2(*l*) contained in this final rule. The Department has also included in this new paragraph its existing policy of rejecting an application if the applicant or any officer, partner, director, principal or employee of the applicant is suspended, debarred or otherwise restricted under Part 24 or Part 25 of this title or under similar procedures of any other Federal agency.

In addition, two existing regulatory requirements (see 24 CFR 200.230(c)(6) and 24 CFR 25.9(p)), with which failure to comply could result in debarment or exclusion from participation in HUD programs, are expressly included in the FHA Commissioner's requirements for mortgagee approval. Provisions are added to paragraph 203.2(*l*) requiring that, at the time of application, neither the mortgagee applicant nor any officer, partner, director, principal or employee of the applicant may (1) be subject to unresolved findings as a result of HUD or other governmental audits or investigations or (2) be engaged in business practices which fail to conform to generally accepted practices of prudent lenders or which demonstrate irresponsibility.

Finally, the separate requirements for limited partnerships in § 203.2(b) (1)–(3) of the interim rule have been consolidated in this final rule.

Section 203.3 Supervised mortgagees.

Numerous comments were received with respect to § 203.3(e). That paragraph prohibits the use of Authorized Agents in connection with HUD-insured mortgage transactions after July 30, 1983, where the Authorized Agent is not a HUD-approved mortgagee.

The interim rule provided a three-year period for Authorized Agents to make this change. The transition has already taken place and the issue is moot.

Section 203.4 Nonsupervised mortgagees.

Section 203.4(b)(1) has been revised to eliminate reference to the three-year interim period provided by the Department to mortgagees previously approved with a net worth or trust estate of less than $100,000 to increase their net worth to the required amount. This period expired on July 30, 1983.

Two comments were received recommending that the Department's minimum adjusted net worth requirement of $100,000 for mortgagee approval be increased. We believe that current net worth requirements are adequate and therefore have not adopted this recommendation.

Another commenter recommended that the minimum required warehouse line of credit of $250,000 (as set forth in § 203.4(b)(2)) be increased. The Department has not adopted this recommendation. Higher requirements could prevent some small mortgagees from qualifying for HUD approval and an increase is not considered necessary to protect Federal financial interests.

One comment was received with respect to the escrow analysis required by § 203.4(b)(4)(i). The comment stated that the requirement was not clear and should be deleted. The Department does not agree. The requirement for escrow analysis is not new and is not a separate reporting requirement, but rather an integral part of an audited financial statement.

A question was raised concerning whether the compliance test referenced in § 203.4(b)(4)(ii) imposed an unnecessary burden on small mortgagees. The Department agrees that this may possibly be the case, and therefore is adding, in this final rule, a new § 203.4(c) providing that mortgagees that originate less than 100 HUD-insured single family mortgages annually may submit a Management Letter prepared by a Certified Public Accountant or Independent Public Accountant, and a Management Letter response prepared by senior management, in lieu of the compliance report. This lesser requirement will ease audit costs to small mortgagees participating in the Department's mortgage insurance programs, since the CPA will not have to perform the detailed compliance testing set forth in HUD Handbook IG 4000.3 Rev.

In addition to providing a reduced compliance burden for smaller mortgagees, this rule also extends, from 75 to 90 days, the time period within which a mortgagee must file with HUD its audit report or Management Letter. The extension should prove helpful to mortgagees and does not adversely affect Federal financial interests.

One comment suggested elimination of the requirement contained in § 203.4(b)(4) authorizing HUD to require the submission of an audit report at such times as the Department may require. The Department does not adopt this suggestion. We have found that this authority is necessary if HUD is to make a timely determination regarding continuation or withdrawal of mortgagee approval where the mortgagee is experiencing financial problems. The final rule also revises § 203.4(b)(4) to set forth the Department's authority to grant extensions of time for filing audited financial statements.

Another comment recommended that HUD define in these regulations the term "branch office". We have not adopted this recommendation. The requirements for a branch office are currently set forth in Form HUD 92001B and HUD Handbook 4060.1, the Mortgagee Approval Handbook, and are available to all mortgagees.

Section 203.5 Loan correspondents.

On December 19, 1985, the Department published in the **Federal Register**, after opportunity for public comment, a final rule revising the eligibility criteria for loan correspondents (50 FR 51673). The rule (1) increases the net worth requirement from $5,000 to $25,000, (2) permits nonsupervised and governmental HUD-approved mortgagees to sponsor loan correspondents, (3) requires, except under the direct endorsement program (where loans must be underwritten by the mortgagee-sponsor) that all loans be underwritten and closed in the loan correspondent's own name, and (4) permits loan correspondents to maintain branch offices upon meeting an additional $25,000 net worth requirement for each branch office until an adjusted net worth of $100,000 is reached. The recent revision of § 203.5 is now in effect. The section is promulgated again in this rule in order to make a language change which makes express something already implied, *i.e.*, that a loan correspondent not only must meet, but also must maintain, an additional $25,000 net worth requirement to continue to operate its branch offices.

Section 203.6 Investing mortgagees.

This section has been revised in the final rule to eliminate the requirement that an investing mortgagee have real estate experience. An investing mortgagee may not originate or service HUD-insured mortgages. It purchases mortgages from other HUD-approved mortgagees and arranges for their servicing. The Department has determined that because of the passive nature of the mortgage operations of such institutions there is no need to require previous real estate experience.

Section 203.7 Governmental Institutions and National Mortgage Associations.

We have combined § 203.8 (Special Purpose Mortgagees) with this section since special purpose mortgagees are, as a matter of practice, governmental institutions or instrumentalities of such institutions.

Also, on August 27, 1985, the Department published a final rule (51 FR 30478), that adopted an interim rule published in the **Federal Register** on September 27, 1985 (50 FR 39083), that extensively revised 24 CFR Part 44 in order to implement the Single Audit Act of 1984 (31 U.S.C. 7501–7507) and OMB Circular A–128. The interim rule contained a provision revising § 203.7 by adding a paragraph requiring State and local governments (as defined in Part 44), that receive mortgage insurance as mortagees, to conduct audits in accordance with HUD audit requirements at 24 CFR Part 44. This rule includes this audit paragraph as part of the revised § 203.7.

The consolidation of §§ 203.7 and 203.8 requires the technical correction of certain cross references to those sections found in Parts 204, 250, 251, and 255 of Title 24. These corrections, and the correction of two other cross references, are included in this rule.

Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section (b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or 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.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 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 hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The substantive changes made in this final rule are minimal and will affect small and large entities equally. (As indicated earlier, § 203.4(c) of the rule contains provisions designed to ease the regulatory burden on small mortgagees with reference to otherwise applicable compliance testing procedures.)

This rule was listed as Sequence Number 853 under the Office of Housing as item H–30–86 in the Department's Semiannual Agenda of Regulations published on October 27, 1986 (51 FR 38424), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this regulation (Sections 203.1(a)(1), 203.2(g), 20.2(h), 203.2(i), 203.2(j), and 203.4(b)(4)) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2502–0005.

The following numbers identify the program listed in the Catalog of Federal Domestic Assistance affected by this regulation change.

Section 203(b)	= 14.117 Mortgage Insurance—Homes (F). 14.118 Mortgage Insurance—Homes for Certified Veterans (F).
Section 203(k)	= 14.108 Rehabilitation Mortgage Insurance (F).
Section 213	= 14.126 Mortgage Insurance—Management Type Cooperative Projects (F).
Section 220	= 14.122 Mortgage Insurance—Homes in Urban Renewal Areas (F).
Section 221(d)(2)	= 14.120 Mortgage Insurance—Homes for Low and Moderate Income Families (F).
Section 222	= 14.166 Mortgage Insurance—Servicemen (F).
Section 234(c)	= 14.133 Mortgage Insurance—Purchase of Units in Condominiums (F).
Section 235(i)	= 14.105 Interest Reduction—Homes For Lower Income Families (C,F).
Section 240	= 14.130 Mortgage Insurance—Purchase by Homeowners of the Fee Simple Title by Lessors (F).
Section 207	= 14.134 Mortgage Insurance—Rental Housing (F)
Section 207 (Mobile Home Parks)	= 14.127 Mortgage Insurance—Mobile Home.
Section 213	= 14.115 Mortgage Insurance—Development of Sales Type Cooperative Projects (F).
	= 14.124 Mortgage Insurance—Investor Sponsored Cooperative Housing (F).
	= 14.132 Mortgage Insurance—Purchase or Sales-Type Cooperative Housing Units (F).
Section 220	= 14.139 Mortgage Insurance—Rental Housing in Urban Renewal Areas (F).
Section 221(d)(3)	= 14.137 Mortgage Insurance—Rental and Cooperative Housing for Low and Moderate Income Families, Market Interest Rate (F).
Section 221(d)(4)	= 14.135 Mortgage Insurance—Rental Housing for Moderate Income Families (F).
Section 231	= 14.138 Mortgage Insurance—Rental Housing for the Elderly (F).
Section 232	= 14.129 Mortgage Insurance—Nursing Homes and Intermediate Care Facilities (F).
Section 241	= 14.151 Supplemental Loan Insurance—Multifamily Rental Housing (F).
Section 242	= 14.128 Mortgage Insurance—Hospitals (F).
Title X	= 14.125 Mortgage Insurance—Land Development and New Communities (F).

List of Subjects in 24 CFR Part 203

Home improvement, Loan program: Housing and Community Development, Mortgage insurance, Solar energy.

Accordingly, 24 CFR Part 203 is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for Part 203 continues to read as follows:

Authority: Secs. 203, 204, and 211, National Housing Act (12 U.S.C. 1709, 1710, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Sections 203.1 through 203.7 are revised to read as set forth below and §§ 203.8 and 203.9 are removed and reserved.

§ 203.1 Approval of mortgagees.

(a) *General.* (1) A mortgagee may be approved for participation in the HUD/FHA mortgage insurance programs upon filing a request for approval on a form prescribed by the Commissioner. Approval of the application shall constitute an agreement between the mortgagee and the Commissioner which shall govern the mortgagee's continued approval subject to the provisions of this part.

(2) Approval may be restricted to participation in the home mortgage insurance programs or the multifamily mortgage insurance programs, and to geographic areas designated by the Commissioner.

(3) Separate approval is required under the National Housing Act for participation in the Title I Program, and additional approval is required for participation in the Title II Direct Endorsement Program or for each of the Coinsurance Programs.

(b) *Prohibited payments.* A mortgagee may not pay anything of value, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person or entity if such person or entity has received any other compensation from the mortgagor, seller, builder, or any other person for services related to such transactions or related to the purchase or sale of the mortgaged property, except that compensation as may be approved by the Commissioner may be paid for services actually performed. The mortgagee shall not pay a referral fee to any person or organization.

(c) *Withdrawal of approval.* Mortgagee approval may be withdrawn by the Mortgagee Review Board as provided in Part 25 of this title. Withdrawal of a mortgagee's approval shall not affect the insurance on mortgages already accepted for insurance.

(Approved by the Office of Management and Budget under control number 2502–0005)

§ 203.2 Approval requirements.

To be approved for participation in the HUD–FHA mortgage insurance programs, and to maintain approval, a mortgagee shall meet the following general requirements and the specific requirements of § 203.3 through § 203.7, as appropriate.

(a) It shall be a chartered institution, a permanent organization having succession, or a trust. A limited partnership will be considered a permanent organization having succession for purposes of this section if the partnership has not more than one general partner and the general partner is a chartered institution that has as its principal activity the management of the partnership affairs. If these conditions are met, the requirements of paragraphs (b) and (c) of this section shall be treated as applicable to the general partner.

(b) It employs trained personnel competent to perform their assigned responsibilities, including origination, servicing and collection activities, and adequate staff and facilities to originate and service mortgages in accordance with this part, to the extent the mortgagee engages in such activities.

(c) All employees who will sign applications for mortgage insurance on behalf of the mortgagee shall be corporate officers or shall otherwise be authorized to bind the mortgagee in matters involving the origination of mortgage loans.

(d) It shall not use escrow funds for any purpose other than that for which they were received.

(e) It shall comply with the provisions of Title VIII of the Civil Rights Act of 1968, the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act of 1974 and all other Federal laws relating to the lending or investing of funds in real estate mortgages.

(f) It shall comply with the servicing responsibilities contained in Subpart C of this part, with all other applicable regulations contained in this title and with such additional conditions and requirements as the Commissioner may impose.

(g) It shall provide prompt notification, on a form prescribed by the Commissioner, of all changes in its legal structure, including, but not limited to mergers, terminations, name, location, control of ownership, and character of business.

(h) It shall file a yearly verification report on a form prescribed by the Commissioner.

(i) It shall, upon request, submit a copy of its latest financial statement, submit such information as the Commissioner may request, and submit to an examination of that portion of its records which relates to its insured mortgage activities.

(j) It shall implement a written Quality Control Plan that assures compliance with the regulations and other issuances of the Commissioner regarding loan origination and servicing.

(k) A mortgagee, other than one meeting the requirements of § 203.7, shall pay an application fee and annual fees, including additional fees for each branch office authorized to submit applications for mortgage insurance, in such amounts and at such times as the Commissioner may require.

(l) At the time of application, neither the applicant mortgagee nor any officer, partner, director, principal or employee of the applicant mortgagee shall:

(1) Be suspended, debarred or otherwise restricted under Part 24 or Part 25 of this title or under similar procedures of any other Federal agency.

(2) Be indicted for, or have been convicted of, an offense which reflects upon the responsibility, integrity or ability of the mortgagee to participate in HUD programs as an approved mortgagee.

(3) Be subject to unresolved findings as a result of HUD or other governmental audits or investigations.

(4) Be engaged in business practices that do not conform to generally accepted practices of prudent lenders or that demonstrate irresponsibility.

(Approved by the Office of Management and Budget under control number 2502–0005)

§ 203.3 Supervised mortgagees.

(a) A supervised mortgagee may submit applications for mortgage insurance and may purchase, hold, service and sell insured mortgages.

(b) An institution may be approved as a supervised mortgagee on application to the Commissioner if it is either:

(1) A member of the Federal Reserve System or an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation, the Federal Deposit Insurance Corporation or the National Credit Union Administration and that meets the requirements of § 203.2; or,

(2) An institution subject to the inspection and supervision of a governmental agency that is required by law or applicable regulation to make periodic examinations of its books and accounts, provided the institution meets the requirements of § 203.2 and the following additional requirements:

(i) It shall promptly notify the Commissioner in the event of termination of its supervision by its supervising agency.

(ii) It shall have and maintain a net worth or a trust estate as provided in § 203.4(b)(1).

(c) A supervised mortgagee may, on application to the Commissioner, maintain branch offices for the submission of applications for mortgage insurance. The mortgagee shall remain fully responsible to the Commissioner for the actions of its branch offices.

(d) A supervised mortgagee may, with the approval of the Commissioner, designate another approved mortgagee as Authorized Agent for the purpose of submitting applications for mortgage insurance in its name and on its behalf.

(e) Approval of a banking institution or a trust company as a supervised mortgagee shall constitute approval of such institution or company when lawfully acting in a fiduciary capacity in investing fiduciary funds which are under its individual or joint control. Upon termination of such fiduciary relationship, any insured mortgages held in the fiduciary estate shall be transferred to a mortgagee approved under this section and the fiduciary relationship must be such as to permit such transfer.

§ 203.4 Nonsupervised mortgagees.

(a) A nonsupervised mortgagee is an institution that has as its principal activity the lending or investment of funds in real estate mortgages, but does not meet the requirements of a supervised mortgagee as provided in §203.3. A nonsupervised mortgagee may submit applications for the insurance of mortgages and may purchase, hold, service and sell insured mortgages.

(b) A mortgagee may be approved as a nonsupervised mortgagee if it meets the approval requirements of § 203.2 and the following special requirements:

(1) It shall have and maintain a net worth or a trust estate of not less than $100,000 in assets acceptable to the Commissioner.

(2) It shall have and maintain a reliable warehouse line of credit in an amount of not less than $250,000, available for use in the origination of mortgages or other mortgage funding programs acceptable to the Commissioner.

(3) It shall segregate escrow commitment deposits, work completion deposits, and all periodic payments received under insured mortgages on account of ground rents, taxes, assessments, and insurance premiums, and shall deposit such funds in a special account or accounts with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration.

(4) It shall file an audit report with the Commissioner within 90 days of the close of its fiscal year (or within an extended time if an extension is granted in the sole discretion of the Commissioner), and at such other times as may be requested. Audit reports shall be based on audits performed by a Certified Public Accountant, or by an Independent Public Accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, and shall include:

(i) A financial statement in a form acceptable to the Commissioner, including a balance sheet and a statement of operations and retained earnings, and analysis of the mortgagee's net worth, adjusted to reflect only assets acceptable to the Commissioner, and an analysis of escrow funds.

(ii) A report on compliance tests prescribed by the Commissioner.

(iii) Such other information as the Commissioner may require.

(c) A nonsupervised mortgagee that originates 100 or fewer FHA-insured single family mortgages annually shall be exempt from the provisions of § 203.4(b)(4)(ii), if it files with the Commissioner, within 90 days of the close of its fiscal year, a certification by a senior official of the mortgagee that it did not originate more than 100 FHA-insured single family mortgages during its fiscal year, and a Management Letter prepared by a Certified Public Accountant, or by an Independent Public Accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, which conforms with generally accepted auditing standards and which includes senior management's response to the Management Letter.

(d) A nonsupervised mortgagee may, on application to the Commissioner, maintain branch offices for the submission of applications for mortgage insurance. The mortgagee shall remain fully responsible to the Commissioner for the actions of its branch offices.

(Approved by the Office of Management and Budget under control number 2502-0005)

§ 203.5 Loan correspondents.

(a) A loan correspondent is an institution that originates and closes HUD/FHA insured mortgage loans for sale to its sponsor or sponsors. Except for the Direct Endorsement program authorized in §§ 200.163 through 200.164a of this chapter, it must process and close all loans in its own name. A loan correspondent may not sell insured mortgages to any mortgagee other than its sponsor or sponsors without the prior approval of the Commissioner, nor may it retain insured mortgages in its own portfolio. In connection with the Direct Endorsement program, a loan correspondent may not underwrite, but shall close in its own name, all loans for submission to HUD/FHA for insurance endorsement. Underwriting of Direct Endorsement loans shall be the responsibility of the loan correspondent's sponsor.

(b) A mortgagee may be approved as a loan correspondent if it meets the approval requirements of § 203.4, except that:

(1) Its approval must be requested by one or more sponsors that are HUD/FHA approved mortgagees under § 203.3, § 203.4, or § 203.7.

(2) It shall be exempt from the warehouse line of credit requirements of § 203.4(b)(2) where there is a written agreement by a sponsor to fund all mortgages originated by the loan correspondent.

(3) It shall have and maintain an adjusted net worth or trust estate of not less than $25,000 in assets acceptable to the Commissioner. Previously approved loan correspondents that have a net worth of less than $25,000 must meet this $25,000 net worth requirement on or before March 1, 1988.

(4) It may not, as authorized in § 203.4(d), maintain branch offices for the processing of loan applications and the submission of applications for a firm commitment without the prior approval of the Commissioner. Approval may be granted where the loan correspondent meets and maintains an additional $25,000 net worth requirement for each branch office it maintains until it has reached an adjusted net worth of not less than $100,000. Loan correspondents with an adjusted net worth of $100,000 or more may, with the prior approval of the Commissioner, open and maintain branch offices without meeting any additional net worth requirement. A loan correspondent shall remain fully responsible to the Commissioner for the actions of its branch offices.

(5) A loan correspondent and its sponsor or sponsors shall promptly notify the Commissioner upon termination of any loan correspondent agreement, and termination of its agreements with all its sponsors shall be cause for withdrawal of the loan correspondent's approval.

§ 203.6 Investing mortgagees.

(a) An investing mortgagee is an organization, including a charitable or nonprofit institution, pension fund or trust, that is not approved under other sections of this part. It may purchase, hold and sell insured mortgages but may not submit applications for the insurance of mortgages. An investing mortgagee may not service insured mortgages without prior approval of the Commissioner.

(b) An organization may be approved as an investing mortgagee if it meets the approval requirements of § 203.2, and the following special requirements:

(1) It has lawful authority to purchase insured mortgages in its own name.

(2) It has or has arranged for funds sufficient to support a projected investment in real estate mortgages of at least $1 million.

(3) It will provide, or will arrange for, the servicing of all mortgages it acquires.

§ 203.7 Governmental institutions, national mortgage associations, public housing agencies and state housing agencies.

(a) A Federal, State or municipal governmental agency, a Federal Reserve Bank, a Federal Home Loan Bank or a National Mortgage Association which meets the approval requirements of § 203.2 and is empowered to hold mortgages insured under the National Housing Act may be approved as an FHA mortgagee and may originate, purchase, hold, service and sell insured mortgages to the extent authorized by applicable Federal, State or local law.

(b) Under such terms and conditions as the Commissioner may prescribe, Public Housing Agencies or their instrumentalities may be approved as mortgagees for the purpose of originating and holding insured project mortgages funded by issuance of tax exempt obligations by the agency, if the housing project will be assisted under section 8 of the United States Housing Act of 1937.

(c) Under such terms and conditions as the Commissioner may prescribe, State Housing Agencies as defined in section 244(g) of the National Act may be approved as mortgagees for the purpose of originating and holding coinsured project mortgages pursuant to section 24 of that Act.

(d) A mortgagee approved under paragraph (a), (b) or (c) of this section may, with the approval of the Commissioner, designate another approved mortgagee as Authorized Agent for the purpose of submitting applications for mortgage insurance in the mortgagee's name and on its behalf.

(e) Since the insuring of mortgage notes or other evidence of indebtedness under the National Housing Act constitutes "financial assistance" for purposes of audit requirements set out in 24 CFR Part 44, State and local governments (as defined in § 44.2) that receive mortgage insurance as mortgagees shall conduct audits in accordance with HUD audit requirements at 24 CFR Part 44.

§ 203.8 [Reserved]

§ 203.9 [Reserved]

PART 204—COINSURANCE

3. The authority citation for Part 204 continues to read as follows:

Authority: Secs. 211 and 244, National Housing Act (12 U.S.C. 1715b and 1715z-9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. The introductory language in paragraphs (a) and (b) of §§ 204.2 is revised to read as follows:

§ 204.2 Approval of coinsuring mortgagees.

(a) A mortgagee approved under § 203.1, § 203.2 or § 203.4 of this chapter and meeting the following special requirements may be approved as a coinsuring mortgagee under this part:

* * * * *

(b) Approval of a coinsuring mortgagee under this part may be withdrawn for the causes provided in § 25.9 of this chapter or for any of the following causes:

* * * * *

PART 250—COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

5. The authority citation for Part 250 is revised to read as follows:

Authority: Secs. 211 and 244, National Housing Act (12 U.S.C. 1715b and 1715z-9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. The introductory language of § 250.202, and paragraph (h) are revised to read as follows:

§ 250.202 Withdrawal of approval.

The Commissioner may refrain from issuing a commitment for mortgage insurance authorized by this part with respect to any project proposed for coinsurance by an agency which has been given written notice by the Commissioner that its certification as an approved agency under this part may be suspended or withdrawn. Certification as an approved agency under this part may be suspended or withdrawn pursuant to the provisions of Part 24 of this title or for any of the following causes:

* * * * *

(h) Withdrawal of approval as a mortgagee pursuant to § 25.9 of this title.

* * * * *

PART 251—COINSURANCE FOR THE CONSTRUCTION OF SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

7. The authority citation for Part 251 continues to read as follows:

Authority: Secs. 211 and 244, National Housing Act (12 U.S.C. 1715b, 1715z-9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. Section 251.101 is revised to read as follows:

§ 251.101 Eligible lender.

The Commissioner may approve as a coinsuring lender any lender that (a) is currently a HUD-approved multifamily lender under 24 CFR 203.1 through 203.4, 203.6, or § 203.7(c), and (b) meets the requirements of § 251.102.

9. Section 251.105(a) is revised to read as follows:

§ 251.105 Delegation of servicing.

(a) The lender must directly service all coinsured loans included in GNMA securities pools. In all other instances, the lender may choose to service its coinsured loans or arrange for another entity to service the Mortgages as long as the contract servicer is a HUD-approved lender under §§ 203.1 through 203.6, or § 203.7(c) of this chapter and the coinsuring lender retains its obligations under this part.

* * * * *

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

10. The authority citation for Part 255 continues to read as follows:

Authority: Secs. 211 and 244, National Housing Act (12 U.S.C. 1715b, 1715z-9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

11. Section 255.101 is revised to read as follows:

§ 255.101 Eligible lender.

The Commissioner may approve as a coinsuring lender any lender that (a) is currently a HUD-approved multifamily lender under 24 CFR 203.1 through 203.4, 203.6, or § 203.7(c); and (b) meets the requirements of § 255.102.

12. Section 255.105(a) is revised to read as follows:

§ 255.105 Delegation of servicing.

(a) The lender must directly service all coinsured loans included in GNMA securities pools. In all other instances, the lender may choose to service its coinsurance loans or arrange for another entity to service the Mortgages, provided the contract servicer is a HUD-approved lender under §§ 203.1 through 203.4, 203.6, or § 203.7(c) of this chapter and the coinsuring lender retains its obligations under this part.

* * * * *

Dated: January 23, 1987.

Thomas T. Demery,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 87-2303 Filed 2-4-87; 8:45 am]

BILLING CODE 4210-27-M

24 CFR Parts 510 and 570

[Docket No. R-86-1286; FR-2151]

Section 312 Rehabilitation Loan Program and Urban Development Action Grant Progam; Relocation Requirements

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: The Department is revising its relocation requirements for those displaced by rehabilitation activities under the Section 312 Rehabilitation Loan Program and the Urban Development Action Grant Program. These amendments provide greater consistency in the treatment of persons who are displaced by HUD-assisted community development projects, but who are not covered by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

EFFECTIVE DATE: March 17, 1987.

This rule applies to any displacement which occurs on or after March 17, 1987.

FOR FURTHER INFORMATION CONTACT: Melvin Geffner, Deputy Director; Roland Brown, Georgian Carter, or Alvin West, Relocation and Real Estate Division, Room 7174, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 24100-7000. Telephone (202) 755-6336. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

1. Background

On June 4, 1986, the Department published a proposed rule in the Federal Register (see 51 FR 20312), requesting comments on revisions to its relocation requirements for two of its programs—the Section 312 Rehabilitation Loan Program and the Urban Development Action Grant Program.

The Department proposed to adopt relocation requirements for non-Uniform Act Section 312 Program activities that are similar to those it plans to adopt to implement Section 104(j) of the Housing and Community Development Act of 1974. Section 104(j) requires that reasonable relocation benefits be provided to persons displaced by rehabilitation or non-Uniform Act acquisition under the Community Development Block Grant (CDBG) Program or Urban Development Action

Grant (UDAG) Program. The proposed changes were designed to simplify current requirements and make them more consistent with relocation requirements under other HUD-assisted activities not subject to the Uniform Act.

In addition, the Department proposed changes to § 570.457, the Urban Development Action Grant (UDAG) Program's requirements on relocation assistance. Paragraph (a) of this section makes it clear that the acquisition of real property by a "State agency" under the UDAG program and displacement resulting from such acquisition are subject to the provision of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). Rather than repeat standards contained in other regulations, paragraph (b) refers the user to § 570.606(a) and 24 CFR Part 42 for specific instructions on implementation of the Uniform Act.

Paragraph (c) of § 570.457 sets forth relocation requirements governing non-Uniform Act displacements under UDAG that are subject to the provisions of Section 104(j) of the Housing and Community Development Act of 1974 (the Act). Section 104(j) requires that reasonable relocation benefits be provided to any family, individual, business, nonprofit organization or farm "involuntarily and permanently displaced as a result of the use of assistance" under the CDBG or UDAG programs to acquire or substantially rehabilitate property. Because the statute covers displacement brought about as a result of the "use of assistance", the displacement-causing acquisition or rehabilitation activities of private developers are subject to the law and these implementing regulations.

These changes will improve consistency in relocation requirements under HUD-assisted community development programs not subject to the Uniform Act. Like the Section 312 relocation requirements referenced above, the changes to the UDAG rule expand the flexibility of the grantee to determine eligibility requirements for tenants displaced from a dwelling and also the amount of assistance to be provided. Consistent with certain minimums set forth in the rule, the grantee must develop, adopt and provide to persons to be displaced the standards it would follow.

The Department also proposed to revise § 750.458(c)(14)(ix)(I) to conform the required certification of compliance with applicable relocation and acquisition requirements to the changes proposed for § 570.457.

2. This Document

The Department received no public comment on the proposal, although it did receive two comments from field offices. Accordingly, the Department is making no substantive change in the rule as proposed. However, HUD is making an editorial change both to § 510.52(c) and to § 570.457(c)—to make it clear that the locality must provide *to persons to be displaced* the locality's standards in providing relocation assistance.

3. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410-0500.

Executive Order 12291

This rule does not constitute a major rule as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. 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 or 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.

Regulatory Flexibility Act of 1980

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities, because it does not affect the amount of funds provided under the Urban Development Action Grant Program or Section 312 Rehabilitation Loan Program, but rather eliminates unnecessary, administrative relocation requirements by making revisions to the rule consistent with recently enacted legislation.

HUD Semiannual Agenda

This rule was listed as item 919 in the Department's Semiannual Agenda of Regulations, published on October 27, 1986 (51 FR 38424, 38425) under Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in this rule were submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C 3501-3520). All requirements have been approved and have been assigned OMB Control Number 2506-0084.

Catalog of Federal Domestic Assistance

The applicable Catalog numbers are 14.220 for the Section 312 Rehabilitation Loan Program and 14.221 for the Urban Development Action Grant Program.

List of Subjects

24 CFR Part 510

Loan programs: housing and community development, Housing, Relocation assistance, Home improvement, Rehabilitation, Urban renewal.

24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, 24 CFR Chapter V is amended as follows:

PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

1. The authority citation for Part 510 continues to read as follows:

Authority: Section 312, United States Housing Act of 1964 (42 U.S.C. 1452b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 510.52 is revised to read as follows:

§ 510.52 Relocation/displacement.

(a) *Responsibility of locality.* (1) The locality shall administer its Section 312 Rehabilitation Loan Program in a manner that minimizes any potential or actual involuntary displacement of tenants. Wherever it offers the potential of minimizing displacement, the locality shall require the owner to consider the feasibility of carrying out the rehabilitation in stages.

(2) The locality is responsible for ensuring compliance with the

requirements of this section. To pay the cost of the assistance required, the locality may use local public funds or Community Development Block Grant funds. The locality also may secure a commitment from any participating party in the program to provide all or part of the necessary funds. (To use Block Grant funds, the locality shall adopt a written policy in accordance with § 570.606(b) of this chapter.)

(3) If a locality determines that a residential tenant will not be displaced, it shall ensure that the terms and conditions of the tenant's continued occupancy are consistent with the locality's standards, are not more restrictive than those customary in the jurisdiction, and are set forth in a lease which is offered to the tenant.

(4) The locality shall maintain records in sufficient detail to demonstrate compliance with the requirements of this section.

(b) *Applicability of Uniform Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and HUD implementing regulations at 24 CFR Part 42 apply to the displacement of any person (family, individual, business, nonprofit organization or farm) as a direct result of the acquisition of real property by a "State agency" (defined in section 101 of the Uniform Act, 42 U.S.C. 4601) for a federally assisted project, including a project where the Federal assistance is a Section 312 Rehabilitation Loan.

(c) *Non-Uniform Act Displacement.* Projects not subject to the Uniform Act are subject to this paragraph (c). The locality shall provide reasonable relocation assistance to any residential or nonresidential tenant displaced as a direct result of an approved Section 312 Rehabilitation Loan activity. (The term "tenant" includes any family, individual, business, nonprofit organization or farm that is a renter.) The locality shall develop, adopt and provide to persons to be displaced a written statement of the standards it will use for providing relocation assistance, consistent with the following minimum requirements:

(1) A residential tenant who moves will be considered displaced from his or her dwelling if:

(i) The tenant has not been offered a decent, safe and sanitary dwelling unit on the real property at a cost for rent and estimated utility charges that does not exceed the greater of

(A) The tenant's cost for rent and utilities at the time of the submission of the preapplication (or the application, if there is no preapplication) to the HUD Office or

(B) 30 percent of the tenant household's gross income; or

(ii) Temporary relocation is required and the tenant is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation.

(2) Eligibility criteria must cover

(i) Any tenant legally occupying the property at the time of the submission of the preapplication (or application, if there is no preapplication) to the HUD office; and

(ii) Any tenant who legally moves into the property between such event and the actual rehabilitation without receiving prior written notice of his or her possible displacement as a result of the planned rehabilitation.

(3) Any residential or nonresidential tenant (but not an owner-occupant) who is determined under local standards to be displaced as a direct result of Section 312 Rehabilitation Loan activity shall be provided with relocation assistance, including at a minimum:

(i) Reasonable moving expenses;

(ii) Advisory services needed to help in relocating; and

(iii) For a displaced residential tenant:

(A) Referral to at least one suitable, decent, safe and sanitary replacement dwelling unit. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such manner that, wherever feasible, they will have a choice between relocating within their neighborhood and other neighborhoods consistent with the locality's responsibility to affirmatively further fair housing; and

(B) Either (*1*) Payment at least equal to 24 times the increase, if any, between the monthly cost of rent and utilities at the dwelling unit from which the tenant is displaced and the cost of rent and utilities at a suitable, decent, safe and sanitary replacement dwelling unit or (*2*) The provision of a certificate or housing voucher for rental assistance payments under the Section 8 Housing Assistance Payments Program if the tenant is an eligible lower income person.

(d) *Appeals.* If a person disagrees with the locality's determination concerning the person's eligibility for, or the amount of a relocation payment under this section, the person may file a written appeal of that determination with the locality. The appeal procedures to be followed are described at 24 CFR 42.10.

(Approved by the Office of Management and Budget under control number 2506–0084)

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

3. The authority citation for Part 570 continues to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Section 570.457 is revised as follows:

§ 570.457 Relocation and acquisition.

(a) *Responsibility of the applicant.* (1) The applicant is responsible for ensuring compliance with the requirements of this section. To pay the cost of relocation assistance, including rental assistance payments, the applicant may use local public funds, action grant or entitlement community development block grant funds (see Subparts D and G of this part). The applicant also may secure a commitment from any participating party in the action grant program to provide all or part of the necessary funds. In order to use Block Grant funds, the applicant shall adopt a written policy in accordance with § 570.606(b).

(2) If the applicant determines that a residential occupant will not be displaced, it shall ensure that the terms and conditions of the person's continued occupancy are consistent with its established standards, are not more restrictive than those customary in the jurisdiction, and are set forth in a lease which is offered to the person.

(3) The applicant shall maintain records in sufficient detail to demonstrate compliance with the requirements of this section.

(b) *Applicability of the Uniform Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and HUD implementing regulations in Part 42 of this title apply to the acquisition of real property by a "State agency" for an activity assisted under this subpart and to the displacement of any person (family, individual, business, nonprofit organization or farm) that results from the acquisition. "State agency" is defined in section 101 of the Uniform Act (42 U.S.C. 4601). *See* also § 570.606(a) for additional instructions on the implementation of the uniform Act.

(c) *Displacement not subject to the Uniform Act.* The displacement of any tenant (family, individual, business, nonprofit organization or farm) as a result of the acquisition of real property by an entity other than a State agency or rehabilitation for an activity assisted under this subpart is not subject to the Uniform Act. However, such displacement is subject to section 104(j) of the Housing and Community Development Act of 1974, which requires that reasonable relocation assistance be provided to persons permanently and involuntarily displaced as a result of the use of assistance received under this part to acquire or substantially rehabilitate property where such displacement is not subject to the Uniform Act. The grantee shall develop, adopt, and provide to persons to be displaced a written statement of the standards it will use for providing relocation assistance, consistent with the following minimum requirements:

(1) A residential tenant who moves will be considered displaced from his or her dwelling if:

(i) The tenant has not been provided a decent, safe, and sanitary dwelling unit on the property following the completion of the assisted activity at a monthly cost for rent and utilities that does not exceed the greater of:

(A) The tenant's cost for rent and utilities at the time of preliminary funding approval for the UDAG assistance; or

(B) 30 percent of the tenant household's gross income; or

(ii) Temporary relocation is required and the tenant is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation.

(2) Eligibility criteria for relocation assistance must cover:

(i) Any tenant legally occupying the property at the time the grantee enters into a contract to provide assistance for the acquisition or rehabilitation; and

(ii) Any tenant who legally moves into the property between such event and the actual acquisition or rehabilitation without receiving prior written notice of his or her possible displacement as a result of the planned acquisition or rehabilitation.

(3) Any residential or nonresidential tenant who is determined under grantee standards to be displaced as a direct result of rehabilitation or acquisition assisted under this part (not subject to the Uniform Act) must be provided relocation assistance, including at a minimum:

(i) Reasonable moving expenses;

(ii) Advisory services needed to help in relocating; and

(iii) For a displaced residential tenant:

(A) Referral to at least one suitable, decent, safe and sanitary replacement dwelling unit. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhood and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing; and

(B) Either (*1*) Payment at least equal to 24 times the increase, if any, between the monthly cost of rent and utilities at the dwelling unit from which the tenant is displaced and the cost of rent and utilities at a suitable, decent, safe and sanitary replacement dwelling unit, or (*2*) The provision of a certificate or housing voucher for rental assistance payments under the Section 8 Housing Assistance Payments Program, if the tenant is an eligible lower income person.

(4) For purposes of this paragraph (c), the term "tenant" includes any family, individual, business, nonprofit organization or farm that is a renter. It also includes any owner-occupant displaced as a direct result of non-Uniform Act acquisition by an agency with the power of eminent domain and any displaced owner-occupant of a manufactured (mobile) home who rents the site.

(d) *Appeals.* If a person disagrees with the applicant's determination concerning the person's eligibility for, or the amount of relocation payment under this section, the person may file a written appeal of that determination with the applicant. The appeal procedures to be followed are described in 24 CFR 42.10.

(Approved by the Office of Management and Budget under control number 2506-0084)

5. Section 570.458(c)(14)(ix)(I) is revised as follows:

§ 570.458 Full applications.

* * * * *

(c) * * *

(14) * * *

(ix) * * *

(I) The acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), HUD implementing regulations in Part 42 of this title, and the relocation requirements in § 570.457(c) governing displacement subject to section 104(j) of the Housing and Community Development Act of 1974.

* * * * *

Dated: January 23, 1987.

Jack R. Stockvis,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 87-2302 Filed 2-4-87; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 18, and 602

[T.D. 8123]

Income Taxes; Limitation on Certain Adoptions, Changes, and Retentions of Annual Accounting Period

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations and amendments to final rules.

SUMMARY: This document provides temporary regulations relating to certain changes, adoptions, and retentions of annual accounting period. The regulations are needed to ensure that taxpayers do not attempt to change to, adopt, or retain a taxable year that is a fiscal year (including a 52-53-week taxable year) in order to circumvent the effective date provisions of the Tax Reform Act of 1986. The regulations affect certain persons who wish to change to, adopt, or retain a taxable year that is a fiscal year during the period covered by the temporary regulations and provide these persons with the guidance needed to comply with the law.

EFFECTIVE DATES: For §§ 1.441-2(f), 1.441-3T, 1.442-1(f) and 1.442-2T, September 29, 1986; for §§ 1.442-3T, 1.706-1 (b) (7) and 18.1378-1 (e), November 5, 1986; for § 602.101 (c), January 22, 1987.

FOR FURTHER INFORMATION CONTACT: Arthur E. Davis III of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attn: CC:LR:T). Telephone 202-566-3238 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) and the Temporary Income Tax Regulations under the Subchapter S Revision Act of 1982 (26 CFR Part 18) to provide temporary rules relating to certain changes, adoptions, and retentions of annual accounting period under sections 441, 442, 706, and 1378 of the Internal Revenue Code of 1954. In general, the temporary regulations limit the ability of certain taxpayers to change to, adopt, or retain a taxable year that is a fiscal year (including a 52-53-week taxable year ending with reference to the month of December) during the period to which the temporary regulations apply. The Internal Revenue Service announced in

Announcement 86–101, 1986–41 I.R.B. 14, and Announcement 86–113, 1986–47 I.R.B. 46, that temporary regulations providing these limitations would be issued.

Explanation of Provisions Changes of Annual Accounting Period

The temporary regulations relating to changes of annual accounting period generally suspend the provisions of §§ 1.441–2 (c), 1.442–1 (c), and 1.706–1 (b) of 26 CFR Part 1, § 18.1378–1 of 26 CFR Part 18, Rev. Proc. 72–51, 1972–2 C.B. 832, and any revenue procedure issued before September 18, 1986, that otherwise would permit a taxpayer to change its taxable year (including a change to a 52–53-week taxable year) either under a procedure that does not require the prior approval of the Commissioner or under expedited procedures for securing that approval. In addition, the temporary regulations provide that the Commissioner generally will not consider a request for approval of a change of annual accounting period unless the taxpayer has had a substantial acquisition or divestiture determined in accordance with the temporary regulations, or the taxpayer meets certain other conditions. The temporary regulations allow certain taxpayers to change their annual accounting period without the prior approval of the Commissioner if the taxpayer has a substantial business purpose for the change as evidenced by the satisfaction of a mechanical test. Certain taxpayers, however, must obtain prior approval to a change even if the mechanical test is satisfied.

The mechanical test generally is the same as the "25 percent test" set forth in section 4.04 of Rev. Proc. 83–25, 1983–1 C.B. 689. Under the mechanical test, the gross receipts from sales or services for the last two months of each of three 12-month periods that end with the last month of the requested taxable year must equal or exceed 25 percent of the gross receipts from sales or services for that 12-month period. If more than one taxable year meets this mechanical test, a substantial business purpose is evidenced only for the year for which the arithmetical average of the percentages obtained under the mechanical test for the three applicable 12-month periods is highest.

For purposes of the mechanical test, the three 12-month periods are the most recent 12-month period (determined at the time the statement or application required to effect or request the change is filed) ending with the last month of the requested taxable year and the two preceding 12-month periods that end with the corresponding month. A taxpayer must test the three 12-month periods that end with months other than the last month of the requested taxable year, however, in order to determine if more than one taxable year meets the mechanical test.

A taxpayer that has not been in existence for the three 12-month periods described above may evidence a substantial business purpose under the mechanical test by taking into account the gross receipts from sales and services of a predecessor organization. Gross receipts of a predecessor organization shall not be taken into account, however, unless the predecessor organization was actively engaged in a trade or business at all times during the portion of the three applicable 12-month periods prior to the inception of the taxpayer. Thus, a taxpayer in existence for only the most recent applicable 12-month period may use the gross receipts from the two preceding 12-month periods of a predecessor organization.

Although a mechanical test is used in these temporary regulations to determine whether a taxpayer has a business purpose for a particular taxable year, taxpayers should not infer that a mechanical test always will be used to determine business purpose in future years. The Service is studying the mechanical test to determine when its use is appropriate.

The temporary regulations do not apply to certain changes of annual accounting period, including a change to a calendar year. Thus, for example, a corporation seeking S status will be permitted to change its taxable year automatically to a calendar year under § 18.1378–1 (b) (1) (for the first year for which the S election is effective) if all of its principal shareholders are calendar year taxpayers and if the corporation satisfies all of the applicable requirements under that section. Similarly, a corporation (including a regulated investment company as defined in section 851) will be permitted to change automatically to a calendar year under § 1.442–1 (c) provided that the corporation satisfies all of the applicable requirements under that section.

The temporary regulations generally apply to any change in annual accounting period if the income tax return for the short period involved in the change is filed after September 29, 1986, and the short period involved in the change ends before January 5, 1987. The temporary regulations do not apply, however, if the application required to effect or request the change (*i.e.*, Form 1128 or Form 2553) was timely filed before September 30, 1986. In the case of a change that is effected by filing an income tax return for the short period involved in the change, the temporary regulations do not apply if an application for extension of time for filing that return was filed before September 30, 1986, the application clearly stated the year to which the taxpayer intended to change, and the income tax return for the short period subsequently is timely filed (determined with regard to extensions).

The temporary regulations include an anti-abuse rule that is applicable to any adoption by a taxpayer of a taxable year that has the effect of circumventing the limitations prescribed under the temporary regulations on changes of annual accounting period. Thus, for example, a corporation will not be able to circumvent the provisions of the temporary regulations by creating a new corporation that adopts the desired fiscal year and by transferring some or all of the net assets of the existing corporation to the new corporation.

52–53-Week Taxable Year

The temporary regulations provide special rules applicable to certain entities and investors in those entities that wish to adopt, retain, or change to or from a 52–53-week taxable year. Under those rules, a partnership, partner, S corporation (or corporation seeking S status), S corporation shareholder, personal service corporation, or employee-owner of a personal service corporation must agree to certain conditions in order to change to or from a 52–53-week taxable year or to adopt or retain such a year. The conditions relate to the taxable year in which a partner, S corporation shareholder, or employee owner must take into account items passed through or paid by the partnership, S corporation, or personal service corporation.

The temporary regulations also include a rule to prevent the evasion or avoidance of tax through the adoption of or change to or from a 52–53-week taxable year by any taxpayer, including a corporation that is not seeking S status. The temporary regulations provide that a taxpayer may not adopt or change to or from a 52–53-week taxable year if the principal purpose for such action is the evasion or avoidance of Federal income tax.

The temporary regulations relating to adoptions of, retentions of, or changes to or from a 52–53-week taxable year generally apply if the first taxable year for which the election to use or retain the 52–53-week year is made (or, if applicable, the short period involved in the change) ends before January 5, 1987, and the income tax return for that year (or period) is filed after September 29, 1986. The temporary regulations do not apply, however, if the application required to effect or request the adoption, retention, or change (i.e., Form 1128 or Form 2553) was timely filed before September 30, 1986. In the case of an adoption or change that is effected by filing an income tax return for the first taxable year for which the election is made, the temporary regulations do not apply if an application for extension of time for filing that return was filed before September 30, 1986, the application clearly stated the taxpayer's intent to adopt or change to a 52–53-week taxable year, and the income tax return for that year is timely filed (determined with regard to extensions).

Adoptions and Retentions of a Taxable Year

The temporary regulations generally provide that a partnership or corporation seeking S status may not adopt or retain a taxable year that results in a deferral of income to its partners or shareholders unless the taxpayer establishes a substantial business purpose for the adoption or retention. Thus, the temporary regulations suspend the applicable provisions of Rev. Proc. 72–51, 1972–2 C.B. 832, and § 4.03 of Rev. Proc. 83–25, 1983–1 C.B. 689, for the period to which the temporary regulations apply. The temporary regulations also contain special rules (including a mechanical test) for determining whether a taxpayer has established a substantial business purpose for the adoption or retention of a taxable year that results in a deferral of income to its partners or shareholders.

The temporary regulations relating to adoptions and retentions of a taxable year generally apply if the first taxable year of the partnership or the first taxable year for which the S election is effective begins before January 1, 1987, unless the application necessary to effect or request the adoption or retention was timely filed before November 6, 1986. The regulations do not apply, however, to an adoption by a partnership of a taxable year that begins before January 1, 1986. The regulations also do not apply to certain adoptions or retentions, such as an adoption or retention of a calendar year.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–0134.

Drafting Information

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

List of Subjects

26 CFR 1.441–1—1.483–2

Income taxes, Accounting, Deferred compensation plans.

26 CFR Part 18

Sale of residence, Income taxes.

26 CFR Part 602

Reporting and record Keeping requirements.

Amendments to the Regulations

For the reasons set out in the preamble, Subchapter A, Parts 1 and 18 and Subchapter H, Part 602 of title 26, Chapter I of the Code of Federal Regulations are amended as set forth below:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: 26 U.S.C. 7805. * * * Section 1.441–3T also issued under 26 U.S.C. 441. Sections 1.442–2T and 1.442–3T also issued under 26 U.S.C. 422, 706, and 1378.

Par. 2. Section 1.441–2 is amended by adding the following new paragraph (f):

§ 1.441–2 Election of year consisting of 52–53 weeks.

* * * * *

(f) *Cross-reference to § 1.441–3T.* For special rules relating to certain adoptions of or changes to or from a 52–53-week taxable year ending in 1986 or 1987, see § 1.441–3T.

Par. 3. Section 1.441–3T is added in the appropriate place.

§ 1.441–3T Special rules for certain adoptions of, retentions of, or changes to or from a 52–53-week taxable year (Temporary).

(a) *Applicability.* This section applies to any partnership, partner, S corporation, S corporation shareholder, personal service corporation, or employee-owner that wishes to adopt or change to or from a 52–53-week taxable year. This section also applies to a corporation seeking S status that wishes to adopt, retain, or change to or from a 52–53-week taxable year. This section applies in the case of a change to or from a 52–53-week taxable year whether or not the taxpayer also wishes to change the month with reference to which its taxable year ends. Paragraph (c) (2) of this section applies to any taxpayer (including, for example, a corporation that is not seeking S status) that wishes to adopt or change to or from a 52–53-week taxable year.

(b) *Definitions*—(1) *Personal service corporation.* For purposes of this section only, the term "personal service corporation" means any corporation (other than an S corporation) if—

(i) The principal activity of that corporation is the performance of personal services, and

(ii) Such services are substantially performed by employee-owners.

A corporation shall not be treated as a personal service corporation, however, unless more than 10 percent of the fair market value of the outstanding stock of the corporation is held by employee-owners.

(2) *Employee-owner.* For purposes of this section, the term "employee-owner" means an employee who owns, on any day of the corporation's taxable year, any outstanding stock of the personal service corporation. Section 318 will apply to determine stock ownership for purposes of this paragraph (b), except that "any" is to be substituted for "50 percent or more in value" in section 318(a)(2)(C).

(3) *Performance of a substantial portion of services.* For purposes of paragraph (b)(1) of this section, personal services are substantially performed by employee-owners if the total time spent by employee-owners in performing those services is 10 percent or more of the total time spent by all employees (including employee-owners) in

performing those services. In determining time spent in performing personal services of a corporation, time spent on matters that do not relate directly and intrinsically to the performance of services for or on behalf of clients or customers of the corporation shall not be taken into account. Thus, for example, in the case of a corporation performing accounting services, time spent in performing secretarial services, managerial work of a purely administrative nature, or janitorial services shall not be taken into account in determining either the time spent by employee-owners in performing accounting services or the total time spent by all employees in performing accounting services. Managerial time shall be taken into account, however, to the extent that it consists of the supervision of accounting services performed by employees for or on behalf of clients or customers of the corporation.

(c) *General rule*—(1) *Satisfaction of applicable conditions.* A taxpayer to which this section applies may not adopt, retain, or change to or from a 52–53-week taxable year under § 1.441–2(c)(1) or (2), § 1.442–1, or 26 CFR 18.1378–1 unless each of the applicable conditions set forth in paragraph (d) of this section is satisfied with respect to the taxpayer seeking the adoption, retention, or change. For additional requirements applicable to certain taxpayers that wish to adopt, retain, or change to or from a 52–53-week taxable year, see §§ 1.442–2T and 1.442–3T.

(2) *Evasion or avoidance of tax*—(i) *General rule.* A taxpayer may not adopt or change to or from a 52–53-week taxable year if the principal purpose for such action is the evasion or avoidance of Federal income tax.

(ii) *Example.* The provisions of this paragraph (c)(2) may be illustrated by the following example.

Example. Assume that X, a calendar year corporation, wishes to elect, for taxable years beginning after December 31, 1985, a 52–53-week taxable year that ends on the Tuesday nearest to December 31. Assume that such election allows the corporation to sell a substantial portion of its assets on Wednesday, December 31, 1986, and to report the income from such sale in the taxable year beginning on December 31, 1986, and ending on December 29, 1987. By electing the 52–53-week taxable year, the corporation obtains the advantages of the lower Federal income tax rates applicable for the period beginning December 31, 1986. Moreover, the sale of the assets on December 31 allows the buyer of the assets, a calendar year taxpayer, to obtain certain Federal income tax advantages that are not available with respect to purchases of assets in 1987 and later years. Given the above facts, it is presumed that the principal purpose for such action is the evasion or avoidance of Federal income tax. Thus, X may not adopt a 52–53-week taxable year.

(d) *Conditions applicable to certain taxpayers*—(1) *Conditions.* (i) If the taxpayer seeking the adoption or change is a partnership, all of the partners (determined at the close of the first taxable year of the partnership for which the election to use the 52–53-week taxable year is made or, if applicable, the short period involved in the change) must agree to treat the current and all subsequent 52–53-week years of the partnership (and of any partner) as ending on the last day of the calendar month that ends nearest to the last day of the 52–53-week year for purposes of determining the taxable year in which the inclusions required by sections 702 and 707(c) are taken into account.

(ii) If the taxpayer seeking the adoption or change is a partner, the partner must agree to treat the current and all subsequent 52–53-week years of the partner (and the 52–53-week years of any partnership in which such taxpayer is a partner) as ending on the last day of the calendar month that ends nearest to the last day of the 52–53-week year for purposes of determining the taxable year in which the inclusions required by sections 702 and 707(c) are taken into account.

(iii) If the taxpayer seeking the adoption, retention, or change is an S corporation or a corporation seeking S status, all of the shareholders (determined at the close of the first taxable year of the S corporation for which the election to use or retain the 52–53-week year is made or, if applicable, the short period involved in the change) must agree to treat the current and all subsequent 52–53-week taxable years of the corporation (and of any shareholder) as ending on the last day of the calendar month that ends nearest to the last day of the 52–53-week year for purposes of determining the taxable year in which the inclusions required by section 1366 are taken into account.

(iv) If the taxpayer seeking the adoption or change is an S corporation shareholder, the shareholder must agree to treat the current and all subsequent 52–53-week taxable years of the shareholder (and the 52–53-week years of any S corporation in which such taxpayer is a shareholder) as ending on the last day of the calendar month that ends nearest to the last day of the 52–53-week year for purposes of determining the taxable year in which the inclusions required by section 1366 are taken into account.

(v) If the taxpayer seeking the adoption or change is a personal service corporation, all of the employee-owners (determined at the close of the first taxable year of the corporation for which the election to use the 52–53-week taxable year is made or, if applicable, the short period involved in the change) must agree to treat the current and all subsequent taxable years of an employee-owner and the corporation that end with or with reference to the same calendar month as if both such taxable years ended on the last day of the taxable year of the corporation for purposes of determining the taxable year in which payments (whether or not in cash) that are deductible by the corporation are taken into account by the employee-owner.

(vi) If the taxpayer seeking the adoption or change is an employee-owner of a personal service corporation, the employee-owner must agree to treat the current and all subsequent taxable years of the employee-owner and the corporation that end with or with reference to the same calendar month as if both such taxable years ended on the last day of the taxable year of the corporation for purposes of determining the taxable year in which payments (whether or not in cash) that are deductible by the corporation are taken into account by the employee-owner.

(2) *Examples.* The provisions of paragraph (d)(1) of this section may be illustrated by the following examples.

Example (1). Assume that ABC, a calendar year partnership, wishes to elect, for taxable years beginning after December 31, 1985, a 52–53-week taxable year that ends on the Friday nearest to December 31. Assume that A, B, and C, who are individual calendar year taxpayers, are equal partners in ABC. Assume also that A, B, and C agree to treat each of the 52–53-week taxable years of ABC as ending on December 31 for purposes of determining the taxable year in which guaranteed payments and their distributive shares of income, gains, losses, deductions, and credits are taken into account. Assume that, for its taxable year ending January 2, 1987, ABC has net income of $30,000, and that ABC has no other items of income, gain, loss, deduction, or credit for that taxable year. Under paragraph (d)(1)(i) of this section, A, B, and C each must include $10,000 in income for their taxable years ending on December 31, 1986. Similarly, if ABC makes a guaranteed payment to A on January 2, 1987, A must include the payment in income for the taxable year ending December 31, 1986.

Example (2). Assume that X, a calendar year personal service corporation, wishes to elect, for taxable years beginning after December 31, 1985, a 52–53-week taxable year that ends on the Friday nearest to December 31. Assume that all of the employer-owners of X are individual calendar year taxpayers. Assume further that all of the employee-owners agree to treat their taxable year as ending on the last day of X's taxable year for purposes of determining the year in which payments by X are taken into income. Assume that on January 2, 1987, X makes a payment of bonuses of $10,000 to each employee-owner. Under paragraph (d)(1)(v) of this section, each employee-owner must include $10,000 in income for the taxable year ending December 31, 1986.

(e) *Procedural requirements.* In the case of an adoption of or change to a 52–53-week taxable year under § 1.441–2(c) (1) or (2), a taxpayer to which any condition in paragraph (d) of this section applies must indicate on the statement required under § 1.441–2(c) (1) or (2), or on a separate statement that is attached to the income tax return for the year of adoption or change, that all of the applicable conditions are satisfied. If the due date for that return is before March 9, 1987, the statement required under § 1.441–2(c) (1) or (2) (or an amended statement) indicating that the applicable conditions are satisfied must be filed by the later of March 9, 1987 or the due date for the return (determined with regard to extensions). If § 1.442–2T or § 1.442–3T applies to an adoption of, retention of, or change to or from a 52–53-week taxable year, the procedures set forth in § 1.442–2T or § 1.442–3T (whichever is applicable) must be followed and the rules set forth in § 1.442–2T(f)(3) or § 1.442–3T(d) shall apply.

(f) *Effective date*—(1) *In general.* This section shall apply to adoptions of, retentions of, or changes to or from a 52–53-week taxable year if—

(i) The income tax return for the first taxable year for which the election to use or retain the 52–53-week year is made (or, if applicable, the income tax return for the short period involved in the change) is filed after September 29, 1986, and

(ii) The first taxable year for which the election to use or retain the 52–53-week year is made (or the short period involved in the change) ends before January 5, 1987.

(2) *Exceptions.* This section shall not apply if the application required to effect or request the adoption, retention, or change was timely filed before September 30, 1986. In the case of an adoption or change that is effected by filing an income tax return for the first taxable year for which the election is made, this section shall not apply if an application for extension of time for filing that return was filed before September 30, 1986, the application clearly stated the taxpayer's intention to adopt or change to a 52–53-week taxable year, and the income tax return for that taxable year is timely filed (determined with regard to extensions).

Par 4. Paragraph (f) of § 1.442–1 is amended by adding the following sentences at the end thereof:

§ 1.442–1 Change of annual accounting period.

* * * * *

(f) *Effective date.* * * * For special rules applicable to certain changes of annual accounting period that result in a short period ending in 1986 or 1987, see § 1.442–2T. For special rules applicable to certain adoptions and retentions of a taxable year ending in 1986 or 1987, see § 1.442–3T.

Par. 5. Section 1.442–2T is added at the appropriate place.

§ 1.442–2T Special limitations on certain changes of annual accounting period (Temporary).

(a) *Applicability.* This section applies to any taxpayer that wishes to change its annual accounting period, or that wishes to adopt an annual accounting period described in paragraph (h) of this section. This section shall not apply, however, to:

(1) Any taxpayer to which the provisions of § 1.1502–76 apply (other than a taxpayer to which the provisions of paragraph (h) of this section apply);

(2) Any taxpayer to which the provisions of § 1.442–1(e) apply;

(3) Any taxpayer that wishes to change its annual accounting period to a calendar year (including a change under 26 CFR 18.1378–1(b)) or to a 52–53-week taxable year that ends with reference to the month of December (see, however, § 1.441–3T);

(4) Any partnership that wishes to change its annual accounting period under § 1.706–1(b)(1) to the same taxable year as that of all of its principal partners or to which all of its principal partners are concurrently changing;

(5) Any corporation seeking S status that wishes to change its annual accounting period under section 4.02 of Rev. Proc. 83–25, 1983–1 C.B. 689, to the same taxable year as that of shareholders holding more than 50 percent of the shares of stock of the corporation or to which such shareholders are concurrently changing;

(6) Any corporation seeking S status that wishes to change its annual accounting period under section 4.04 of Rev. Proc. 83–25, 1983–1 C.B. 689;

(7) Any taxpayer that wishes to change to a 52–53-week taxable year that ends with reference to the same calendar month as that in which the former taxable year ended (see, however, § 1.441–3T); or

(8) Any organization exempt under section 501(a), and any plan meeting the requirements for qualification under section 401(a) and which is exempt under section 501 (a), except those organizations and plans required to file a Form 990–T for the short period involved in the change of annual accounting period.

(b) *General rule.* A taxpayer to which this section applies may not change its annual accounting period under the provisions of—

(1) Paragraph (c) of § 1.442–1,

(2) Paragraph (b) of § 1.706–1,

(3) 26 CFR 18.1378–1(b),

(4) Rev. Proc. 72–51, 1972–2 C.B. 832, or

(5) Any revenue procedure issued before September 18, 1986, that, without regard to this section, would permit a taxpayer to change its taxable year either under a procedure that does not require the prior approval of the Commissioner or under expedited procedures for obtaining that approval.

Examples of procedures suspended by paragraph (b)(5) of this section include Rev. Proc. 84–34, 1984–1 C.B. 508, and those portions of Rev. Proc. 83–25, 1983–1 C.B. 689, that apply to changes of annual accounting period. In addition, the Commission will not consider a request by a taxpayer to which this section applies for approval of a change of annual accounting period under § 1.442–1(b)(1) unless the requirements of paragraph (e) of this section are satisfied. A taxpayer to which this section applies may, however, change its annual accounting period without securing the prior approval of the Commissioner if the taxpayer can establish a substantial business purpose for the change under paragraph (c) of this section and agrees to all of the applicable conditions set forth in paragraph (d) of this section.

(c) *Substantial business purpose*—(1) *General rule.* Except as provided in paragraph (c) (4) of this section, a taxpayer generally can establish a substantial business purpose under this paragraph (c) for a change of annual accounting period to any taxable year that meets the requirements of paragraph (c)(2) of this section. If more than one taxable year meets the requirements of paragraph (c)(2), however, a taxpayer can establish a substantial business purpose under this paragraph (c) only for a change to the year that yields the highest percentage when the percentages (rounded to the nearest 1/100 of a percent) obtained under paragraph (c)(2) of this section are averaged.

(2) *Mechanical test.* A taxable year meets the requirements of this paragraph (c)(2) only if, for the most recent 12-month period (determined at the time the statement or application required to effect or request the change is filed) ending with the last month of the requested taxable year and for each of the two preceding 12-month periods ending with the corresponding month—

(i) The gross receipts from sales or services for the last two months of such 12-month period equal or exceed 25 percent of—

(ii) The gross receipts from sales or services for such 12-month period.

(3) *Special rules*—(i) *Gross receipts.* For purposes of this section, gross receipts from sales or services shall be determined using the taxpayer's method of accounting.

(ii) *52–53-week taxable year.* If the requested year is a 52–53-week taxable year, the calendar month ending nearest to the last day of the 52–53-week taxable year shall be treated for purposes of paragraph (c)(2) of this section as the last month of the requested year.

(iii) *Taxpayers not in existence for three 12-month periods.* If a taxpayer has not been in existence for the three 12-month periods described in paragraph (c)(2) of this section, the requirements of paragraph (c)(2) of this section may be satisfied by taking into account the gross receipts from sales and services of a predecessor organization (within the meaning of section 4.04 of Rev. Proc. 83–25) that was actively engaged in a trade or business at all times during the portion of the three applicable 12-month periods prior to the inception of the taxpayer. Thus, a taxpayer in existence for only the most recent applicable 12-month period may use the gross receipts of a predecessor organization for the two preceding 12-month periods.

(4) *Exceptions.* The following taxpayers cannot establish a substantial business purpose for a change of annual accounting period under this section solely by satisfying the requirements of this paragraph (c), and, thus, must secure the prior approval of the Commissioner to the change:

(i) A partner of a partnership;

(ii) A partnership in which any partner is a partnership or S corporation;

(iii) A beneficiary of a trust or estate;

(iv) A United States shareholder of a controlled foreign corporation; and

(v) A shareholder of a DISC or former DISC.

(5) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples.

Example (1). Assume that X, a calendar year corporation that is not described in paragraph (c)(4) of this section, wishes to change its annual accounting period to a fiscal year that ends on November 30. If the change is permitted under this section, the short period involved in the change would end on November 30, 1986. Under paragraph (f) of this section, X must attach a statement to its income tax return for the short period ending November 30, 1986, in order to effect the change. For purposes of paragraph (c)(2) of this section, the most recent 12-month period ending with the last month of the requested taxable year (November), determined as of the time the statement required to effect the change is filed, is the period that begins on December 1, 1985, and ends on November 30, 1986. The two preceding 12-month periods ending with the corresponding month are the periods from December 1, 1984, through November 30, 1985, and from December 1, 1983, through November 30, 1984.

Example (2). Assume that X, a calendar year corporation that is not described in paragraph (c)(4) of this section, wishes to change its annual accounting period to a fiscal year that ends on September 30. Assume that the most recent 12-month period determined under paragraph (c)(2) of this section is the period from October 1, 1985, through September 30, 1986, and that the two preceding 12-month periods are the periods from October 1, 1984, through September 30, 1985, and from October 1, 1983, through September 30, 1984.

Assume that the gross receipts from sales or services for the last two months of the 12-month periods ending on September 30, 1986, September 30, 1985, and September 30, 1984, are $3,500, $3,125, and $2,500, respectively. Assume further that the total gross receipts for the 12-month periods ending on September 30, 1986, September 30, 1985, and September 30, 1984, are $12,500, $12,000, and $10,000, respectively. The following percentages are obtained for the 12-month periods ending on September 30, 1986, September 30, 1985, and September 30, 1984, when the gross receipts for the last two months of each period are divided by the total gross receipts for that 12-month period: 28.00% ($3,500/$12,500), 26.04% ($3,125/$12,000), and 25.00% ($2,500/$10,000). Thus, the requirements of paragraph (c)(2) of this section are satisfied since each of those percentages equals or exceeds 25%.

Example (3). Assume the same facts as in example (2) except that X wishes to change its annual accounting period to a fiscal year that ends on July 31. In addition, assume that the percentages obtained for purposes of paragraph (c)(2) of this section with respect to a fiscal year that ends on July 31 are 26.00%, 25.00%, and 25.00%. Under paragraph (c)(1) of this section, X can establish a substantial business purpose only for a fiscal year that ends on September 30 since the average of the percentages obtained under paragraph (c)(2) of this section with respect to that year (26.35%) exceeds the average of the percentages obtained with respect to a fiscal year that ends on July 31 (25.33%).

(d) *Conditions.* The requirements of this section are in addition to any applicable conditions under sections 441, 442, 443, 706, and 1378. Thus, for example, a taxpayer must annualize income for the short period involved in a change of annual accounting period to which this section applies if required to do so under section 443(b). The following additional conditions apply under this section to any change of annual accounting period made by a corporation (other than an S corporation) without the prior approval of the Commissioner:

(1) If the taxpayer has a net operating loss as defined in section 172 for the short period involved in the change, that net operating loss must be deducted ratably over a six-year period beginning with the first taxable year after the short period unless—

(i) The net operating loss resulting from the short period is $10,000 or less, or

(ii) The net operating loss results from a short period of nine months or longer and is less than the net operating loss for a full 12-month period beginning with the first day of the short period.

(2) If the taxpayer has an unused credit for the short period, the taxpayer must carry the unused credit forward. Unused credits from the short period may not be carried back.

(3) The taxpayer may not make an election to be treated as an S corporation that would be effective for the taxable year immediately following the short period.

(e) *Prior approval of the Commissioner*—(1) *In general.* The Commissioner will not consider a request for approval to a change of annual accounting period under this section unless—

(i) The taxpayer is described in paragraph (c)(4) of this section and the taxable year to which the taxpayer wishes to change meets the requirements of paragraph (c)(1) of this section, or

(ii) The taxpayer has experienced a substantial acquisition or diverstiture, as defined in paragraph (e)(2) of this section.

(2) *Substantial acquisition or diverstiture*—(i) *In general.* For purposes of this paragraph (e), a taxpayer has not experienced a substantial acquisition or diverstiture unless—

(A) The taxpayer has acquired or disposed of a block of assets on or after the first day of the taxable year immediately proceeding the short period involved in the change of annual accounting period,

(B) At all times during the applicable 12-month periods (as defined in paragraph (e)(2)(iii) of this section), including any period during which the assets were not held by the taxpayer, the assets were segregated, whether in a separate branch or division or otherwise, so that the gross receipts attributable to those assets can be identified, and

(C) The requirements of paragraph (e)(2)(ii) of this section are satisfied.

If a taxpayer has experienced a substantial acquisition or diverstiture it is anticipated that the Commissioner will usually approve a change of annual accounting period to a taxable year that would meet the requirements of paragraph (c)(1) of this section if pro-forma gross receipts (*i.e.*, gross receipts that would have resulted if the acquistion or diverstiture had taken place at the beginning of the earliest applicable 12-month period) were substituted for the gross receipts described in paragraph (c)(2) of this section. The failure of a requested taxable year to meet the requirements of paragraph (c)(1) when pro-forma gross receipts are used, however, will not prevent the Commissioner from approving the change.

(ii) *Mechanical test.* A taxpayer has experienced a substantial acquisition or diverstiture for purposes of this paragraph (e) only if—

(A) The aggregate of the gross receipts from sales and services (within the meaning of paragraph (c)(3)(i) of this section) for the applicable 12-month periods attributable to the acquired or divested assets (including receipts for any period during which the assets were not held by the taxpayer), exceeds 80 percent of—

(B) The aggregate of the gross receipts from sales and services (within the meaning of paragraph (c)(3)(i) of this section) of the taxpayer for the applicable 12-month periods, determined without taking into account the gross receipts from sales and services attributable to the acquired or divested assets.

(iii) *Applicable 12-month periods.* For purposes of this paragraph (e)(2), the term "applicable 12-month periods" means—

(A) In the case of a acquisition, the 12-month period described in paragraph (c)(2) of the section; and

(B) In the case of divestiture, the 12-month periods described in paragraph (c)(2) of this section that end before the date of the divestiture.

(iv) *Example.* The provisions of this paragraph (e) may be illustrated by the following example.

Example. Assume that X, a calendar year corporation, wishes to change its annual accounting period to a fiscal year ending October 31, 1986. Assume that on January 1, 1986, X acquired from corporation Y a block of assets that Y held in a separate division and that X also holds in a separate division. Assume that the most recent 12-month period described in paragraph (c)(2) of this section is the period that begins on November 1, 1985, and ends on October 31, 1986, and that the two preceding 12-month periods are the periods from November 1, 1984 through October 31, 1985, and from November 1, 1983, through October 31, 1984. Assume that the gross receipts attributable to the assets acquired from Y for the 12-month period ending October 31, 1986 (including the receipts attributable to the period from November 1, 1985, through December 31, 1985, when the assets were held by Y, and the receipts attributable to the period from January 1, 1986, through October 31, 1986, when the assets were held by X), are $8,000. In addition, assume that the gross receipts attributable to the assets acquired from Y for the 12-month periods ending October 31, 1985, and October 31, 1984, when the assets were held by Y, are $7,500, and $7,000, respectively. Assume further that X's gross receipts from sales and services for the 12-month period ending October 31, 1986, October 31, 1985, and October 31, 1984, without taking into account gross receipts attributable to the assets acquired from Y, are $10,000, $9,000, and $8,000, respectively. The requirements of paragraph (e)(2)(ii) of this section are satisfied since $22,500 ($8,000 + $7,500 + $7,000) exceeds 80 percent of $27,000 ($10,00 + $9,000 + $8,000). Thus, the Commissioner will consider X's request to change its taxable year to a fiscal year ending October 31, 1986.

(f) *Procedures*—(1) *Changes not requiring the prior approval of the Commissioner.* In order to effect a change that does not require the prior approval of the Commissioner under this section, a taxpayer must indicate that the requirements of this section are satisfied in a statement setting forth the computations required to establish a substantial business purpose under paragraph (c) of this section. The statement also must indicate that the taxpayer has agreed to all of the applicable conditions to the change, including any applicable conditions contained in § 1.441-3T. A taxpayer (other than an corporations seeking S status) must attach the statement to the income tax return for the short period involved in the change and, in addition, must type or legibly print the following caption at the top of page 1 of the return: "FILED UNDER § 1.442-2T (f)(1)." In the case of a corporation seeking S status, the statement must be attached to Form 2553 and the caption "FILED UNDER § 1.442-2T (f) (1)" must be typed or printed legibly at the top of page 1 of Form 2553.

(2) *Changes requiring the prior approval of the Commissioner.* In the case of a change of annual accounting period that requires the prior approval of the Commissioner under this section, a taxpayer must file Form 1128 or Form 2553, whichever is applicable. (See paragraph (e)(1) of this section for situations in which a request for approval will be considered.) The taxpayer must indicate that the application is filed under this paragraph (f)(2) by typing or printing legibly the following caption at the top of page 1 of the Form 1128 or Form 2553: "FILED UNDER § 1.442-2T (f)(2)." The taxpayer also must attach a statement to the applicable form setting forth the computations described in paragraph (c) of this section. In addition, a taxpayer described in paragraph (e)(1) (ii) of this section must attach a statement setting forth the computations described in paragraph (e) (2) of this section.

(3) *Time for filing.* (i) Except as otherwise provided in paragraph (f)(3)(ii) of this section, a taxpayer cannot change its annual accounting period under this section unless the return or form required to effect or request the change is filed by its due date (with extensions if the change is effected by filing an income tax return for the short period involved in the change).

(ii) A taxpayer may change its annual accounting period under this section if the due date (without regard to extensions) for the return or form required to effect or request the change is on or after September 30, 1986, and before March 9, 1987 and the return or form is filed before March 9, 1987 (or, in the case of a change effected by filing an income tax return for the short period involved in the change, if an application for extension is filed before March 9, 1987. This paragraph only extends the time for changing an annual accounting period and does not extend the time for making a S election. An S election that is timely filed before March 9, 1987, however, will not be denied or rendered ineffective solely by reason of the need for the taxpayer to submit the information required by paragraph (f)(1) or (f)(2) of this section.

(iii) In the case of a change of annual accounting period under this section that is effected by filing an income tax return for the short period involved in the change, any failure to file a return or to pay tax on or before the due date for the return or the date prescribed for payment will be treated as due to reasonable cause and will not give rise to any addition to tax under section 6651 if—

(A) The due date for the return (without regard to extensions) or the date prescribed for payment is on or after September 30, 1986, and before March 9, 1987, and

(B) The return (or application for extension) is filed and the tax is paid before March 9, 1987.

(g) *Effective date*—(1) *In general.* This section shall apply to a change of annual accounting period (other than a change described in paragraph (g)(2) of this section) if—

(i) The income tax return for the short period involved in the change is filed after September 29, 1986, and

(ii) The short period involved in the change ends before January 5, 1987.

(2) *Exceptions.* This section shall not apply to a change of annual accounting period if the application required to effect or request the change was timely filed before September 30, 1986. In the case of a change that is effected by filing an income tax return for the short period involved in the change, this section shall not apply if an application for extension to file that return was filed before September 30, 1986, the application clearly stated the year to which the taxpayer intended to change, and the income tax return for the short period is timely filed (determined with regard to extensions).

(3) *Hardship rule.* A taxpayer can request a waiver from the provisions of this section if the taxpayer can demonstrate, to the satisfaction of the Commissioner, that the taxpayer would sustain a substantial hardship from the application of this section, and if the short period involved in the change ends on or before October 5, 1986. A waiver ordinarily will not be granted unless the taxpayer can show that, by October 5, 1986, the taxpayer had closed its books in a manner that indicates that the period in question was intended to be the end of the short period, taken a physical inventory (if applicable), and incurred substantial costs in modifying its accounting systems (including,) for example, costs of reprogramming applicable computer systems) in order to change its year. A request for a waiver under this paragraph (g)(3) must be filed with the Commissioner of Internal Revenue, 1111 Constitution Avenue, NW, Room 5040, Washington, DC 20224 by March 9, 1987. Any information submitted with the request for waiver shall be submitted under penalties of perjury.

(h) *Anti-abuse rule*—(1) *In general.* A taxpayer may not adopt any taxable year that has the effect of circumventing the provisions of this section. The provisions of this section are deemed to be circumvented if, for example, a taxpayer that is unable to change its taxable year under this section transfers a substantial portion of its net assets to a related person and the related person purportedly adopts the desired taxable year. In that case, purported adoption of the desired taxable year will not be given effect and the related person must adopt the same taxable year as that of the taxpayer that is unable to change its taxable year under this section. For this purpose, the term "related person" has the same meaning as in section 168(e)(4)(D) (as in effect prior to the enactment of the Tax Reform Act of 1986), except that the second sentence thereof (relating to the substitution of 10 percent for 50 percent in applying sections 267(b) and 707(b)(1)) shall be disregarded.

(2) *Example.* The provisions of paragraph (h)(1) of this section may be illustrated with the following example.

Example. Assume that X, a calendar year corporation, is subject to the restrictions on changes in annual accounting period under this section. Assume that X wishes to change its taxable year to a fiscal year ending November 30, 1986, but cannot do so because it does not meet the requirements of this section. Assume further that X creates corporation Y, a wholly-owned subsidiary of X, which purportedly adopts a taxable year ending November 30, 1986. In addition, assume that X transfers a substantial portion of its net assets to Y before November 30, 1986, in a transaction described in section 351 or 368. Under these facts, Y may not adopt a November 30 taxable year and instead must adopt a taxable year that ends on December 31, which is the taxable year of X.

Par. 6. Section 1.442–3T is added at the appropriate place:

§ 1.442–3T Special limitations on certain adoptions and retentions of a taxable year.

(a) *Applicability.* This section generally applies to—

(1) Any partnership that wishes to adopt a taxable year other than the calendar year, the taxable year of its principal partners, or the taxable year to which all of its principal partners are concurrently changing, and

(2) Any corporation seeking S status that wishes to adopt or retain a taxable year other than the calender year or a taxable year that meets the requirements of § 4.02 or 4.04 of Rev. Proc. 83–25, 1983–1 C.B. 689.

(b) *General rule.* A taxpayer to which this section applies may not adopt or retain a taxable year that results in any deferral of income to its partners or shareholders unless the taxpayer—

(1) Secures the prior approval of the Commissioner by establishing a substantial business purpose under paragraph (c)(2) of this section for the adoption or retention, or

(2) Is permitted to adopt or retain the taxable year without securing the prior approval of the Commissioner under paragraph (c)(1) of this section.

Thus, a taxpayer to which this section applies may not adopt or retain a taxable year that results in a deferral of income to its partners or shareholders under Rev. Proc. 72–51, 1972–2 C.B. 832, or § 4.03 of Rev. Proc. 83–25, 1983–1 C.B. 689.

(c) *Substantial business purpose*—(1) *Prior approval of the Commissioner not needed.* Notwithstanding § 1.706–1(b), § 1.442–1(b)(2), and 26 CFR 18.1378–1(a), a taxpayer to which this section applies may adopt or retain a taxable year that results in a deferral of income to its partners or shareholders without the prior approval of the Commissioner if the taxpayer can establish a substantial business purpose under § 1.442–2T(c). Thus, a taxpayer described in § 1.442–2T(c)(4) must secure the prior approval of the Commissioner to the adoption or retention even if the requirements of § 1.442–2T(c)(1) are satisfied. A taxpayer shall effect an adoption or retention permitted under this paragraph (c)(1) in the manner prescribed by § 1.442–2T(f)(1), except that the taxpayer's first income tax return shall be treated as the return for the short period involved in a change of annual accounting period.

(2) *Prior approval of the Commissioner.* In any case where the taxpayer was in existence for the three 12-month periods described in § 1.442–2T(c)(2), or where a predecessor organization (within the meaning of § 4.04 of Rev. Proc. 83–25) was actively engaged in a trade or business at all times during the portion of those three 12-month periods prior to the inception of the taxpayer, the Commissioner will consider a request for prior approval of an adoption or retention of a taxable year that results in a deferral of income to its partners or shareholders only if the taxpayer is described in § 1.442–2T(e). In such a case, the application for approval shall be filed in the manner prescribed by § 1.442–2T(f)(2). In any other case, the taxpayer must establish a substantial business purpose in order to obtain the prior approval of the Commissioner, and must file an application for approval in accordance with § 1.706–1(b) or 26 CFR 18.1378–1(a) (whichever is applicable) and § 1.442–1T(b)(1). For this purpose, the following factors generally will not be sufficient to establish a substantial business purpose:

(i) The use of a particular year for regulatory or financial accounting purposes;

(ii) The hiring patterns of a particular business (e.g., the fact that a firm typically hires staff during certain times of the year);

(iii) The use of a particular year for administrative purposes, such as for the admission or retirement of partners or shareholders, promotion of staff, and compensation or retirement arrangements with staff, partners, or shareholders; and

(iv) The fact that a particular business involves the use of price lists, model year, or other items that change on an annual basis.

(d) *Time for filing.* (1) Except as otherwise provided in paragraph (d)(2) of this section, a taxpayer cannot adopt or retain a taxable year under this section unless the return or form required to effect or request the adoption or retention is filed by its due date (with extensions if the adoption is effected by filing an income tax return for the taxpayer's first taxable year).

(2) A taxpayer may adopt or retain a taxable year under this section if the due date (without regard to extensions) for the return or form required to effect or request the adoption or retention is on or after November 6, 1986, and before March 9, 1987, and the return or form is filed before March 9, 1987 (or, in the case of an adoption effected by filing an income tax return for the taxpayer's first taxable year, if an application for extension is filed before March 9, 1987). This paragraph (d)(2) only extends the time for adopting or retaining a taxable year and does not extend the time for making an S election. An S election that is timely filed before March 9, 1987, however, will not be denied or rendered ineffective solely by reason of the need for the taxpayer to submit the information required by paragraph (c) of this section.

(3) In the case of an adoption or retention of a taxable year under this section that is effected by filing an income tax return for the taxpayer's first taxable year, any failure to file a return or to pay tax on or before the due date for the return or the date prescribed for payment will be treated as due to reasonable cause and will not give rise to any addition to tax under section 6651 if—

(i) The due date for the return (without regard to extensions) or the date prescribed for payment is on or after November 6, 1986, and before March 9, 1987, and

(ii) The return (or application for extension) is filed and the tax is paid before March 9, 1987.

(e) *Effective date.* This section generally applies if the first taxable year of the partnership or the first taxable year for which the election to be an S corporation is effective begins before January 1, 1987, unless the application necessary to effect or request the adoption or retention was timely filed before November 6, 1986. This section shall not apply, however, to an adoption by a partnership of a taxable year that begins before January 1, 1986.

Par. 7. Section 1.706–1 is amended by adding the following new paragraph (b)(7):

§ 1.706–1 Taxable years of partner and partnership.

* * * * *

(b) *Adoption or change in taxable year.* * * *

(7) *Cross-reference to § 1.442–2T and § 1.442–3T.* For special rules applicable to certain changes in annual accounting period where the short period involved in the change ends in 1986 or 1987, see § 1.442–2T. For special rules applicable to certain adoptions and retentions of a taxable year ending in 1986 or 1987, see § 1.442–3T.

* * * * *

PART 18—TEMPORARY INCOME TAX REGULATIONS UNDER THE SUBCHAPTERS S REVISION ACT OF 1982

Par. 8. The authority for Part 18 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 9. Section 18.1378–1 is amended by adding the following new paragraph (e) at the end thereof:

§ 18.1378–1 Taxable year of S corporation.

* * * * *

(e) *Cross-reference to § 1.442–2T and § 1.442–3T.* For special rules applicable to certain changes in annual accounting period where the short period involved in the change ends in 1986 or 1987, see § 1.442–2T. For special rules applicable to certain adoptions and retentions of a taxable year ending in 1986 or 1987, see § 1.442–3T.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 10. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 11. Section 602.101 (c) is amended by inserting in the appropriate places in the table "§ 1.441–3T ... 1545–0134", "§ 1.442–2T ... 1545–0134", and "§ 1.442–3T ... 1545–0134."

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

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: January 15, 1987.

O. Donaldson Chapoton,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87-2016 filed 2-4-87; 8:45 am]

BILLING CODE 4830-01-M

---

26 CFR Parts 5h and 602

[T.D. 8124]

Income Tax; Certain Elections Under the Tax Reform Act of 1986

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the time and manner of making certain elections under the Tax Reform Act of 1986. These regulations provide guidance to persons making these elections.

DATES: These regulations are effective February 5, 1987. Except as otherwise provided, the regulations apply to elections made after October 22, 1986.

FOR FURTHER INFORMATION CONTACT: Joel S. Rutstein of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, D.C. 20224, (Attention: CC:LR:T (LR–77–86). Telephone 202–566–3297 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to certain elections under various sections of the Internal Revenue Code of 1986 and the Tax Reform Act of 1986 (the Act). These regulations are added to the Temporary Regulations—Elections Under Various Public Laws (26 CFR Part 5h). The temporary regulations provided by this document will remain in effect until superseded by later temporary or final regulations relating to these elections.

Explanation of Provisions

Section 5h.5(a)(1) lists certain elections that are provided by the Act and are addressed in this regulation. The general rules (and exceptions thereto) regarding the time for making the listed elections are provided in

§ 5h.5(a)(2). The general rules (and exceptions thereto) regarding the manner of making the listed elections are provided in § 5h.5(a)(3). Special rules regarding the time and manner for making certain elections listed in § 5h.5(a)(1) are contained in paragraphs (b) through (i) of § 5h.5. Election provisions provided by the Act, but not addressed in this regulation, will be addressed in other regulation projects.

Section 5h.5(j) provides that additional information may be required from taxpayers after an election has been filed.

Special Analysis

The Commissioner of Internal Revenue has determined that this temporary regulation is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

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

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545-0982.

Drafting Information

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

List of Subjects

26 CFR Part 5h

Income taxes, Elections under various public laws, Deficit Reduction Act of 1984, Tax Reform Act of 1986.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulation

Accordingly, 26 CFR Parts 5h and 602 are amended as follows:

PART 5h—[AMENDED]

Paragraph 1. The authority for Part 5h continues to read:

Authority: 26 U.S.C. 7805, section 5h.5 also issued under 26 U.S.C. 42(f)(1), 42(g)(1), 42(i)(2), 42(j)(5), 48(b)(2), 56(f)(3)(B), 83(c)(3), 141(b)(9), 142(d)(1), 142(d)(4)(B), 143(k)(9)(D)(iii), 154(d), 147(b)(4)(A), 165(l)(1), 168(b)(5), 168(f)(1), 168(g)(7), 168(h)(6)(F)(ii), 216(b)(3), 263(i), 263A(d)(3), 382(l)(5)(H), 448(d)(4), 453C(b)(2)(B), 453C(e)(4), 468B, 469(j)(9), 474, 585(c)(3)(A)(iii)(I), 585(c)(4), 616(d), 617(h), 1059(c)(4), 2632(b)(3), 2652(a)(3), 3121(w)(2), 4982(e)(4), and 7701(b). Section 5h.5 also issued under Pub. L. 99-514 sections 203(a)(1)(B), 204(e), 243(a), 243(b), 311(d)(2), 646, 801(d)(2), 806(e)(2)(c), 905(c), 1704(b), 1801(a), 1802(a), and 1804(e)(4).

Par. 2. A new § 5h.5 is added immediately after § 5h.4 to read as follows:

§ 5h.5 Time and manner of making the elections under the Tax Reform Act of 1986.

(a) *Miscellaneous elections*—(1) *Elections to which this paragraph applies.* This paragraph applies to the elections set forth below provided under the Tax Reform Act of 1986 (the Act). General rules regarding the time for making the elections are provided in paragraph (a)(2) of this section. General rules regarding the manner for making certain elections are provided in paragraph (a)(3) of this section. Special rules regarding the time and manner for making certain elections are contained in paragraphs (a)-(i) of this section. If a special rule applies to one of the elections listed below, a cross-reference to the special rule is shown in brackets at the end of the description of the "Availability of Election." Paragraph (j) of this section provides that additional information with respect to elections may be required by future regulations or revenue procedures.

Section of Act	Section of Code	Description of Election	Availability of Election
201(a)	168(b)(5)	Election to depreciate property using the straight line method of recovery with respect to one or more classes of property for any taxable year	Property placed in service after 12-31-86. Election must be made for taxable year in which property is placed in service. Election shall apply to all property in the class placed in service during the taxable year for which the election is made.
201(a)	168(f)(1)	Election to exclude certain property from the accelerated cost recovery system	Property placed in service after 12-31-86. Election must be made for taxable year in which property is placed in service.
201(a)	168(g)(7)	Election to use alternative depreciation system with respect to one or more classes of property for any taxable year (except for residential rental or non-residential real property where the election may be made separately with respect to each property)	Property placed in service after 12-31-86. Election must be made for taxable year in which property is placed in service. Except for residential rental or non-residential real property, election shall apply to all property in the class placed in service during the taxable year for which the election is made.
201(a), 1802(a)	168(h)(6)(F)(ii), 168(j) (as in effect before October 22, 1986).	Election by a tax-exempt controlled entity to treat any gain recognized by the tax-exempt parent on any disposition of an interest in the tax-exempt controlled entity (and to treat any dividends or interest received or accured from the tax-exempt controlled entity) as unrelated business taxable income under Code section 511 in order for the tax-exempt controlled entity to not be treated as a tax-exempt entity (or as a successor to a tax-exempt entity)	Property placed in service after 9-27-85, but can apply to property placed in service before such date if the tax-exempt controlled entity so elects. [See paragraph (a)(3)(ii) of this section.]
203(a)(1)(B)		Election to apply Act section 201 (including all elections within section 201)	Property placed in service after 7-31-86 and before 1-1-87.
204(e)		Election to have Act section 201 either (i) not apply to any property placed in service during 1987 or 1988 which is replacement property for property lost, damaged or destroyed in a flood which occured 11-3-86 through 11-7-85 and which was declared a natural disaster area by the President of the United States, or (ii) apply to all such replacement property placed in service during 1985 or 1986	(i) Property placed in service during 1987 or 1988, or (ii) property placed in service during 1985 or 1986.
243(a)		Election to begin the 60 month amortization period with the first month of the taxpayer's first taxable year beginning after 11-19-82 in lieu of the 11-19-82 date or the bus operating authority acquisition date	Bus operating authorities held on 11/19/82, or acquired after that date under a written contract that was binding on that date.

Section of Act	Section of Code	Description of Election	Availability of Election
243(b)		Election to begin the 60 month amortization period on the first month of the taxpayer's first taxable year beginning after the deregulation month in lieu of the deregulation month	Freight forwarder operating authorities held at the beginning of the 60 month period applicable to the taxpayer (*i.e.*, the deregulation date or the first month of the first taxable year beginning after the deregulation date).
243 (a), (b)		Election by a qualified corporate taxpayer to allocate a portion of the cost basis of a qualified acquiring corporation in the stock of an acquired corporation to the basis of the authority	For bus operating authorities: authorities held on 11/19/82, or acquired after that date under a written contract that was binding on that date. For freight forwarders: authorities held at the beginning of the 60-month period applicable to the taxpayer.
252(a)	42(f)(1)	Election concerning beginning of credit period for low-income housing credit	Buildings placed in service after 12-31-86 and before 1-1-90 (before 1-1-91 for buildings described in Code section 42(n)(2)(B)). [See paragraph (b) of this section.]
252(a)	42(g)(1)	Election concerning qualified low-income housing project to either satisfy the 20-50 or the 40-60 occupancy test	Buildings placed in service after 12-31-86 and before 1-1-90 (before 1-1-91 for buildings described in Code section 42(n)(2)(B)). [See paragraph (b) of this section.]
252(a)	42(i)(2)	Election to reduce eligible basis by outstanding balance of Federal loan subsidy	Buildings placed in service after 12-31-86 and before 1-1-90 (before 1-1-91 for buildings described in Code section 42(n)(2)(B)). [See paragraph (b) of this section.]
252(a)	42(j)(5)	Election to have certain partnerships treated as the taxpayer eligible for low-income housing credit	Buildings placed in service after 12-31-86 and before 1-1-90 (before 1-1-91 for buildings described in Code Section 42(n)(2)(B) [See paragraph (b) of this section.]
311(d)(2)		Revocation of prior election under Code section 631(a)	Election for taxable years beginning before 1-1-87 may be revoked for taxable years ending after 12-31-86.
411(b)(1)	263(i)	For intangible drilling and development costs paid or incurred with respect to an oil, gas, or geothermal well located outside the United States, election to include such costs in adjusted basis for purposes of computing the amount of any deduction under Code section 611 (without regard to section 613).	Costs paid or incurred after 12-31-86 in taxable years ending after such date. [See paragraph (a)(2)(iii) of this section.]
411(b)(2)	616(d)	For expenditures paid or incurred with respect to the development of a mine or other natural deposit (other than an oil, gas, or geothermal well) located outside the United States, election to include such expenditures paid or incurred during the taxable year for which made in adjusted basis for purposes of computing the amount of any deduction under Code section 611 (without regard to section 613)	Costs paid or incurred after 12-31-86 in taxable years ending after such date. [See paragraph (a)(2)(iv) of this section.]
411(b)(2)	617(h)	For expenditures paid or incurred before the development stage for the purpose of ascertaining the existence, location, extent or quality of any deposit of ore or other mineral deposit (other than an oil, gas or geothermal well) located outside the United States, election to include all such expenditures, paid or incurred during the taxable year with respect to any such deposit, in adjusted basis for purposes of computing the amount of any deduction under Code section 611 (without regard to section 613)	Costs paid or incurred after 12-31-86 in taxable years ending after such date. [See paragraph (a)(2)(v) of this section.]
501(a)	469(j)(9)	Election to increase basis of property by amount of disallowed credit for purposes of determining gain or loss from a disposition of property used in a passive activity	Taxable years beginning after 12-31-86. [See paragraph (a)(3)(iii) of this section.]
614(b)	1059(c)(4)	Election to determine whether a dividend is extraordinary by reference to the fair market value of the share of stock with respect to which the dividend was received	Dividends declared after July 18, 1986 in taxable years ending after such date.
621(a)	382(l)(5)(H)	Election by certain new loss corporations not to apply the special rules of Code section 382(l)(5) concerning inapplicability of the section 382(a) limitation on corporate net operating loss carryforwards where the old loss corporation is involved in a Title 11-type case	Ownership changes following either an owner shift involving a 5% shareholder occurring after 12-31-86 or an equity structure shift occuring pursuant to a plan of reorganization adopted after 12-31-86.
644(d)	216(b)(3)	Election by a cooperative housing corporation to allocate real estate taxes or interest or both to each tenant-stockholder's dwelling unit in a manner which reasonably reflects the cost to the corporation of the tenant-stockholder's dwelling unit	Taxable years beginning after 12-31-86. [See paragraph (a)(3)(iv) of this section.]
646		Election by an entity to be treated as a trust under the Internal Revenue Code if such entity was created in 1906 as a common law trust and governed by the trust laws of the State of Minnesota, receives royalties from iron ore leases, and income interests in the entity are publicy traded on a national stock exchange	The election is effective beginning on first day of the first taxable year beginning after October 22, 1986 and following the year in which the election is made. Such election must be made by the board of trustees of such entity and must be accompanied by a written agreement signed by the board of trustees of the entity.
651	4982(e)(4)	Election by a regulated investment company to use taxable years ending on 11-30 or 12-31 for purposes of computing capital gain net income under Code section 4982	Calendar years beginning after 12-31-86. [See paragraph (a)(2)(vi) of this section.]
701(a)	56(f)(3)(B)	Election to have amount of net book income be equal to amount earnings and profits	Taxable years beginning after 12-31-86.
801(a)	448(d)(4)	Election of common parent of an affiliated group that all members of such group be treated as one taxpayer if substantially all the activities of all members of the affiliated group involve performance of services in the same field	Taxable years beginning after 12-31-86.
801(d)(2)		Election to continue using the cash method of accounting for loans, leases and related party transactions	Loans, leases and related party transactions entered into before 9-26-85.
802	474	Election by certain small businesses to use the simplified dollar-value LIFO method	Taxable years beginning after 12-31-86. [See paragraph (a)(3)(v) of this section.]
803(a)	263A(d)(3)	Election to have rules of Code section 263A (relating to capitalization and inclusion in inventory costs of certain expenses) not apply to any plant or animal produced in any farming business conducted by the electing taxpayer	Unless consent is obtained from the Commissioner, the first taxable year beginning after 12-31-86 during which the taxpayer engages in a farming business. [See paragraph (c) of this section.]
806(e)(2)(C)		Election to have net income for the short taxable year of a partnership or S corporation which results from the required change in accounting period included entirely in income for such short taxable year	Partner and shareholder taxable years beginning after 12-31-86 with or within which the short taxable year created under section 806 of the Act ends. [See paragraph (d) of this section.]

Section of Act	Section of Code	Description of Election	Availability of Election
		Election to reduce partnership or S corporation income for the short taxable year resulting from a required change in accounting period under section 806 of the Act by an unamortized adjustment amount existing as of October 22, 1986, where such adjustment was required to effectuate a previous accounting period change under Rev. Proc. 72-51, 1972-2 C.B. 832 or Rev. Proc. 83-25, 1983-1 C.B. 689	Short taxable years of partnerships or S corporations beginning after 12-31-86 [See paragraph (e) of this section.]
811(a)	453C(b)(2)(B)	Election to compute adjusted bases using depreciation deduction used under Code section 312(k)	Taxable years ending after 12-31-86 with respect to dispositions made after 2-28-86.
811(a)	453C(e)(4)	Election to have Code section 453C not apply to obligations arising from sales of timeshares and unimproved residential lots to invividuals	Taxable years ending after 12-31-86 with respect to dispositions made after 2-28-86. [See paragraph (a)(3)(vi) of this section.]
901(a)	585(c)(3)(A)(iii)(I)	Election to recapture more than 10% of the bad debt reserve in the first taxable year after the disqualification year	Taxable years beginning after 12-31-86.
901(a)	585(c)(4)	Election to use the "cut-off method" to recapture bad debt reserves	Taxable years beginning after 12-31-86.
905(a)	165(l)(1)	Election to treat amount of reasonably estimated loss on a deposit in insolvent or bankrupt qualified financial institution as a loss described in Code section 165(c)(3) and incurred in the taxable year	Taxable years beginning after 12-31-82. [See paragraph (f) of this section.]
905(c)		Election to apply Code section 451(f) (relating to treatment of interest on frozen deposits in certain financial institutions)	Taxable years beginning after 12-31-82 and before 1-1-87.
1301(b)	141(b)(9)	Election by issuer of tax-exempt bonds to treat a portion of an issue as a qualified 501(c)(3) bond if such portion would have qualified as a 501(c)(3) bond had it been issued separately	Bonds issued after 8-15-86. [See paragraph (g) of this section.]
1301(b)	142(d)(1)	Election by issuer of tax-exempt bonds for residential rental property to satisfy either the 20-50 or the 40-60 occupancy test	Bonds issued after 8-15-86. [See paragraph (g) of this section.]
1301(b)	142(d)(4)(B)	Election by issuer of tax-exempt bonds for residential rental property to treat the project as a deep rent skewed project	Bonds issued after 8-15-86. [See paragraph (g) of this section.]
1301(b)	143(k)(9)(D)(iii)	Election to treat limited equity cooperative housing as residential rental property and not as owner-occupied housing	Bonds issued after 8-15-86 and before 1-1-89. [See paragraph (g) of this section.]
1301(b)	145(d)	Election by issuer of tax-exempt bonds to have Code section 145 not apply to the issue if the issue is an issue of exempt facility bonds or qualified redevelopment bonds, to which the volume cap applies	Bonds issued after 8-15-86. [See paragraph (g) of this section.]
1301(b)	147(b)(4)(A)	Election by issuer of qualified 501(c)(3) bonds to have such bonds treated as meeting the limitation on maturity requirements of Code section 147(b)(1) if the requirements of section 147(b)(4)(B) are met	Bonds issued after 8-15-86. [See paragraph (g) of this section.]
1431(a)	2632(b)(3)	Election to not allocate generation skipping transfer exemption to a direct skip transfer	Generation skipping transfers made, or treated as made, after October 22, 1986.
1431(a)	2652(a)(3)	Election to have qualified terminable interest property election not apply for purposes of the generation skipping transfer tax	Generation skipping transfers made, or treated as made, after October 22, 1986.
1704(b)		Election to revoke prior election under Code section 1402(e) (relating to exemption from social security taxes for certain clergy)	Remuneration received in taxable years ending on or after October 22, 1986. [See paragraph (h) of this section.]
1801(a)	168(i) (as in effect before October 22, 1986)	Election to make finance leasing rules inapplicable to property which would otherwise be subject to them under the transitional rules of section 12(c)(1) of the Tax Reform Act of 1984	Personal property leased under certain lease agreements effective on or after 1-1-84. [See paragraph (a)(3)(vii) of this section.]
1804(e)(4)		Election by a common parent of an affiliated group to apply amendments made by the Tax Reform Act of 1984 for taxable years beginning after 12-31-83	Groups which include a corporation which on 6-22-84 is a member of the group which files a consolidated return for such corporation's taxable year which includes 6-22-84.
1807(a)(7)	468B	Election to treat a qualified payment made to a court-ordered fund as a payment made to a designated settlement fund	Generally, liabilities arising out of personal injury, death or property damage that are incurred after 7-18-84 under law in effect before the enactment of Code section 461(h). Election is made for the taxable year in which qualified payments are made to a designated settlement fund.
1809(e)(2)	48(b)(2)	Election by lessee and lessor not to apply the rule of Code section 48(b)(2) concerning the date leased property is treated as originally placed in service	Property originally placed in service after 4-11-84 (as determined under Code section 48(b) prior to its amendment by section 114(a)of the Tax Reform Act of 1984). [See paragraph (a)(3)(viii) of this section.]
1810( )(4)	7701(b)	Election to be treated as a resident alien	Taxable years beginning after December 31, 1984. [See paragraph (a)(3)(ix) of this section.]
1879(p)(1)	83(c)(3)	Election to treat certain stock acquired upon the exercise of nonqualified stock options as subject to a substantial risk of forfeiture by reason of Code section 83(c)(3) even though the transfer of stock pursuant to such exercise occurred before 1-1-82, the effective date of section 83(c)(3)	Transfers of stock described in section 1879(p)(1) of the Act [See paragraph (a)(2)(viii) and(a)(3)(x) of this section.]
1882(c)	3121(w)(2)	Election to revoke prior election under Code section 3121(w) (relating to exemption from social security taxes for certain churches and qualified church-controlled organizations	Remuneration paid after 12-31-86 unless such electing church or church-controlled organization had withheld and paid over all employment taxes due, as if such election had never been in effect during the period from the stated effective date of the election being revoked through 12-31-86. [See paragraph (i) of this section.]

(2) *Time for making elections*—(i) *In general.* Except as otherwise provided in this section, the elections specified in paragraph (a)(1) of this section shall be made by the later of—

(A) The due date (taking extensions into account) of the tax return for the first taxable year for which the election is to be effective, or

(B) April 15, 1987 (in which case the election generally must be made by amended return).

(ii) *No extension of time for payment.* Payments of tax due shall be made in accordance with chapter 62 of the Code.

(iii) *Time for making the election with respect to foreign intangible drilling costs.* With respect to the election under

Act section 411(b)(1) (Code section 263(i)(2)(A)), the election shall be made on a property-by-property basis for each oil, gas, or geothermal property (as defined in Code section 614). The election shall be made by the due date (taking extensions into account) of the income tax return for the first taxable year in which the taxpayer pays or incurs any cost with respect to the development of such property for which the election is available.

(iv) *Time for making the election with respect to foreign development expenditures.* With respect to the election under Act section 411(b)(2) (Code section 616(d)(2)(A)), the election shall be made for each mine or other natural deposit not later than the time prescribed by law for filing the income tax return (taking extensions into account) for the taxable year to which such election is applicable.

(v) *Time for making the election with respect to foreign exploration expenditures.* With respect to the election under Act section 411(b)(2) (Code section 617(h)(2)(A)), the election may be made at any time before the expiration of the period prescribed for filing a claim for credit or refund of the tax imposed by chapter 1 of the Code for the first taxable year for which the taxpayer desires the election to be applicable.

(vi) *Time for making certain elections by regulated investment companies.* The election under Act section 651 (Code section 4982(e)(4)) shall be made on a statement attached to the form prescribed by the Internal Revenue Service which is used to report and pay the excise tax liability under such section 4982, and shall be filed on or before March 15 of the first calendar year beginning after the end of the first excise tax period for which the election is to be effective. The statement of election under section 4982(e)(4) shall be attached to the prescribed form regardless of whether the regulated investment company is liable for the excise tax imposed by section 4982 for the excise tax period in question.

(vii) *Time for making the election with respect to certain nonqualified stock options.* The election under section 1879(p)(1) of the Act (Code section 83(c)(3)) shall be made—

(A) By April 21, 1987, in any case in which the operation of any law or rule of law on or before such date would prevent the credit or refund of any overpayment of tax resulting from such election, and

(B) By no later than any date after April 21, 1987 on which the operation of any law or rule of law would prevent the credit or refund of any overpayment of tax resulting from such election.

(3) *Manner of making elections*—(i) *In general.* Except as otherwise provided in this section, the elections specified in paragraph (a)(1) of this section shall be made by attaching a statement to the tax return for the taxable year for which the election is to be effective. If because of paragraph (a)(2)(i)(B) of this section the election may be filed after the due date of the tax return for the first taxable year for which the election is to be effective, such statement must be attached to a tax return or amended return for the taxable year to which the election relates. Except as otherwise provided in the return or in the instructions accompanying the return for the taxable year, the statement shall—

(A) Contain the name, address and taxpayer identification number of the electing taxpayer,

(B) Identify the election,

(C) Indicate the section of the Code (or, if the provision is not codified, the section of the Act) under which the election is made,

(D) Specify, as applicable, the period for which the election is being made and/or the property or other items to which the election is to apply, and

(E) Provide any information required by the relevant statutory provisions and any information necessary to show that the taxpayer is entitled to make the election.

(ii) *Special rules for making the transitional rule elections with respect to certain tax-exempt controlled entities.* The irrevocable election under Act sections 201(a) and 1802(a) (Code sections 168(h)(6)(F)(ii) and 168(j), as in effect before October 22, 1986), shall be made by the tax-exempt controlled entity at the time and in the manner described in paragraphs (a)(2) and (a)(3)(i) of this section. A copy of the election statement filed by the tax-exempt controlled entity shall also be attached to the Federal tax returns (*e.g.*, Form 990 or 5500) of each of the tax-exempt shareholders or beneficiaries of the controlled entity.

(iii) *Special rule for making the election with respect to gain or loss from a disposition of property used in a passive activity.* The election under Act section 501(a) (Code section 469(j)(9)) shall be made on the form prescribed by the Internal Revenue Service for computing the taxpayer's passive activity loss and credit for the taxable year in which the property is disposed.

(iv) *Special rules for making the election with respect to cooperative housing corporations.* The election under Act section 644(d) (Code section 216(b)(3)(B)(ii)) may be made by a cooperative housing corporation with respect to its real estate taxes or interest or both. The election is available for any taxable year beginning after December 31, 1986, if the cooperative housing corporation has, by January 31 of the year following the first calendar year that includes any period to which the election applies, furnished to each tenant-stockholder during that period a written statement showing the amount of the allocation (or allocations) under section 216(b)(3)(B)(i) attributable to such tenant-stockholder's dwelling unit (or units) for that period. Any cooperative housing corporation making the election shall do so in accordance with paragraph (a) (2) and (3) of this section and shall identify in the statement described in paragraph (a)(3) of this section whether the election is for real estate taxes or interest or both.

(v) *Special rules for making the election with respect to the simplified dollar-value LIFO method.* The election under Act section 802 (Code section 474) may be made only if the taxpayer files with the taxpayer's income tax return for the taxable year as of the close of which the method is first to be used a statement of the taxpayer's election to use the simplified dollar-value LIFO inventory method. The statement shall be on Form 970 pursuant to the instructions to the form and to the requirements of the regulations under section 474, or in such other manner as may be acceptable to the Commissioner.

(vi) *Special rules for making election to have section 453C not apply to obligations arising from sales of timeshares and unimproved residential lots to individuals.* The election under Act section 811(a) (Code section 453C(e)(4)) to have section 453C not apply to obligations arising from sales of timeshares and unimproved residential lots to individuals may be made with respect to any obligation, or with respect to a class of such obligations. In the case of an election made with respect to a class of obligations, such election shall describe the class of obligations with such specificity as to make the class readily identifiable.

(vii) *Special rules for making certain finance leasing transitional rule elections.* The election relating to finance leases under Act section 1801(a)(1) (Code section 168(i) as in effect before October 22, 1986) shall be made by the lessor under a lease agreement subject to the finance lease rules of section 168(i) of the Code, as in effect before October 22, 1986, by noting this election in the books and records relating to the lease agreement within 12 months after February 5, 1987.

(viii) *Special rules for making the election relating to the date leased property is treated as originally placed in service.* The election under Act section 1809(e)(2) (Code section 48(b)(2)) must be made jointly by the lessee and the lessor. The election is made jointly when both the lessee and the lessor make the election in accordance with paragraphs (a)(2) and (a)(3)(i) of this section. In addition to the other information required to be provided under paragraph (a)(3)(i) of this section, the statement described therein shall include a copy of the lease agreement and shall be signed by both the lessee and the lessor.

(ix) *Special rules for making the election to be treated as a resident alien.* The election under Act section 1810(l)(4) (Code section 7701(b)) to be treated as a resident under Code setion 7701(b) shall be made by an alien individual by attaching a statement to the individual's income tax return (Form 1040), for the taxable year for which the election is to be in effect (the election year). The alien individual may not make this election until such time as he has satisfied the substantial presence test of Code section 7701(b)(1)(A)(ii) for the year following the election year. If an alien individual has not satsified the substantial presence test for the year following the election year as of the due date (without regard to extensions) of the tax return for the election year, the alien individual may request an extension of time for filing the return until after he has satisfied such test, provided that he pays with his extension application the amount of tax he expects to owe for the election year, computed as if he were a non-resident alien throughout the election year. The statement shall include the name and address of the alien individual and contain a signed declaration that the election is being made. It must specify—

(A) That the alien individual was not a resident in the year immediately preceding the election year;

(B) That the alien individual is a resident in the year immediately following the election year under the substantial presence test and the individual's number of days of presence in the United States during such year;

(C) The date or dates of the alien individual's 31 consecutive day period of presence and continuous presence in the United States during the election year; and

(D) The date or dates of absence from the United States during the election year that are deemed to be days of presence.

(x) *Special rules for making the election with respect to the treatment of the exercise of certain nonqualified stock options.* The election under Act section 1879(p)(1) (Code section 83(c)(3)) is made by filing on Form 1040X a claim for credit or refund of the overpayment of tax resulting from the election. In order to satisfy the requirements of § 301.6402-2(b)(1) (relating to grounds set forth in claim), the claim for credit or refund must set forth)—

(A) The date on which the option was granted,

(B) The name of the corporation which granted the option,

(C) The date on which the stock was transferred pursuant to the exercise of the option,

(D) The fiar market value of such stock on December 4, 1973,

(E) The fair market value on July 1, 1974 of the stock received upon the reorganization of the corporation which granted the option, and

(F) The date on which the taxpayer sold substantially all of the stock received in such reorganization.

The taxpayer shall file a single claim for credit or refund of the entire overpayment of tax resulting from the election under Act section 1879(p)(1).

(4) *Revocation*—(i) *Irrevocable elections.* The elections described in this section under Act sections 201(a) (Code sections 168(b)(5), 168(f)(1), 168(g)(7), and 168(h)(6)(F)(ii)), 203(a)(1)(B), 252(a) (Code sections 42(f)(1), 42(g)(1), 42(i)(2), and 42(j)(5)), 411(b)(1) (Code section 263(i)), 411(b)(2)(A) (Code section 616(d)(2)(A)), 501(a) (Code section 469(j)(9)), 801(d)(2), 905(c), 1301(b) (Code sections 141(b)(9), 142(d)(1), 142(d)(4)(B), 143(k)(9)(D)(iii), 145(d), and 147(b)(4)(A)), 1431(a) (Code section 2652(a)(3)), 1704(b), 1802(a) (Code section 168(j) as in effect before October 22, 1986), 1804(e)(4), 1879(p)(1) (Code section 83(c)(3)), and 1882(C) (Code section 3121(w)(2)) are irrevocable.

(ii) *Elections revocable with the consent of the Commissioner.* The elections described in this section under Act sections 204(e), 243(a), 243(b), 243(a)(b), 411(b)(2)(B) (Code section 617(h)(2)(A)), 614(b) (Code section 1059(c)(4)), 621(a) (Code section 382(l)(5)(H)), 644(d) (Code section 216(b)(3)), 646, 651 (Code section 4982(e)(4)(B)), 701(a) (Code section 56(f)(3)(B)), 801(a) (Code section 448(d)(4)), 802 (Code section 474), 803(a) (Code section 263A(d)(3)), 806(e)(2)(C) (and the election described in H.R. Rep. No. 99-841 at II-320), 811(a) (Code sections 453C(b)(2)(B) (i) and 453C(e)(4)), 901(a) (Code sections 585(c)(3)(B)(ii) and 585(c)(4)), 905(a) (Code section 165(l)(1)), 1801(a) (Code section 168(i) as in effect before October 22, 1986), 1807(a)(7) (Code section 468B), 1809(e)(2) (Code section 48(b)(2)), and 1810(l)(4) (Code section 7701(b)) are revocable only with the consent of the Commissioner.

(iii) *Freely revocable elections.* The elections described in this section under Act sections 311(d)(2) and 1431(a) (Code section 2632(b)(3)) are freely revocable.

(b) *Elections with respect to the low-income housing credit.* The elections under Act section 252 (a) (Code sections 42(f)(1), 42(g)(1), 42(i)(2), and 42(j)(5)) must be made for the taxable year in which the project is placed in service and shall be made in the certification required to be filed pursuant to section 42(l)(1).

(c) *Election to have the rules of section 263A (relating to capitalization and inclusion in inventory costs of certain expenses) not apply to any plant or animal produced in any farming business conducted by the electing taxpayer*—(1) *In general.* This paragraph applies to the election under Act section 803(a) (Code section 263A(d)(3)) to have the rules of section 263A (relating to capitalization and inclusion in inventory costs of certain expenses) not apply to any plant or animal produced in any farming business conducted by the electing taxpayer. The election is available to taxpayers engaged in the business of farming, including producers of agricultural crops, livestock, nursery stock, sod, trees bearing fruit, nuts or other crops, and ornamental trees (for purposes of section 263A, an evergreen tree that is more than 6 years old at the time it is severed from the roots shall not be treated as an ornamental tree). The election is not available to a corporation, partnership, or tax shelter that is required to use the accrual method of accounting under section 447 or section 448(a)(3), or farming syndicates (as defined in section 464(c)), or with respect to the planting, cultivation, maintenance or development of pistachio trees. In addition, the election does not apply with respect to costs incurred for the planting, cultivation, maintenance or development of any citrus or almond grove incurred during the 4-taxable-year period beginning with the taxable year in which such grove was planted. If a citrus or almond grove is planted in more than one taxable year, the portion of the grove planted in one taxable year is treated as a separate grove for this purpose.

(2) *Time and manner of making the election.* Unless consent is obtained

from the Commissioner, the election may only be made for the taxpayer's first taxable hear that begins after December 31, 1986, and during which the taxpayer engages in a farming business. The election shall be made on the Schedule E, F or other schedule required to be attached to the income tax return for the first taxable year for which the election is effective. In the case of a partnership or S corporation, the election must be made at the partner or shareholder level.

(3) *Election treated as if made if certain requirements satisfied.* A taxpayer eligible to make the election under section 263A(d)(3) shall be treated as having made the election if such taxpayer reports income and expense in accordance with the rules under the election on a timely filed income tax return.

(4) *Revocation.* Once the election is made, it is revocable only with the consent of the Commissioner.

(5) *Special rules for treatment of expenses.* If the election is made, the plant or animal produced is treated as section 1245 property and gain is recaptured (treated as ordinary income) in the amount of deductions which, but for the election, would have been required to be capitalized with respect to the plant or animal. If the taxpayer or a related person makes the election, a non-accelerated method of depreciation (as defined in section 168(g)(2)) shall be applied to all property used predominantly in any farming business of the taxpayer or related person and placed in service in any taxable year during which the election is in effect. For purposes of this election, related party means: (i) the members of the taxpayer's family (defined for this purpose to include the spouse of the taxpayer and any of this or her children who have not reached the age of 18 as of the last day of the taxable year); (ii) any corporation (including an S corporation) 50 percent or more of the value of which is owned directly or indirectly (through the application of section 318) by the taxpayer or members of the taxpayer's family; (iii) any corporation that is a member of the same controlled group (within the meaning of section 1563) as the taxpayer; and (iv) any partnership if 50 percent or more of the value of the interests in such partnership is owned directly or indirectly (through the application of section 318) by the taxpayer or members of the taxpayer's family.

(d) *Election with respect to the treatment of net income for the short taxable year resulting from a required change in accounting period.* This paragraph applies to the election under secton 806(e)(2)(C) of the Act. Net income for the short taxable year resulting form a required change in accounting period under the provisions of section 806 of the Act which is to be included ratably in the partners' and S corporation shareholders' income for the first four taxable years (including the short taxable year) beginning after December 31, 1986, or included entirely in income for the short taxable year at the election of the partner or shareholder, shall be taken into account in accordance with section 702 (with respect to partners) and section 1366 (with respect to S corporation shareholders).

(e) *Election with respect to reducing partnership or S corporation income for the short taxable year resulting from a required change in accounting period under section 806 of the Act by an unamortized adjustment amount existing as of October 22, 1986.*—(1) *In general.* This paragraph applies to the election described in H.R. Rep. No. 99-841 at II-320.

(2) *Partnerships or S corporations that make the election to reduce income for the short taxable year by an unamortized adjustment amount existing as of October 22, 1986.* Where a partnership or S corporation elects to reduce its income for the short taxable year required under the provisions of section 806 of the Act by the unamortized adjustment amount existing as of October 22, 1986, in accordance with paragraph (a) of this section, the income for the short taxable year (reduced by the unamortized adjustment amount) may then be subject to the election, under section 806(e)(2)(C) of the Act, by partners and S corporation shareholders to include all the net income for the short taxable year entirely in income for the partners' or shareholders' taxable year with or within which the short taxable year ends.

(3) *Partnership or S corporations that do not make the election to reduce income for the short taxable year by an unamortized adjustment amount existing as of October 22, 1986.* Where a partnership or S corporation does not elect to reduce its income for the short taxable year created by the provisions of section 806 of the Act by the unamortized adjustment amount existing as of October 22, 1986, as provided in paragraph (a) of this section, the short taxable year required under the provisions of section 806 of the Act shall be considered one taxable year for purposes of amortizing the adjustment amount under the requirements of Rev. Proc. 72-51, 1972-2 C.B. 832, or Rev. Proc. 83-25, 1983-1 C.B. 689. The net income of the partnership or S corporation after reduction by the adjustment amount for the short taxable year may then be subject to the election under section 806(e)(2)(C) of the Act by partners or S corporation shareholders to include all the net income for the short taxable year entirely in income for the partners' or shareholders' taxable year with or within which the short taxable year of the partnership or S corporation ends.

(f) *Election with respect to the treatment of certain losses in insolvent financial institutions*—(1) *In general.* This paragraph applies to the election under Act section 905(a) (Code section 165(l)(1)). If—

(i) As of the close of the taxable year, it can reasonably be estimated that there is a loss on a deposit of a qualified individual (as defined in section 165(l)(2)) in a qualified financial institution (as defined in section 165(l)(3)), and

(ii) Such loss is on account of the bankruptcy or insolvency of such institution,

then the qualified individual may elect to treat the entire amount so estimated for that taxable year (disregarding any amount treated as a casualty loss under section 165(c)(3) in a previous taxable year) as a loss § 5h.5(f)(1) described in section 165(c)(3) and incurred during the taxable year. The election shall apply to all losses of the qualified individual on deposits in the institution with respect to which an election is made, and section 166 (relating to bad debts) shall not apply to any loss with respect to which an election is made.

(2) *Time and manner of making the election.* The election may be made by claiming such loss on the tax return for any taxable year in which a reasonable estimate of such loss can be made. If the qualified individual does not claim such loss on the tax return for that taxable year, the qualified individual may not subsequently amend the tax return for that taxable year to claim such loss for that taxable year. However, for a tax return filed with respect to a taxable year beginning after December 31, 1982, but before January 1, 1986, the qualified individual may subsequently (before the expiration of the period prescribed for filing a claim for credit or refund) amend the tax return for that taxable year to claim such loss for that taxable year.

(3) *Revocability of the election.* This election may be revoked only with the consent of the Commissioner.

(g) *Elections with respect to certain bonds.* The elections under Act section 1301(b) (Code sections 141(b)(9), 142(d)(1), 142(d)(4)(B), 143(k)(9)(D)(iii), 145(d), and 147(b)(4)(A)) must be made in the § 5h.5 (g) bond indenture or a related document (as defined in § 1.103–13(b)(8)) on or before the date of issue. With respect to obligations issued on or before March 9, 1987 these elections must be made on or before March 9, 1987 and need not be made in the bond indenture or a related document, but must be made in writing and retained as part of the issuer's books and records.

(h) *Revocation of the election for exemption from social security taxes by certain clergy*—(1) *In general.* This paragraph applies to the election under Act section 1704(b) to revoke an election under section 1402(e)(1) of the Code by a duly ordained, commissioned, or licensed minister of a church, a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order), or a Christian Science practitioner. Only elections which are effective for the taxable year containing October 22, 1986 may be revoked under this paragraph.

(2) *Time for revoking the election.* The election shall be revoked by filing Form 2031 before the date on which the individual becomes entitled to benefits under sections 202(a) or 223 of the Social Security Act (without regard to sections 202(j)(1) or 223(b) of such Act), and not later than the due date of the Federal income tax return (including any extension thereof) for the individual's first taxable year beginning after October 22, 1986.

(3) *Manner of revoking the election.* To revoke an election under section 1402(a)(1), the individual shall file Form 2031 in accordance with the instructions accompanying that form. The revocation shall be made effective, as designated by the individual on the form, either with respect to the individual's first taxable year beginning after October 22, 1986.

(4) *Special rules for payment of self-employment taxes with respect to certain taxable years ending on or after October 22, 1986*—(i) *Elections filed after the due date of the Federal income tax return.* In Form 2031 is filed on or after the due date of the Federal income tax return (including any extension thereof) for the individual's first taxable year ending on or after October 22, 1986, and the election made therein is effective with respect to that taxable year, Form 2031 shall be accompanied by an amended Federal income tax return for such taxable year together with payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Code with respect to all of the individual's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of subtitle A of the Code (notwithstanding paragraph (4) or (5) of section 1402(c)) but for the exemption under section 1402(e)(1).

(ii) *Elections filed before the due date of the Federal income tax return.* If Form 2031 is filed before the due date of the Federal income tax return (including any extension thereof) for the individual's first taxable year ending on or after October 22, 1986, and the election is effective with respect to that taxable year, payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Code with respect to all of the individual's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of the subtitle A of the Code (notwithstanding paragraph (4) or (5) of section 1402(c)) but for the exemption under section 1402(e)(1) shall be made:

(A) In the case of Forms 2031 that are filed on or before the date on which the individual's Federal income tax return for such first taxable year is filed, with the individual's Federal income tax return for such taxable year; and

(B) In the case of Forms 2031 that are filed after the date on which the individual's Federal income tax return for such first taxable year is filed, with an amended Federal income tax return for that taxable year filed on or before the due date for the individual's Federal income tax return (including any extension thereof) for such taxable year.

(iii) *Interest on amounts paid after the due date of the Federal income tax return.* If any amount of tax imposed by section 1401 for an individual's taxable year with respect to which an election under this paragraph (h) is effective is paid after the due date of the individual's Federal income tax return (without regard to extensions) for such taxable year, interest will be assessed on such tax from the due date of such return (without regard to extensions) to the date on which such tax is paid.

(5) *Revocability of the revocation of the election.* Once having filed Form 2031, the individual may not thereafter file an application for an exemption under section 1402(e)(1).

(6) *Effective date of this provision.* This provision shall apply with respect to remuneration received in the taxable years for which the individual designates the revocation to be effective, as described in paragraph (h)(3) of this section, and with respect to monthly insurance benefits payable under title II of the Social Security Act on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation is effective (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).

(i) *Revocation of the election for exemption from social security taxes by certain churches on qualified church-controlled organizations*—(1) *In general.* This paragraph applies to the election under Act section 1882 (Code section 3121 (w)(2)) to revoke an election under section 3121(w) by a church or qualified church-controlled organization (as defined in section 3121(w)(3)).

(2) *Time and manner of revoking the election.* The revocation described in this paragraph (i) shall be made by filing a Form 941 on or before the due date for filing Form 941 (without regard to extensions) for the first quarter for which the revocation is to be effective, accompanied by payment in full of the taxes that would be due for that quarter had there been no election under section 3121(w). See paragraph(i)(4) of this section for the effective date of revocation made under this paragraph (i).

(3) *Revocability of the revocation of the election.* Once an election under section 3121(w) is revoked under this paragraph (i), a new election under section 3121(w) may not be made.

(4) *Effective date of this paragraph.* A revocation made under this paragraph (i) shall be effective for the quarter of the calendar year covered by the Form 941 on which the revocation is made in accordance with paragraph (i)(2) of this section and all subsequent quarters. However, no revocation shall be effective prior to January 1, 1987 unless such electing church or church-controlled organization had withheld and paid over all employment taxes due, as if such election had never been in effect, during the period from the effective date of the election being revoked through December 31, 1986.

(j) *Additional information required.* Later regulations or revenue procedures issued under provisions of the Code or Act covered by this section may require the furnishing of information in addition to that which was furnished with the statement of election described in this section. In such event, the later regulations or revenue procedures will provide guidance with respect to the furnishing of such additional information. (26 U.S.C. 7805).

PART 602—[AMENDED]

Par. 3. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.10 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 5h.5 . . . 1545–0982".

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

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: January 13, 1987.

O. Donaldson Chapoton,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87-2219 Filed 2-4-87; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 1-87]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is exemption a Privacy Act system of records from subsection (c)(3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8); (f) and (g) of the Privacy Act, 5 U.S.C. 552a. This system is the "United States Trustee Program Case Referral System, JUSTICE/UST–004." Records contained in this system relate to official Federal investigations and matters of law enforcement. The exemptions are needed to protect ongoing investigations, as well as the privacy of third parties and the identities of confidential sources involved in such investigations.

EFFECTIVE DATE: February 5, 1987.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 272-6474.

SUPPLEMENTARY INFORMATION: A proposed rule with invitation to comment was published in the Federal Register on September 5, 1986 (51 FR 31781). The public was given 30 days to comment.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of smal entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, the Department amends 28 CFR Part 16 by adding § 16.77 as set forth below.

Dated: January 8, 1987.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR Part 16 by adding § 16.77 to read as follows:

§ 16.77 Exemption of United States Trustee Program System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8); (f) and (g):

(1) United States Trustee Program Case Referral System, JUSTICE/UST–004.

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) since an exemption being claimed for subsection (d) makes this subsection inapplicable.

(3) From subsection (d) because access to the records contained in this system might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (e)(5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interest of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(5) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement because the subject of the investigation would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it would compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7) From subsections (e)(4) (G) and (H) because this system of records is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k).

(8) From subsection (e)(8) because the individual notice requirement of this subsection could present a serious impediment to law enforcement in that this could interfere with the U.S. Attorney's ability to issue subpoenas.

(9) From subsections (f) and (g) because this system has been exempted from the access provisions of subsection (d).

[FR Doc. 87-2307 Filed 2-4-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Approval of Amendments to Colorado Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: The Director is announcing the approval of several proposed program amendments to the Colorado permanent regulatory program (hereinafter referred to as the Colorado program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments consist of regulation changes and a policy statement addressing the program deficiencies set forth at 30 CFR 906.16 (b) through (h) in an earlier rulemaking.

EFFECTIVE DATE: February 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue NW., Albuquerque, New Mexico; Telephone: (505) 766–1406.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

Information regarding the general background on the Colorado program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval, can be found in the December 15, 1980 **Federal Register** (45 FR 82173–82214). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 906.15 and 906.16.

II. Submission of Amendments

By letter dated August 18, 1986 (Administrative Record No. CO–294), Colorado submitted a proposed amendment consisting of various regulations modifications and a policy statement designed to address the program deficiencies identified in an earlier amendment (51 FR 4485–4497, February 5, 1986) and codified at 30 CFR 906.16 (b) through (h). The Director announced receipt of these materials in the October 9, 1986 **Federal Register** (51 FR 36231–36233) and invited public comment on their substantive adequacy.

III. Director's Findings

Set forth below, pursuant to SMRCA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments submitted by Colorado. The letter in the heading of each finding refers to the paragraph of 30 CFR 906.16 containing the requirement which Colorado is addressing.

1. Required Amendment (b)

For the reasons set forth in Finding 1(d) of the February 5, 1986 **Federal Register** notice (51 FR 4486), the Director required that, by February 5, 1985, Colorado submit revisions to 2 CCR 407–2, 2.02.2(2)(g) or otherwise propose to amend its program to require that the notice filed by any person intending to conduct coal exploration involving the removal of 250 or fewer tons of coal include a complete description of the methods of exploration to be used and the practices that will be followed to reclaim the area following completion of exploration, and to clarify that specifying the maximum number of holes to be drilled will not fully satisfy this requirement.

The amendment submitted by Colorado on August 18, 1986 revises State rule 2.02.2(2)(g) to require that all coal exploration notices include a narrative description of the methods to be used to conduct coal exploration and reclamation. Therefore, the Director finds that the revised State rule is no less effective than the corresponding Federal regulations at 30 CFR 772.11(b)(5).

2. Required Amendment (c)

For the reasons set forth in Finding 1(f) of the February 5, 1986 **Federal Register** notice (51 FR 4486), the Director required that, by February 5, 1987, Colorado submit a revised form of 2 CCF 407–2, 4.21.4(1) replacing the cross reference to 2.05.6(2)(b) with one to 2.05.6(2)(a)(iii), or otherwise propose to amend the coal exploration provisions of its program to protect critical habitats of endangered or threatened species and habitats of unusually high value for fish, wildlife or related environmental values.

The amendment submitted by Colorado on August 18, 1986 replaces the cross reference to 2.05.6(2)(b) in 4.21.4(1) with one to 2.05.6(2)(b)(iii). Therefore, the Director finds that revised State rule 4.21.4(1) contains habitat protection requirements no less effective than those set forth in the Federal regulations at 30 CFR 815.15(a).

3. Required Amendment (d)

For the reasons set forth in Finding 3(a) of the February 5, 1986 **Federal Register** notice (51 FR 4487), the Director required that, by February 5, 1987, Colorado submit revisions to 2 CCR 407–2, 4.06.1(2) or otherwise propose to amend its program to provide that topsoil storage practices other than stockpiling may be used only when (1) stockpiling would be detrimental to the quantity or quality of the stored materials, (2) all stored materials are moved to an approved site within the permit area, (3) the alternative practice would not permanently diminish the capability of the soil of the host site, and (4) the alternative practice would maintain the stored materials in a condition more suitable for future redistribution than would stockpiling.

The amendment submitted by Colorado on August 18, 1986 revises State rule 4.06.1(2) to require that the permittee demonstrate that a proposed alternative to stockpiling will provide more, rather than equal or more as in the previous version, protection for the topsoil. In addition, Colorado has proposed a policy statement in the form of a handbook memorandum entitled "Alternative to Topsoil Stockpiles", which requires that the Division consider the following factors when evaluating a proposed alternative practice: (1) Whether stockpiling would be detrimental to the quantity or quality of the topsoil, (2) whether the alternative practice would permanently diminish the capability of the host site, and (3) whether the alternative practice would maintain the topsoil in a condition more suitable for future distribution than would stockpiling. With respect to the remaining requirement of 39 CFR 906.16(d) that all stored materials be placed on an approved site within the permit area, Colorado rule 1.04(89) provides that all areas affected by surface coal mining reclamation operations must be included within the permit area. In addition, the policy statement requires that any proposed alternative practices be approved in writing by the Division. Therefore, the Director finds that revised State rule 4.06.1(2) and the accompanying handbook memorandum are no less effective than the requirements of the Federal regulations at 30 CFR 816.22(c)(3) and 817.22(c)(3).

4. Required Amendment (e)

For the reasons set forth in Finding 3(c) of the February 5, 1987 **Federal Register** (51 FR 4487), the Director required that, by February 5, 1987, Colorado submit revisions to 2 CCR 407–2, 4.06.2(2)(a) or otherwise propose to amend its program to establish definitive criteria governing the granting of topsoil removal variances, criteria which must be no less effective than those contained in the Federal regulations at 30 CFR 816.22(a)(3) and 817.22(a)(3).

As originally submitted, the Colorado rules provided that areas which might qualify for a variance included, but were not limited to, light traffic areas where vegetation or soil stability would not be destroyed, areas where topsoil removal would result in needless damage to soil characteristics, and areas of construction of small structures such as power poles, signs or fences. As revised in the August 18, 1986 submission, Colorado now limits the variance to the specific situations listed above, as do the Federal rules at 30 CFR 816.22(a)(3) and 817.22(a)(3). Therefore, the Director finds that Colorado rule 4.06.2(2)(a), as revised, is no less effective than the corresponding Federal rules.

5. Required Amendment (f)

For the reasons set forth in Finding 3(d) of the February 5, 1987 **Federal Register** notice (51 FR 4487), the Director required that, by February 5, 1987, Colorado submit revisions to 2 CCR 407-2, 4.06.1(4)(a)(iii) or otherwise propose to amend its program to require that, before the State approves topsoil substitutes or supplements, the operator demonstrate that the proposed final soil medium would be the best available within the permit area to support the vegetation.

The amendment submitted by Colorado on August 18, 1986, revises State rule 4.06.2(4)(a) to provide that the Division may approve the use of topsoil substitutes or supplements only if the resulting soil medium is, among other things, the best available in the permit area to support revegetation. Therefore, the Director finds that revised Colorado rule 4.06.2(4)(a) is no less effective than the corresponding Federal regulations at 30 CFR 816.22(b) and 817.22(b).

6. Required Amendment (g)

For the reasons set forth in Finding 9(i) of the February 5, 1986 **Federal Register** (51 FR 4491), the Director required that, by February 5, 1987, Colorado submit revisions to 2 CCR 407-2, 2.10.1(1) or otherwise propose to amend its program to require that all areas upon which roads or support facilities, other than isolated monitoring stations involving little or no surface disturbance, are to be sited be mapped at a scale of 1:6,000 or larger.

The amendment submitted by Colorado on August 18, 1986, revises State rule 2.10.1(1) to require that all roads and support facilities within the permit area be shown on a large scale (1:6,000 or larger) map. Therefore, the Director finds that revised Colorado rule 2.10.1(1) is no less effective than the corresponding Federal rule at 30 CFR 777.14(a).

7. Required Amendment (h)

For the reasons set forth in Finding 10(b) of the February 5, 1987 **Federal Register** notice (51 FR 4491–4492), the Director required that, by February 5, 1987, Colorado submit revisions to 2 CCR 407-2, 2.04.12(1) or otherwise propose to amend its program to require that prime farmland investigations be conducted on all lands upon which roads or support facilities are to be sited.

The amendment submitted by Colorado on August 18, 1986 revises State rule 2.04.12(1) to require that prime farmland investigations be conducted on all lands within the proposed permit area, or in the case of underground mining, only those areas proposed to be disturbed by surface operations or facilities. Colorado has proposed this language to eliminate the need for prime farmland investigations on areas overlying the underground workings of a mine where the surface is not disturbed. The State definition of "permit area" includes such areas whereas the Federal rules do not. In his February 5, 1986 rulemaking, the Director was concerned that, because of Colorado's interpretation of the term "disturbed area", investigations might not be made on all areas where certain roads and support facilities were to be sited. However, since Colorado has revised its topsoil rules at 4.06.2(2)(a) to require topsoil salvage wherever mining-related activities would otherwise adversely affect soil characteristics, such areas now would be considered potential disturbed areas under the State interpretation of that term and hence would be investigated for the presence of prime farmland. Therefore, the Director finds that Colorado rule 2.04.12(1), as revised, is no less effective than the corresponding Federal rule at 30 CFR 785.17(b)(1), which requires prime farmland reconnaissance surveys of all proposed permit areas.

IV. Public Comments

The Director solicited public comments on the proposed amendments in the October 9, 1986 **Federal Register** (51 FR 36231–36233). The comment period closed on November 10, 1986, without receipt of any comments. Since no one either requested an opportunity to present testimony at a hearing or expressed an interest in a public hearing, the public hearing scheduled for November 3, 1986, was not held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), the Director also solicited comments from various Federal agencies. All agencies either declined comment or concurred in the amendments. However, the U.S. Forest Service noted that it must also review and approve all applications for permits or permit revisions where it is the surface land managing agency. In response, the Director notes that the cooperative agreement (30 CFR 906.30) governing mining on Federal lands in Colorado contains extensive provisions requiring consultation with the Federal land managing agency; it also requires that all necessary approvals be obtained.

V. Director's Decision

Based on the findings set forth above, the Director is approving the proposed amendments submitted by Colorado on August 18, 1986, and is removing the required amendments specified in 30 CFR 906.16 (b) through (h). The Federal rules at 30 CFR Part 906 are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with SMCRA without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Matters

1. Compliance with the National Environmental Policy Act

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

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

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 906

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

Dated: January 30, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 906—COLORADO

30 CFR Part 906 is amended as follows:

1. The authority citation for Part 906 continues to read as follows:

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

2. A new paragraph (h) is added to § 906.15 to read as follows:

§ 906.15 Approval of regulatory program amendments.

* * * * *

(h) The following amendments, as submitted on August 18, 1986, are approved effective February 5, 1987:

(1) Revisions to the following provisions of 2 CCR 407-2, the rules and regulations of the Colorado Mined Land Reclamation Board:

2.02.2(2) (g)
2.04.12(1)
2.10.1(1)
4.06.1(2)
4.06.2(2)(a)
4.06.2(4)(a)
4.21.4(1)

(2) The Handbook Memorandum entitled "Alternative to Topsoil Stockpiles", which interprets State rule 4.06.1(2).

§ 906.16 [Removed]

3. Section 906.16 is removed in its entirety.

[FR Doc. 87-2411 Filed 2-4-87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 166

Defense Contracting; Reporting Procedures on Defense Related Employment

AGENCY: Office of the Secretary of Defense.

ACTION: Amendment of final rule.

SUMMARY: This amendment to the rule is the fiscal year 1986 update of the section listing DoD contractors receiving contract awards of $10 million or more. The amendment is published to comply with the provisions of 10 U.S.C. 2397.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. J.R. Sungenis, Director for Information Operations and Reports, Washington Headquarters Services, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Telephone (202) 746-0334.

SUPPLEMENTARY INFORMATION: In FR Doc. 70-15846 appearing in the **Federal Register** on November 25, 1970 (35 FR 18040), the Office of the Secretary of Defense published a final rule establishing criteria, prescribing procedures, and assigning responsibilities for monitoring contracting within the Department of Defense. Subsequently, fiscal years 1971 (36 FR 18464) through 1985 (50 FR 52443) which constitute the list of DoD contractors receiving contract awards for $10 million or more, were updated.

List of Subjects in 32 CFR Part 166

Armed Forces, conflict of interests, government employees, government procurement, reporting and recordkeeping requirements.

PART 166—[AMENDED]

Accordingly, 32 CFR Part 166 is amended as follows:

1. The authority citation for part 166 is revised to read as follows:

Authority: 10 U.S.C. 2397.

2. Section 166.11 is revised to read as follows:

§ 166.11 Department of Defense contractors receiving contract awards of $10 million or more.

Fiscal year 1986:

3D/International, Inc.
AAI Corp.
ACS Construction Co. of Miss.
ALM, Inc.
ALS Corp.
AT&T Information Systems
AT&T Technologies, Inc.
A/S Kongsberg Vaapenfabrikk
Aar Brooks & Perkins Corp.
Abbott Products, Inc.
Abex Corp.
Accudyne Corp.
Ace Industries, Inc.
Action Manufacturing Co.
Actus Corp/Escon, Inc., JV
Actus Corp.
Acurex Corp.
Addsco Industries, Inc.
Advanced Computer Communications
Advanced Technology, Inc.
Aero Corp.
Aerodyne Investment Castings
Aerojet-General Corp.
Aeroquip Corp.
Aerospace Corp., The
Agip Deutschland
Agip Petroli Spa
Airspace Technology Corp.
Aksarben Foods
Alabama Power Co.
Alamo Technology, Inc.
Alascom, Inc.
Alexander, H.B. & Son, Inc.
Algernon Blair, Inc.
All-Bann Enterprises, Inc.
Allen, J.F. Co.
Allied Corp. Prestolite
Allied Corp.
Allis-Chalmers Corp.
Alpha Industries, Inc.
Altama Delta Corp.
AM General Corp.
Amerada Hess Corp.
American Airlines, Inc.
American Cyanamid Co. Inc.
American Develpment Corp.
American Electronic Laboratories, Inc.
American Export
American Express Company
American Fuel Cell
American Management Systems
American President Lines, Ltd.
American Puff Corp.
American Satellite Co.
American Systems Corp.
American Telephone & Telegraph Co.
American Trans Air, Inc.
Amertex Enterprises, Inc.
Ametek, Inc.
Amex Systems, Inc.
Amoco Corp.
Ampex Corp.
Amron Corp.
Amstar Technical Products Co.
Analysis & Technology, Inc.
Analytic Sciences Corp., The
Analytical Systems Engineering
Analytics Inc.
Andersen, Arthur & Co.
Anker Kolen Maatschappij BV
Annuss GMBH Co.
Apex Oil Co.
Applied Companies, Inc.
Applied Research, Inc.
Applied Technology Associates
Arcwel Corp.
Ardox Corp.
Argosystems, Inc.
Arinc Research Corp.
Arkla, Inc.
Arral Industries, Inc.
Arrow Air, Inc.
Asco Falcon II Shipping Co.
Ashland Oil, Inc.
Asis Oil Co., Ltd.
Associated Aerospace
Astrocom Electronics, Inc.
Astronautics Corp. of America
Atacs Corp.
Atkins, Claude E. Enterprises
Atlantic Marine, Inc.
Atlantic Research Corp.
Atlantic Richfield Co.
Atlas Processing Co.
Auburn Electric, Inc.
Aul Instruments, Inc.
Austin Co. The
Autek Systems Corp.

Automated Data Management, Inc.
Automated Sciences Group, Inc.
Avantek, Inc.
Avco Corp.
Avondale Industries, Inc.
Aydin Corp.
Ayer, N.W. Inc.
Bahrain National Oil
Balimony Manufacturing Co. of Venice
Ball Corp.
Baltimore Gas & Electric Co.
Barrett Refining Corp.
Basil, Frank E., Inc. of Delaware
Bates, Ted Worldwide, Inc.
Bateson, J.W. Co. Inc.
Bath Iron Works Corp.
Battelle Memorial Institute
Bay City Marine, Inc.
BBN Communications Corp.
BDM Corp., The
Beacon Oil Co.
Bean Dredging Corp.
Beatrice Companies, Inc.
Becharas Brothers Coffee Co.
Bechtel Operating Service
Beech Aerospace Services, Inc.
Beech Aircraft Corp.
Bei Electronics, Inc.
Belcher New England, Inc.
Belcher Oil Company of NY, Inc.
Belcher Oil Co.
Bell Boeing
Bell Helicopter Textron, Inc.
Belleville Shoe
Bender, Allen L.
Bender Shipbuilding
Bendix Field Engineering Corp.
Beretta USA Corp.
Berg, Chris, Inc.
Bertolini, J.D. Industries
Bertucci, Anthony Construction Co.
Betac Corp.
Bethlehem Steel Corp.
Bilfinger & Berger Bauaktienge
Bionetics Corp., The
Blake Construction Co., Inc.
Blount Brothers Corp.
Blue Cross & Blue Shield of Rhode Island
Blue Cross & Blue Shield of South Carolina
Blue Cross & Blue Shield of Washington & Alaska, Inc.
Bodenhamer Building Corp.
Boeing Co. The
Boeing Technical Operations
Boeing Vertol Co.
Boland David, Inc.
Belt, Beranek, and Newman, Inc.
Booz, Allen & Hamilton, Inc.
Borg-Warner Corp.
Braintree, V. Maritime Corp.
Brintec Systems Corp.
British Aerospace
Brockway Standard, Inc.
Brunswick Corp.
Brussels Steel America, Inc.
Bulova Systems & Instruments
Bundesamt Fuer Wehrtechnik
Burlington Industries, Inc.
Burnside-Ott Aviation Training Center
Burroughs Corp.
Butler Aviation International
C 3, Inc.
C Construction Co., Inc.
CFS Aircargo, Inc.
Caci, Inc.
Caddell Construction Co.
Cadillac Gage Co.
Cal State Electric, Inc.
Calcasieu Refining Co.
California Microwave, Inc.
California Pacific Associates
California Storage Concepts
Calspan Corp.
Caltex Oil Products Co.
Caltex Petroleum Corp.
Camel Manufacturing Co.
Campbell, E.C., Inc.
Campbell Soup Co.
Can-Am Industries, Inc.
Cantu Services, Inc.
Carbon Hill Manufacturing Co.
Carlson, Henry Co.
Carnation Co.
Carnegie-Mellon University
Carolina Power & Light Co.
Carothers Construction, Inc.
Cas, Inc.
Case, J.I. Co.
Caterpiller, Inc.
Cates Construciton, Inc.
CBI Industries, Inc.
CBI Marine Co.
Centex Construction Co.
Central Power Engineering Corp.
Central Texas College
Centre Manufacturing Co., Inc.
Cerberonics, Inc.
Cessna Aircraft Co., Inc.
CFM International, Inc.
Chamberlain Manufacturing Corp.
Chancellor & Son, Inc.
Chesapeake and Potomac Telephone Co. of Virginia
Chevron USA, Inc.
Chin II Engineering, Ltd
Chromalloy American Corp.
Chrysler Corp.
Ciba-Geigy Corp.
Cincinnati Electronics Corp.
Cincinnati Milacron, Inc.
Cinpac, Inc.
City Public Service
Clearwater Constructors, Inc.
Clement Brothers Co.
Cleveland Pneumatic Co.
Coastal Dry Dock & Repair Corp.
Coastal Refining & Marketing
Coastal States Trading, Inc.
Cobro Corp.
College of Lake County
Colonas Shipyard, Inc.
Colorado Springs, City of
Colsa, Inc.
Colt Industries, Inc.
Columbia Research Corp.
Comarco, Inc.
Comptek Research, Inc.
Computer Sciences Corp.
Computer Software Analysts, Inc.
Computer Technology Association
Computervision Corp.
Comstock Communications, Inc.
Condec Corp.
Conner Brothers Construction Co.
Conoco, Inc.
Construcciones Aeronauticas Sa
Contel Page Systems, Inc.
Continental Airlines, Inc.
Continental Maritime San Diego
Control Data Corp.
Copper Tire & Rubber Co.
Cooper & Lybrand
Cornell University, Inc.
CPT Corp.
Craddock-Terry Shoe Corp.
Craft Machine Works, Inc.
Cray Research, Inc.
Creech J.W., Inc.
Crysen Corp.
Cubic Corp.
Cummins Engine Co. Inc.
DAE Woo Corp.
Daimler Benz AG
Dart & Kraft, Inc.
Data General Corp.
Datagraphix, Inc.
Dataproducts New England, Inc.
Davey Compressor Co.
Day & Zimmermann, Inc.
Day Zimmermann & Basil Corp.
Dayron Corp.
Dayton Power & Light Co.
Defense Research, Inc.
Del Manufacturing Co.
Del Monte Corp.
Delta Industries, Inc.
Designer & Planners, Inc.
Detyens Shipyards, Inc.
Deutsche Bundespost
Deutsche Pam Mineraloel GMBH
Deval Corp.
Developmental Sciences, Inc.
Devils Lake Sioux Manufacturing
Deweys Electronics
Dewitt, J.E., Inc
DGWT Netherlands
Diagnostic & Retrieval Systems
Diamond Shamrock
Digital Equipment Corp.
Dillingham Construction
Diversified Group, Inc.
Doster Construction Co., Inc.
Draper Charles Stark Laboratories
Dresser Industries, Inc.
Du Pont, E.I. De Nemours and Co.
Dun & Bradstreet Corp.
Dynalec Corp.
Dynalectron Corp.
Dynamac Corp.
Dynamics Research Corp.
Dynateria, Inc.
EC Corp., The
EG&G Washington Anaytical Services Center
EG&H, Inc.
EIP Microwave, Inc.
E-Systems, Inc.
Eagle Technology, Inc.
Earth Technology Corp.
Eastern Canvas Products, Inc.
Eastern Marine, Inc.
Eastman Kodak Co.
Eastport International, Inc.
Eaton Corp.
Ebasco Services, Inc.
Eberharter Construction Group
Edcar Industries, Inc.
Edo Corp.
Educational Computer Corp.
Eldyne, Inc.
Electro-Methods, Inc.
Electronic Data Systems Corp.
Electrospace Systems, Inc.
ELF France
Elle Petroleum Corp.
Emco, Inc.
Emerson Electric Co.
Engineered Air Systems, Inc.

Engineering & Economics Research
Engineering Research Association
Environmental Research Institute, Michigan
Environmental Science & Engineering
Equipment & Supply, inc.
ESL, Inc.
ESSO AG
Evaluation Research Corp.
Evergreen International Airlines
Ex-Cell-O Corp.
Expander Transport Corp.
Expediter Transport Corp.
Exporter Transport Corp.
Expresser Transport Corp.
Extender Transport Corp.
Exxon Co., U.S.A.
Exxon Corp.
FEL Corp.
FN Manufacturing, Inc.
Fabrique Nationale Herstal SA
Fairchild Aircraft Corp.
Fairchild Industries, Inc.
Fairchild Weston Systems, Inc.
Fairey Marine, Ltd.
Farmers Union Central Exchange
Farrell Lines, Inc.
Federal Cartridges Corp.
Federal Data Corp.
Federal Data Systems, Inc.
Federal Electric Corp.
Figgie International, Inc.
Fina Oil & Chemical Co.
Firestone Tire & Rubber Co.
Fisher Controls, Ltd.
Flight International Group, Inc.
Flight Systems, Inc.
Florida Power & Light Co.
Fluke John Manufacturing Co., Inc.
Flying Tiger Line, Inc., The
FMC Corp.
Ford Aerospace Communications
Forstmann & Co., Inc.
Fraass Survival Systems, Inc.
Freightliner Corp.
Fruin-Colnon Corp.
G & C Enterprises, Inc.
G A Technologies, Inc.
G E C Avionics, Ltd.
G T E Service Corp.
Gardner-Zemke Co.
Garrett Corp., The
Gates Learjet Corp.
Gay, Robert Construction Co.
Gayston Corp.
General Battery Corp.
General Defense Corp.
General Dynamics Corp.
General Electric Co.
General Foods Corp.
General Instrument Corp., Delaware
General Motors Corp.
General Railroad Eqipment & Services
General Research Corp.
General Ship Corp.
General Signal Corp.
Genrad, Inc.
Geo-Centers, Corp.
Georgia Institute Technology
Georgia Power Co.
Giant Industries, Inc.
Gibbs & Cox, Inc.
Global Associates, A Joint Venture
GNB Inc.
Goodrich, B.F. Co., The
Goodyear Aerospace Corp.
Goodyear Tire & Rubber Co.
Goolsby Building Corp.
Gortons of Gloucester
Gould Computer Systems, Inc.
Gould, Inc.
Grace Industries, Inc.
Graham Contracting, Inc.
Great Lakes Dredge & Dock Co.
Greenhut Construction Co., Inc.
Grey Advertising, Inc.
GRG Engineering, Inc.
Grid Systems Corp.
Grumman Aerospace Corp.
Grumman Data Systems Corp.
Grumman Houston Corp.
GTE Government Systems, Inc.
GTE Products Corp., Delaware
GTE Sylvania, Inc.
GTE Telecom, Inc.
Gulf Power Co.
Gulfstream Aerospace Corp., Delaware
Gulfstream Aerospace Corp., Georgia
H & H Meat Products, Inc.
H L J Construction & Management Group
H R Textron, Inc.
Halton Marine, Inc.
Hamilton Technology, Inc.
Hans Heede GMBH
Hanson Construction Co.
Harley-Davidson Motor Co., Inc.
Harnischfeger Corp.
Harris Corp.
Harsco Corp.
Hartec Enterprises, Corp.
Harvard University
Hawaiian Electric Co., Inc.
Hawaiian Independent Refinery
Hawaiian Telephone Co.
Hayes International Corp.
Hazeltine Corp.
HCA Mideast, Ltd.
Heckethorn Manufacuring Co.
Held & Francke
Hellenic Fuel & Lubricant Ind.
Henderson, H.F. Industries
Hensel Phelps Construction Co.
Hercules Inc.
Hess Oil Virgin Islands Corp.
Hewlett-Packard Co.
Heydt, Francis E. Co.
Hill Petroleum
Hochtief AG
Hoffman Construction Co., Oregon
Hoffman-La Roche, Inc.
Hollingsworth, John R. Co.
Holmes & Narver, Inc.
Holmes & Narver/Morrison-Knudson
Holston Defense Corp.
Honam Oil Refinery Co., Ltd.
Honeycomb Co. of America
Honeywell, Inc.
Honeywell Information Systems
Hooks Mike, Inc.
Horizons Technology, Inc.
Howell & Howell
Howmet Turbine Components Corp.
HRB-Singer, Inc.
Hudgins Construction Co., Inc.
Hudson Institute, Inc.
Hughes Aircraft Co.
Hughes Communication International
Hunt Building Corp.
Hunt Oil Co.
Hydraulic International, Inc.
Hydroscience, Inc.
Hyster Co.
IIT Research Institute
I L C Data Device Corp., Del.
IBIS Corp.
ICI Americas, Inc.
Illinois Tool Works, Inc.
INCO, Inc.
Industrial Pump & Compressor
Information System & Network Corp.
Informatics General Corp.
Information Spectrum, Inc.
Infotec Development, Inc.
Ingersoll-Rand Co.
Institute for Defense Analyses
Integrated Systems Analysts
Intelcom Support Services, Inc.
Inter-Community Telephone Co.
Intercontinental Mfg Co.
Integraph Corp.
Intermetrics, Inc.
International Business Machines
International Terminal Operating Co.
Intersystems Corp.
ISC Defense Systems, Inc.
Isometrics, Inc.
Israel Aircraft Industries
Israel Military Industries
Itel Corp.
ITT & Varo Joint Venture
ITT Corp.
ITT Westinghouse Joint Venture
Jacksoville Shipyards, Inc.
James, T. L. & Co., Inc.
Jaycor
Jersey Central Power & Light Co.
Jet Electronic & Technology
Jonathan Corp., The
Jones Group, Inc., The
Jordon & Nobles, Inc.
Jowett Corp.
JR Son, Inc.
Kaiser Aerospace & Electronics Co.
Kaiser Engineers & Constructors
Kaiser Engineers, Inc.
Kaman Aerospace Corp.
Kaman Sciences Corp.
Kansas Power & Light Co.
Kay & Associates, Inc.
Kaydon Corp.
KDI Precision Products, Inc.
Kellogg Sales Co.
Kelsey-Hayes Co.
Kentron International, Inc.
Kern County Refinery, Inc.
Key Airlines, Inc.
Kilgore Corp.
Kimberly-Clark Corp.
Kinross Manufacturing Corp.
Kisco Co. Inc.
Koch Fuels, Inc.
Kock Refining Co., Inc.
Koehring Co.
Koppers Co., Inc.
Korea Electric Power Corp.
Korean Air Lines Co., Ltd.
Kovatch Corp.
Kraus Peter
Kronenberger & Sohn KG
Kurz & Root Co.
Kuwait National Petroleum Co.
Kvaas Construction Co., Inc.
L S I Avionic Systems
La Forge & Budd Construction Co.
Lake Shore, Inc.
Laketon Refining Corp.
Land O Frost, Inc.
Landau, H. & Co.

Landoll Corp.
Lane Construction Corp.
Lanson Industries, Inc.
Lanthier Robert J., Co., Inc.
Lathrop, F. P. Construction Co.
Lavino, E. J. & Co.
Leal Petroleum Corp.
Lear Siegler, Inc.
Lewis, Jerry M. Truck Parts Equipment
Libby Corp.
Light Helicopter Turbin Eng
Lilly, David B. Co., Inc.
Lilly Eli & Co.
Lite Industries, Inc.
Little, Arthur D., Inc.
Litton Industries, Inc.
Litton Systems, Inc.
Lock 26 Constructors
Lockheed Corp.
Lockheed Electronics Co.
Lockheed Missiles & Space Co.
Lockheed Shipbuilding Co.
Lockport Marine Co.
Loggins Meat Co.
Logicon Inc.
Logistics Management Institute
Loral Corp.
Loral Electro-Optical Systems
Loral Electronic Systems
Loral Hycor, Inc.
Louisville Gas & Electric Co.
LTV Aerospace & Defense Co.
LTV Corp., The
Lucas Industries, Inc.
Luhr Bros, Inc.
Lundy Electronics & Systems
Lyda Inc.
Lykes Bros Steamship Co., Inc.
M H K Minerolhandel GMBH & Co.
M/A COM Linkabit, Inc.
M/A-COM, Inc.
Mabco Prefabricated Building
Magnavox Co., Inc. The
Magnavox Government & Industrial Electronics Co.
Management & Technical Services Co.
Mandex, Inc.
Mantech International Corp.
Mapco, Inc.
MAR, Inc.
Marable W M, Inc.
Maremont Corp.
Marinette Marine Corp.
Marion Laboratories, Inc.
Marquardt Co., Inc.
Martin Marietta Aerospace
Martin Marietta Corp.
Martin Marietta, D. E. JV
Martin-Baker Aircraft Co., Ltd.
Maruzen Oil Co., Ltd.
Marvin Engineering Co., Inc.
Maschinenfabrik Augsburg
Mason Chamberlain, Inc.
Mason Hanger-Silas Mason Inc., WV
Massachusetts Institute of Technology
Massman Construction Co.
Matra Co.
Maxwell Laboratories Inc.
Mayer Oscar Foods Corp.
McAlister Construction Co.
McCann Bill, Inc.
McCarthy Building Systems, Inc.
McCarthy Construction
McDermott Inc.
McDonnell Douglas Corp.
McDonnell Douglas Helicopter
McGraw-Edison Co.
McKee, Robert E., Inc.
McLaughlin Research Corp.
McMullan Robert & Son, Inc.
McMullen, John J. Associates
McRae Industries, Inc.
McGaughan, A. S. Co., Inc.
Mechanical Equipment Co.
Menasco, Inc.
Merck & Co., Inc.
Metal Trades, Inc.
Metric Construction Co., Inc.
Metric Constructors, Inc.
Metric Systems Corp.
Metro Machine Corp.
Meyer Tool, Inc.
MI Ryung Construction Co., Ltd
Michelson Organization
Midland-Ross Corp.
Midwest Construction Co.
Milcom Systems Corp.
Miltope Corp.
Mine Safety Appliances Co.
Miner Industries, Inc.
Minnesota Mining & Mfg Co.
Minowitz Manufacturing Co., Inc.
MIP Instandsetzungsbetric
Mission Research Corp.
Mitre Corp., The
Mobil Oil Corp.
Montedipe Spa
Moog, Inc.
Moon Engineering Co., Inc.
Morrison Knudsen Corp.
Mortenson, M. A. Co.
Morton Thiokol, Inc.
Moss Point Marine, Inc.
Motor Oils Hellas Corinth Refi
Motorola Communications Elcr
Motorola Computer Systems, Inc.
Motorola, Inc.
Munro & Co., Inc.
N I Industries, Inc.
Nabisco Brands, Inc.
Natco Limited Partnership
National Aeronautic Association, USA
National Airmotive Corp.
National Steel Shipbuilding Co.
National Structure, Inc.
National Systems Management
Navajo Refining Co.
Navistar International Corp.
NCR Corp.
Needham, Inc.
Nero & Associates, Inc.
Network Systems Corp.
New Mexico State University
Newberg-Brinderson, JV
Newhall Refining Co.
Newport News Shipbuilding & Dry Dock Co.
Nichols Research Corp.
N L Industries, Inc.
Norden Systems, Inc.
Norfolk Dredging Co., Inc.
Norfolk Shipbuilding Dry Dock
North Atlantic Industries, Inc.
Northeast Construction Co.
Northeast Petroleum Corp.
Northern Research & Engineering
Northern Telecom, Inc., Delaware
Northrop Corp.
Northrop Services, Inc.
Northrop Worldwide Aircraft Services
Northwest Airlines, Inc.
Northwest Marine Iron Works
Nuclear Metals, Inc.
O A O Corp.
O T O Melara Spa
Ocean Technology, Inc.
Ohbayashi Corp.
Okinawa Electric Power Co.
Oklahoma Aerotronics, Inc.
Oklahoma Gas and Electric Co.
Olin Corp.
Omi Bulk Transport, Inc.
Onan Corp.
Oregon Freeze Dry Foods, Inc.
Ori, Inc.
Oshco Pae Somc
Oshkosh Truck Corp.
Overton Constructors
P C C Technical Industries, Inc.
Paccar, Inc.
Pacer Systems, Inc.
Pacific Construction Co., Ltd.
Pacific Gas & Electric Co.
Pacific Refining Co.
Pacific Services, Inc.
Pan Am World Services, Inc.
Pan American World Airwarys, Inc.
Panama Canal Commission
Papa Mario & Sons, Inc.
Papago Chemicals, Inc.
Parker-Hannifin Corp.
Parsons, Ralph M. Co., The
Patrol Ofisi A S Genel Mud
Peco Enterprises, Inc.
Pennsylvania Shipbuilding Co.
Pennsylvania State University
Perceptronics, Inc.
Percor, Inc.
Perkin-Elmer Corp., The
Peterson Builders, Inc.
Petroleos Del Mediterraneo SA
Petroleum Traders Corp.
Petron Trading Co., Inc.
Pfizer, Inc.
Philip Morris Companies, Inc.
Phillipp Holzmann AG
Physics International Co.
Picker International, Inc.
Pike, John P. & Son, Inc.
Pioneer Construction Co.
Piqua Engineering, Inc.
Planning Research Corp.
Planning Systems, Inc.
Plastoid Corp.
Pneumo Abex Corp.
Poloron Products Bloom
Poong Lim Industry Co., Ltd.
Potomac Electric Power Co.
Power Conversion, Inc.
PPG Industries, Inc.
Price/Ciri Construction, JV.
Pride Refining, Inc.
Procter & Gamble Co., The
Property Service Agency
Propper International, Inc.
Prudential Lines, Inc.
Public Service Co. of New Mexico
Puerto Rico Sun Oil Co., Inc.
Purdy Corp.
Q E D Systems, Inc.
Questech Inc.
Quinton Corp.
Quintron Systems, Inc.
R & D Associates
Raae Karchert
Racal Corp., The
Radian Corp.
Rail Co.

Rand Corp., The
Raymond Engineering, Inc.
Raymond-Brown & Root-Mowlem
Raytheon Co.
Raytheon Service Co.
RCA Corp.
RCA Global Communications, Inc.
Reach-All Manufacturing & Engineering Co.
Recon/Optical, Inc.
Reeves Brothers, Inc.
Refinery Associates, Inc.
Reflectone, Inc.
Reid, J. H. General Contractor
Remploy, Ltd.
Rensselaer Polytechnic Institute
Republic Electronics, Inc.
Resource Consultants, Inc.
Rexon Technology Corp.
Reynolds, R. J. Tobacco Co.
Rheinmetall GMBH
Rice, James ED
Ridgeline Industries, Inc.
Right Away Foods Corp.
River City Petroleum, Inc.
Riverside Research Institute
RJR Nabisco, Inc.
Roberts, J. R. Corp.
Rockwell International Corp.
Roe Enterprises Inc.
Roebbelen Engineering, Inc.
Roh, Inc.
Rolls-Royce, Inc.
Rolm Mil-Spec Computer
Rosemount, Inc.
Rosenblatt, M. & Son, Inc.
Ross Bicycles, Inc.
Royal Norwegian Naval Material
Royal Ordanance Factories
Royal Ordnance Ammunitional, Ltd.
Rubber Crafters of West Virginia
Rum Yang Construction Co., Ltd.
Russell Corp., The
S B Construction, Inc.
S Cubed
S F W Corp.
Sachs-Freeman Associates, Inc.
Sadelmi New York, Inc.
San Diego Diversified Builders
Sanders Associates, Inc.
Santa Fe Engineers, Inc.
Sargent Fletcher Co.
Sargent Industries, Inc.
Sasc Technologies, Inc.
Sasebo Heavy Industries Co., Ltd.
Saudi Maintenance Co. Siyanco
Scallop Corp.
Schneider, Inc.
Science Applications International
Scientific Support Services
Scientific-Atlanta, Inc.
Scope, Inc.
Scripps Inst. of Oceanography
Sea-Land Service, Inc.
Sears Petroleum & Transport
Seaward International
Sechan Electronics, Inc.
Sellers Oil Co., Inc.
Selm Servizi Elettrici Montedi
Selma Apparel Corp.
Semcor, Inc.
Serv-Air, Inc.
Service Engineering Co.
Sharpe Contructors, JV
Shell Eastern Petroleum PTE Ltd.
Shell International Petroleum
Shell Oil Co.
Sheller-Globe Corp.
Shirley Construction Corp.
Siemens Capital Corp.
Siemens Medical Systems, Inc.
Sierra Research Corp.
Sierracin Sylmar
Sikorsky Support Services, Inc.
Silverton Construction Co., Inc.
Simmonds Precision Products
Sinclair Marketing, Inc.
Singer Co., The
Sippican, Inc.
SKF Industries, Inc.
Smithkline French Inter-American
SMS Data Products Group, Inc.
Sociedade De Construcors
Sofec, Inc.
Softech, Inc.
Solar Turbines, Inc.
Sonicraft, Inc.
Sooner Defense of Florida, Inc.
Southeast Machine Co.
Southern Air Transport, Inc.
Southern Packaging & Storage Co.
Southwest Gas Corp.
Southwest Mar San Francisco
Southwest Marine, Inc.
Southwest Mobile Systems Corp.
Southwest Research Institute
Southwestern Bell Telephone Co.
Space Communication Co.
Space Data Corp.
Sparta, Inc.
Sparton Corp.
Sperry Corp.
Squibb, E. R. & Sons, Inc.
SRI International
SRS Technologies
Staatsbauamt
Standard Manufacturing Co.
Standard Oil Company Ohio Corp.
Standard Products Co., The
Stanford, LeLand Jr University
Stanford Telecommunications
Star Food Processing, Inc.
Stearns Catalytic Corp.
Stearns-Roger, Inc.
Steinberg Brothers, Inc.
Stellar Industries, Inc.
Sterling Systems, Inc.
Steuart Petroleum Co.
Stewart & Stevenson Services
Stewart-Warner Corp.
Stolte, Inc.
Stone & Webster Engineering
Storage Technology Corp.
Strong Bill Enterprises, Inc.
Sumitomo Heavy Industries, Ltd.
Sun Chemical Corp.
Sun Refining & Marketing Co.
Sundstrand Corp.
Sundstrand Data Control, Inc.
Sunkyong, Ltd.
Superior Engineers Electronic Co.
Support Systems Associates, Inc.
Supreme Beef Processor, Inc.
Survival Technology, Inc.
Sverdrup Technology, Inc.
Swann Oil, Inc.
Swiftships, Inc.
Syscon Corp.
System Development Corp.
System Planning Corp.
Systemhouse, Inc.
Systems & Applied Sciences
Systems Engineering Assoc.
System Management American
Systems Research Laboratories
Systron-Donner Corp.
T R W Electronic Products, Inc.
T R W, Inc.
Tadiran Electronic Industries
Tan-Tex Industries Corp.
Tandem Computers, Inc.
Taylor, T. H., Inc.
Techdyn Systems Corp.
Technology Applications, Inc.
Tecom Inc.
Tektronix, Inc.
Tele-Signal Corp.
Teledyne, Inc.
Teledyne Industries, Inc.
Telos Corp.
Temtex Products, Inc.
Tennessee Apparel Corp.
Tennessee, State of
Tennier Industries, Inc.
Termomeccanica Italiana Spa
Tesoro Alaska Petroleum Co.
Tetra Tech., Inc.
Teval Corp.
Texaco, Inc.
Texas Capital Contractors, Inc.
Texas Instruments, Inc.
Texas Mil-Tronics, Inc.
Texas Power & Light Co.
Texstar Plastics Co., Inc.
Textron, Inc.
Therm, Inc.
Thompson, J. Walter Co.
Todd Pacific Shipyards Corp.
Todd Shipyards Corp.
Tohoku, Denryoku K. K.
Tokyo Denryoku, K. K.
Torrington Co., The
Tower Air, Inc.
Townsend & Bottum, Inc.
Tracor Aerospace Austin, Inc.
Tracor Applied Sciences, Inc.
Tracor, Inc.
Tracor Marine, Inc.
Tracor MBA
Trailer Marine Transport Corp.
Trans World Airlines, Inc.
Transamerica Airlines, Inc.
Transamerica Delaval, Inc.
Trataros Construction, Inc.
Trataros Industries, Ltd.
Travenol Laboratories, Inc., Delaware
Treadwell Corp.
Triad Aviation
Triad Microsystems, Inc.
Tridair Ind Fastener Div.
Triple A Machine Shop, Inc.
TSC Corp.
Turner International Industries
Turtle Mountain Mfg. Co.
Tyger Construction Co., Inc.
U S Oil & Refining Co.
U S Oil Co., Inc.
Ultramar Petroleum, Inc.
Ultrasystems, Inc.
Unidynamics Corp.
Unified Industries, Inc.
Union Carbide Corp.
Union Corp., The
Union Explosives Rio Tinto SA
Union Underwear Co., Inc., New York
Uniroyal, Inc.
United Airlines Aircrew Training
United Chem-Con Corp.

United States Lines, Inc.
United Technologies Corp.
Universal Canvas, Inc.
Universal Energy Systems, Inc.
Universal Propulsion Co.
University of California
University of Dayton
University of Illinois
University of Maryland
University of New Mexico, The
University of Southern California
University of Texas System
Upjohn Co., The
Urdan Industries, Ltd.
Usibelli Coal Mine, Inc.
Utah Power & Light Co.
Utah State University
Valleydale Packers, Inc.
Valmac Industries, Inc.
Vanee Foods Co.
Varian Associates, Inc.
Veda Inc.
Ver-Val Enterprises, Inc.
Verac, Inc.
Vertac Chemical Corp.
Vickers, Inc.
Viereck Co., Inc., The
Vinnell Corp.
Virginia Electric and Power Co.
Vitro Corp.
VIZ Manufacturing Co., Inc.
VSE Corp.
Walters, E. & Co., Inc.
Wang Laboratories, Inc.
Washington, University of
Waterman Steamship Corp.
Watkins Engineers & Constructors
Watkins-Johnson Co.
Wedtech Corp.
Wellco Enterprises, Inc.
Westerchil Construction Co., Inc.
Western Alaska Contractors JV
Western Gear Corp.
Western Petroleum Co.
Western Pioneer, Inc.
Western Research Corp.
Western Union International
Western Union Telegraph Co.
Westinghouse Electric Corp.
Westminster Co., Inc.
Westmont Industries
Westphal GMBH & Co. KG
White Consolidated Industries
White Engines, Inc.
White, T.A. Co., Inc.
Whitesell-Green, Inc.
Whittaker Corp.
Wickes Companies, Inc.
Willbros Butler Engineers, Inc.
Williams Electric Co., Inc.
Williams International Corp.
Williams Steel Industries, Inc.
William-Mc Williams Co., Inc.
Wilson Machine Company, Inc.
Winfield Manufacturing Co., Inc.
Wisconsin Physicians Service Insurance
Woods Hole Oceanographic Institute
Woodward Governor Co.
World Airways, Inc.
Wylie, C.E. Construction Co.
Wynn Construction Co.
Wyoming Refining Co.
Xerox Corp.
Zantop International Airlines
Zaroco, Inc.
Zenith Data Systems Corp.
Zenith Electronics Corp.
Zwick Energy Research Organization

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 2, 1987.

[FR Doc. 87-2443 Filed 2-4-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-86-11]

Drawbridge Operation Regulations; Pascagoula River, MI

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Mississippi State Highway Department, the Coast Guard is changing the regulation governing the operation of the U.S. Highway 90 drawbridge across the Pascagoula River, mile 1.8 at Pascagoula, Mississippi, to permit the draw of the bridge to remain closed to navigation from 6:15–7:15 a.m., 7:25–8 a.m., and 3:30–4:45 p.m. Monday through Friday except holidays. Presently, the bridge is permitted to remain closed to vessel traffic from 6:15–7:15 a.m., 7:25–8 a.m., 3:15–4:15 p.m., and 4:30–5:30 p.m. Monday through Friday except holidays.

This change is being made because of an increase in vehicular traffic and a change in the pattern of vehicular traffic flow. This action should help to relieve congestion at the bridge site during the peak hours of traffic flow, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On 28 November 1986, the Coast Guard published a proposed rule (51 FR 43047) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 5 December 1986. In each notice interested parties were given until 12 January 1987 to submit comments.

Drafting Information

The drafters of this regulation are John Wachter, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

Two letters were received in response to the notices, offering no objections to the proposal.

Economic Assessment and Certification

This regulation is considered to be non-major under executive order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this finding is that the bridge will actually remain in the closed to navigation position for less time than with the current regulation. The new closure time is an effort to expedite the flow of the changed vehicular traffic pattern. Since the economic 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 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.683 is revised to read as follows:

§ 117.683 Pascagoula River.

The draw of the US90 bridge, mile 1.8 at Pascagoula, shall open on signal; except that, from 6:15 a.m. to 7:15 a.m., 7:25 a.m. to 8 a.m., and 3:30 p.m. to 4:45 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels.

Dated: January 26, 1987.

E.B. Acklin,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. 87-2437 Filed 2-4-87; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

Ice Navigation Season Notification

[CGD-87-005]

AGENCY: Coast Guard, DOT.

ACTION: Notice of Ice Navigation Season.

SUMMARY: The Ice Navigation Season Regulation Area (RNA) on the Northern portion of the Chesapeake Bay and its tributaries, including the Chesapeake and Delaware Canal will be placed in effect on January 29, 1987. The regulations for this Regulated Navigation Area, found in 33 CFR 165.503, published in the **Federal Register** May 19, 1983 (48 FR 22543), state that they are placed in effect and terminated at the direction of the Captain of the Port, Baltimore, MD by notice in the **Federal Register.** The purpose of this regulated navigation area is to enhance the safety of navigation in the affected waters. It requires operators of certain vessels to be aware, during their vessel's transit of the Regulated Navigation Area, of currently effective Ice Navigation Season Captain of the Port Orders issued by the Captain of the Port Baltimore, Maryland.

EFFECTIVE DATE: January 29, 1987.

FOR FURTHER INFORMATION CONTACT: Commander David M. Strasser, Chief Port Operations Department, USCG Marine Safety Office, Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022, (301) 962-5105.

Dated: February 2, 1987.

R.C. Pickup,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 87-2440 Filed 2-4-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3150-8]

Approval and Promulgation of Implementation Plans; Indiana

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

ACTION: Final rulemaking.

SUMMARY: USEPA is disapproving a revision to the Porter County, Indiana State Implementation Plan (SIP) for total suspended particulate (TSP). The revised strategy for this county was submitted as a revision to the SIP by Indiana on October 15, 1984, and is contained in Indiana regulation 325 IAC 6-6, Source Specific and Facility Emission Limitations for TSP in Porter County. USEPA has reviewed the regulation and the supporting documentation and has found that the regulation is not approvable under the Clean Air Act (Act) due to deficiencies in the regulation itself and in the modeling analysis and emission inventory submitted to support the regulation. This final action is consistent with USEPA's proposed rulemaking action of October 16, 1985 (50 FR 41909).

EFFECTIVE DATE: This final rulemaking becomes effective on March 9, 1987.

ADDRESSES: Copies of this disapproval of the Porter County TSP plan, copies of the SIP revision, the proposed and final technical support documents, public comments on the notice of proposed rulemaking, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Steven D. Griffin, at (312) 353-3849, before visiting the Region V Office.)

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

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

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

SUPPLEMENTARY INFORMATION: Under section 107 of the Act, USEPA has designated certain areas in each State as not attaining the NAAQS for particulate matter.[1] A small portion of northern Porter County is presently designated unclassified with respect to attainment of particulate matter NAAQS and the remainder of the County is designated attainment.[2]

Bethlehem Steel Corporation (BSC), with technical advice from the Indiana Air Pollution Control Division (IAPCD), recently developed a revised TSP control strategy for Porter County, Indiana. The strategy used a computer dispersion modeling analysis to determine emission limits (industrial and non-industrial).[3]

The purpose of the revised Porter County strategy appears to be to attain and maintain the primary particulate matter standards in the most cost effective manner by emphasizing nonprocess fugitive dust control, rather than increased process controls. The modeling submitted in support of the strategy does predict violations of the 24-hour secondary standard.

BSC submitted this strategy to the Indiana Air Pollution Control Board (IAPCB) for its consideration. On May 21, 1984, the IAPCB sent USEPA for comment a copy of a draft Porter County TSP regulation, 325 IAC 6-6, and a December 1983 Technical Support Document, consisting of (1) particulate matter emissions inventories, and (2) an air quality modeling report ("Northwestern Porter County Air Quality Modeling Study", December 21, 1983). USEPA submitted comments on the proposed rule and the technical support document on July 6, 1984, with revisions on July 18, 1984.

On October 3, 1984, the IAPCB adopted this Porter County strategy as new regulation 325 IAC 6-6. Indiana submitted this rule on October 15, 1984,

---

[1] The primary particulate matter NAAQS are violated when, in a year, either: (1) the geometric mean value of TSP concentrations exceeds 75 micrograms per cubic meter of air (75 $\mu g/m^3$) (the annual primary standard), or (2) the maximum 24-hour concentration of TSP exceeds 260 $\mu g/m^3$ more than once (the 24-hour standard). The secondary particulate matter NAAQS is violated when, in a year, the maximum 24-hour concentration exceeds 150 $\mu g/m^3$ more than once.

[2] On March 3, 1978, USEPA initially designated all of Porter County as unclassifiable for particulate matter (43 FR 8962). On October 5, 1978, USEPA mistakenly designated Porter County as primary nonattainment (43 FR 45993).

In 1979, USEPA established three TSP monitors near Bethlehem Steel Corporation (BSC). These monitors recorded clear violations of the particulate matter NAAQS. On August 18, 1982, USEPA corrected its mistake of designating the entire county nonattainment by officially redesignating most of Porter County as unclassifiable and, based on the monitored violations near BSC, designating a portion of northern Porter County as primary nonattainment for particulate matter (47 FR 35966).

BSC petitioned the Seventh Circuit Court of Appeals to review this nonattainment designation. On December 13, 1983, the Court held that USEPA does not now have the authority to unilaterally redesignate an area nonattainment and vacated the designation. See *Bethlehem Steel Corporation v. USEPA*, 726 F.2d 1303. In response to the Court decision, USEPA reinstituted its initial unclassifiable designation for the entire county on June 6, 1984 (49 FR 23343).

On March 14, 1984, Indiana requested that all of Porter County be redesignated attainment, except for an area in the northern portion of Porter County which contains BSC and other major sources. USEPA approved this redesignation on April 22, 1985 (50 FR 15748). The current designation is that an area bounded on the north by the Lake Michigan shoreline, on the east by Mineral Springs Road, on the south by I-94, and on the west by Indiana 249 from I-94 to Burns Ditch and then following Burns Ditch to Lake Michigan is designated unclassifiable. The remainder of the County is designated attainment.

[3] This type of SIP is referred to as an "attainment demonstration SIP". In order to be approvable, an attainment demonstration SIP requires that all applicable emission limitations and requirements within it must individually be approvable, because the demonstration assumes that all of the limits are in place and are approved as a part of the SIP. Additionally, it requires alll other applicable Section 110 requirements be met, e.g., explicit and approvable test methods, inspection procedures, and compliance schedules.

as a proposed revision to the SIP. Previously, on September 26, 1984, Indiana has sent to USEPA, BSC's August 27, 1984, response to USEPA's, July 6, 1984, comments, additional support documentation for the fugitive dust control program, and a revised air quality modeling report ("Northwestern Porter County Air Quality Modeling Study", August 13, 1984). However, Indiana did not submit a revised emission inventory for this area. On November 7, 1984, Indiana promulgated 325 IAC 6–6 as a State regulation.

USEPA reviewed the documents which were submitted. On October 16, 1985 (50 FR 41909), USEPA proposed to disapprove the revision due to deficiencies in the regulation itself and the underlying modeling analysis and emission inventory. On February 14, 1986, BSC submitted comments and further technical support in response to the proposed rulemaking action. Following is a discussion of the major deficiencies, BSC's comments, and USEPA's responses to those comments, where appropriate. Other deficiencies and more detail on the deficiencies discussed below can be found in USEPA's technical support documents which are available for review at the addresses listed in the front of this notice.

Deficiencies in the Emission Limits in 325 IAC 6–6

Deficiency

In 325 IAC 6–6–4, Emission Limitations, the heading above the emission limits column identifies these as "annual" limits. USEPA cannot approve any strategy which does not ensure attainment and maintenance of the short-term, as well as the annual, particulate matter NAAQS. Because 325 IAC 6–6 does not include short-term limits to protect the 24-hour NAAQS and the State has not demonstrated that the annual limits protect the 24-hour NAAQS, USEPA cannot approve the regulation.

BSC Comment

BSC did not address this deficiency.

Deficiency

Certain of the emission limits in 325 IAC 6–6 are expressed in terms of pounds per hour. To be approvable, any "mass per unit time" emission limit, such as pounds per hour, must either be supported by a thorough reduced load modeling analysis or evidence must be submitted that the facility cannot operate at less than full load. No such analysis or evidence was provided for the Porter County pounds per hour limits. Therefore, because such limits are an intrinsic part of the Porter County strategy, the strategy cannot be approved.

BSC Comment

BSC argued that these "pounds per hour" limits are acceptable since the sources in question are either baghouses, a slab mill scarfer, or a scrubber at the sinter plant. BSC claimed that the baghouses are associated with process sources which operate in an "on-off" mode. (BSC stated that this operation applied to the scarfer and scrubber as well.) Consequently, the company claimed that modeling these sources at reduced load was not appropriate.

USEPA Response

USEPA accepts the argument that a reduced load analysis is not necessary for sources that operate only in an "on-off" mode. BSC has not provided operating data, however, to prove that the process sources in question operate in this mode.

Deficiencies in 325 IAC 6–6 (Compliance Determinations)

Deficiency

Rule 325 IAC 6–6–2(d)(6) lists certain sources for which fuel usage data are used to determine compliance, and 325 IAC 6–6–2(e)(1) lists certain sources for which stack tests determine compliance. There are some sources limited by 325 IAC 6–6 that are not on either list. Rule 325 IAC 6–6–2(j) states that for all stack sources where compliance is not based on fuel monitoring analysis, compliance shall be based on opacity observations. 325 IAC 6–6–2(j) is unapprovable because it contradicts 325 IAC 6–6–2(e)(1) and because stack tests must be the primary test to determine compliance for all stack sources for which compliance is not based on fuel monitoring data. Opacity limitations should apply in addition to the stack test particulate limitations.

BSC Comment

BSC did not address this deficiency.

Deficiency

The Porter County strategy claims 30 percent control for basic oxygen furnace (BOF) vessels Numbers 1 and 2 and 90 percent control for BOF vessel Number 3. The BOF emission factors in the modeling analysis and the BOF emission limits in 325 IAC 6–6 reflect these levels of control. However, 325 IAC 6–6 does not contain a compliance method for roof monitor emissions from these sources. Indiana's general opacity rule, 325 IAC 5–1, applies to the BOF shop, but Indiana has not demonstrated that this opacity limit reflects 30 percent or 90 percent control for BOF vessels. The BOF shop emission limits in 325 IAC 6–6 are not approvable without appropriate compliance methods.

BSC Comment

BSC commented the USEPA should approve, at least, those portions of the subject rule that relate to opacity limits since Indiana is free to include in its SIP (or exclude from its SIP) any opacity limits it desires. Bethlehem also suggested that, because USEPA considered the BOF emission limits unapprovable without a compliance method, USEPA should probably reconsider approval of 325 IAC 6–3 as a particulate matter emission limit for the BOF, coke battery fugitive emission points, and blast furnaces, because there is no specified method of determining compliance for those sources using the process weight table in 325 IAC 6–3.

USEPA Response

USEPA does not agree that Indiana is free to include in its SIP (or exclude from its SIP) any opacity limits it desires. 40 CFR 51.19(c) requires that each SIP shall, as a minimum, provide for establishment of a system for detecting violations of any rules and regulations through the enforcement of appropriate visible emission limitations.

As for the second comment, 325 IAC 6–3, Particulate Emission Limitations for Process Operations, contains mass emission limits for process sources. Although there is no compliance method in this rule for fugitive sources, USEPA has considered that compliance with Indiana's general opacity rule, 325 IAC 5–1, indicates compliance with 325 IAC 6–3. USEPA is not now reconsidering approval of 325 IAC 6–3 providing particulate matter emission limitations for the BOF, coke battery fugitive emission points, and blast furnaces. However, the USEPA is currently reconsidering whether or not 325 IAC 5–1 is adequate to ensure compliance with 325 IAC 6–3 for process fugitive sources. As a result of this reconsideration, USEPA may determine that Indiana's opacity rule 325 IAC 5–1 is deficient.

Deficiency

The modeling analysis claims a 75 percent emission reduction for reentrained road dust from U.S. 12. Since 325 IAC 6–6 does not require cleaning of this road and no one has committed to clean it, the emission reduction credit from the cleaning is not approvable.

BSC Comment

This deficiency was not addressed.

General Comment on Emission Limits

BSC Comment

BSC urged approval of the State regulation because it is an improvement upon existing regulations (e.g., allowable emissions are reduced from both point and fugitive dust sources).

USEPA Response

USEPA can only approve the plan if it has been demonstrated to ensure attainment and maintenance of the NAAQS or if it does not relax present limits for all sources. An acceptable attainment demonstration has not been provided for the Porter County plan. Additionally, the State has not demonstrated that the plan is either equal to or more stringent than the present SIP requirements for these sources. Even if USEPA approves a plan as being equal to or more stringent than the existing regulations, USEPA cannot approve a control strategy completely for an area until it ensures attainment and maintenance of the NAAQS.

Deficiency

The submitted modeling analysis is based on emissions being limited both at BSC and other facilities in the area. However, 325 IAC 6–6 only includes emission limitations and control measures for BSC. The State did not document that the emissions from these other sources used in the modeling represent the maximum allowable under current SIP regulations. Without such documentation, USEPA cannot confirm that this portion of the Porter County strategy is enforceable and, therefore, the strategy as a whole must be disapproved.

BSC Comment

BSC did not address this deficiency.

Deficiencies with the Air Quality Modeling

Deficiency

Indiana did not submit a complete copy of the modeling analysis, but did submit a report on the analysis from the contractor who developed the Porter County strategy. This report contained a summary of the modeling analysis techniques, a summary of the modeling input data, a summary table of the results of the modeling. Without seeing a complete copy of the modeling analysis, USEPA cannot fully comment on it. However, USEPA's review of the report has revealed several deficiences.

BSC Comment

BSC questioned how USEPA could be so certain that the deficiencies cited in the October 1985 notice were valid when USEPA had never reviewed a complete copy of the analysis.

USEPA Response

USEPA acted on all information submitted by the State. The State apparently saw no need to submit the complete set of computer print-outs. USEPA assumed that the report prepared by BSC's consultant was an accurate summary of the modeling analysis. (Note: USEPA did not cite the failure to submit the computer print-outs as a major deficiency.) Finally, it should be noted that BSC has not claimed that the actual print-outs resolve any of the cited deficiencies.

Deficiency

The most obvious deficiency with the completed modeling analysis is the lack of a reference short-term attainment demonstration. Instead, the demonstration used statistical transform equations to approximate 24-hour TSP concentrations.

This technique is contrary to current USEPA modeling guidelines, and current demonstrations based on this technique cannot be approved. (See the "Regional Workshops Air Quality Modeling: A Summary Report" (April 1981), and a memo dated June 20, 1984, from G. T. Helms entitled "Modeling Demonstration for Niagara Frontier".)

BSC Comment

BSC did not address this issue.

Deficiency

Another modeling deficiency concerns the issue of "ambient air". USEPA's ambient air policy is found at 40 CFR 50.1(e) and in a January 19, 1980, letter from Douglas Costle, then Administrator, to Senator Jennings Randolph. This policy only exempts from consideration land owned or controlled by the source to which public access is precluded by a fence or other physical barriers. No documentation was provided to justify the exclusion of modeled receptors from a large portion of the Burns Harbor area. For example, the neighboring Port of Indiana property does not fit the ambient air exemption, and the lack of receptors in this area is an obvious deficiency. This specific situation was addressed in the August 18, 1982, notice on the redesignation of Porter County. Thus, the submitted modeling analysis is further deficient, because it fails to provide a complete assessment of the pollutant concentrations in all the "ambient air" areas of Porter County.

BSC Comment

BSC maintained that the exclusion of modeled receptors from certain portions of the Burns Harbor area (such as the Port of Indiana) was proper.

USEPA Response

USEPA explained its policy on ambient air in the August 1982 notice. To reiterate, ambient air is that portion of the atmosphere, external to buildings, to which the general public has access. The only exemption from this definition is the atmosphere over land owned or controlled *by the source* and to which public access is precluded by a fence or other physical barriers. Consequently, the exclusion of receptors from non-BSC property, such as the Port of Indiana, is inappropriate.

Deficiency

BSC's August 13, 1984, report states that Porter County sources were modeled at 1979 stack and process fugitive source emission parameters adjusted to reflect projected operating rates. USEPA's modeling policy requires that short-term attainment demonstrations must use maximum allowable operating levels and maximum allowable emission limitations. For this reason also, the short-term modeling is deficient.

BSC Comment

BSC did not address this issue.

General Modeling Comments

BSC Comment

BSC objected to USEPA's strict reliance on its modeling guidelines since they claimed that these are merely guidelines and not Federal regulations.

USEPA Response

USEPA's "Guideline on Air Quality Models" (April 1978) recommends air quality modeling techniques that should be applied to SIP revisions for existing sources and to new source reviews. The Guideline is used by USEPA Regional Offices in judging the adequacy of modeling analyses performed by USEPA, States, local agencies, and by industry. The Guideline was developed to provide a consistent basis for selection of the most accurate model and data bases for use in air quality assessments and, therefore, responds to the need for consistency expressed by States, industries, trade associations, and the deliberation of Congress. Clarifications to the April 1978

Guideline have been issued at various times.

USEPA's modeling guidance allows the use of an alternative model or procedure if an acceptable demonstration is made that the alternative model performs equivalent to or better than the applicable USEPA recommended model. In addition, USEPA has specified procedures and techniques to be followed for determining the acceptability of a nonguideline model for an individual case based on superior performance. These procedures are contained in the USEPA document entitled "Interim Procedures for Evaluating Air Quality Models (Revised)", September 1984. BSC did not provide a demonstration for an alternative approach consistent with the Interim Procedures document.

BSC Comment

BSC argued that its modeling analysis is within the bounds of flexibility allowed by USEPA's modeling guidelines.

USEPA Response

USEPA follows its modeling guidelines in reviewing attainment demonstrations for new and existing sources. Although the guidelines do allow some flexibility, this flexibility still does not allow USEPA to accept an analysis fraught with deficiencies such as those cited in the October 1985 notice.

BSC Comment

BSC stated that the ISCLT model was used, not the CDM model, as noted in the October 1985 notice.

USEPA Response

USEPA acknowledges the error in the October 1985 notice. As correctly noted in USEPA's March 1985 Technical Support Document, the ISCLT model was used.

Deficiencies in the Emission Inventory

Deficiency

There are discrepancies between the inventories Indiana has submitted in support of its Porter County sulfur dioxide strategy and that it submitted in support of its TSP strategy.

BSC Comment

BSC did not address this deficiency.

Deficiency

Several of the emission limits in 325 IAC 6–6 for baghouses were higher than limits in the technical support document. This indicated that the technical support document allowed more emissions than the modeling took into account. BSC claimed that those discrepancies had been corrected, but they still existed in the documents that had been submitted to USEPA at the time of proposed rulemaking.

BSC Comment

Bethlehem submitted a February 17, 1984, technical support document and suggested that USEPA review the correct inventory to determine if the discrepancies were actual problems or the result of USEPA basing the review on the wrong documents.

USEPA Response

The limits in the February 17, 1984, technical support are the same as the limits in 325 IAC 6–6. This deficiency has been resolved.

Deficiency

325 IAC 6–6 contains a method for determining compliance with a coke quench water quality limit but does not contain a limit, and there is no Federally enforceable quench water quality limit in Indiana's SIP because 325 IAC 11–3–2(h) was disapproved due to an inadequate compliance method. The 1500 milligram (mg) total dissolved solids (TDS) per liter quench water limit of 325 IAC 11–3–2(h) would result in an emission rate of 0.6 lb per ton of coal. The strategy assumes an emission rate of 0.27 lb per ton of coal. The Porter County strategy is unacceptable because there is no Federally enforceable water quality limit and even if the 1500 mg TDS per liter limit were enforceable, it does not correspond to the modeled emission rate. Furthermore, the once per quarter sampling frequency specified in 325 IAC 6–6 is inadequate.

BSC Comment

This deficiency was not addressed.

Deficiency

Indiana's coke pushing rule, 325 IAC 11–3–2(g), was disapproved by USEPA, because it is not enforceable. 325 IAC 6–6 relies upon 325 IAC 11–3–2(g) to limit coke pushing emissions. A coke pushing emission factor of 0.08 lb per ton of coal (0.05 for uncollected emissions + 0.03 from control devices) would be acceptable if 325 IAC 11–3–2(g) were enforceable. But the modeled emission rates appear to be 0.047 lb per ton of coal for Number 2 Battery and 0.043 lb per ton of coal for Number 1 Battery. The Porter County strategy does not ensure that coke pushing emissions will not exceed the modeled emission rates. Similarly, compliance with 325 IAC 11–3–2(b) would result in a charging emission rate of about 0.043 lb per ton of coal. The Porter County strategy emission inventory assumes a charging emission rate of 0.016 lb per ton of coal.

BSC Comment

These deficiencies were not addressed.

Violations of the Secondary Particulate Matter Standard

Deficiency

The modeling submitted with the Porter County strategy predicted violations of the 24-hour secondary particulate matter standard. These 24-hour violations were predicted using the CDM annual model with the statistical transform equations (Larsen's Transforms) referred to previously. These statistical techniques are not acceptable for demonstrating attainment; basically because they underpredict 24-hour concentrations. For the same reason, the converse is true; these same techniques can be used to demonstrate nonattainment. This is because the hourly sequential short-term modeling concentrations given by reference modeling will generally be greater, not less, than the transform derived short-term concentrations. Another reason for disapproving the Porter County plan is because the modeling predicts violations of the secondary TSP standard in an area currently designated better than secondary nonattainment, i.e., unclassifiable.

BSC Comment

BSC did not address this comment.

Additional Public Comments

In addition to BSC's submittal responding to the October 1985 notice, Citizens for a Better Environment submitted comments in support of USEPA's proposed rulemaking to disapprove the Porter County plan on December 6, 1985. These comments are available for review at the locations listed in the **ADDRESSES** section of this notice.

Summary of Today's Rulemaking

In conclusion, the Porter County TSP strategy is not approvable, because of deficiencies in the regulation itself, such as enforceability; deficiencies in the modeling procedures used in development of the strategy; deficiencies in the emission inventory used in the strategy; and predicted violations of the secondary TSP standard. The above notice references some of the major deficiencies with the Porter County plan. As previously stated, other deficiencies are noted in USEPA's technical support documents which are also available for review at the locations listed in the **ADDRESSES** section of this notice. USEPA is disapproving as a revision to the SIP Indiana's revised Porter County TSP plans, including 325 IAC 6-6, which was submitted on October 15, 1984.

Additionally, USEPA is disapproving 325 IAC 5-1 (1980 APC 3), Indiana's opacity rule, for those sources referenced at 325 IAC 6-6-2(j) and specifically listed at 325 IAC 6-6-4. 325 IAC 6-6-2(j) contains modifications to 325 IAC 5-1 for certain stack sources in Porter County. USEPA has determined that these modifications are intrinsic to 325 IAC 5-1 as it applies to Porter County; therefore, 325 IAC 5-1 cannot be approved for Porter County as long as 325 IAC 6-6 is unapprovable. As a result of this disapproval, these Porter County sources will remain regulated by the previously approved opacity SIP, which includes 1974 APC 3 for combustion sources and 1972 APC 3 for process sources. In addition, as long as Bethlehem's No. 2 Coke Oven Battery Underfire Stack "equivalent visible emissions limit" (EVEL) remains approved, it replaces 325 IAC 5-1.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, Intergovernmental relations.

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

Dated: January 28, 1987.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart P—Indiana

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

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.770 is amended by adding paragraphs (c) (53) and (61) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(53) On October 6, 1980, Indiana submitted revised opacity regulation 325 IAC 5-1. It replaces 1972 APC 3 for process sources, approved at Paragraph (b), and SIP 1974 APC 3 for combustion sources, approved in part at paragraph (c)(14). Indiana does not intend 325 IAC 5-1 to regulate the emission points in Lake County listed in Table 2 of 325 IAC 6-1-10.2 (paragraph (c)(57)). USEPA is disapproving 325 IAC 5-1 for these sources. Indiana does not intend 325 IAC 5-1 to regulate certain coke battery emission sources listed in 325 IAC 11-3 (paragraph (c)(42)). USEPA is disapproving 325 IAC 5-1 as it applies to the provisions of 325 IAC 11-3 which USEPA disapproved at (c)(42), i.e., pushing and quenching sources throughout the State and coke oven doors in Lake and Marion Counties. Additionally, Indiana has modified 325 IAC 5-1 as it applies to certain stack emission points in Porter County at 325 IAC 6-6-2(j). USEPA is disapproving 325 IAC 5-1 as it applies to these Porter County sources (paragraph (c)(61) and § 52.794(c)).

For those source categories where USEPA is disapproving 325 IAC 5-1, they remain regulated by the previously approved opacity SIP which consists of SIP 1974 APC 3 for combustion sources and 1972 APC 3 for process sources. Additionally, as long as the Bethlehem Steel Corporation No. 2 Coke Oven Battery Underfire Stack EVEL (paragraph (c)(49)) remains approved, it replaces 325 IAC 5-1.

* * * * *

(61) On October 15, 1984, Indiana submitted a revision to the Porter County total suspended particulate (TSP) plan, including regulation 325 IAC 6-6, which was promulgated by Indiana on November 7, 1984. This plan is disapproved. See § 52.776(l).

* * * * *

3. Section 52.776 is amended by reserving paragraph (k) and adding paragraph (l) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(k) [Reserved]

(l) The revised Porter County TSP plan, as submitted by Indiana on October 15, 1984, is disapproved, because the State did not demonstrate that it assures the attainment and maintenance of the primary TSP NAAQS in Porter County, Indiana. See § 52.770(c)(61).

4. Section 52.794 is amended by adding paragraph (c) to read as follows:

§ 52.794 Source surveillance.

* * * * *

(c) 325 IAC 5-1 (October 6, 1980, submittal—§ 52.770(c)(53)) is disapproved for the Lake County sources specifically listed in Table 2 of 325 IAC 6-1-10.2 (§ 52.770(c)(57)); for pushing and quenching sources throughout the State (August 27, 1981, 325 IAC 11-3-2 (g) and (h)—§ 52.770(c)(42)); for coke oven doors in Lake and Marion Counties (325 IAC 11-3-2(f)—§ 52.770(c)(42)); and for certain stack sources listed in 325 IAC 6-6-4 in Porter County (325 IAC 6-6-2(j)—§ 52.770(c)(53)). Applicability of this regulation to these sources is being disapproved because 325 IAC 5-1 does not meet the enforceability requirements of § 51.22 as it applies to these sources. Opacity limits in 325 IAC 6-1-10.2 and certain opacity limits in 325 IAC 11-13 and 325 IAC 6-6-2(j) supersede those in 325 IAC 5-1, and USEPA has previously disapproved these superseding regulations (§ 52.776 (j), (g), (f), and (l), respectively)

[FR Doc. 87-2212 Filed 2-4-87; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[A-9-FRL-3151-4]

Approval and Promulgation of Implementation Plans; California Plan Revisions for Merced County and San Francisco Bay Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice disapproves revisions to the San Francisco Bay Area and Merced County portions of the California State Implementation Plan (SIP). The revisions are relaxations of existing SIP requirements for food processors pertaining to New Source Review (NSR) and particulate emissions prohibitory regulations.

EFFECTIVE DATE: March 9, 1987.

ADDRESS: EPA's Technical Support Document and a copy of the disapproved rules are located at: New Source Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Dave Jesson (A-3-1), New Source

Section, Air Managemend Division, EPA, Region 9 (415) 974–8220 (FTS) 454–8220.

SUPPLEMENTARY INFORMATION:

Background

In September 1983 the California State Legislature adopted Senate Bill 664, which added and revised §§ 41511.5, 41511.6, and 41511.7 of the State Health and Safety Code, relating to air pollution control requirements applicable to food processors. This legislation mandated revisions to the existing California air pollution control district rules and regulations, pertaining to NSR, Prevention of Significant Deterioration (PSD), and particulate emissions control.

Specifically, State law set the requirements for food processors as follows: (1) Particulate prohibitory rules must be consistent with a level of 480 pounds per day, but not to exceed 20 pounds per hour; (2) district NSR rules must have an applicability cutoff level of 1000 pounds per day, but not to exceed 50 tons per year; (3) district NSR rules must exempt modifications to convert from gaseous fuel to liquid or alternative fuels if emission increases do not exceed 40 tons per year of nitrogen oxides, sulfur dioxide, and volatile organic compounds, or 25 tons per year of particulate matter; and (4) PSD requirements may not be more stringent than federal PSD regulations. Finally, SB 664 provided that its sections shall be "inoperative" if EPA disapproves the amended SIP or if sanctions are imposed under the Clean Air Act as a result of the law's requirements.

On August 21, 1984 and September 19, 1984, respectively, the Merced County Air Pollution Control District (MCAPCD) and Bay Area Air Quality Management District (BAAQMD) adopted revisions to their regulations to conform to the State law. These revisions were submitted to EPA by the State on October 5, 1984, as official amendments to the SIP.

On February 14, 1985 EPA proposed to disapprove certain of the rules and to take no action at this time on others (50 FR 6217). EPA proposed disapproval because the revisions violated federal NSR requirements or relaxed existing SIP requirements without a demonstration by the State that the relaxations would not jeopardize attainment and maintenance of the national standards.

Among the deficiencies cited in the Notice of Proposed Rulemaking or accompanying Technical Support Document are the following. The revisions conflict with 40 CFR 51.165(a)(1)(vi) [formerly § 51.18(j)(1)(vi)] provisions regarding net emission increase by allowing each facility to modify without offsets if emission increases from such modification are less than 40 tons per year for nitrogen dioxides, sulfur oxides, and precursor organic compounds and 25 tons per year of particulate matter, despite other contemporaneous emission increases at the source which must be included in the determination of offset requirements. The revisions exempt food processor modifications from NSR requirements regardless of whether emission increases exceed the significance levels prescribed at 40 CFR 51.165(a)(1)(x) [formerly § 51.18(j)(1)(x)] for carbon monoxide and lead. The revisions relax the SIP particulate matter emission limitation of 0.10 gr/sdcf in the MCAPCD and 0.15 gr/sdcf in the BAAQMD to 20 pounds per hour and 480 pounds per day. This relaxation yields a potential particulate matter increase of 3821 tons per year within the Bay Area, according to the BAAQMD.

At the request of several commentors, EPA later extended the public comment period for the notice to June 5, 1985 (see 50 FR 21085). On August 12, 1986, the State submitted renumberings of BAAQMD rules 2–2–119 (now 122), 2–2–232 (now 235), and 2–2–421 (now 422), adopted on March 19, 1986.

Public Comment

EPA received eight comments on the proposal. Seven of the commentors were representatives of the food processor industry in California, and one commentor was a county supervisor. All comments opposed the disapproval, primarily arguing that the rule revisions would benefit an economically depressed industry and that the adverse air quality consequences of the rule relaxations were not as severe as increased pollution that would result if the industry failed and were to be replaced by more polluting developments. EPA has responded to these comments in its Technical Support Document. EPA is sympathetic to the commentors' argument, but continues to find no authority under the Clean Air Act to allow its approval of rule relaxations that would interfere with attainment and maintenance of the national standards either because (1) such approval would provide an economic benefit and competitive advantage to a particular category of industry, or (2) approval would prevent possible replacement of a less polluting industry with more polluting housing or industrial development.

EPA Action

For the reasons stated above and in the proposal, EPA today takes final action to disapprove the following food processor rule relaxations:

MCAPCD Rule 210.1–II–J—Defintion of Food Processor
MCAPCD Rule 210.1–VII–F—Exemption—Food Processors
MCAPCD Rule 408–C (new sentences two and three)—Fuel Burning Equipment
BAAQMD Section 2–2–119—Exemption, New Food Processing Facilities
BAAQMD Section 2–2–120—Exemption, Modification of Food Processing Facility
BAAQMD Section 6–205—Definition of Food Processor
BAAQMD Section 6–312—Food Processing Facility Particulate Matter Limitation

As discussed in the proposal, EPA wil' take action in future notices on MCAPCD minor revisions to Rules 202 and 210.1–V–D (Calculations), which do not specifically apply to food processors and which are approvable as elements of the wholly revised MCAPCD NSR Rule; and EPA will act on BAAQMD sections 2–2–232, 2–2–121, and 2–2–421 at a later date in conjunction with rulemaking on the entire BAAQMD PSD rule.

The effect of this disapproval is to maintain the present SIP requirements for food processors. Since the disapproved rules are written to be effective only upon EPA approval, the rule provisions would remain inoperative in district rules as a result of this action.

Administration

Under 5 U.S.C. 605(b), EPA has determined that this action will not have a significant economic impact on a substantial number of small entities, since the action will not impose any new burdens on these facilities, which must continue to comply with existing NSR and particulate emissions prohibitory rules.

Under Executive Order 12291, this action is not "major". It has been submitted to the Office of Management and Budget (QMB) for review.

Under section 307(b)(1) of the Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 6, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Ozone, Sulfur oxide, Nitrogen oxides, Hydrocarbons, Carbon monoxide.

Dated: January 29, 1987.

Lee M. Thomas,

Administrator.

Subpart F of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.279 is added to read as follows:

§ 52.279 Food processing facilities.

(a) The following regulations are disapproved because they conflict with the requirements of 40 CFR Subpart I [formerly § 51.18], "Review of new sources and modifications," and relax the control on emissions from food processing facilities without any accompanying analyses demonstrating that these relaxations will not interfere with the attainment and maintenance of the National Ambient Air Quality Standards.

(1) Merced County APCD Rules 210.1–II–J, 210.1–VII–F, 408–C (new sentences two and three), adopted on August 21, 1984, and submitted on October 5, 1984.

(2) Bay Area Air Quality Management District sections 2–2–119, 2–2–120, 6–205, 6–312, adopted on September 19, 1984, and submitted on October 5, 1984.

[FR Doc. 87–2422 Filed 2–4–87; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 81

[A-3-FRL-3147-7; EPA Docket No. 107PA-11]

Designation of Areas for Air Quality Planning Purposes; Disapproval of Section 107 Classification for the Commonwealth of Pennsylvania

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On June 29, 1983 (48 FR 29887) EPA proposed to approve the reclassification of Madison, Mahoning, Boggs, Washington and Pine Townships in Armstrong County, Pennsylvania from nonattainment to attainment of the primary National Ambient Air Quality Standards (NAAQS) for Sulfur Dioxide (SO_2) pursuant to section 107(d) of the Clean Air Act, 42 U.S.C. 7407(d).

Subsequently, on August 15, 1986, EPA published a notice in the **Federal Register** (51 FR 29262) reopening the public comment period on this action in order to discuss the requirements of the July 8, 1985, stack height regulations (50 FR 27892) and to solicit comment on the possible impact that these regulations have on the Armstrong County demonstration of attainment.

As a result of this Notice and a review of the comments received, EPA is today disapproving the Commonwealth of Pennsylvania request to reclassify the nonattainment portion of Armstrong County to attainment for SO_2.

EFFECTIVE DATE: March 9, 1987.

ADDRESSES: Copies of the reclassification request and accompanying documents are available during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Eighth Floor, Philadelphia, Pennsylvania 19107, Attn: Esther Steinberg

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, 700 North 3rd Street, Harrisburg, Pennsylvania 17120, Attn: Gary Triplett

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donna Abrams (3AM11) at the EPA, Region III address above or call (215) 597–9134.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) and on September 2, 1978 (43 FR 40515), EPA classified Madison, Mahoning, Boggs, Washington and Pine Townships in Armstrong County, Pennsylvania as a nonattainment area for Sulfur Dioxide (SO_2). This classification was based primarily on an air diffusion modeling study performed for the Pennsylvania Department of Environmental Resources (DER) by a consultant, Geomet, Inc. The study predicted violations of the National Ambient Air Quality Standards (NAAQS) for SO_2, resulting primarily from the West Penn Power Company (WPPC) Armstrong Power Plant, a two unit, coal-fired facility (180 mw each unit) located on the Allegheny River near the town of Reesedale in Washington Township, Armstrong County. The Geomet study and its results are discussed in detail in the Notice reopening the comment period on this action (see 51 FR 29269).

On July 24, 1979, EPA published a **Federal Register** Notice (44 FR 43306) describing the steps that DER and WPPC had agreed to in a Consent Order and Agreement to provide for attainment of the SO_2 NAAQS. These steps are discussed in detail in that Notice and in the Notice reopening the public comment period on the proposed reclassification of Armstrong County (51 FR 29270).

DER and WPPC renegotiated the Consent Order and Agreement discussed above and submitted it to EPA as a proposed SIP revision on December 17, 1980. The revised Agreement included a schedule for construction of a 307-meter smoke-stack to replace the two existing 70-meter stacks at the plant, and set out interim emission limits which were to provide reasonable further progress toward meeting the NAAQS pending the completion of the stack at the end of 1982. The final emission limits under the Consent Order were to be the applicable limits in the Pennsylvania Code of Regulations (4.8 lbs. $SO_2/10^6$ BTU—daily average not to be exceeded at any time; 4.0 lbs. $SO_2/10^6$ BTU daily average not to be exceeded more than two days in any running 30-day period; and 3.7 lbs. $SO_2/10^6$ BTU—30-day average not to be exceeded at any time).

EPA proposed approval of this SIP revision in the **Federal Register** on January 28, 1981 (46 FR 9128), and on August 18, 1981, EPA published final approval of this SIP revision (46 FR 43423). The details regarding the stack height determination through fluid modeling, and the dispersion modeling of the GEP stack emissions, which were an integral part of this SIP revision, are discussed in detail in the notices relating to this SIP revision as well as the Notice reopening the comment period on the proposed reclassification of Armstrong County for SO_2 (51 FR 29270). EPA concluded that the studies demonstrated that Armstrong's 307-meter stack was an acceptable stack height credit.

This conclusion was based on conformity of the stack height showings with the proposed 1979 stack height regulations implementing section 123 of the Clean Air Act (Act), (44 FR 2608, January 17, 1979), which provides that emission limits for sources shall not be based upon credit for stack height above good engineering practice (GEP) height.

On December 10, 1982, DER notified EPA that the terms of the Consent Order had been fully satisfied. WPPC's 307-meter stack was completed, and the Armstrong plant was operating in accordance with the final emission limits specified in the Agreement. At that time, DER requested that the Armstrong area be reclassified "attainment" for SO_2.

On June 29, 1983, (48 FR 29887), EPA proposed approval of DER's reclassification request. EPA proposed approval in part based on a determination that this action met the requirements of the final stack height regulations published in the **Federal Register** on February 8, 1982 (47 FR 5864). However, on October 11, 1983, the Court of Appeals for the District of Columbia Circuit issued its opinion remanding portions of the 1982 stack height regulations (*Sierra Club vs. EPA*, 719 F. 2d 436 (D.C. Cir., 1983)). A detailed history of the stack height regulations, as it applies to this action, is discussed in the Notice reopening the comment period on this proposal (51 FR 29268).

As a result of uncertainties about the potential impact of that decision and any revised rules on the attainment demonstration at issue here, EPA delayed final action on the reclassification until it could fully assess whether the final revised rules would affect the reclassification.

On July 8, 1985, EPA promulgated final revised stack height rules in response to the DC Circuit Court remand (50 FR 27892). The Armstrong Power Plant stack height has not been demonstrated to conform to these regulations. The Armstrong County attainment demonstration is based on modeling of SO_2 emissions from the 307-meter stack at the Armstrong plant. When and if the regulations implementing section 123 are applied to that plant, credit for the full 307-meter stack may or may not be permitted.

The rules require a showing by field studies or fluid modeling that height greater than provided by the appropriate formula is needed to avoid a 40 percent increase in concentrations due to downwash that would also result in exceedance of a NAAQS or applicable PSD increment. To conduct a demonstration to show whether a NAAQS or a PSD increment is exceeded, the 1985 stack height regulations require that an emission rate be specified which is equivalent to that prescribed by the applicable New Source Performance Standard (NSPS). In this requirement, EPA established the presumption that the NSPS limit can be met by all sources seeking to justify stack height above formula height. A source may rebut this presumption, and establish an alternative emission limitation, by demonstrating to the reviewing authority that the NSPS emission limitation may not feasibly be met, given the characteristics of the source. WPPC, in conducting its fluid modeling, used the maximum emission rate specified in DER's non-air basin regulation (which is less stringent than the applicable NSPS); and to date, WPPC has not attempted to make a showing that NSPS is infeasible.

Additionally, the 1985 regulations contain a definition of "dispersion technique" which explicitly includes the merging of gases from two or more existing stacks into one unless, for mergers conducted before the promulgation of the regulations, such merging was part of a change in operations that included the installation of emissions control equipment or was carried out for "sound economic or engineering reasons." The merging of WPPC's two 70-meter stacks into one 307-meter stack may be considered a dispersion technique. Under the 1985 regulations, WPPC has the burden of providing documentation, in accordance with EPA guidance, that this is not the case. Complete documentation to support such a showing has not yet been provided. In any event, it would be evaluated in applying the 1985 regulations to the Armstrong stack.

Because WPPC acted in accordance with previous EPA guidance in constructing its stack to resolve the SO_2 nonattainment situation in Armstrong County, EPA reopended the public comment period on the proposed reclassification request to solicit public comment on whether the specific provisions of the 1985 stack height rules discussed above should be applied to the Armstrong Power Plant. EPA published a notice of the reopened comment period in the **Federal Register** on August 15, 1986 (51 FR 29268). EPA expressly sought comments on whether the October 11, 1983 Court decision, and resulting July 8, 1985 stack height regulations (50 FR 27892) are applicable to West Penn Power Company's Armstrong Station in a manner which requires that the Commonwealth of Pennsylvania and EPA reassess the Armstrong GEP stack height determination and stack merger, and require additional showings to demonstrate the attainment of the SO_2 NAAQS in Armstrong County.

In order to focus public comment on these issues, EPA set forth two possible options, together with the principal arguments in support of each position. Option "A" was to apply the July 8, 1985 stack height regulations to Armstrong's (WPPC's) GEP determination and subsequent attainment demonstration. Option "B" was not to apply the July 8, 1985 stack height regulations to WPPC's GEP determination and subsequent attainment demonstration.

As a result of the Notice, EPA received twenty-three responses with comments. EPA considered these comments along with the previous administrative proceedings here, the record of the 1985 stack height rulemaking, and its denial of three petitions for reconsideration concerning some of the same portions of the rules at issue here (51 FR 15885 (April 29, 1985)) in arriving at a decision. Based on this overall record, EPA has concluded that the provisions of the 1985 stack height regulations at issue here do apply to the Armstrong plant, and must be satisfied in order to approve the reclassification of Armstrong County. Since the appropriate showings under those provisions have not been made, at this time EPA must disapprove the reclassification request for the reasons stated above and discussed in the responses to comments below.

Comments in Support of Option "A"

Comment

1. The fact that EPA approved credit for Armstrong's stack is irrelevant. Congress adopted § 123 precisely because EPA, prior to 1977, had approved SIPs that gave credit for stacks beyond what Congress had intended in 1970. Accordingly, § 123 required EPA to promulgate rules establishing more restrictive limits on dispersion credit.

2. Section 123 by its terms applies to all stack changes after December 31, 1970, and provides no authority to EPA to exempt sources based on site-specific EPA approval actions before or after 1977.

3. The fact that EPA's approval of Pennsylvania's limits for Armstrong was not based on EPA's 1982 rules is irrelevant. The EPA approval action was taken before EPA had complied with the mandate of § 123 to issue final stack height rules. The validity of that approval was clearly contingent on EPA promulgation of valid final § 123 rules that permitted the credit in the Pennsylvania approval action. EPA's 1979 proposal was never adopted, EPA's 1982 rules were struck down as unlawful, and EPA's 1985 rules do not permit credit on the showing made by Pennsylvania. Moreover, the operative EPA stack height requirements at the time of the Pennsylvania approval, EPA's 1976 guideline, barred credit for Armstrong's stack increase.

Response

EPA basically agrees with the result urged by these comments. This Notice states that EPA has determined that the attainment demonstration may not be approved unless it conforms to the 1985 rules.

Comment

This matter cannot be distinguished from the Kammer case. In Kammer, EPA expressly stated that the Agency's presumptive NSPS limit requirement was adopted pursuant to the instruction of the U.S. Court of Appeals in its decision to remand the definition of "excessive concentrations" to EPA (51 FR 15886 (April 29, 1986)). Armstrong's reliance on its demonstration was just as fundamentally unlawful as Kammer's.

Response

In the April 29, 1986 Notice (51 FR 15885), EPA denied petitions for reconsideration of the fluid modeling requirements of the stack height regulations as they applied to the Kammer plant of American Electric Power Service Corporation (AEP). A fluid modeling study had been conducted by AEP, in 1979, to justify a stack for Kammer.

While EPA believes that there are some distinguishable factors between the two plants as discussed in the Notice (reopening the comment period on this action (51 FR 29271)), EPA has concluded that the better view is that WPPC is essentially in the same position as AEP, and that the 1985 rules are applicable to both.

Comment

The two Armstrong units were served originally by two separate stacks and are now served by one stack. EPA's July 1985 § 123 rules bar credit for the enhanced dispersion resulting from combining stacks unless certain specified showings are made. It appears that the dispersion modeling study relied upon to support the "attainment" designation gave full credit for the enhanced plume rise from Armstrong's combined stack. Since there is no evidence that West Penn Power has attempted to make the showings required by EPA's § 123 rules, these rules do not permit EPA to approve a redesignation based on such credit.

Response

This comment correctly states the merged stack issue in light of EPA's conclusion set forth in this Notice that the 1985 stack height regulations do apply to the Armstrong Power Station.

Comments in Support of Option "B"

Comment

West Penn has never sought and has never received an increase in DER's original emission limitation for the Armstrong Power Station based on stack height. Clearly, Pennsylvania's non-air basin sulfur dioxide emission limit is not a product of increased stack height at the Armstrong Power Station and stack height was not a consideration in the approval of this emission limit.

Response

The previous approval of DER's non-air basin regulation does not govern this action. DER's federally approved non-air basin regulation sets a maximum emission limitation of 4.0 lbs. $SO_2/10^6$ BTU, never to be exceeded. DER's "averaging" provision, which was approved for Armstrong County in conjunction with the construction of WPPC's stack, was never approved by EPA for all non-basin areas in the state. These averaging provisions permit up to 4.8 lbs $SO_2/10^6$ BTU as a maximum daily average so long as the 4.0 lbs $SO_2/10^6$ BTU is not exceeded more than twice in 30 days and the 30-day running average does not exceed 3.7 lbs. $SO_2/10^6$ BTU. In any event, the requirements of the 1985 rules must be met in establishing appropriate emission limits and attainment status for the area.

Comment

EPA has made a number of technical errors in the proposed Notice, they are: 1) the emission limitation used in the Armstrong dispersion modeling study was 4.0 lbs. of SO_2 per million BTU of heat input not 4.8 lbs. of SO_2 per million BTU of heat input, 2) Armstrong Power Station's approved SIP emission limit was not based on credit for the Armstrong GEP stack and, 3) no inference should be drawn that DER's 1979 non-air basin emission limit was developed based upon any credit for the Armstrong GEP stack.

Response

1. The use of 4.0 instead of 4.8 lbs $SO_2/10^6$ BTU further flaws the attainment demonstration for Armstrong County EPA believed that 4.8 lbs. $SO_2/10^6$ BTU was modeled for Armstrong because this is the emission limit which Armstrong Power Station may never exceed. EPA has learned from this comment by West Penn Power Company that Armstrong's never to be exceeded emission limit was not modeled for purposes of the attainment demonstration. Instead, the demonstration was based on the lower 4.0 lb. emission limit, which can, under law, be exceeded at the Armstrong Station as often as twice in each thirty day period. This fact provides a separate and independent basis for the position taken by EPA in this Notice that this area lacks an adequate attainment demonstration and will be taken into consideration in EPA's overall evaluation of Armstrong Power Plant's compliance with section 123 of the Clean Air Act.

2. The stack height demonstration was determined based on an emission limit of 4.8 lbs. $SO_2/10^6$ BTU, as described above. Although greater-than-formula stack height may not have originally entered into the setting of this limit, the Geomet study demonstrated that the limit was in fact insufficiently stringent to bring about attainment of the SO_2 standard without an increase in stack height. The 1977 Amendments to the Clean Air Act required Pennsylvania to revise its SIP for Armstrong County to ensure attainment of the SO_2 standard. EPA approved the existing DER emission limit for the Armstrong Station as satisfying the requirements of the 1977 Amendments only because that limit was believed to ensure attainment of the standard in Armstrong County when coupled with a new 307-meter stack. See 47 FR 43424. Had West Penn not received credit for the increase in stack height, the emission limit would have been lowered. See 46 FR 9129. Therefore, maintenance of this limit was dependent upon credit for the increased stack height. In any event, the 1985 stack height regulations fully address this problem by specifying that the emission limitation for purposes of justifying increased stack height shall be presumed to be the applicable NSPS limit or a source specific rebuttal of that presumption and justification of some alternative emission limitation.

3. DER's 1979 non-air basin regulation, as stated previously was never approved by EPA. The regulation is relevant only to Armstrong County, in the manner discussed above.

Comment

The EPA's rulemaking approving the stack configuration of Armstrong, specifically placed greater importance on attaining the SO_2 NAAQS than on complying with a subsequent final stack height rule.

Response

It is incorrect to claim that EPA placed greater importance upon one legislative requirement over another. Attaining the SO_2 NAAQS is, of course, important and an expeditious attainment is required under the Act. However, Congress, in adding Section 123, specified that attaining the NAAQS through excessive reliance on dispersion is not acceptable. Indeed, this point simply illustrates that the prior rulemaking for WPPC should not survive the subsequent stack height rules, which provided for the proper implementation of section 123.

Comment

If EPA decides to apply the 1985 revised stack height regulations to the Armstrong Power Station, it will be demonstrating to regulated industry that formal EPA approval of efforts to achieve environmental deadlines cannot be relied upon in the absence of final and finally litigated regulations.

Response

Regulations, once developed, always face the possibility of revision should new information become available to warrant a change, or as in this case, subsequent litigation requires change. In developing a regulation, EPA tries to implement the Act in the most appropriate manner. Should a regulation need to change due to better insight, court ordered requirements, or other factors, the revision may incorporate "grandfathering" provisions, when appropriate, to smooth the transition in a way which is fair and environmentally sound. Provisions such as this were included in the 1985 stack height rulemaking. However, for the reasons stated in the 1985 rulemaking, and the 1986 denial of petitions for reconsideration, EPA determined that "grandfathering" of previous fluid modeling demonstrations was not appropriate.

Comment

EPA's formal actions approving Armstrong's stack created a rule separate and distinct from the 1982 regulations which were remanded to EPA for revisions. Additionally, no petition to review EPA's action in approving the construction of Armstrong's stack has ever been filed. Therefore, it must be treated as a valid final rule.

Response

Although EPA approval of Armstrong's emission limits based on the stack was a final Agency action, it, like all such actions, is subject to revision based on changes in regulatory requirements. The reclassification request that is the subject of this Notice must conform to present regulatory requirements, including the 1985 rules. In addition, as stated in the preamble to the 1985 rules, 50 FR 27905, all previously established emission limits are required to be reviewed against these rules, and revised as appropriate. Those requirements are applicable here.

Comment

1. Should EPA retroactively withdraw its approval West Penn will be deprived of the benefit from its $13 million investment.

2. The argument that West Penn will not lose the benefit of its new stack if the 1985 stack height regulations are applied to Armstrong, presupposes that retroactive application of EPA's 1985 stack height regulations to the Armstrong Power Station serves a specific statutory interest sufficiently important that it outweighs the burden on West Penn.

3. In its benefit/burden analysis EPA must also keep in mind that West Penn would not have built a stack higher than approved by EPA for GEP credit. Also, EPA cannot ignore the cost of NSPS controls.

Response

The action being taken today is not retroactive. Although application of the 1985 stack height rules may ultimately require a reduction in the emission limit for the Armstrong Station, any such reduction would be prospective in effect. As stated in the Notice reopening the comment period on this action, WPPC will not be deprived of the benefit of its $13 million investment, for the reasons described there (51 FR 29272).

Application of the 1985 stack height regulations serves an important statutory interest, namely ensuring that attainment of air quality standards is not achieved by reliance on excessive stack height or other dispersion techniques. In Armstrong County, Pennsylvania relied on an increase in stack height in lieu of a decrease in emissions to attain the SO_2 standard. Therefore, that stack height must be carefully examined under section 123. In promulgating the 1985 regulations, EPA found that the 1979 proposed regulations, on which approval of the Armstrong stack was based, were inadequate because they did not specify an emission limit to serve as a starting point for GEP determinations. Without such a specification, a tall stack could, in effect, justify itself under the regulations. See 50 FR 27898. Such self-justification may have occurred in the case of the Armstrong Station, where the GEP stack height determination was based on an emission limit that was sufficiently stringent to ensure attainment of the SO_2 standard only when coupled with an increase in stack height.

The 1985 stack height rules are designed to implement the express requirements of section 123 of the Act. In implementing section 123, EPA has promulgated regulations which presume an emission limit (NSPS) that may be rebutted by a particular source. Such a demonstration is based on EPA's BART guidelines, which include consideration of costs and feasibility. With regard to the cost of complying with the NSPS or an alternative emission limit, West Penn is in the same position as any other source seeking credit for stack height in excess of formula height. Such cost does not, therefore, justify exempting West Penn from the requirements of the 1985 rules.

Comment

If EPA decides to retroactively apply its 1985 stack height regulations to the Armstrong Power Station, it could affect the construction of a new coal-fired electric generating facility in which Armstrong has invested approximately $11 million.

Response

While EPA is sensitive to this issue, it cannot base its decision to reclassify Armstrong County on this. WPPC does not have an unqualified right to construct a facility without compliance with environmental requirements, even when those requirements are changed during planning or construction. In this instance, the $11 million investment was incurred while the area was classified nonattainment for SO_2. WPPC cannot be said to have relied on the fact that the area has attained the NAAQS for SO_2. Additionally, it should be noted that Pennsylvania's approved new source review regulations clearly provide provisions which allow sources to locate in nonattainment areas.

Comment

The argument that West Penn's stack height demonstration did not employ the presumptive NSPS requirements is invalid as being contray to law. The presumptive NSPS requirement was not an issue before the Court of Appeals in *Sierra Club vs. EPA, Supra*, and nothing in the court's opinion or the Clean Air Act, expressed or implied, requires use of such a stringent level of control before a GEP credit above formula height may be demonstrated.

Response

This is a challenge to the stack height regulations, and properly should be raised before the Court of Appeals. The regulations have not been stayed, and EPA will implement them unless and until they are stayed or reversed.

Comment

Congress intended to forbid any dispersion enhancement practice that was significantly motivated by an intent to obtain additional credit for greater dispersion. West Penn's stack was neither intended to and did not result in any dispersive enhancement.

Response

The stack merger and the new 307-meter stack enhanced the dispersion of SO_2 from the Armstrong Station, and Pennsylvania's demonstration that the ambient air quality standards for SO_2 has been attained in Armstrong County depended on that enhanced dispersion. Therefore, the demonstration must be examined to determine if it was consistent with section 123 and with EPA's implementing regulations. Those regulations address requirements for justifying the merger of stacks, and provide West Penn an opportunity to demonstrate an absence of dispersive intent.

Comment

Examination of the ad hoc rule for the Armstrong Power Station demonstrates that credit for stack height in excess of formula height was granted with "utmost caution" in "rare circumstances" and the Agency erred on the side of reducing stack height credit. West Penn was required to (1) demonstrate downwash induced ambient standard or PSD increment exceedances, (2) follow comprehensive fluid and dispersion modeling guidelines, and (3) limit the extent of terrain that could be used in the demonstration and, therefore, EPA acted with "utmost caution." Additionally, the Armstrong Power Station had two 70-meter stacks located within one-half mile of terrain elevated approximately 600 feet above the plant which is the kind of rare circumstance in which Section 123 was intended to provide relief.

Response

EPA recognizes that the Agency action approving the WPPC stack at Armstrong represented a careful consideration of a number of the factors which are required by the Court of Appeals' remand of the 1982 stack height regulations. However, for the reasons discussed here, the relationship between that showing and a health-based emission limit is problematic. More significantly, the action EPA took in revising the stack height regulations requires conformance of Armstrong to those regulations.

Comment

The rule that NSPS be applied in fluid modeling studies is an administrative preference, most likely chosen because, as part of a generally applicable rule, it can be applied without detailed analysis of individual situations.

Response

As discussed above, issues relating to the NSPS presumption in the 1985 stack height regulations belong in the proceedings pending in the D.C. Court of Appeals, where those regulations are under review. The basis for EPA's judgment is set out in the 1985 rulemaking and the denial of petitions for reconsideration.

Comment

West Penn's decision to construct its GEP stack height using a single concrete shell containing two flues was not based on a desire to employ merger as a dispersion technique. It was based on sound economic reasons. A formal demonstration is not required under the 1985 stack height regulations if no increase in emission limitations is being sought, which is the case at the Armstrong Power Station.

Response

A formal demonstration must be made that the merging of the flues at the Armstrong Power Station was done for sound economic or engineering reasons. While some information was provided making such a demonstration, more detail is required than what was provided in order to satisfy the regulatory requirements.

Comment

Retroactive application of EPA's 1985 stack height rules to the Armstrong Power Station is not governed by EPA's April 29, 1986 denial of petitions for reconsideration of the 1985 stack height rules.

Response

It is true that application of EPA's 1985 stack height rules to the Armstrong Power Station is not directly governed by EPA's April 29, 1986 denial of petitions for reconsideration of the 1985 stack height rules. However, the principles which governed EPA's denial of these petitions do apply. As stated in the denial Notice, the July 8, 1985 revisions to the stack height rules required under section 123 of the Clean Air Act, were to ensure that the degree of emission limitation required for the control of any air pollutant under an applicable State Implementation Plan (SIP) was not affected by that portion of any stack height which exceeded good engineering practice (GEP) height or by any other dispersion technique. The petitions in question were denied because no new information or rationales were provided to warrant a reconsideration of the rules. Similar circumstances exist here, and EPA has concluded that, for the reasons stated in its denial and in this Notice, the 1985 rules apply to the Armstrong Station.

Comment

EPA's technical staff has concluded that the differences between the draft technical guidance on how to conduct a fluid modeling study and the modifications made to it prior to its publication in final form do not lead to a conclusion that the study erred on the side of granting too much stack height.

Response

EPA does not base any of the conclusions in this Notice on the differences between the draft and final technical guidance on fluid modeling.

EPA has stated in its responses to public comments on the July 8, 1985 rulemaking that demonstrations are merely tools for determining compliance with regulatory requirements. Thus, the issue of concern is not the technical adequacy of the demonstration, but whether it comports with the revised regulations.

Comments

In order to develop a complete record EPA should include, as part of its rulemaking docket the following documents.

1. Any document in which EPA considers the burden on West Penn of retroactive application of its 1985 stack height rules.

2. Any document analyzing whether or not the definition of "excessive concentration" in EPA's 1979 proposed stack height rules violated any requirement of the Clean Air Act.

3. Any document discussing the basis upon which EPA approved DER's non-air basin sulfur dioxide emission limitation; particularly, any document which supports West Penn's position that DER's emission limitation is not based on stack height credit and that its acceptability as an attainment strategy was tested rather than established with the use of proportional (rollback) model; and

4. All documents which describe any reviews made by EPA of DER, or any comments, approvals, authorizations or acceptances by EPA employees, officials or representatives of EPA with respect to West Penn's fluid modeling and

dispersion modeling for the Armstrong Power Station.

Response

EPA will take this comment into account in designating the administrative record for this rulemaking action.

Comment

If EPA does not redesignate to attainment there may be a potential curtailment of new coal mining projects or increased costs for new projects. Also, there may be a change in the coal supply for the Armstrong Power Station from the current local Pennsylvania supplies to out-of-state suppliers of lower sulfur coal.

Response

Under the Clean Air Act, EPA cannot base its decision whether to reclassify Armstrong County to attainment for SO_2 on any of these factors.

Comment

In Option "A" which supports application of the 1985 amended stack height regulations to Armstrong, EPA states that "it may be argued that the rules were not intended to implicitly grandfather any sources that were not explicitly grandfathered." Now EPA wishes to act as if they are not knowledgeable about their own intent.

Response

EPA has no intent to "grandfather" sources from application of the 1985 rule execpt where it expressly stated. The Notice in this action simply noted that, given the nature of EPA's intent regarding "grandfathering," it may be reasonable to conclude that the 1985 stack height regulations apply to the Armstrong Station for that reason alone.

Comment

EPA is not precluded by the Court remand or by any other requirements from honoring its commitment to WPPC, upholding its approval of the Armstrong stack, and redesignating Armstrong County to attainment.

Response

EPA has no commitment to WPPC respecting continued applicability of the 1982 stack height approval or actions regarding attainment designation in Armstrong County. As a result of the Court remand, EPA has promulgated the 1985 stack height rules. IF EPA were to redesignate Armstrong County to attainment for SO_2 in circumstances where these rules are applicable to the Armstrong Power Station, this action would be improper.

Comment

The scope of services provided for the Armstrong stack work included sizing and location of the stack and ductwork. The final selection was based on sound engineering and economic reasons as discussed below.

The area available for the stack(s) was insufficient for two chimneys (1 per unit) without extensive relocation of existing facilities which would result in interruption of generation and have a severe economic impact on the project.

In addition, pricing information obtained from the chimney constructor indicated that a single stack with two flues would be only 60 percent of the cost of two single flue chimneys.

Because of improved operating reliability, maintenance and the overwhelming savings in the two flue single stack over the single flue two stacks, the former option was selected.

In the event of an outage for flue inspection or maintenance, a two flue stack provides the greatest advantage because generation is curtailed only in the one unit.

Response

EPA has provided guidance regarding exceptions from restrictions on credit for merged stacks under the 1985 stack height rules (EPA memorandum dated October 28, 1985, from Darryl D. Tyler, Director, Control Programs Development Division, EPA, Research Triangle Park, NC to the EPA, Director, Air Management Division, Regions I–X, EPA). This guidance should be adhered to in providing any justification for merged stacks. These arguments by WPPC will be considered in evaluating its compliance with those rules.

Conclusion

After review in light of the Sierra Club decision, the 1985 stack height regulations, and the denial of petitions for reconsideration, EPA has concluded that these regulations do apply to the Armstrong Power Plant and therefore, to the request for reclassification of Armstrong County. The preamble to the 1985 regulations explicitly states that all existing stack height credits must be reviewed for conformance with them. This conclusion conforms to that requirement and to previous regulatory judgment by EPA.

Additionally, as stated previously in EPA's response to public comments, the SO_2 attainment demonstration for this area is further flawed by the fact that the dispersion modeling was performed at an emission rate of 4.0 lbs $SO_2/10^6$ BTU heat input which can, under law, be exceeded at the Armstrong Station as often as twice in each thirty day period. This fact provides separate and independent justification for EPA's determination that the Armstrong area lacks an adequate attainment demonstration.

Therefore, EPA is today disapproving the Commonwealth's request to reclassify Armstrong County, Pennsylvania to attainment for SO_2. This request is denied pending an acceptable demonstration of attainment which must consider a determination of the correct GEP stack height for WPPC, whether the stack merger was undertaken for sound economic or engineering reasons, and the appropriate emission limits for that source.

Administrative Procedures

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 6, 1987. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(1)).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: January 23, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87–2423 Filed 2–4–87; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 271

[SW-9-FRL-3148-5]

Arizona: Schedule of Compliance for Modification of State Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region 9.

ACTION: Notice of Arizona's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986 EPA promulgated amendments to the deadlines for state program modifications, and published requirements for states to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Arizona to modify its program in accordance with § 271.21(g)

to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Gary Lance (T-2-5), Waste Programs Branch, U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105, (415) 974-8125.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program: (1) Is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement [section 3006(b), 42 U.S.C. 6226(b)]. EPA regulations for final authorization, appear at 40 CFR 271.1 through 271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986 for a complete discussion of these procedures and deadlines.

B. Arizona

Arizona received basic authorization of its hazardous waste program on December 4, 1985. [See section 50 FR 47736, November 20, 1985]. Today EPA is publishing a compliance schedule for the State of Arizona to obtain program revisions for the following Federal program requirements.

3006(f)—Availability of Information

The State has agreed to obtain the needed program revisions according to the following schedule:

Regulations drafted	By 7/87.
Regulations submitted to EPA for review.	By 8/87.
Regulations submitted to Attorney General.	By 11/87.
Regulations adopted/certified	By 1/88.

Arizona expects to submit an application for authorization of the above mentioned program revisions by March 1, 1988.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(B).

Dated: January 22, 1987.

Judith E. Ayres,

Deputy Administrator.

[FR Doc. 87-1962 Filed 2-4-87; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 271

[SW-9-FRL-3148-7]

Guam: Schedule of Compliance for Modification of State Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region 9.

ACTION: Notice of Guam's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986 EPA promulgated amendments to the deadlines for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing the compliance schedule for Guam to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Roccena Lawatch (T-2-5), Waste Programs Branch, U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-0772.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program: (1) Is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement [Section 3006(b), 42 U.S.C. 6226(b)]. EPA regulations for final authorization, appear at 40 CFR 271.1 through 271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986 for a complete discussion of these procedures and deadlines.

B. Guam

Guam received basic authorization of its hazardous waste program on January 27, 1986 [51 FR 1370, January 13, 1986]. Today EPA is publishing a compliance schedule for the Territory of Guam to obtain program revisions for the following Federal program requirements.

3006(f)—Availability of Information

The Territory has agreed to obtain the needed program revisions according to the following schedule:

Regulations drafted	By 3/30/87.
Regulations submitted to EPA for review.	By 4/15/87.
Regulations proposed to the Guam Environmental Protection Agency Board.	By 5/15/87.
Regulations adopted	By 5/15/87.

Guam expects to submit an application for authorization which includes the above mentioned program revisions by July 15, 1987.

Authority

This notice is issued under the authority of sections 2022(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(B).

Dated: January 22, 1987.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 87-1963 Filed 2-4-87; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 271

[SW-9-FRL-3148-6]

Nevada: Schedule of Compliance for Modification of Nevada's Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region 9.

ACTION: Notice of Nevada's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986 [51 FR 33712], EPA promulgated amendments to the deadlines for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Nevada to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: M. Kim Savage (T-2-5), Waste Programs

Branch, U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105, (415) 974-8002.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement [section 3006(b), 42 U.S.C. 6226(b)]. EPA regulations for final authorization appear at 40 CFR 271.1 through 271.24. In order to retain authorization a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 *FR* 33712, September 22, 1986 for a complete discussion of these procedures and deadlines.

B. Nevada

Nevada received final authorization of its hazardous waste program on November 1, 1985 (50 *FR* 42181, October 18, 1985). Today EPA is publishing a compliance schedule for Nevada to obtain program revisions for the following Federal program requirements:

3006(f)—Availability of Information

The State has agree to obtain the needed program revisions according to the following schedule:

Regulations drafted—By March, 1987
Regulations submitted to EPA for review—By March, 1987
Regulations proposed to Commission—By July, 1987
Regulations adopted—By January, 1988

Nevada expects to submit an application to EPA for authorization of the above mentioned program revisions by March 1, 1988.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(B).

Dated: January 22, 1987.

Judith E. Ayres,
Regional Administrator.

[FR Doc. 87-1964 Filed 2-4-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[General Docket No. 20840; FCC 86-570]

Use of Recording Devices in Connection With Telephone Service

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This action terminates the rulemaking proceeding which was initiated to reexamine the efficacy, desirability and lawfulness of the tariff prescription and Commission rule governing the recording of interstate telephone conversations. The Further Notice of Proposed Rulemaking proposed to eliminate the tariff prescription and to revoke § 64.501 of the Commission's Rules. This action concluded that it is in the public interest to retain the rule and the tariff prescription with a slight modification.

EFFECTIVE DATE: March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Veal, Tariff Division, Common Carrier Bureau, (202) 632-6917.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in General Docket No. 20840, FCC 86-570, Adopted, December 23, 1986 and Released, January 26, 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 Contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On October 27, 1983, the FCC released a Further Notice of Proposed Rulemaking (*Further Notice*), proposing to eliminate completely the current tariff prescription and to revoke § 64.501 of the Commission's Rules, 47 CFR 64.501. The tariff prescription currently provides that telephone subscribers wishing to record a telephone call must either use a beep tone device or obtain prior consent from all parties to the conversation. Three factors led to this proposal. First, the proliferation of inexpensive acoustic and inductive recorders, which cannot be detected by the telephone company, has rendered the tariffed prohibition virtually unenforceable. Second, to the extent that the beep tone and mutual consent requirements are unenforceable, they may actually create a false sense of security among persons who assume that these requirements adequately protect their privacy. Finally, the enactment by Congress of the Omnibus Crime Control and Safe Streets Act of 1968 (Omnibus Act), 18 U.S.C. 2510 *et seq.*, which imposes strict civil and criminal penalties for certain acts of interception and divulgence of telephone communications, raised questions as to the necessity of Commission regulation of telephone recording.

2. While most of the comments advocate elimination of the beep tone requirements, however, they fail to persuade the Commission that the policy should be abandoned. The Commission acknowledges that once the use of acoustic and inductive-type recorders became widespread, there was no way to detect violations of the beep tone requirements. However, the Commission does not believe that the limited ineffectiveness of the policy, in and of itself, justifies its elimination. Therefore, we shall modify the current tariff prescription and § 64.501 by adding to the present beep tone and mutual consent options a third option: recording will also be permitted if the recording party notifies the other party that it intends to record the conversation. This notification should be made at the beginning, and as part of the recorded portion of the call.

3. Notification made in a clear, unambiguous manner will meet the objective of notifying parties that their conversations are being recorded. We believe that one-party notification will be less intrusive and cumbersome in some situations than the mutual consent option and could, therefore, reduce any burdens which the present requirements might be causing.

4. One reason for retaining the beep tone rule with this slight modification is that, despite the telephone company's inability to detect unauthorized recordings when they are being made, the tariff sanctions can still be applied when such activity comes to light, and in this way may still be useful as a deterrent.

5. The Commission also concludes that Congress did not intend to limit the Commission's jurisdiction over the recording of two-way telephone conversations by the promulgation of the Omnibus Act. While the Commission shares Congress' concern for law enforcement, it also believes that the privacy of telephone communications is important and that appropriate measures should be taken to preserve users' privacy.

6. Some of the commenters assert that the tariff prescription was overbroad and interferes with beneficial recording. The Commission is not convinced, however, that most legitimate business interests could not be met despite the retention of the beep tone or mutual consent options. We believe that addition of the one-party notification option increases the likelihood that legitimate business interests can be met within the requirements of the Rule.

7. Finally, the Commission fails to believe that any false sense of security that the requirement might be inducing in telephone users is sufficiently significant to outweigh these other factors, especially since the assertion that such a false sense of security has been engendered by the Rule and tariff requirement is purely speculative.

Ordering Clauses

8. It is further ordered, that pursuant to the authority granted in sections 4(i), 4(j), 201, and 218 of the Communications Act, 47 U.S.C. 154(i), 154(j), 201 and 218, § 64.501 of the Commission's Rules, 47 CFR 64.501 is amended as shown at the end of this document to reflect that the mutual consent option will now be replaced with one-party notification effective 30 days from the date of this publication.

9. In view of the foregoing and pursuant to the authority granted in sections 2(a), 4(i), 4(j), 201, 205, 303(r), and 403 of the Communications Act, 47 U.S.C. 152(a), 154(i), 154(j), 210, 205, 303(r) and 403 it is ordered, That all common carriers subject to Title II of the Communications Act, 47 U.S.C. 151 *et seq.* shall revise such tariff regulations on file with this Commission which provide for the use of recording devices in connection with interstate and foreign message toll telephone service and wide area telephone service, to comport with this Order.

10. It is further ordered, that the tariff revisions required in paragraph 8 be filed no later than 45 days from the release date of this Order to be effective on 15 days' notice. For this purpose we waive § 61.58 of the Commission's Rules, 47 CFR 61.58 and assign Special Permission No. 87-2.

12. It is further ordered, that Docket No. 20840 is hereby terminated.

List of Subjects in 47 CFR Part 64

Communications common carrier, Recording devices, Telephone companies.

Rule Changes

Part 64 and 47 CFR is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, unless otherwise noted.

2. Section 64.501 is amended by the addition of paragraph (b) to read as follows:

§ 64.501 Recording of telephone conversations with telephone companies.

* * * * *

(b) Where such use shall be preceded by verbal notification which is recorded at the beginning, and as part of the call, by the recording party, or,

* * * * *

3. Section 64.501 is further amended by redesignating existing paragraphs (b), (c) and (d) as paragraphs (c), (d) and (e), respectively.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-2358 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 85-334; RM-5111]

Radio Broadcasting Services; Clifton, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Class C FM Channel 271 for 237A at Clifton, AZ, and modifies the permit of Station KJJJ(FM), in response to a petition filed by Double Eagle Broadcasting. With this action, this proceeding is terminated.

DATES: Effective March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-334, adopted December 3, 1986, and released January 22, 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.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended, under Arizona, by revising Channel 271 for 237A for Clifton.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-2359 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-64; RM-5010]

Radio Broadcasting Services; Auberry, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 286B1 to Auberry, California, as that community's first local service, in response to a petition filed by Eric R. Hilding. With this action, this proceeding is terminated.

DATES: Effective March 9, 1987. The window period for filing applications will open on March 10, 1987, and close on April 8, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-64, adopted December 4, 1986, and released January 22, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. § 73.202(b), Table of FM Allotments, is amended by adding Auberry, California, Channel 286B1.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2360 Filed, 2-4-87; 8:45 am]

BILLING CODE 6710-01-M

---

47 CFR Part 73

[MM Docket No. 86-25; RM-4971]

Radio Broadcasting Services; Chester, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 287C2 to Chester, California, as that community's second local FM service, in response to a petition filed by Eric R. Hilding.

DATES: Effective March 9, 1987. The window period for filing applications will open on March 10, 1987, and close on April 8, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-25, adopted Dec. 16, 1986, and released Jan. 22, 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 copying contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202(b), the Table of FM Allotments, the entry for Chester, California is amended to add Channel 287C2.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Policy and Rules Division Mass Media Bureau.

[FR Doc. 87-2361 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-90; RM-5162]

Radio Broadcasting Services; Julesburg, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 243C1 to Julesburg, Colorado, as that community's first local broadcast service in response to a petition filed by Vivian S. Lopez. With this action, this proceeding is terminated.

DATES: Effective March 9, 1987; The window period for filing applications will open on March 10, 1987, and close on April 8, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-90, adopted Dec. 16, 1986, and released Jan. 22, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. In § 73.202(b) the table of allotments is amended by adding Julesburg, Channel 243C1, under Colorado.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2362 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-131; RM-5225, RM-5473]

Radio Broadcasting Services; Nowata, OK; Caney, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 268A to Nowata, Oklahoma, with a site restriction of 6.1 kilometers southeast, as the community's second local FM service, at the request of Paul J. Campbell and Channel 266A to Caney, Kansas, with a site restriction of 3.1 kilometers east, as the community's first local FM service, at the request of Mike Stephens. With this action, this proceeding is terminated.

DATES: Effective March 12, 1987. The window for filing applications will open on March 13, 1987, and close on April 13, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-131, adopted December 4, 1986 and released January 26, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [AMENDED]

2. Section 73.202(b), the table of allotments is amended by adding Caney, Kansas, Channel 266A, and by amending the entry for Nowata, Oklahoma, to add Channel 268A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-2375 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-57; RM-4940]

Radio Broadcasting Services; Hazard, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 284A to Hazard, Kentucky, as that community's second commercial FM channel in response to a petition filed by Perry Broadcasting, a partnership consisting of John E. Edwards and Kenneth R. Combs. With this action, this proceeding is terminated.

DATES: Effective March 6, 1987; The window period for filing applications will open on March 9, 1987, and close on April 6, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-57, adopted Dec. 15, 1986, and released Jan. 21, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. In § 73.202, the Table of FM Allotments, in the entry for Hazard, Kentucky, Channel 284A is added.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-2363 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-20; RM-5160]

Radio Broadcasting Services; Menominee, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 280A to Menominee, Michigan, and modifies the license of Station WCJL-FM, Channel 292A, Menominee, to specify Channel 280A. This action is taken in response to a petition filed by Woodward Communications, Inc., Station WAPL-FM, Channel 289, Appleton, Wisconsin. The substitution at Menominee, will permit Station WAPL-FM to relocate its transmitter and retain the Class C designation. Canadian concurrence has been obtained for the allocation of Channel 280A at Menominee, Michigan. With this action, this proceeding is terminated.

DATES: Effective March 9, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-20, adopted November 25, 1986, and released January 22, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202(b), the Table of Allotments, the entry for Menominee, Michigan, is amended to add Channel 280A and delete Channel 292A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2364 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-91; RM-5126]

Radio Broadcasting Services; Buffalo, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260A to Buffalo, Missouri, as that community's first commercial broadcast service. Supporting comments were filed by School District No. 1. With this action, this proceeding is terminated.

DATES: Effective March 12, 1987. The window period for filing applications will open on March 13, 1987, and close on April 13, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-91, adopted, 1986, and released, 1986. 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for the entry of Buffalo, Missouri, by adding 260A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2367 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-117; RM-5085]

Radio Broadcasting Services; Bethany, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 238C2 to Bethany, Missouri, in response to a petition filed by Jerrell A. Shephard, and modifies the license of FM Station KAAN to specify operation on Channel 238C2. This allotment could provide Bethany with its first wide area coverage channel. Supporting comments were filed by Jerrell A. Shephard. With this action, this proceeding is terminated.

DATE: Effective March 6, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–117, adopted Dec. 15, 1986, and released Jan. 21, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Bethany, Missouri, Channel 238C2 is added and Channel 240A is deleted.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2366 Filed 2–4–87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-353; RM-5486]

Radio Broadcasting Services; Hardin, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 238 to Hardin, Montana, in response to a petition filed by California Broadcast Group, licensee of Station KBSR–FM, and modifies the license of Station KBSR–FM to specify operation on Channel 238 instead of Channel 237A. With this action, this proceeding is terminated.

DATES: Effective March 6, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–353, adopted Dec. 19, 1986, and released Jan. 21, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. In § 73.202, the Table of FM Allotments

In § 73.202(b), the Table of Allotments is amended by revising the entry of Hardin, Montana, to delete Channel 237A and add Channel 238.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–2368 Filed 2–4–87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-266; RM-5324; 5550]

Radio Broadcasting Services; Franklin and Haverhill, NH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 231A for Channel 232A at Franklin, New Hampshire, and modifies the permit of Station WFTN–FM to specify the new channel, at the request of Northeast Communications Corporation. Channel 231A can be allocated to Franklin without a site restriction. This document also allocates Channel 267A to Haverhill, New Hampshire, as the community's first local FM service, at the request of Barbara Dempsey. Channel 267A can be allocated with a site restriction of 2.3 kilometers northwest to avoid a short-spacing to recently allocated Channel 268A at Meredith, NH,Canadian concurrence has been received.

DATES Effective March 9, 1987; The window period for filing applications will open on March 10, 1987, and close on April 8, 1987. Applications can only be filed for the Haverhill allotment.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–266, adopted Nov. 20, 1986, and released Jan. 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for New Hampshire is amended by adding Channel 267A, Haverhill, and substituting Channel 231A for Channel 232A at Franklin.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2371 Filed 2–4–87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-210; RM-5317]

Radio Broadcasting Services; Roseau, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 271C2 to Roseau, Minnesota, as that community's first broadcast service, in response to a petition filed by Marlan T. Obie. Canadian concurrence has been obtained for the allotment of this channel. Supporting comments were filed by the petitioner. With this action, this proceeding is terminated.

DATES: Effective March 6, 1987; The window period for filing applications will open on March 9, 1987, and close on April 6, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–210, adopted Dec. 24, 1986, and released Jan. 21, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Minnesota, by adding Channel 271C2 to Roseau.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-2365 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-53; RM-5027]

Television Broadcasting Services; Twentynine Palms, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns UHF television Channel 31 to Twentynine Palms, California, as that community's first local television broadcast service, in response to a petition filed by Pacer Television Company. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–53, adopted December 16, 1986, and released January 22, 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.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.606(b) [Amended]

2. § 73.606(b), is amended by adding Twentynine Palms, California, Channel 31.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocation Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2380 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-36; RM-5081]

Television Broadcasting Services; McCook, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns VHF TV Channel 12+ to McCook, Nebraska, as the community's third local TV service, with a site restriction of 21.5 miles east. Crossroads Communications, Inc., Carl Fisher and Pamela R. Jones each filed comments expressing an intention to apply for the channel, if assigned. The petitioner, Jerrell E. Kautz, failed to file comments in the proceeding. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 12, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–36, adopted November 20, 1986 and released January 26, 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.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.606(b) [AMENDED]

2. In § 73.606, the table of assignments, the entry for McCook, Nebraska is amended to add Channel 12.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2414 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-149; RM-5171]

Television Broadcasting Services; Corning, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns UHF-TV Channel 48+ to Corning, New York, as the community's first local commercial television service, at the request of Clarence Smith. The channel requires a site restriction of 8.5 miles south. With this action, this proceeding is terminated.

DATE: Effective March 12, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–149, adopted December 24, 1986, and released January 26, 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.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.606(b) [Amended]

2. Section 73.606(b), the Television Table of Assignments for Corning, New York, is amended by adding Channel 48+.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2381 Filed 2–4–87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-265; RM-5305]

Radio Broadcasting Services; Harrison, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 282A to Harrison, Ohio, as the community's first local FM service, at the request of Vernon Baldwin. The allocation can be made in compliance with the Commission's minimum distance separation requirements with a site restriction of 8 kilometers west to avoid a short-spacing to that portion of Station WPAY-FM's buffer zone which lies outside Zone II. The Commission has waived protection of that portion of the buffer within Zone I. With this action, this proceeding is terminated.

DATES: Effective March 9, 1987; the window period for filing applications will open on March 10, 1987, and close on April 8, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–265, adopted December 5, 1986, and released January 22, 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.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Ohio is amended by adding Harrison, Channel 282A.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2374 Filed 2–4–87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 85-284; RM-5055]

Television Broadcasting Services; Williamsport, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF TV Channel 53—to Williamsport, Pennsylvania, as the community's first local television service, at the request of Checkpoint Communications Company and Henry W. Mitchell, George A. Mitchell and William B. Kane. A site restriction of 11.8 kilometers (7.4 miles) west is imposed. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–284 adopted November 20, 1986, and released January 22, 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.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.606(b) [AMENDED]

2. In § 73.606, the table of assignments, the entry for Williamsport, Pennsylvania is amended to add Channel 53—.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2382 Filed 2–4–87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-97; RM-5170]

Television Broadcasting Services; Jellico, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns UHF Television Channel 54 to Jellico, Tennessee, as that community's first local television service at the request of Wayne Marler Crusades, Inc. A site restriction of 8.5 kilometers (5.3 miles) south of the city is required. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–97, adopted December 3, 1986, and released January 22, 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.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.606(b) [Amended]

2. § 73.606, the Table of Assignments, in the entry for Jellico, Tennessee, Channel 54— is added.

Mark N. Lipp,
Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-2383 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-94; RM-4786]

Radio Broadcasting Services; Corpus Christi, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 204A to Corpus Christi, Texas, as that community's third local noncommercial educational FM service, at the request of Family Educational Radio of South Texas. Concurrence by the Mexican government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-94, adopted December 5, 1986 and released January 26, 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.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.504(a) [Amended]

2. Section 73.504(a), the noncommercial educational FM, the table of allotments; in the entry for Corpus Christi, Texas, Channel 204A is added.

Ralph A. Haller,
Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2376 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-85; RM-5090]

Radio Broadcasting Services; Lytle, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 217A to Lytle, Texas, as that community's first noncommercial educational FM channel at the request of Stronghold Foundation, Inc. The allotment requires a site restriction of 11.2 kilometers (7.0 miles) southwest of the community. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-95, adopted December 4, 1986 and released January 22, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.504(a) [Amended]

2. Section 73.504(a), the noncommercial educational FM table of allotments, in the entry for Lytle, Texas, Channel 217A is added.

Federal Communications Commission.

Mark N. Lipp,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2379 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-71; RM-5074]

Radio Broadcasting Services; Post, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 297C2 in lieu of Channel 297A to Post, Texas, as that community's first wide coverage FM service at the request of Boles Broadcasting Company. The window period for filing applications will be announced at a future date. With this action, this proceeding is terminated.

DATE: Effective March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order MM Docket No. 86-71, adopted December 5, 1986, and released January 22, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202(b) the Table of FM Allotments is amended under, Texas, by

revising Channel 297A to 297C2 for Post.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2377 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-295; RM 5450]

Radio Broadcasting Services; Tye, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 259C1 for Channel 257A at Tye, Texas, and modifies the license of Station KTLC(FM) to specify operation on the new frequency, at the request of Tye Broadcasting, Inc. Concurrence by the Mexican government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-295, adopted December 16, 1986, and released January 22, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202, the Table of FM Allotments is amended, under Texas, by revising Channel 257A to 259C1 for Tye.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2378 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 90

[PR Docket No. 86-160; FCC 87-14]

Amendment of Part 90 Making Available Additional Frequency Assignments for SMR Systems in the 800 MHz Band; Report and Order

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order which will allow fully-loaded Specialized Mobile Radio (SMR) systems to participate in inter-category frequency sharing. This action was taken to provide additional frequency relief for SMR systems meeting the mobile loading requirements.

EFFECTIVE DATE: The adopted rules become effective on March 9, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 86-160, adopted January 5, 1987, and released January 26, 1987. The full text of the 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 contractor, International Transcription Service, 2100 M Street, NW., Washington, DC 20037, telephone (202) 857-3800.

Summary of Report and Order

1. On May 8, 1986, the FCC released a Notice of Proposed Rulemaking (Notice), 51 FR 18464 (May 20, 1986), that proposed to amend § 90.621(g) of the rules to permit inter-category sharing of frequencies in the 800 MHz band by SMR, Industrial/Land Transportation, and Business category eligibles. The Notice proposed that licensees in these categories with fully-loaded trunked systems could access frequencies in the other 800 MHz categories when frequencies were not available in their own category. It was also proposed that access to Public Safety category frequencies by SMR licensees would not be permitted. The Notice further proposed that eligible licensees be authorized one inter-category sharing channel unless it was proven that the system's current mobile loading would warrant the authorization of additional channels. Finally, the Notice proposed that all requests for inter-category sharing frequencies be accompanied by concurrence from the frequency coordinator for the category involved.

2. This Report and Order adopts rules concerning the inter-category sharing of 800 MHz frequencies in the four categories designated in Part 90, Subpart S, of the rules. An eligible SMR licensee will be allowed access to unused channels in the Industrial/Land Transportation and Business categories and will be authorized one channel more than its current loading warrants. Further, if a licensee is authorized additional channels, it will automatically be removed from the waiting list unless its system, with the additional channels, remains seventy percent loaded. In this case, the effective date of the waiting list application will be changed to date of grant of additional channels. The application will then be moved to the appropriate place on the waiting list consistent with the new effective filing date. Licensees in the Industrial/Land Transportation and Business categories will be eligible for unused channels in the SMR category if channels are not available in their own category. Non-SMR licensees that are authorized SMR channels will also be authorized one channel more than their current loading warrants. Finally, concurrence from the coordinators of the categories involved will be required when inter-category channels are requested.

Final Regulatory Flexibility Analysis

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Paperwork Reduction Act Statement

4. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

Ordering Clause

5. Accordingly, *It is Ordered*, that Part 90 *Is Amended* as set forth below, and that this proceeding *Is Terminated*. Authority for this action is found in sections 4(i) and 303 of the

Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303.

6. For further information concerning this proceeding contact Eugene Thomson, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554, telephone (202) 634-2443.

List of Subjects in 47 CFR Part 90

SMR systems, Inter-category sharing, Private land mobile radio services.

William J. Tricarico,

Secretary.

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

The authority citation for Part 90 continues to read as follows:

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

1. Section 90.617 is amended by revising the introductory texts of paragraphs (a), (b), (c), and (d) to read:

§ 90.617 Frequencies in the 809.750-816/854.750-861 MHz and 896-901/935-940 MHz bands available for trunked or conventional system use in non-border areas.

(a) The channels listed in Table 1 are available to eligible applicants in the Public Safety Category (consisting of the Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, and Special Emergency Radio Services). These frequencies are available in areas farther than 110 km (68.4 miles) from the U.S./Mexico border, and 160 km from the U.S./Canada border. Specialized Mobile Radio Systems (SMRS) will not be authorized in this category. These channels are available for inter-category sharing as indicated in § 90.621(g).

* * * * *

(b) The channels listed in Table 2A are available to eligible applicants in the Industrial/Land Transportation Category (consisting of the Power, Petroleum, Forest Products, Motion Picture, Relay Press, Special Industrial, Manufacturers, Telephone Maintenance, Motor Carrier, Railroad, Taxicab and Automobile Emergency Radio Services). These frequencies are available in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 160 km (100 miles) from the U.S./Canada border. Specialized Mobile Radio Systems (SMRS) will not be authorized in this category except as indicated in § 90.621(g).

* * * * *

(c) The channels listed in Table 3A are available to eligible applicants in the Business Radio Category. This category does not include Specialized Mobil Radio Systems as defined in § 90.603(c). These frequencies are available in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 160 km (100 miles) from the U.S./Canada border. These channels are available for inter-category sharing as indicated in § 90.621(g).

* * * * *

(d) The channels listed in Table 4A are available to eligibles in the SMRS Category (consisting of Specialized Mobile Radio Systems (SMRS) eligible under § 90.603(c)). These frequencies are available in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 160 km (100 miles) from the U.S./Canada border. These channels are available for inter-category sharing as indicated in § 90.621(g)

* * * * *

2. Section 90.619 is amended by revising the introductory tests of paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (b) to read:

§ 90.619 Frequencies available for use in the U.S./Mexico and U.S./Canada border areas.

(a) * * *

(1) Table 1 lists the channels that are available for assignment to eligible applicants in the Public Safety Category (consisting of the Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, and Special Emergency Radio Services). Specialized Mobile Radio Systems (SMRS) will not be authorized in this category. These channels are available for inter-category sharing as indicated in § 90.621(g).

* * * * *

(2) Table 2 lists the channels that are available for assignment to eligible applicants in the Industrial/Land Transportation Category (consisting of the Power, Petroleum, Forest Products, Motion Picture, Relay Press, Special Industrial, Manufacturers, Telephone Maintenance, Motor Carrier, Railroad, Taxicab and Automobile Emergency Radio Services). Specialized Mobile Radio Systems (SMRS) will not be authorized in this category except as indicated in § 90.621(g).

* * * * *

(3) Table 3 lists the channels that are available for assignment to eligible applicants in the Business Radio Category. This category does not include Specialized Mobile Radio Systems as defined in § 90.603(c). These channels are available for inter-category sharing as indicated in § 90.621(g).

* * * * *

(4) Table 4 lists the channels that are available for assignment for the SMRS Category (consisting of Specialized Mobile Radio Systems (SMRS) as defined in § 90.603(c)). These channels are available for inter-category sharing as indicated in § 90.621(g).

* * * * *

(b) *U.S./Canada border area.* The following criteria shall govern the assignment of frequency pairs (channels) for stations located in the U.S./Canada border area. These channels are available for assignment for conventional or trunked systems in accordance with all applicable sections of this subpart. They are available for inter-category sharing as indicated in § 90.621(g).

* * * * *

3. Section 90.621 is amended by revising paragraph (g) and adding a new paragraph (h) to read:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(g) The 806-821/851-866 MHz channels listed as available for eligibles in the Public Safety, Industrial/Land Transportation, Business, and SMRS categories are available for inter-category sharing under the following conditions:

(1) Channels in the Public Safety, Industrial/Land Transportation and Business categories will be available to eligible applicants in those categories only if there are no frequencies in their own category and no public safety systems are authorized on those channels under consideration to be shared.

(2) Channels in the Industrial/Land Transportation and Business categories will be available to fully-loaded SMR systems if no SMRS category frequencies are available. Evidence must be provided that the SMR applicant has sufficient users to warrant the authorization of additional channels. If available, the SMR licensee will be authorized no more than one channel more than its current loading warrants.

(3) Channels in the SMRS category will be available to fully-loaded industrial/Land Transportation and Business category systems if frequencies in their own categories are not available. Evidence must be provided that the applicant has sufficient users to warrant the authorization of additional channels. If available, the licensee will

be authorized no more than one channel more than its current loading warrants.

(4) The applicant must submit a statement from its own category coordinator that frequencies are not available in that category, and coordination is required from the applicable out-of-category coordinator.

(5) The out-of-category licensee must operate by the rules applicable to the category to which the frequency is allocated.

(h) The 896–901/935–940 MHz channels listed as available for eligibles in the industrial/Land Transportation and Business categories will be available for inter-category sharing to all persons eligible in those categories under the following conditions thirty-six (36) months from the date the first authorization in this spectrum is issued.

(1) The applicant must submit a statement from its own category coordinator that frequencies are not available in that category, and coordination is required from the applicable out-of-category coordinator.

(2) The out-of-category licensee must operate by the rules applicable to the category to which the frequency is allocated.

[FR Doc. 87-2357 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 86-63; FCC 86-429]

Amateur Radio Service; Examination Credit for Written Elements

AGENCY: Federal Communications Commission.

ACTION: Final rule; effective date.

SUMMARY: On November 25, 1986, the Commission published a final rule in this proceeding concerning the Amateur Radio Service and written examination credit (51 FR 42578). This document specifies the effective date of that action.

EFFECTIVE DATE: February 13, 1987.

FOR FURTHER INFORMATION CONTACT: John Borkowski (202) 632-4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-2355 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

48 CFR Parts 2413 and 2433

[Docket No. R-87-1263; FR-2098]

Implementation of the Competition in Contracting Act of 1984 into the HUD Acquisition Regulation; Announcement of Effective Date

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of announcement of effective date for final rule.

SUMMARY: This notice announces the effective date for the final rule published in the **Federal Register** on November 6, 1986 (51 FR 40331). That rule adopted the interim rule for the implementation of the Competition in Contracting Act of 1984 (CICA) into the HUD Acquisition Regulation (HUDAR), which was published in the **Federal Register** of November 8, 1985 (50 FR 46572). The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register.**

Thirty calendar days of continuous session of Congress will expire on March 2, 1987.

DATE: The effective date for the final rule published November 6, 1986 (51 FR 40331), is March 2, 1987.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Department of Housing and Urban Development, Washington, DC 20410, Telephone (202) 755-5294. (This is not a toll-free number.)

Dated: January 30, 1987.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 87-2300 Filed 2-4-87; 8:45 am]

BILLING CODE 4210-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312 and 1313

[Ex Parte No. 387]

Railroad Transportation Contracts; Suspension of Interim Rule Effective Date

AGENCY: Interstate Commerce Commission.

ACTION: Suspension of the January 22, 1987 effective date for rail contract interim rules at 49 CFR 1313.10(b)(4)(i) and 1313.11(b)(3)(i).

SUMMARY: The Commission is suspending the January 22, 1987 effective date for interim rules at 49 CFR 1313.10(b)(4)(i) and 1313.11(b)(3)(i). These interim rules provide for disclosure of origin/destination information in contract summaries for agricultural commodity contracts and forest products and paper contracts (51 FR 45898, December 23, 1986). We are reinstating the prior interim rule at 49 CFR 1312.41(d)(1)(iii) for contract origin/destination information, pending the comment period and final rules. Section 1312.41(d)(1)(iii) requires disclosure of information sufficient to allow a party to determine if it is affected. Use of phrases such as "various pints in [a particular State]" will not be accepted, but references either to all points in a State or to a tariff will be acceptable pending final rules.

EFFECTIVE DATE: February 5, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas Dahl, (202) 275-6448 or 275-7246.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4537 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: January 20, 1987.

By the Commission, Chairman Gradison.

Noreta R. McGee,

Secretary.

Appendix

Accordingly, 49 CFR Parts 1312 and 1313 are amended as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

1. The authority citation for 49 CFR Part 1312 continues to read as follows:

Authority: 49 U.S.C. 10708(d) (1) and (2) and 10762, 5 U.S.C. 553.

2. Section 1312.41 is added to read as follows:

§ 1312.41 Contracts and contract summaries.

(a)–(c) [Reserved]

(d) *Content or contract summary; format.* (1) Contract summaries for agricultural commodities, forest products or paper shall contain the following terms in the order named.

(i)–(ii) [Reserved]

(iii) The origin station(s) and destination station(s), including the specific port(s) (if applicable).

(iv)–(vii) [Reserved]

(2)–(4) [Reserved]

(e)–(g) [Reserved]

PART 1313—RAILROAD CONTRACTS ENTERED INTO PURSUANT TO 49 U.S.C. 10713

3. The authority citation for 49 CFR Part 1313 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10713; and 5 U.S.C. 553.

§ 1313.10 [Amended]

4. The rules at 49 CFR 1313.10(b)(4)(i) are suspended.

§ 1313.11 [Amended]

5. The rules at 49 CFR 1313.11(b)(3)(i) are suspended.

[FR Doc. 87-2334 Filed 2-4-87; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 52, No. 24
Thursday, February 5, 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.

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545 and 563

[No. 87-110]

Adjustable-Rate Mortgage Home Loan Disclosures

Dated: January 29, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), proposed to amend its regulations regarding the disclosures and notices that lenders must give to borrowers concerning adjustable-rate mortgage ("ARM") home loans. The Board's current regulation requires a lender to provide to a prospective borrower a clear and concise description of the nature of ARMs, either when an application is given or before a nonrefundable fee is charged, whichever is earlier. This disclosure may be accomplished by using the booklet titled, *Consumer Handbook on Adjustable Rate Mortgages* ("ARMs Handbook"). The proposed rule would retain the same timing for disclosures and continue to allow the use of the ARMs Handbook, but would require additional disclosures of specific information concerning the ARM program being offered to the consumer. The revision would clarify the Board's regulation and would implement the uniform disclosure of ARMs recommended by the Federal Financial Institutions Examination Council ("FFIEC") on August 12, 1986. The proposal was prepared in consultation with the Federal Reserve Board ("FRB") and the Office of the Comptroller of the Currency ("OCC"). the three agencies are revising their regulations concurrently and, where appropriate, analogously, in order to make uniform the disclosures that lenders must make to borrowers concerning ARMs. Particular attention was given by all three agencies to the volume and substance of consumer comment conerning ARMs in the past two years. In addition, the proposal would consolidate and clarify existing Board regulations on disclosures and notices for all loans.

The Board is soliciting comments for a period of 30 days and considering requiring compliance with the regulation on the same date that the FRB amended regulations take effect, currently planned for October 1, 1987.

DATE: Comments must be received on or before March 9, 1987.

ADDRESS: Send comments to Director, Public Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Stephen D. Johnson, Attorney/Advisor, Division of Consumer and Civil Rights, Offices of Community Investment, (202-653-2692), Federal Home Loan Bank Board, 1700 G Street, NW. Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board is directed by Title IV of the National Housing Act, 12 U.S.C. 1724-30, to assure the sound and safe operation of institutions the accounts of which are insured by the FSLIC. Pursuant to that mandate, the Board is proposing revisions and clarifications to its regulations regarding the initial disclosures and subsequent notices that lenders must give to prospective borrowers and loan customers. The proposed revisions would implement a simple and uniform method of initial disclosures for ARMs developed in consultation with other financial regulatory agencies.

The popularity as widespread availability of a variety of ARMs are recent developments in home finance. ARMs proved to be great benefit to lenders and borrowers in the recent past when very high interest rates constricted the supply of funds for housing loans. Consumer awareness of ARMs has increased rapidly, but ARMs present borrowers with unfamiliar and complex options, including possible changes in terms, payments and amortization. Lenders have also gone through a learning and training effort, but not all lenders have completely mastered the skills required to develop and market successful ARMs. The Board has monitored complaints arising from incomplete or inaccurate understandings by both borrowers and lenders. Many customer complaints have been resolve by full explanation of the ARM to the customer. However, when this occurs after the making of the loan, both the lender and the borrower are already bound by the terms and conditions of the ARM—no longer is there much room for negotiation or choice of a different ARM.

Competitive and properly structured loan programs, prudent lending practices and informed borrowers and lenders provide the fundamental basis of modern lending, central to sound and safe operations by lenders. The Board, therefore, proposes to enhance the safety and soundness of insured institutions through these rule changes.

For several years the Board has been working with the other regulatory agencies in the FFIEC to develop a uniform set of disclosures for ARMs. In part, this effort arose from concern about the differing disclosure requirements imposed by the various federal agencies, since four federal agencies require that lenders subject to their regulations provide to borrowers four different kinds of disclosures. Under Regulation Z, (12 CFR 226) the FRB requires that a variable-rate feature be described briefly to consumers. In contrast, the regulations of other federal financial regulatory agenices and the Department of Housing and Urban Development ("HUD") call for more extensive, detailed information. The OCC mandates variable-rate disclosures for national banks and other lenders that seek to market their loans to national banks at 12 CFR Part 29. Under the "Alternative Mortgage Transaction Parity Act of 1982", Pub. L. No. 97-320, 96 Stat. 1545, *codified at* 12 U.S.C. 3801 *et seq.*, state-chartered institutions and other mortgage lenders may take advantage of federal authorization of ARMs by following the rules of the Board of the OCC (12 U.S.C. 3802). HUD prescribes disclosures for lenders wishing to participate in the Federal Housing Administration insurance program at 24 CFR Parts 203 and 234. The Board requires variable-rate disclosures for federally-chartered savings and loan associations and also for certain other lenders that wish to market their loans to federally-chartered savings and loans at 12 CFR 545.33 and for all insured institutions at 12 CFR 563.9–9.

The FFIEC and member agencies believe that the present regulatory structure is causing problems for both consumers and lenders. The ability of consumers to understand and make important decisions about ARMs before entering into these transactions may be hampered by their receipt of different information about ARM programs depending on which type of lender they have approached. This problem is exacerbated by the variety of ARM products now being offered as well as the complexity of some of these products. At the same time, regulatory requirements have proven burdensome to the mortgage industry, particularly when mortgage lenders must satisfy more than one regulation in order to take full advantage of the secondary market. Under certain circumstances, lenders who wish to originate mortgages for possible sale to either a federal savings and loan association or to national bank may have to make disclosures under both agencies' rules. Furthermore, it has been claimed that regulatory requirements have hampered the development of the secondary market for ARMs.

On April 17, 1985, the Board proposed to adopt a regulation requiring insured institutions to disclose in simple terms to certain applicants the general nature of the ARM device, including all of its significant features. See Board Res. No. 85–287, 50 FR 16094 (April 24, 1985). The Board's proposal also required lenders to distribute the ARMs Handbook published by the Board and the FRB, or a suitable substitute. The Board received 66 public comments in response to the proposed rule. Fifty-one comments were submitted by savings and loan associations. The great majority of commenters, whether in support or opposition, praised the regulatory goal of public disclosure and the concomitant spirit and intent of the proposed rule. The objections focused on a perceived lack of need for the proposed rule and problems associated with its implementation. The Board carefully reviewed all comments and determined to adopt the regulation substantially as proposed, with some modifications. The rule became 12 CFR 563.9–9, effective August 1, 1985.

Based on recommendations by the FFIEC and its own analysis, the FRB proposed in May 1985 to amend Regulation Z to provide more information to consumers about ARMs and to encourage uniform disclosures among the agencies. The FFIEC had two recommendations, which grew out of the work of a task force composed of representatives from HUD, the OCC, the FRB, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Board: (1) Consumers should be given information about ARMs before they submit a loan application or pay any fee; and (2) disclosures should include an explanation of the nature of ARMs, including an example of payment changes that would result in a creditor's ARM program assuming two percentage points index rate increases in each of the first three years of a mortgage.

On May 15, 1985, the FRB published a proposed amendment to Regulation Z incorporating the recommendations of the FFIEC and proposing to eliminate footnote 43 of Regulation Z that permits creditors to substitute the disclosures required by other federal agencies for the variable-rate disclosure required by Regulation Z. The FRB proposed that creditors make available to consumers information explaining ARMs and stated that the ARMs Handbook could be used by creditors to fulfill the requirement. The FRB further proposed that detailed, transaction-specific, disclosures be given to the consumer, including an example of the consumer's payment terms if the index rate increased two percentage points in each of the first three years.

The FRB received over 500 comments on its May 1985 proposal, many of them negative. About one-third of the commenters generally opposed the proposed rule because of the payment example required and the consequent potential increase in expense and burden to creditors. Futhermore, approximately one-half of the commenters addressed the proposal that the example of rate increases be transaction-specific. Nearly seventy percent of these commenters opposed the requirement, citing their concern about the anticipated high cost of preparing the transaction-specific disclosures. They also stated that these disclosures would be difficult to prepare within three days after the application. A majority of the commenters on the issue opposed the proposed example based on assumed two percentage points per year index rate increases for three years.

In August 1985, the FFIEC discussed the Board's rule change and the negative public comments received on the FRB's proposal, and recommended that its Consumer Compliance Task Force ("Task Force") develop a different approach to ARM disclosures. In October 1985, the Task Force recommended to the FFIEC that "generic" loan program disclosures be developed, but asked the FFIEC to decide whether the payment example should be based on an assumed two percentage points annual increase in index values. The ARMs disclosure proposal was discussed at three subsequent meetings of the FFIEC in late 1985 and in 1986. During that period, the federal financial agencies received letters from key members of Congress recommending that the disclosures show the borrower's maximum rate and payment exposure. On August 11, 1986, the FFIEC approved a proposal requiring that creditors provide two types of disclosures: (1) The *Consumer Handbook on Adjustable Rate Mortgages*, or a suitable substitute, and (2) disclosures that fully describe each of the creditor's ARM programs, with ultimately a fifteen-year historical example of how changes in the index or formula values used to compute interest rates would affect the interest rates and payments on a $10,000 home loan.

As recommended by the FFIEC, the Board is now proposing that ARM disclosures, including both the ARM brochure and the other detailed ARM information, be provided to prospective borrowers when an application form is furnished or before the payment of a non-refundable fee, whichever is earlier. This rule is consistent with the Board's current rule, 12 CFR 563.9–9(b), for distribution of the ARM brochure. This would permit creditors to provide the detailed generic disclosures to consumers as an insert or an attachment to the handbook when it is given. It also reflects the views of some of the commenters on the Board's and FRB's original proposals, who felt that ARM information should be provided to consumers as early as possible, particularly before payment of an application fee, in order for consumers to use the information for comparison shopping.

ARM disclosures would continue to be given to consumers earlier than the other Truth in Lending disclosures required by 12 CFR 226.17 (prior to consummation) and 12 CFR 226.19(a) (three days after a creditor's receipt of a written application).

The ARMs Handbook, developed by the FRB and the Board, may be used by creditors to fulfill the first requirement, if they choose. The new proposal would also permit creditors to provide a "suitable substitute" in place of the consumer handbook. Rather than the Board's evaluating whether an individual creditor's ARM brochure is a "suitable substitute," the regulation would require individual creditors to make good faith determination of whether a brochure is, in fact, a suitable substitute. The Board envisions that substitutes must be, at a minimum, comparable to the ARMs Handbook in substance, balance and comprehensiveness, recognizing that some lenders' brochures may contain more detailed descriptions of their particular ARM programs than are contained in the ARMs Handbook.

The remainder of the current proposal contains the revisions that would be made to the ARM disclosures currently required by 12 CFR 545.33(e) and (f) and 12 CFR 563.9–9. Like the FFIEC August 1986 recommendation, the Board proposal requires that detailed, specific information about all major aspects of an ARM feature be clearly disclosed to consumers. As discussed below, many of these disclosures are similar to those already required by Board regulations, but are being rewritten for uniformity and clarity.

Creditors would be required to identify the index to which interest rate changes are tied or provide a brief description of the formula used in calculating changes if no index is used. The proposal also would call for an explanation of how the interest rate will be determined—for example, by a statement that the interest rate will be based on a specific index plus a margin. Furthermore, creditors would be required to include a statement suggesting that consumers ask for the current margin value and interest rate. Creditors would also need to alert consumers about a discount feature when the initial rate is discounted.

As required now by the Board, the OCC, and the FRB, the frequency of interest rate and payment adjustments also would be disclosed, along with interest rate and payment caps. If no payment or rate caps exist, the disclosure would indicate conspicuously that there would be no limits on potential increases in payments or rates. If the presence of rate or payment caps would result in interest rate carryover or negative amortization, the disclosure statement would need to contain a statement about those features, as is now mandated in the OCC's disclosure rule.

Two proposed disclosures that were not contained in the FRB's original May 1985 proposal are: 1) The fact that a loan program contains a demand feature, if applicable; and 2) a statement reflecting what information will be contained in an adjustment notice and when such notice will be provided. Finally, creditors would be required to include a notice to consumers that disclosure forms are available for the creditor's other ARM loan programs.

The most significant change from the Board's current regulation and the FRB's May 1985 proposal is the type of example to be mandated in the ARM disclosures. The FRB's earlier proposal would have required creditors to show the effects of interest rate changes on the particular loan that the borrower was applying for. In contrast, the new proposal would provide for an example based on a $10,000 loan, as does the current OCC rule. As a result, the disclosures could be preprinted for each loan program and given to consumers with an ARMs Handbook. Creditors also would be required to include a statement on the disclosure from explaining to consumers how to calculate their actual monthly payment amount for a loan amount other than $10,000. The example based on $10,000 reflects the recommendation of the FFIEC, which is premised in part on the rationale that figures based on a $10,000 example provide information that consumers can use with minimal difficulty to calculate their actual monthly payments for a specific transaction. In addition to the effect on monthly payments, the example would need to reflect the effect of index rate changes on the outstanding loan balance as of the end of the year.

The May 1985 FRB proposal would have required that two examples be shown: one based on an assumed increase of 2 percentage points in the index rate in each of the first three years; and, one based on no changes in the index rate during the loan term. In contrast, the new proposal omits the example of no changes in index rates and would simply require that the example shown be based on the history of the specific index or formula to be used in the loan program. The index values used in the example will begin with the value for 1977 and be updated annually to add the values for each year from 1977 through 1986, and each year the value selected for one more year would be added until 1991. From that time forward, lenders would show a "rolling history" of index values, updated annually, for the preceding fifteen years.

The provision that the example be based on the historical performance of individual indices reflects the recommendation of the FFIEC and responds to Congressional concerns. This type of example also was recommended by some of the commenters on the FRB's earlier proposal. These commenters felt that the example based on assumed two percentage points increases for three years was too negative and, in fact, misleading to consumers when used for ARMs tied to stable indices, such as the cost of funds. Furthermore, some commenters asserted that consumers would be in a better position to compare ARM programs with an example based on the past performance of different actual indices, rather than an example based on arbitary assumed increases.

The payment and outstanding loan balance figures in the example would reflect all significant loan program terms. For example, features such as rate and payment caps, a discounted interest rate, negative amortization, and interest carryover would need to be taken into account by creditors in calculating the payment and outstanding balance figures. Because disclosures would be given early, creditors would need to assume a value for the margin in order to do the calculations for the example. Creditors could select a margin that they have used during the preceding six months and disclose on the form that the margin is one that they have used recently. The margin selected could be used until a creditor updates the disclosure form to reflect the most recent fifteen years of index values.

Another change from earlier proposals is the requirement that the maximum interest rate and payment be disclosed. These disclosures would be calculated based on a $10,000 loan that is originated at the most recent interest rate shown in the historical example, and would assume that the interest rate then increases as rapidly as possible under the program. Thus, in a loan with interest rate limitations, or "caps," of two percentage points per year, and five percentage points for the life of the loan, the maximum interest rate would be five percentage points higher than the most recent rate shown in the historical example. Furthermore, the loan would not reach the maximum interest rate increase until the third year of the loan because of the two percent annual limitations. Consequently, the maximum payment disclosed would reflect the amortization of the loan during that period. Statement of a maximum interest rate and payment would not be required if the loan contained no caps, although the disclosure would state conspicuously that there are no limits on potential increases in payments of rates.

The Board welcomes comments on this proposed rule.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small entities to which the proposed rule would apply.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, the proposed rule would apply to the 1,663 insured institutions that had assets totaling $100 million or less as of October 31, 1986.

3. *Impact of the proposed rule on small entities.* The proposal should not have a significant economic impact on small institutions. Small institutions as well as large ones will be using a new format for disclosure of information already being made with few new information categories. All institutions—including small ones—should benefit from improved safety and soundness and from greater ARM secondary market opportunities that will result from the proposal.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* In the above **SUPPLEMENTARY INFORMATION** the Board is soliciting comment on possible alternatives to the rule as proposed.

List of Subjects in 12 CFR Parts 545 and 563

Accounting, Bank deposit insurance, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, and Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 545, Subchapter C, Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. The authority citation for Part 545 is revised to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend § 545.33 by revising the introductory text of paragraph (e) to read as follows; by removing paragraph (e)(4) and redesignating paragraph (e)(5) as the new paragraph (e)(4); and by removing paragraph (f) redesignating paragraphs (g) and (h) as the new paragraphs (f) and (g) respectively.

§ 545.33 Home loans.

* * * * *

(e) *Adjustments.* For any home loan secured by borrower-occupied property, or property to be occupied by the borrower, adjustments to the interest rate, payment (s), balance, or term to maturity shall comply with the limitations and provisions of this paragraph (e). The disclosure and notice requirements of § 563.9–9 shall also be complied with.

* * * * *

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

3. The authority citation for Part 563 is revised to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

4. Section 563.9–9 is amended by revising the heading of the section to read as follows; by redesignating paragraph (a)(3) as the new paragraph (a)(4); by adding a new paragraph (a)(3) to read as follows; and by revising paragraphs (b), (c), and (d) to read as follows:

§ 563.9–9 Fixed-rate and adjustable-rate mortage loan disclosures and notices.

(a) * * *

(3) "Fixed-rate mortgage loan" means a loan, secured by property occupied or to be occupied by the borrower, on which the rate, term and the amount of the payments are fixed at the time of execution of the original loan documents. Fixed-rate mortgage loans may or may not be fully amortizing and include graduated payment loans on which the schedule of payment adjustments is fixed at the time of executing the original loan documents.

* * * * *

(b) *Disclosure.* Insured institutions shall disclose to each applicant for a home loan that is secured by property occupied or to be occupied by the borrower the information specified by this paragraph (b). These disclosures shall be provided for all such loans whether originated by the lender or purchased from an affiliate (as defined in § 583.15) or purchased from an unaffiliated entity as part of a business arrangement or agreement to purchase loans not yet originated. Disclosures must be delivered or placed in the mail not later than three business days following receipt of a consumer's written application when the application reaches the creditor through an intermediary agent or broker. Loans purchased from an unaffiliated entity in the usual course of business, and previously originated by the entity without guarantees, agreements or understandings that they would be purchased by the institution, may be purchased notwithstanding these disclosure requirements, provided that such loans comply with any other disclosure requirements, such as Truth in Lending, to which they may be subject. The disclosures shall be in one or more documents other than the loan documents and shall be in plain language. The purpose of these disclosure requirements is to provide a full understanding of the operations and consequences of the loan for which the borrower is applying. The disclosures do not constitute a commitment on the part of an institution to make a loan to the applicant.

(1) For all home loans secured by property occupied or to be occupied by the borrower on which the interest rate, balance, term and the amount of the payments are fixed, at a minimum an association shall provide, not later than three (3) business days following the receipt of a written application, the following information: (i) If the loan contract contains a due-on-sale clause, what rights the lender has under the clause.

(ii) If the loan contract authorizes the imposition of a late charge or a prepayment penalty, the amount of the charge or penalty or the manner in which it is to be determined. If the amount of the charge or penalty may vary over the term of the loan, the lender shall indicate the approximate minimum and maximum amounts that may be imposed for a loan of the same type and with an initial balance comparable to that of the borrower.

(iii) If the loan contract provides for escrow payments, a statement explaining the purpose of requiring escrow payments, how the amount of escrow payment is established, how the borrower will be notified of any deficiencies in the borrower's escrow account, how such deficiencies will be corrected, whether the borrower will have the option of correcting the deficiency with either pro-rated monthly payments or a lump-sum payment, and the rights of the association if the borrower fails to make the escrow payments.

(iv) In the case of non- or partially-amortized loans (including a loan giving the institution the right to call the loan due and payable after a period of time or upon the occurrence of an event external to the loan), a statement of what information will be contained in the notice of maturity, how far in advance notice of maturity will be provided, whether the institution has unconditionally obligated itself to refinance the loan or whether there will be a large payment due at maturity or upon call of the loan.

(v) A description of all contractural contingencies, including those arising from the borrower's breach or nonperformance of an obligation under the loan contract, under which the loan may become due or which may result in a forced sale of the home.

(2) In addition to providing the information required by paragraphs (b)(1) (i), (ii), (iii), (iv) and (v) of this section, institutions offering adjustable-rate home loans, secured by property occupied or to be occupied by the borrower, shall provide two types of disclosure to prospective borrowers when an application form is provided or before the payment of a non-refundable fee, whichever is earlier:

(i) The *Consumer Handbook on Adjustable Rate Mortgages*, prepared by the Federal Reserve Board and the Federal Home Loan Bank Board, or a suitable substitute, shall be provided.

(ii) A "loan program" disclosure (prepared for each adjustable-rate home loan program) containing the following information, *if applicable*, shall be provided: (A) The fact that the interest rate, payment or term can change.

(B) The index or formula to be used and a source of information about the index.

(C) How the interest rate and payment will be determined.

(D) A statement that the interest rate will be discounted.

(E) How the index is adjusted to determine the interest rate, *i.e.*, the margin, and a statement that the consumer should ask about the current margin value and current interest rate.

(F) The frequency of interest rate and payment changes.

(G) Any rules relating to changes in the index, interest rate, payment amount and outstanding loan balance (*e.g.*, interest rate or payment limitations, negative amortization and interest carryover).

(H) A statement of the maximum interest rate and payment amount under the program if a $10,000 loan had originated at the most recent interest rate shown in the hypothetical example in paragraph (b)(2)(ii)(J) of this section. The example should assume that the interest rate increases as rapidly as possible under the program.

(I) If there are no limitations on payment or interest rate increase, a conspicuous statement to that affect.

(J) A historical example, based on a $10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest rate changes implemented according to the terms of the loan program. The example shall be based on index values beginning in 1977 and be updated annually until a fifteen-year history is shown. Thereafter, the example shall reflect the most recent fifteen years of index values. The example shall reflect all significant loan program terms, such as negative amortization, interest rate carryover, interest rate discounts, and interest rate and payment limits, that are affected by the index movement during the period.

(K) An explanation of how to calculate consumer's payment amounts for loans based on multiples of $10,000, with an example using the most recent monthly payments shown in the hypothetical example in paragraph (b)(2)(ii)(J) of this section.

(L) That fact that a loan program contains a demand feature.

(M) What information will be contained in the required notice of adjustment and how far in advance such notice will be provided.

(N) A notice that disclosure forms are available on other ARM loan programs.

(c) *Notice.* An adjustment to the interest rate with or without a corresponding adjustment to the payment in an adjustable-rate mortgage loan is an event requiring new disclosure to the borrower. At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, or, if the loan documents provide for a payment change accompanying each interest adjustment, at least 30 but no more than 120 days before the effective date of each scheduled interest rate adjustment, the following disclosures shall be made by the insured institution to the borrower: (1) The current and prior interest rates.

(2) The index values upon which the current and prior interest rates are based.

(3) The extent to which the lender has foregone any increase in the interest rate.

(4) The contractural effects of the adjustment, including the payment due after the adjustment and the loan balance.

(5) The payment, if different from that referred to in paragraph (C)(4) of this section, that would be required to fully amortize the loan at the new interest rate over the remainder of the loan term.

(d) *Calls.* At least 90 but not more than 120 days prior to a "call" or expected maturity of a non- or partially-amortized loan, an insured institution shall give the borrower actual notice of the "call" or maturity.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87-2340 Filed 2-4-87; 8:45 am]

BILLING CODE 6720-01-M

---

12 CFR Part 563

[No. 87-114]

Regulation of Direct Investments by Insured Institutions

Dated: February 2, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of extension of comment period.

SUMMARY: This notice extends the comment period on a proposed amendment to 12 CFR 563.9-8 (Regulation of Direct Investment by Insured Institutions) to defer the expiration date of the regulation to January 1, 1989. Board Res. No. 86-962, 51 FR 32925 (September 17, 1986).

DATE: Comments must be received no later than 5:30 p.m. on February 13, 1987.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Christina M. Gattuso, Staff Attorney (202) 377-6649, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board at the above address.

SUPPLEMENTARY INFORMATION: On September 11, 1986, the Federal Home Loan Bank Board, ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation

("FSLIC"), adopted a proposed amendment ("September proposal") to its regulation governing investments by institutions the accounts of which are insured by the FSLIC ("insured institutions") in equity securities, real estate, service corporations, and operating subsidiaries ("direct investments"). The proposal, which was published for a 30-day comment period ending on October 17, 1986, would have deferred the expiration date of the regulation from January 1, 1987, to January 1, 1989.

On December 18, 1986, the Board adopted an interim final rule to defer the expiration date of the direct investment regulation to March 15, 1987, and voted to reopen the comment period on the September proposal through February 6, 1987. Board Res. No. 86–1260, 51 FR 47001 (December 30, 1986) and Board Res. No. 86–1291, 52 FR 80 (January 2, 1987).

One commenter requested that the Board extend the comment period on the September proposal for a two week period beyond February 6, 1987, in order for the commenter to complete several economic studies, currently in process, regarding the direct investment regulation. After considering the concerns raised by this commenter, the Board has determined to extend the comment period on the September proposal through February 13, 1987. The Board believes that extension of the comment period for one week will allow commenters and the Board's staff additional time in which to complete economic studies on the direct investment regulation.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87–2450 Filed 2–4–87; 8:45 am]

BILLING CODE 6720-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-10-FRL-3151-7]

Approval and Promulgation of State Implementation Plan; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this notice EPA Invites public comment on its proposal to approve in part, and disapprove in part, the State of Oregon rules for conflict of interest of state boards. These rules were submitted to EPA on May 31, 1986 as revisions to the Oregon State Implementation Plan (SIP). The submitted rules satisfy the requirements of section 128 (State Boards) of the Clean Air Act (hereinafter the Act) with respect to the Department of Environmental Quality (DEQ) and the Environmental Quality Commission (EQC), but fail to satisfy the requirements with respect to the Lane Regional Air Pollution Authority (LRAPA) which issues permits and enforcement orders under the Act.

DATE: Comments must be postmarked on or before March 9, 1987.

ADDRESSES: Comments should be addressed to:

Laurie M. Kral, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A–86–9), Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

State of Oregon, Department of Environmental Quality, Executive Building, 811 SW. 6th Avenue, Portland, OR 97204.

FOR FURTHER INFORMATION CONTACT:

David C. Bray, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–4253, FTS: 399–4253.

SUPPLEMENTARY INFORMATION:

I. Background

The August 7, 1977, amendments to the Clean Air Act included a new Section 128 "STATE BOARDS," which required each SIP to contain certain provisions by August 7, 1978. These provisions must require that (1) any board or body which approves permits or enforcement orders under the Act shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the Act, and (2) any potential conflicts of interest by members of such board or body, or the head of executive agency with similar powers, be adequately disclosed.

On October 24, 1978, the Oregon Department of Environmental Quality (DEQ) submitted new rules, specifically, Oregon Administrative Rules (OAR) Division 20, sections 200 through 215, as a revision to the Oregon SIP in order to satisfy the requirements of section 128 of the Act. These rules were subsequently returned to the DEQ without action by EPA because of inadequate public notice for the DEQ's public hearing.

On February 5, 1986, the Oregon Environmental Council (OEC) notified the administrator of EPA of their intent to commence a civil action for failure to comply with an alleged non-discretionary duty under the Act. On May 8, 1986, the OEC and Kathy Williams, a private citizen, filed suit in the United States District Court for the District of Oregon, alleging that EPA failed to approve or disapprove the 1978 SIP submittal within 4 months, and that EPA failed to promulgate federal rules to implement section 128 of the Act in Oregon.

On April 25, 1986, the Environmental Quality Commission (EQC) adopted a complete consolidated SIP which included conflict of interest rules for state boards. On May 30, 1986, the DEQ submitted these rules (along with the consolidated SIP) to EPA as a revision to the Oregon SIP.

On September 15, 1986, EPA entered into a settlement agreement and consent decree with the OEC et al., for resolution of the civil suit. Specifically, EPA agreed to take expeditious action on the May 30, 1986, SIP submittal by proposing approval, disapproval or other final action on the submittal on or before February 1, 1987, and by taking final action on or before July 1, 1987.

II. Discussion

The "Conflict of Interest" rules submitted by the DEQ on May 30, 1986, specifically OAR 340–20–200 through 215, apply only to the EQC and the Director of the DEQ. EPA has found that these rules satisfy the requirements of section 128 of the Act for the EQC and the Director of the DEQ, and is therefore proposing to approve this submittal as a revision to the Oregon SIP, as they apply to the EQC and DEQ.

In order to determine whether there were any other boards or bodies in Oregon which issued permits or enforcement orders under the Act, EPA requested the State of Oregon Attorney General to review the State's air pollution program and identify each board or body which implemented any provision of the SIP. The Oregon Attorney General's opinion is included in the docket for this rulemaking and is available for review at the locations listed in the **ADDRESSES** section.

Based on the Oregon Attorney General's opinion, EPA finds that there is one other board or body in Oregon which issues permits and enforcement orders under the Act, as contemplated by section 128. Specifically, the Lane

Regional Air Pollution Authority (LRAPA) and its Board of Directors, have been approved by EPA to run an air pollution program in Lane County, Oregon. This program includes issuing permits to sources and enforcing emission limitations under the Act. Since neither the current SIP nor the May 30, 1986, SIP submittal, contains Sections 128 provisions for the LRAPA and its Board of Directors, EPA finds the SIP to be deficient with respect to LRAPA and its Board of Directors. Hence, EPA is proposing to disapprove the Oregon SIP for failing to contain provisions satisfying section 128 for the LRAPA and its Board of Directors.

There are also other boards and bodies in Oregon which carry out portions of the approved SIP. However, these boards or bodies do not issue permits or enforcement orders as contemplated by section 128. The Act, and thus section 128, contemplates enforcement orders issued under section 113(d), section 119, and section 167. Enforcement orders other than these are not affected by the requirements of section 128. The boards and bodies, other than the DEQ, EQC, and LRAPA, do not issue enforcement orders under sections 113(d), 119, or 167 of the Act. Also, the Act, under section 110(a)(2)(D), contemplates certain programs explicitly intended to be implemented through permits, namely the new source review, the prevention of significantly deterioration, and the stationary source permit programs. The boards or bodies, other than the DEQ, EQC, and LRAPA, do not issue permits under these programs. These other boards may issue what they refer to as "permits," but they are simply mechanisms for implementing certain SIP control programs. These so-called "permits" are still federally enforceable since they are derived from the SIP, but they are not permits as explicitly set forth in the Act, and consequently, as envisioned by section 128. Therefore, EPA finds that the SIP is not required to contain section 128 provisions for these boards and bodies. EPA's review of these boards and bodies, and its analysis of each, is included in the docket on this rulemaking and is available for review at the locations listed in the **ADDRESSES** section.

Finally, a specific concern was raised with respect to the Oregon Board of Forestry and the control of prescribed burning of forestry residues (or slash burning). EPA finds that slash burning permits are not the type of permit contemplated in the Act as being affected by section 128. They may be referred to as "permits" but do not fall into any of the specific categories described earlier as set forth in the Act. Instead, the slash burning program is basically a control measure which the State has chosen to implement through a permit system. Furthermore, the Oregon Attorney General found that the Board of Forestry has no involvement in the permitting and enforcement of the State's air pollution regulations for prescribed forestry burning. Rather, the Oregon Department of Forestry and the State Forester have jurisdiction over this activity. Since the Board of Forestry has not authority under State law to issue permits or enforcement orders regarding prescribed forestry burning, and in light of EPA's decision that slash burning permits are not affected by section 128, EPA finds that Section 128 provisions are not required for the Board of Forestry.

III. Summary of Action

In summary, EPA is today proposing to approve OAR 340–20–200 through 215, as it applies to the DEQ and EQC, as revisions to the Oregon SIP satisfying the requirements of section 128 of the Act. However, EPA is proposing to disapprove the Oregon SIP for failure to meet the requirements of section 128 with respect to (and only with respect to) the LRAPA and its Board of Directors.

Interested parties are invited to comment on all aspects of this proposed approval and disapproval of revisions to the Oregon SIP. Comments should be submitted in triplicate to the address listed in the front of this Notice. Public comments postmarked by March 9, 1987, will be considered in any final action EPA takes on this proposal.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709). The proposed disapproval involves only administrative procedures and will not have a significant economic impact on a substantial number of small entities.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and Recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: December 31, 1986.

Robie G. Russell,

Regional Administrator.

[FR Doc. 87–2424 Filed 2–4–87; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201–8

Implementation of Federal Information Processing Standards (FIPS) and a Federal Telecommunications Standard (FED–STD) in the Federal Information Resources Management Regulation (FIRMR)

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed final regulation updates FIRMR provisions by implementing four Federal Information Processing Standards (FIPS) and one Federal Telecommunications Standard (FED–STD) to provide associated standard terminology that shall be used in requirements documents, including solicitations, as applicable. FIPS PUBS 120, 121, 123, 125, and FED–STD 1005A are added to the FIRMR. The intended effect of this regulation is to enhance economy and efficiency in the acquisition of automatic data processing/telecommunications equipment and services.

DATE: Comments are due: April 6, 1987.

ADDRESS: Comments should be submitted to the General Services Administration (KMPR), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mary B. Anderson, Regulations Branch (KMPR), Information Resources Management Service, telephone (202) 566–0194 or FTS, 566–0194. The full text of the proposed rule is available upon request.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or no net cost effect on society. The proposed rule is therefore not likely to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Chapter 201–8

Computer technology, Telecommunications, Information resources activities, Standards for information resources.

Dated: December 31, 1986.

Francis A. McDonough,

Deputy Commissioner for Federal Information Resources Management.

[FR Doc. 87-2306 Filed 2-4-87; 8:45 am]

BILLING CODE 6820-25-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[CC Docket No. 83-1376; Rm 4436]

Interstate Telecommunications Services, Alaska et al.

AGENCY: Federal Communications Commission.

ACTION: Order extending time.

SUMMARY: The order extends the time for filing opposition and reply comments before the Federal-State Joint Board in CC Docket No. 83–1376, *Integration of Rates and Services,* to provide for better sequencing of comments in interrelated proceedings. The Joint Board is considering the interrelationships between rate integration and competition in developing a recommended market structure and cost support mechanism for Alaska interstate telecommunications.

DATES: Opposition comments may be filed on, or before, February 27, 1987. Reply comments may be filed on, or before, March 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Douglas Slotten, Common Carrier Bureau, Policy and Program Planning Division, 202–632–9342.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking initiating this docket is reported at Integration of Rates and Services, 50 FR 41714 (Oct. 15, 1985). The Order inviting interested persons to file comments is reported at *Integration of Rates and Services,* 51 FR 17756 (May 15, 1986).

Memorandum Opinion and Order

Adopted: January 15, 1987.

Released: January 20, 1987.

By the Chief, Common Carrier Bureau.

In the matter of Integration of rates and services for the provision of communications by authorized common carriers between the contiguous states and Alaska, Hawaii, Puerto Rico and the Virgin Islands; CC Docket No. 83–1376, RM 4436.

1. On January 8, 1987, the Alaska Telephone Association (ATA) filed a motion requesting an extension of time for filing further comments before this Federal-State Joint Board (Alaska Joint Board) in the rulemaking phase of this proceeding. ATA requests that the due date for opposition comments be extended from January 20, 1987, to a minimum of thirty days following the release of a related recommended decision of the Federal-State Joint Board in CC Docket No. 80–286 (Docket 80–286 Joint Board).

2. In support of its request, ATA submits that the Docket 80-286 Joint Board is expected to consider several proposals for modifying the separations procedures in the near future. It submits that its members are participating in that docket as well as in this one. ATA submits that to provide reasoned and informed comments to the Alaska Joint Board, it is essential that ATA have sufficient time to evaluate the potential impact of any recommendation of that Joint Board before filing its comments with the Alaska Joint Board.

3. ATA's concern with the proper sequencing of comments is well taken. The Docket 80–286 Joint Board has before it proposals on the allocation of category 6 and 8 plant that could affect the range or nature of the arguments that a party may desire to present to the Alaska Joint Board. In particular, decisions on the category 6 and 8 issues affect the evaluation of the procedures that may be necessary to implement any cost support mechanism that may be proposed by any party. Accordingly, we conclude that the comment dates should be modified to permit parties in this proceeding to consider any related decisions that may be taken by the Docket 80–286 Joint Board before they must file further comments in this proceeding. However, thirty days from the release of any related recommended decision of that Joint Board is too lengthy a deferral. The essence of the information needed by commenting parties in the Alaska Joint Board should be available at the time of a public meeting on those issues. Therefore, because we hope the Joint Board will be able to address these issues in the near future, we find that February 27 and March 27, 1987, will allow adequate time for the parties to prepare their opposition comments and reply comments in the rulemaking phase of this proceeding, respectively.

4. *Accordingly, It Is Ordered,* pursuant to sections 1, 4 (i) and (j), 201–205, 221, and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i) and (j), 201–205, 221, and 410(c), that the request of the Alaska Telephone Association *Is Granted* to the extent indicated.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 87-2385 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 69

[CC Docket No. 87-2]

Amendment and Clarification Rules Governing the National Exchange Carrier Association

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission requests comment on proposed additions to its rules that would govern the allocation and reporting of the administrative expenses of the National Exchange Carrier Association. At present, the rules do not allocate NECA's administrative expenses or specify a reporting format.

DATES: Comments may be filed on or before February 25, 1987. Reply comments may be filed on or before April 22, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kent Nilsson, Policy and Program Planning Division, Common Carrier Bureau. (202) 632–6363.

SUPPLEMENTARY INFORMATION: This notice contains a summary of the Commission's Notice of Proposed Rulemaking In the Matter of Amendment and Clarification of Part 69 Rules Governing the National Exchange Carrier Association, CC Docket No. 87–2 (FCC 87–19), adopted January 6, 1987, and released January 16, 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 full text of this decision also may be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, NW., Washington, DC 20037. The telehone number of the International Transcription Service is (202) 857–3800. It is certified that the requirements that are contained in the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to the rules that may result from this proceeding. NECA is not the type of small, non-dominant entity that is described in 5 U.S.C. 601, and 5 U.S.C. 601(2) specifically excludes rulemaking proceedings of this type. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements that are applicable to the public. However, NECA may be required to classify, retain, and report additional information incident to its specific obligations under the Commission's rules.

Summary of Notice of Proposed Rulemaking in CC Docket 87-2

1. In ruling on a petition that was filed by six state public utility commissions, the Commission released an order on January 16, 1987 that instituted a rulemaking into the allocation and reporting of the administrative expenses of the National Exchange Carrier Association ("NECA"). In instituting this proceeding, the Commission noted that because NECA's administrative expenses had been included in common line revenue requirements and disbursements, the Commission's recent decision to permit NECA to administer a voluntary pool for deregulated billing and collection purposes required that "those NECA expenses and any other future expenses that are not associated with interstate access" be apportioned to "a non-access category in order to assure that such expenses are not reflected in access charges."

2. In addition, the Commission stated:

> We have also tentatively decided that our cost apportionment rules should be revised to provide a more precise apportionment of the NECA expenses that are associated with interstate access charges. The present rules assign all of these expenses to the common line elements, including expenses related to the preparation of NECA tariffs for other elements and the administration of the voluntary "traffic sensitive" pool. We believe these latter expenses should be reflected in the NECA charges for those elements. Similarly . . . we have tentatively concluded that the cost of NECA participation in proceedings other than investigations or preinvestigation review of NECA tariffs, court proceedings related thereto, or matters that relate to Subpart G of Part 69 of our rules, should also be assigned to a non-access category. Such non-access category expenses would not be paid through access charge revenues . . . We also propose to require that NECA provide in each tariff filing a more detailed accounting of the expenditures that it has made, and that it anticipates making during the following test year, with respect to its activities under Part 69 of our rules. We request specific proposals as to the form that this rule should take.

3. As a matter of first impression, the Commission proposed adding to § 69.603 of its rules the subsections that are contained at the conclusion of this notice. Persons wishing to file comments or reply comments should conform to the requirements of §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, and should state in the caption of each comment and reply comment that the filing is being made in CC Docket No. 87-2.

4. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that ex parte contacts are permitted from the time the Commission adopts a Notice of Proposed Rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an ex parte presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written ex parte presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral ex parte presentation addressing matters not fully covered in any previously-filed written comments in the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each ex parte presentation described above must state on its fact the Secretary has been served, and must also state by docket number the proceeding to which it relates.

Ordering Clauses

5. *Accordingly, it is ordered*, pursuant to sections 1, 4(i) through (j), 201-202, and 403 of the Communications Act of 1934, as amended, that the petition is granted to the extent stated herein, and is otherwise denied.

6. *It is further ordered* pursuant to sections 1, 4(i) through (j), 201-202, 205, and 403 of the Communications Act of 1934, as amended, that a notice of proposed rulemaking is instituted to amend Part 69 of the Commission's rules to conform to this Order.

List of Subjects in 47 CFR Part 69

Access charges, National Exchange Carrier Association.

It is proposed that Part 69 of Title 47 of the Code of Federal Regulations be amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 201, 202, 203, 205, 218, 403.

2. Section 69.603 is amended by adding paragraphs (c) and (d) to read as follows:

§ 69.603 Association functions.

* * * * *

(c) The Association shall divide the expenses of its operations into two categories. The first category ("Category I Expenses") shall consist of those expenses that are associated with the preparation, defense, and modification of Association tariffs, those expenses that are associated with the administration of pooled receipts and distributions of exchange carrier revenues resulting from Association tariffs, and those expenses that pertain to Commission proceedings involving Subpart G of Part 69 of the Commission's rules. The second category ("Category II Expenses") shall consist of all other Association expenses. Category I Expenses shall be sub-divided into two components: (1) common line ("Category I.A. Expenses"); and (2) other expenses ("Category I.B. Expenses"). Category I.A. Expenses shall consist of all Category I Expenses that relate to the preparation, defense, and modification of common line tariffs, those expenses that relate to the distribution of revenues that are received pursuant to those tariffs, and those expenses that are associated with Commission proceedings that relate to Subpart G of Part 69 of our rules. Category I.B. Expenses shall consist of all other Category I Expenses.

(d)(1) The revenue requirement for Association tariffs filed pursuant to § 69.4(a) and (b)(2) shall include no Association expenses other than Category I.A. Expenses.

(2) The revenue requirement for Association tariffs filed pursuant to § 69.4(b)(1), (3) through (9) shall include no Association expenses other than Category I.B. Expenses.

(3) No distribution to an exchange carrier of revenues from Association common line tariffs shall include

adjustments for Association expenses other than Category I.A. Expenses.

(4) No distribution to an exchange carrier of revenues from Association tariffs other than common line tariffs shall include adjustments for Association expenses other than Category I.B. Expenses.

(5) In the cost support materials for each tariff filing that is made pursuant to Part 69 of the Commission's rules, the Association shall separately identify and provide all Category I.A. and Category I.B. expenses for the twelve calendar months preceding the tariff filing and those Category I.A. and I.B. expenses that are forecast for the twelve calendar months subsequent to the month preceding the month in which the tariff is made.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 87-2386 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-492, RM-5390]

Radio Broadcasting Services; Siloam Springs, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document comments on a petition by John Brown University seeking the substitution of Channel 266A for noncommercial educational Channel *212A and modification of its license accordingly.

DATES: Comments must be filed on or before March 23, 1987, and reply comments on or before April 7, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Marvin R. Rosenberg and Frank R. Jazzo, Esqs., Fletcher, Head & Hildreth, 1225 Connecticut Ave., NW., Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-492, adopted December 5, 1986, and released January 21, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte contact.*

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau

[FR Doc. 87-2388 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-489, RM-5460, RM-5490]

Radio Broadcasting Services; Canton, Farmington, and Pekin, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately filed petitions. The first, submitted by Metrocom Communications corporation, Inc., permittee of Station WBOD-FM, Canton, Illinois, proposes to substitute Channel 247B1 for Channel 265A and to modify its Class A construction permit accordingly. The second petition, filed by Petaz Communications, Inc., licensee of Station WGLO(FM), Pekin, Illinois, proposes to modify its Class A license to a Class B1 facility by substituting Channel 238B1 for Channel 237A at Pekin. Petitioner also requests substitution of channel 247B1 for unused Channel 239A at Farmington, Illinois, to accommodate its proposal. Interested parties are requested to submit gain area showings for their respective proposals.

DATES: Comments must be submitted on or before March 24, 1987, and reply comments on or before April 8, 1987.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard J. Hayes, Jr. 1359 Black Meadow Road, Spotsylvania, Virginia 22553 (Counsel for Metrocom Communications Corporation, Inc.); John F. Garziglia, Pepper and Corazzini, 200 Montgomery Building, 1776 K Street, NW., Washington, 20006 (Counsel for Petaz Communications, Inc.)

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-489 adopted December 16, 1986 and released January 28, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Mass Media Bureau.

[FR Doc. 87-2389 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-491, RM-5396, RM-5557]

Radio Broadcasting Services; St. James and Blue Earth, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separate conflicting petitions for rule making. The first petition, filed by Rogers Broadcasting, Inc., proposes the substitution of FM Channel 283C2 for Channel 285A at St. James, Minnesota, and modification of the license of Station KXAX, to specify operation on Channel 283C2. The second petition, filed by Minn-Iowa Christian Broadcasting Inc., requests the substitution of Channel 283C2 for Channel 265A at Blue Earth, Minnesota, and modification of its license for Station KJLY(FM), to reflect the Class C2 channel. The allotment could provide either community with its first wide area coverage channel. There is a site restriction 29.5 kilometers south of St. James, Minnesota, for the allocation of Channel 283C2 at that community. In comments, parties should compare the gain area provided by each proposal including the population and area with expanded service.

DATES: Comments must be filed on or before March 23, 1987. and reply comments on or before April 7, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Rogers Broadcasting, Inc., Station KXAX, P.O. Box 465, St. James, Minnesota 56081; Mark E. Fields, Miller & Fields, P.C. P.O. Box 33003, Washington, DC 20033 (Counsel for Station KXAX); and Susan Wing, Marissa G. Repp, Hogan & Hartson, 815 Connecticut Ave., NW., Washington, DC 20006-4072 (Counsel for Minn-Iowa Christian Broadcasting, Inc.)

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-491, adopted December 5, 1986, and released January 21, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedngs, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filling procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2391 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-202; RM-5266]

Radio Broadcasting Services; Penacook, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of petition.

SUMMARY: This document denies the request of Harvest Broadcasting Services to allocate Ch. 227A to Penacook, New Hampshire, upon a finding that the area is not a "community" for allotment purposes. With this action, this proceeding is terminated.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-202, adopted December 5, 1986, and released January 22, 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 Transportation Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2370 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-07-M

47 CFR Part 73

[MM Docket No. 86-514, RM-5571]

Radio Broadcasting Services; Jackson, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes the allocation of Channel 258A to Jackson, NH, as the community's first local FM service, at the request of Michael J. Osborne. Channel 258A can be allocated in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Canadian concurrence is required since Jackson is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before March 27, 1987, and reply comments on or before April 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Michael J. Osborne, 6 Rice Street, Natick, Massachusetts 01760 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-514, adopted December 24, 1986, and released January 26, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2392 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-515, RM-5539]

Radio Broadcasting Services; Perry, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by The Andover Corporation to allocate Channel 286A to Perry, Oklahoma, as the community's first local FM service. The channel can be allocated in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.5 kilometers (2.2 miles) southwest to avoid a short-spacing to Station KXLK, Channel 287, Haysville, Kansas.

DATES: Comments must be filed on or before March 27, 1987, and reply comments on or before April 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: B. Jay Baraff, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., Suite 203, Washington, DC 20036 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-515, adopted December 24, 1986, and released January 26, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2393 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-512, RM-5563]

Radio Broadcasting Services; Monterey, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by First Media of Monterey Inc., proposing the substitution of Channel 295C2 for Channel 296A at Monterey, Tennessee, and modification of the permit of Station WRJT(FM), Monterey, to specify operation on Channel 295C2, as that community's first wide coverage area FM service.

DATES: Comments must be filed on or before March 27, 1987, and reply comments on or before April 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Kirk Tollett, Vice-President, First Media of Monterey Inc., WRJT Building, P.O. Box 187, Monterey, TN 38574.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-512, adopted December, 24, 1986 and released January 26, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-2394 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-234; RM-5263]

Radio Broadcasting Services; Del Rio, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by Forum Broadcasting, Inc., proposing the substitution of Channel 234C2 for Channel 232A at Del Rio, Texas and modification of the license of Station KLKE (FM), Channel 232A to specify operation on the new channel. This action is taken at the request of the petitioner. The counterproposal filed by Elena Mendoza requesting Channel 234C2 for allotment to Brackettville, Texas is denied. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-234, adopted December 24, 1986, and released January 26, 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.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2395 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-486, RM-5536]

Radio Broadcasting Services; Delta, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Glen S. Gardner proposing the allotment of Channel 239C1 to Delta, UT, as that community's first FM service. A site restriction of 11.7 kilometers (7.3 miles) south of the community is required.

DATES: Comments must be filed on or before March 24, 1987, and reply comments on or before April 8, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Glenn S. Gardner, c/o Vir James P.C., Broadcast Engineering Consultants, 3137 W. Kentucky Avenue, Denver, Co. 80219; and Glen S. Gardner, 781 N. Valley View Dr. #28, St. George, Utah 84770.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-486 adopted December 16, 1986 and released January 28, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2396 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[Docket No. 86-490, RM-5517]

Radio Broadcasting Services; Sauk City, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Madison Radio, Ltd., licensee of Station WSEY(FM), Channel 244A, Sauk City, Wisconsin, proposing the substitution of Channel 242B1 for Channel 244A and modification of its license to specify the new channel. The proposal could provide a first wide area coverage station at Sauk City.

DATES: Comments must be filed on or before March 23, 1987, and reply comments on or before April 7, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Dan Dobrowolski, General Manager Madison Radio, Ltd., P. O. Box 566, Middleton, WI 53562 (petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawling, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rules Making, MM Docket No. 86-490, adopted December 16, 1986 and released January 21, 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, MW., 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2397 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-101; RM-5114; RM-5455]

Television Broadcasting Services; Anniston, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: Proposals to assign VHF television Channel 4 to Anniston, Alabama, in response to separate petitions filed by Contemporary Communications and Jacksonville State

University, are denied for failure to provide city grade coverage as required by § 73–685(a) of the Commission's Rules. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–101, adopted December 5, 1986 and released January 26, 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.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2398 Filed 2–4–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-493, RM-5525]

Television Broadcasting Services; Anchorage and Seward, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by the University of Alaska seeking the reassignment of VHF television Channel 9 from Seward to Anchorage, Alaska, and the reservation of the channel for noncommercial educational use.

DATES: Comments must be filed on or before March 23, 1987, and reply comments on or before April 7, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Joseph A. Godles, Esq., Goldberg & Spector, 1229–19th Street NW., Washington, DC 20036. (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–493, adopted December 10, 1986, and released January 22, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–2399 Filed 2–4–87; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 52, No. 24
Thursday, February 5, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Documentation of Categorical Exclusion; Wild and Scenic River Boundary Adjustment, Middle Fork of the Feather River, Plumas National Forest

A boundary adjustment in the Middle Fork of the Feather Wild and Scenic River will allow a land sale under the small Tracts Act to resolve an innocent trespass. The boundary adjustment will remove 5 acres from the Recreation Zone of the Wild and Scenic River. This parcel is adjacent to a residential subdivision and has been innocently encroached upon by subdivision lot owners because of an erroneous private survey.

This action will become final upon publication in the **Federal Register.**

The **Federal Register,** Volume 45, No. 135, Friday July 11, 1980, page 46835, is corrected and amended as follows:

River Area Discription, Mount Diablo Meridian, California T.22N., R.13E., M.D.M

Section 10: Delete entire present description; insert the following:

Section 10: NW1/4, W1/2SW1/4: Excepting Therefrom, the E1/2E1/2E1/2E1/2E1/2NW1/4.

For further information, contact: Regional Forester, Pacific Southwest Region, 630 Sansome Street, San Francisco, California 94111.

R.E. Greffenius,

Acting Regional Forester.

[FR Doc. 87-2314 Filed 2-4-87; 8:45 am]

BILLING CODE 3410-11-M

Environmental Statements; Tonto National Forest, Maricopa County, AZ; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will publish an environmental impact statement for a proposal to permit the construction of a new County highway connecting the northeast portion of Scottsdale, Arizona with State Highway 87. The Forest Service will be the lead agency. The consulting firm of Dames and Moore will prepare the statement. However, the Forest Service will furnish guidance and participate in the preparation of the statement, independently evaluate the statement prior to its approval, and take responsibility for the scope and content of the statement.

The Tonto National Forest Land and Resource Management Plan has been approved and implemented. One of the management decisions in the plan was to study the proposed extension of Rio Verde Drive across the Tonto National Forest to State Highway 87.

A range of alternative locations for construction of a new highway will be considered. Extension of Rio Verde Drive across the Tonto National Forest will require examining the effects on the Tonto National Forest Plan. A Plan Amendment may be required.

Federal, State, and local agencies; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process.

This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

Public meetings for identification of potential issues will be held locally during the spring of 1987. The exact time and locations will be published in advance.

Sotero Muniz, Regional Forester, Southwest Region, Albuquerque, New Mexico, is the responsible Official.

The analysis is expected to take about 20 months. The draft environmental statement should be available for public review by March 1, 1988. The final environmental impact statement is scheduled to be completed by October 15, 1988.

Written comments and suggestions concerning the analysis should be sent to James L. Kimball, Forest Supervisor, Tonto National Forest, P.O. Box 5348, Phoenix, Arizona 85010, by March 16, 1987.

Questions about the proposed action and environmental impact statement should be directed to Larry Soehlig, Lands Staff Officer, Tonto National Forest, phone (602) 225-5270.

Dated: January 28, 1987.

James L. Kimball,

Forest Supervisor.

[FR Doc. 87-2322 Filed 2-4-87; 8:45 am]

BILLING CODE 3410-11-M

Florida National Scenic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Florida National Scenic Trial Advisory Council will be held at 9:00 a.m. on Saturday, February 28, 1987, at the Avon Park Air Force Range, ten miles east of Avon Park, Florida.

The purpose of the Florida National Scenic Trail Advisory Council is to advise the Secretary of Agriculture on all matters of planning, management and development of the Florida National Scenic Trail. The agenda will include discussion of management organizational strategies to implement the Florida National Scenic Trail Comprehensive Plan.

The meeting will be open to the public; however, facilities and space for accommodating the public are limited. Any member of the public may file with the Council a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Laurence G. Kolk, Recreation Staff Officer, USDA-Forest Service, National Forest in Florida, 227 North Bronough Street, Tallahassee, Florida 32301, Telephone 904/681-7265. Minutes of the meeting will be available for public inspection at the above address approximately four weeks after the meeting.

Issued in Tallahassee, Florida, on January 29, 1987.

T.F. Thomas, Jr.,

Acting Forest Supervisor.

[FR Doc. 87-2311 Filed 2-4-87; 8:45 am]

BILLING CODE 3410-11-M

Domestic Livestock Grazing Fees

AGENCY: Forest Service, USDA.

ACTION: Notice of 1987 grazing fees.

SUMMARY: The fee for grazing livestock on certain specified National Forest System lands in the 16 contiguous Western States will be $1.35 per animal month for the 1987 grazing year.

EFFECTIVE DATE: March 1, 1987.

FOR FURTHER INFORMATION CONTACT: Robert M. Williamson, Director, Range Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20013-6090, (703) 235-8139.

SUPPLEMENTARY INFORMATION: Grazing fees for the use of the National Forests and Land Utilization Projects in the 16 Western States, and the Crooked River and Curlew National Grasslands are established and collected annually by the Forest Service under the authority of the Organic Act of June 4, 1897, (16 U.S.C. 473-475, 477-482, 551), the Bankhead-Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010-1012), and Executive Order 12548 of February 14, 1986. The 16 contiguous Western States are Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. The agency will issue bills to permittees in accordance with the rate prescribed in this notice.

In giving this notice, the Forest Service also wants to inform the public, and grazing permittees in particular, that the legality of the fee formula under which the 1987 grazing fee is calculated is being challenged in an action pending in the United States District Court for the Eastern District of California, *Natural Resources Defense Council, et al.* v. *Donald P. Hodel as Secretary of the United States Department of the Interior and Richard E. Lyng as Secretary of the United States Department of Agriculture*, Civ. No. CIV-S-86-0548 EJG EM. Should disposition of this litigation require change in the fee formula or in rates for the 1987 grazing year, the Forest Service will give timely notice of such changes in the **Federal Register**.

Dated: January 29, 1987.

F. Dale Robertson,

Associate Chief.

January 29, 1987.

[FR Doc. 87-2339 Filed 2-4-87; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Environmental Statements; Central Regional Critical Area Treatment (CAT) RC&D Measure, New Jersey

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Central Regional Critical Area Treatment (CAT) RC&D Measure, Ocean County, New Jersey.

FOR FURTHER INFORMATION CONTACT: Joseph C. Branco, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873, telephone (201) 246-1662.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Joseph C. Branco, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns are critical erosion on school property and safety. The planned works of improvement include the construction of a diversion, 2 pipe outlet drop structures, timber and gravel walkway, gravel access road, grading and revegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Joseph C. Branco.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local official)

Dated: January 28, 1987.

Joseph C. Branco,

State Conservationist.

[FR Doc. 87-2313 Filed 2-4-87; 8:45 am]

BILLING CODE 3410-16-M

Wills Creek Watershed, OH; Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Wills Creek Watershed, Guernsey, Belmont, Noble, and Muskingum Counties, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, 200 North High Street, Columbus, Ohio, 43215, telephone 614-469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control. The planned works of improvement include 0.89 miles of diking, a flood warning system, and 0.93 miles of channel modification.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administration action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: January 27, 1987.
Harry W. Oneth,
State Conservationist.
[FR Doc. 87-2413 Filed 2-4-87; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-423-603]

Preliminary Affirmative Countervailing Duty Determination; Industrial Phosphoric Acid From Belgium

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Belgium of industrial phosphoric acid. The estimated net subsidy is 0.65 percent *ad valorem*. In addition, we preliminarily determine that "critical circumstances" do not exist in this case.

We have notified the U.S. International Trade Commission (ITC) of our determinations. We are directing the U.S. Customs Service to suspend liquidation of all entries of industrial phosphoric acid from Belgium that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond or entries of this product in an amount equal to the estimated net subsidy as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by April 14, 1987.

EFFECTIVE DATE: February 5, 1987.

FOR FURTHER INFORMATION CONTACT: Alain Letort of Mark Linscott, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202/377-0186 (Letort) or 202/377-1174 (Linscott).

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters of industrial phosphoric acid in Belgium. For purposes of this investigation, the following programs are found to confer subsidies to manufacturers, producers, or exporters of industrial phosphoric acid in Belgium:

- Capital Grants and Interest Rate Reductions
- Exemptions from Real Property Taxes

We determine the estimated net subsidy to be 0.65 percent *ad valorem* for all manufacturers, producers, or exporters of industrial phosphoric acid in Belgium.

Case History

On November 5, 1986, we received a petition in proper form filed by the FMC Corporation, of Philadelphia, Pennsylvania, and the Monsanto Company, of Saint Louis, Missouri, on behalf of the U.S. industry producing industrial phosphoric acid.

In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Belgium of industrial phosphoric acid receive, directly or indirectly, subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

In addition, the petition alleges that "critical circumstances," as defined in section 703(e)(1) of the Act, exist in this case. We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on November 25, 1986, we initiated such an investigation (51 FR 43761, December 4, 1986). We stated that we expected to issue a preliminary determination by January 29, 1987.

Since Belgium is a "country under the Agreement" under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Belgium materially injure, or threaten material injury to, a U.S. industry. Therefore, we notified the ITC of our initiation. On December 22, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Belgium of industrial phosphoric acid (52 FR 612, January 7, 1987).

On December 5, 1986, we presented a questionnaire to the government of Belgium in Washington, DC, concerning the petitioners' allegations, and requested a response by January 5, 1987. On December 22, 1986, and again on January 7, 1987, upon request of respondents, we granted additional time to submit responses. On January 20, 1987, we received responses to our questionnaire from the government of Belgium, the Société Régionale d'Investissement de Wallonie (SRIW), which is an agency of the regional government of Wallonia, and from the Société Chimique Prayon-Rupel S.A. (SCPR), which is the only known producer and exporter of industrial phosphoric acid in Belgium.

Scope of Investigation

The product covered by this investigation is industrial phosphoric acid, which is currently provided for in item 416.30 of the *Tariff Schedules of the United States* (TSUS).

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" (49 FR 18006, April 26, 1984).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final detemination.

For purposes of this preliminary determination, the period for which we are measuring subsidization ("the review period") is calendar year 1985, which coincides with SCPR's fiscal year. In their responses, the government of Belgium, SRIW, and SCPR provided data, including financial statements, for the applicable period.

Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer a Subsidy

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters of industrial phosphoric acid in Belgium under the following programs.

A. Programs Created by the 1970 Economic Expansion Law (EEL)

Under the Economic Expansion Law (EEL) of December 30, 1970, the Belgian government offers incentives to promote sectoral and technological development in designated development areas and in adjoining industrial sites. The provisions of the EEL are implemented and administered by regional authorities. Under the EEL the following benefits may be provided: Capital grants or interest rate reductions; loan guarantees; accelerated depreciation; real property, capital registration and capital gains tax exemptions; contractual aid and employment premiums. Companies which invest in development areas and which contribute directly to the creation, extension or conversion of industrial and service-related establishments pursuant to the general economic interest of the country are eligible to participate in these programs.

1. *Capital Grants and Interest Rate Reductions.* Companies which finance qualifying investments under the EEL through approved credit institutions may receive up to a seven percent reduction in the interest rate payable on 75 percent of the total cost of investment, so long as the effective rate does not fall below one percent per annum.

For those companies which finance at least 50 percent of the investment from their own funds, the interest rate reduction may be wholly or partly replaced by a nonrefundable capital grant of an equivalent amount. Because benefits received under this federal program are limited to companies within certain regions, we preliminarily determine the capital grants to be countervailable.

SCPR'S plant at Puurs, the only plant producing industrial grade phosphoric acid for sale to all markets, is not located in a development area and has never received benefits under this program. According to the responses, SCPR's plant at Engis was located in a development area and received two capital grants in 1985. All of the Engis plant's production of industrial phosphoric acid is for captive use (*i.e.*, it is consumed internally by SCPR to manufacture other products). Although industrial phosphoric acid produced by the Engis plant is not currently sold to any market, we find no evidence in the responses that industrial phosphoric acid produced at Engis differs in any respect from that produced at Puurs, nor any evidence that industrial phosphoric acid produced in the Engis plant could not be exported to the United States. Accordingly, to the extent that SCPR's production of industrial phosphoric acid has benefited under this program, regardless of the fact that benefits were conveyed to the Engis plant rather than to the Puurs plant, we find that these benefits accure to all production of industrial phosphoric acid.

To calculate the benefits, we allocated the grants received in 1985 over ten years, which is the average useful life of renewable physical assets in the chemical manufacturing industry, as determined under the U.S. Internal Revenue Service's Asset Depreciation Range System. Because SCPR obtained no new loans during the year in which it received the grants, we used as our discount rate the average rate charged by commercial banks in Belgium to their prime borrowers in 1985. Applying the grant methodology and dividing by the f.o.b. value of total sales by SCPR during the review period, we calculated an estimated net subsidy of 0.54 percent *ad valorem*.

2. *Exemption from Real Property Tax.* Companies which make qualifying investments pursuant to the EEL in designated development areas may be exempted from national, provincial and local real property taxes for a period of up to five years. Because benefits received under this federal program are limited to companies within certain regions, we preliminarily determine real property tax exemptions to be countervailable.

Due to its location in a development area, SCPR's plant at Engis has been exempt from paying a combined real property tax rate of 37.9 percent for investments it has made in Engis. To the extent that SCPR's production of industrial phosphoric acid has benefited under this program, regardless of the fact that benefits were conveyed to the Engis plant rather than to the Puurs plant, we find these benefits to accure to all production of industrial phosphoric acid.

To calculate the benefits, we divided the amounts reported in the responses as exempted in 1985 by the f.o.b. value of total sales by SCPR during the review period. Using our usual tax methodology, the benefit would be that amount reported in the tax return filed during the review period. According to SCPR's response, the government does not notify the taxpayer of its real property tax liability until the year following the year covered by the tax liability. Because we did not have the tax exemption for the 1984 tax liability, which would have been actually reported by government tax authorities during the review period in 1985, we have used as best information available, the exemption for the 1985 tax liability reported in 1986. Using this methodology, we calculated an estimated net subsidy of 0.11 percent *ad valorem*.

The remaining benefits under the EEL are discussed in the "Programs Preliminarily Determined Not to Be Used" section of this notice.

II. Programs Preliminarily Determined not to Confer a Subsidy

We preliminarily determine that subsidies are not being provided to manufacturers, producers, or exporters of industrial phosphoric acid in Belgium under the following programs.

A. Investment in SCPR by SRIW

Petitioners allege that the Société Régionale d'Investissement de Wallonie (SRIW), an agency of the regional government of Wallonia, played a crucial role in liquidating the former holding company Société de Prayon (SP) and its manufacturing subsidiary Société Industrielle de Prayon (SIP), and reorganizing them into the Société Chimique Prayon–Rupel S.A. (SCPR), the current producer and exporter in Belgium of the subject merchandise. Petitioners further allege that SRIW's equity investment in SCPR was made on terms inconsistent with commercial considerations.

In its response, SRIW states that it carries out two types of activities: (1) Equity investments made on behalf of and under the direction of the regional government of Wallonia with funds transferred to it by that government; and (2) equity investments aimed at promoting the economy of the region, made with SRIW's own funds, without any direction, advice, or prior approval from the regional government of Wallonia or the government of Belgium. SRIW's investment in SCPR falls into the second category. Under the law of April 2, 1962, governing regional investment companies, SRIW is required to seek a "normal return" on the second category of investments and to apply rules of "sound management." In order to avoid confusion between the two types of investments, SRIW set up in 1985 a wholly owned subsidiary called SOWAGEP, whose purpose is to act, in lieu of SRIW, as a representative of the regional government of Wallonia with respect to investments by that government.

With respect to SRIW's investment in SCPR, SRIW and SCPR state that SCPR is not SP or SIP reorganized, but rather a separate firm. According to the responses, SP and SIP filed for bankruptcy in 1981 under normal Belgian procedures comparable to Chapter XI proceedings in the United States. After SP and SIP were placed in receivership, SRIW formed a joint venture with a private Belgian industrial consortium, a Moroccan phosphate company, and a private French engineering firm. This joint venture was named Société Chimique Prayon-Rupel S.A. (SCPR). SCPR then purchased certain assets of the former SP and SIP from the court-appointed receiver.

In order to determine whether SRIW's equity investment in SCPR was made on terms inconsistent with commercial considerations, we analyzed the terms of this investment in light of normal commercial practices. We do not find this transaction inconsistent with commercial considerations for the following reasons.

First, SRIW is only a minority shareholder in SCPR. SRIW purchased its equity in SCPR on the same terms and conditions, at the same price, and at the same time as the private shareholders, which constitutes a *prima facie* indication that SRIW's investment was consistent with commercial considerations.

Second, at the time the joint venture was set us (late in 1981), the shareholders in the joint venture had every expectation that SCPR would return a profit, as evidenced by the shareholders' agreement which shows SCPR's anticipated stream of profits and rates of return on equity. SCPR purchased only those assets of SP and SIP it believed could return a profit, *i.e.*, the plants at Engis and Puurs. The sizable share of foreign and private investment in the joint venture is another indication of anticipated profitability.

Third, SRIW states that its investment in SCPR was made with its own funds, and not at the direction of the regional government of Wallonia. As noted above, where SRIW makes an equity investment with its own funds, it is required by law to obtain a "normal return" on its investment.

For the reasons stated above, we preliminarily determine that SRIW's investment in SCPR was not made on terms inconsistent with commercial considerations, and, therefore, does not confer a subsidy on industrial phosphoric acid from Belgium.

B. 1985 Equity Infusion by SRIW into SCPR

Petitioners allege that SCPR's capital stock increase by its shareholders in 1985 was inconsistent with commercial considerations because the company was clearly not an attractive investment opportunity at that time.

In order to determine whether the 1985 equity infusion was made on terms inconsistent with commercial considerations, we followed the same methodology as for the original equity investment into SCPR and analyzed this infusion in light of normal commercial practices. We do not find this transaction inconsistent with commercial considerations because (1) SCPR's private shareholders also contributed to the increase in capital stock on the same terms and conditions as SRIW, which constitutes a *prima facie* indication that SRIW's investment was consistent with commercial considerations, and (2) SCPR reported profits in each of the three years preceding the 1985 equity infusion.

Accordingly, we preliminarily determine that SRIW's equity infusion into SCPR in 1985 does not confer a subsidy on industrial phosphoric acid from Belgium.

III. Programs Preliminarily Determined not to be Used

We preliminarily determine that the following programs were not used by the manufacturers, producers, or exporters of industrial phosphoric acid in Belgium during the review period.

A. Preferential Loans

Petitioners allege that SCPR may have benefited from loans made on terms inconsistent with commercial considerations by the Société Nationale de Crédit à l'Industrie (SNCI), which is a primary government-controlled lender to industrial and commercial enterprises in Belgium. In its response, SCPR states that it has never applied for nor received loans from SNCI.

B. Employment-Based Benefits

Petitioners allege that SCPR may have received funds for employee training programs and other employment-based benefits from the Office National de l'Emploi. In its response, SCPR states that it has never applied for nor received such benefits.

C. Programs Created by the 1970 Economic Expansion Law (EEL)

1. *Loan Guarantees.* The government may gurantee loans made or bonds issued for the financing of investments which realize the objectives set forth in the EEL. If a loan was not granted by a public credit organization, or if a bond was not acquired or subscribed by a public-sector institution, the guarantee is limited to 75 percent of the amount due after realization of any collateral security. According to the responses, SCPR received no guarantees under this program.

2. *Accelerated Depreciation.* Companies qualified for governmental aid under the EEL may depreciate investments in plants, equipment and industrial buildings at double the rate allowed for normal straight-line depreciation. Accelerated depreciation benefits may be utilized for three successive tax periods, to be agreed upon and embodied in an aid contract. According to the responses, SCPR has not claimed accelerated depreciation under this program.

3. *Exemption from Capital Registration Tax.* Subscriptions or contributions to the capital of companies vested with legal personality and incorporated to act in accordance with the intentions of the EEL are exempted from payment of the capital registration tax. According to the responses, SCPR received no exemptions under this program.

4. *Employment Premiums.* Investments made pursuant to the EEL that create new jobs in development areas entitle the employer to a non-repayable grant. The magnitude of payment varies according to the number of jobs created. According to the responses, SCPR received no employment premiums under this program.

5. *Contractual Aid.* The EEL provides aid in the form of contracts awarded to firms making investments that promote economic, technological, industrial and/or commercial development within development areas. Specific types of aid include progress contracts, administrative promotion contracts, technological promotion contracts and contracts for the conversion or restructuring of operations. According to the responses, SCPR was awarded no contracts under this program.

6. *Exemption from Capital Gains Tax.* Capital gains invested in development areas under the EEL are exempt from the Belgium capital gains tax, if invested within a year following the close of the tax year in which the gain is realized. According to the responses, SCPR received no capital gains tax exemptions under this program.

D. Operating Subsidies

Petitioners allege that SCPR's annual reports for 1984 and 1985 show that the company received certain unspecified "operating subsidies." In its response, SCPR states that the "operating subsidies" in question consisted of certain research and development grants awarded by IRSIA, an agency of the government of Belgium, for laboratory research wholly unrelated to industrial phosphoric acid. Because these grants did not benefit the production of industrial phosphoric acid, we preliminarily determine that these grants were not used in this case.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of industrial phosphoric acid from Belgium. Under section 703(e)(1) of the Act, critical circumstances exist when the Department has a reasonable basis to believe or suspect that (1) the alleged subsidy is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Section 355.29(a) of the Commerce Regulations [19 CFR 355.29(a)] on critical circumstances provides, *inter alia*, that we will determine "whether the alleged subsidy is an *export* subsidy inconsistent with the Agreement" (emphasis added). Thus, under existing regulations, a subsidy may be viewed as inconsistent with the Agreement only if it is an export subsidy.

Based upon our analysis, no export subsidies inconsistent with the Subsidies Code are being bestowed upon industrial phosphoric acid from Belgium. Therefore, we do not need to address the issue of whether there have been massive imports of industrial phosphoric acid from Belgium over a relatively short period. Accordingly, we preliminarily determine that "critical circumstances" do not exist with respect to industrial phosphoric acid from Belgium.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. We will not accept any statement in a response that cannot be verified for our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of industrial phosphoric acid from Belgium which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond equal to 0.65 percent *ad volorem* for each such entry of this merchandise. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days after the Department makes its final determination.

Public Comment

In accordance with § 355.35 of the Commerce Regulations (19 CFR 355.35) we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination, at 1:00 p.m. on March 3, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B–099, at the above address within 10 days of the publication of this notice in the **Federal Register.**

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of the proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by February 24, 1987. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, all written views will be considered if received not less than 30 days before the final determination is due, or, if a hearing is held, within 10 days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act [19 U.S.C. 1671b(f)].

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

January 29, 1987.

[FR Doc. 87-2235 Filed 2-4-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-605]

Preliminary Affirmative Countervailing Duty Determination; Industrial Phosphoric Acid From Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Israel of industrial phosphoric acid. The estimated net subsidy is 6.52 percent *ad valorem* for Negev Phosphates Ltd., 14.83 percent *ad valorem* for Haifa Chemicals Ltd., and 7.14 percent *ad valorem* for all other manufacturers, producers, or exporters in Israel of industrial phosphoric acid. In addition, we preliminarily determine that critical circumstances do not exist in this case.

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of industrial phosphoric acid from Israel that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and to require a cash deposit or bond on entries of the subject merchandise in an amount equal to the estimated net subsidy as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination by April 14, 1987.

EFFECTIVE DATE: February 5, 1987.

FOR FURTHER INFORMATION CONTACT: David Levine or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/377-1673 (Levine), 202/377-0161 (Taverman).

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Israel of industrial phosphoric acid. For purposes of this investigation, the following programs are found to confer subsidies to manufacturers, producers, or exporters of industrial phosphoric acid in Israel:

- Investment Grants under the Encouragement of Capital Investments Law (ECIL)
- Long-Term Development Loans under the ECIL
- Bank of Israel Export Production Fund loans
- Bank of Israel Export Shipment Fund Loans
- Bank of Israel Imports-for-Export Fund Loans
- Exchange Rate Risk Insurance Scheme

Case History

On November 5, 1986, we received a petition in proper form filed by the FMC Corporation, of Philadelphia, Pennsylvania, and the Monsanto Company, of Saint Louis, Missouri, on behalf of the U.S. industry producing industrial phosphoric acid.

In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Israel of industrial phosphoric acid receive, directly or indirectly, subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. In addition, the petition alleges that "critical circumstances," as defined in section 703(e)(1) of the Act, exist in this case. We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on November 25, 1986, we initiated such an investigation (51 FR 43761, December 4, 1986). We stated that we expected to issue a preliminary determination by January 29, 1987.

Since Israel is a "country under the Agreement" under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry. Therefore, we notified the ITC of our initiation. On December 22, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Israel of industrial phosphoric acid (52 FR 612, January 7, 1987).

On December 8, 1986, we presented a questionnaire to the Government of Israel in Washington, DC concerning the petitioners' allegations, and requested a response by January 5, 1987. On December 30, 1986, upon request of respondents, we granted additional time to submit responses. On January 12, 1987, we received responses to our questionnaire from the Government of Israel and from Negev Phosphates Ltd. (Negev).

We did not receive a response from Haifa Chemicals Ltd. (Haifa), although it is a producer and exporter of industrial phosphoric acid. For purposes of this preliminary determination, we therefore applied the best information available to derive an estimated countervailing duty rate for Haifa. As best information available, we used the subsidy rates for particular programs found in our most recent final affirmative countervailing duty determination for an industrial product from Israel *(Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Israel (OCTG)* (52 FR 1649, January 15, 1987)), or the rate found for Negev, whichever was greater. Because Haifa did not respond, we preliminarily determine that a significant difference exists in the estimated net subsidies for the two companies. We therefore found company-specific rates for Haifa and Negev, and derived a weighted average for the "all other" company rate for industrial phosphoric acid from Israel.

Scope of Investigation

The product covered by this investigation is industrial phosphoric acid, which is currently provided for in item 416.30 of the *Tariff Schedules of the United States* (TSUS).

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidization ("the review period") is April 1, 1985 through March 31, 1986, the fiscal year for the companies under investigation. In their responses, the Government of Israel and Negev provided data, including financial statements, for the applicable period.

Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters of industrial phosphoric acid in Israel under the following programs.

A. The Encouragement of Capital Investments Law (ECIL)

The purpose of the ECIL is to attract capital to Israel. In order to be eligible to receive various benefits under the ECIL, including investment grants, long-term industrial development loans, accelerated depreciation, and reduced tax rates, the applicant must obtain approved enterprise status.

Approved enterprise status is obtained after review of information submitted to the Israel Ministry of Industry and Trade, Investment Center Division. The amount of the benefits received by approved enterprises depends on the geographic location of the eligible enterprise. For purposes of the ECIL, Israel is divided into three zones—Development Zone A, Development Zone B, and the "central area"—each with a different funding level.

1. *Investment Grants.* According to the responses, only investment projects outside the central area are eligible to receive investment grants since 1978. Because the grants are limited to enterprises located in specific regions, we preliminarily determine that they constitute subsidies within the meaning of the Act. Since 1975, Negev has been approved to receive grants for two projects.

To calculate the benefit, we allocated these grants over 10 years (the average useful life of assets in the chemical manufacturing industry, as determined under the U.S. Internal Revenue

Service's Asset Depreciation Range System). Usually, to allocate benefits over time we use as our discount rate the firm's weighted cost of capital, which is an average of the company's marginal costs of debt and equity for the year in which the terms of the grant were approved. However, we were unable to calculate a weighted cost of capital for Negev because there is no fixed rate long-term borrowing in Israel. Therefore, in order to reflect most accurately the benefit to Negev over time, we have used a variable discount rate to allocate the grant benefits.

To calculate the grant allocation amount for the review period, we applied the grant methodology outlined in the Subsidies Appendix, using as our variable discount rate the national average short-term borrowing rate for new Israeli shekels (NIS) in the review period, as determined by the Bank of Israel, adjusted for inflation. We divided by the value of total sales during the review period to calculate an estimated net subsidy for Negev of 2.1 percent *ad valorem.* As best information available, we preliminarily determine that the estimated net subsidy for Haifa also is 2.1 percent *ad valorem.*

2. *Long-Term Industrial Development Loans.* Prior to July 1985, approved enterprises were eligible to receive long-term industrial development loans funded by the Government of Israel. These loans were disbursed through the Industrial Development Bank of Israel (IDBI) and other industrial development banks associated with each commercial bank in Israel.

We stated in *OCTG* that the Government of Israel did not provide us with sufficient information concerning selection criteria for approved enterprises under ECIL, the criteria for receiving industrial development loans under ECIL, or the distribution of loans under the program. Although we asked for explanations of these elements in our questionnaire for the instant case, the responses did not provide sufficient clarification. Therefore, we preliminarily determine that the loans are limited to a specific enterprise or industry, or group of enterprises or industries, and are countervailable if they were provided on terms inconsistent with commercial considerations.

The supplemental response of Negev indicates that the company had loans under this program outstanding during the review period for projects at five of its plants, one of which produces an input for the subject product. The loans provided for this plant were linked to the U.S. dollar and were not on terms inconsistent with commercial considerations; *i.e.*, interest paid on the loans was not less than what would have been paid at our benchmark rate for these loans (the dollar-linked variable short-term rate adjusted for exchange rate fluctuation). Therefore, we preliminarily determine that Negev received no countervailable benefits under this program. As best information available, we preliminarily determine the estimated net subsidy for Haifa to be 5.02 percent *ad valorem,* based on *OCTG.*

B. Bank of Israel Export Loans

The Government of Israel provides preferential financing to manufacturers, producers, or exporters in Israel of industrial phosphoric acid through three export credit funds administered by the Bank of Israel (BOI).

1. *Export Production Fund (EPF).* Under the EPF, three-month loans are provided to exporters to finance export production. The amount which a company is able to borrow under this program is limited by a quota set by the BOI. The quota is based on the value of the company's exports, the product's value-added percentage, and the production cycle of the company. During the review period, Negev received loans denominated in NIS under this program.

Because only exporters are eligible for these loans, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates. We used as our benchmark the national average non-directed short-term NIS lending rate in the review period, to be published in the 1986 BOI Annual Report,[1] adjusted for inflation. Comparing this benchmark to the interest rates charged on these loans, we preliminarily determine that the loans were provided at preferential rates and are, therefore, countervailable.

To calculate the benefit from these loans, we allocated the interest savings over total exports during the review period, because Negev did not segregate loans provided for industrial phosphoric acid from loans for other products. We thereby calculated an estimated net subsidy of 0.64 percent *ad valorem* for Negev. The estimated net subsidy for Haifa is 2.78 percent *ad valorem,* based on *OCTG.*

2. *Export Shipment Fund (ESF).* Under the ESF, loans are provided to exporters to enable them to extend credit in foreign currency to their overseas customers. Financing is granted on a shipment-by-shipment basis. Funding is provided after shipment of the goods and must be repaid within six months. Because only exporters are eligible for these loans, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates.

According to its response, Negev received only dollar-denominated loans under the ESF at the interest rate of LIBOR plus two percent. Dollar loans are not otherwise available in Israel, and we were not able to obtain a benchmark interest rate for these loans from independent sources. We therefore used the benchmark applied in our *Final Affirmative Countervailing Duty Determination: Potassium Chloride from Israel (Potash)* (49 FR 36122, September 14, 1984) and *OCTG,* which is the London Interbank Offered Rate *(LIBOR)* plus two percent. Since Negev paid interest on the loans at our benchmark rate, we preliminarily determine that the company received no countervailable benefits under the ESF. The estimated net subsidy for Haifa is 0.002 percent *ad valorem,* based on *OCTG.*

3. *Imports-for-Export Fund (IEF).* Under the IEF, exporters receive loans with a three-month term in order to finance imported materials used for export production. Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they provided at preferential rates.

According to its response, Negev received dollar-denominated loans under the IEF during the review period. Comparing the benchmark interest rate (LIBOR plus two percent) to the rates charged on these loans, we preliminarily determine that some of the loans were provided at preferential rates and are, therefore, countervailable. To calculate the benefit from these loans, we allocated the interest savings over total exports during the review period, since Negev did not segregate loans for industrial phosphoric acid from loans for other products. We thereby calculated an estimated net subsidy of 0.01 percent *ad valorem* for Negev. The estimated net subsidy for Haifa is 1.16 percent *ad valorem,* based on *OCTG.*

D. Exchange Rate Risk Insurance Scheme

The Exchange Rate Risk Insurance Scheme (EIS), operated by the Israel Foreign Trade Risk Insurance Corporation Ltd. (IFTRIC), is aimed at insuring exporters against losses which result when the rate of inflation exceeds the rate of devaluation and the new Israeli shekel (NIS) value of an

[1] We received this public information during verification for our *Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from Isreal (Flowers)* (to be published in the **Federal Register** on February 3, 1987). It is contained in Verification Exhibit 20 of the official file (C-508-603).

exporter's foreign currency receivables does not rise enough to cover increases in local costs.

The EIS scheme is optional and open to any exporter willing to pay a premium to IFTRIC. Compensation is based on a comparison of the change in the rate of devaluation of the NIS against a basket of foreign currencies with the change in the consumer price index. If the rate of inflation is greater than the rate of devaluation, the exporter is compensated by an amount equal to the difference between these two rates multiplied by the value-added of the exports. If the rate of devaluation is higher than the change in the domestic price index, however, the exporter must compensate IFTRIC. The premium is calculated on the basis of the value-added of the exports.

In determining whether an export insurance program provides a countervailable benefit, we examine whether the premiums and other charges are adequate to cover the program's long-term operating costs and losses. In *Potash*, we stated that we had insufficient data to determine that the premiums and other charges were manifestly inadequate to cover the program's long-term operating costs and losses. We noted, however, that we were not making a conclusive determination on the program's countervailability at that time. However, in *OCTG* and *Flowers* we found that this program conferred a countervailable benefit on manufacturers, producers, or exporters in Israel of oil country tubular goods and flowers.

In both those cases we reviewed EIS data which showed that EIS operated at a loss from 1981 through 1985. In fact, in the five years of operations, there was only one month when premiums received were greater than compensation paid out. We believe that five years is, in this case, a sufficiently long period to establish that the premiums and other charges are manifestly inadequate to cover the long-term operating costs and losses of the program. Therefore, we preliminarily determine that this program confers an export subsidy on exports of industrial phosphoric acid from Israel.

We calculated the benefit from this program by allocating the amount of compensation Negev received from IFTRIC expressly for industrial phosphoric acid exported to the United States, after deducting premiums paid, over the company's exports of industrial phosphoric acid to the United States during the review period. We thereby found a estimated net subsidy of 3.77 percent *ad valorem* for Negev. As best information available, we preliminarily determine that the estimated net subsidy for Haifa also is 3.77 percent *ad valorem*.

II. Programs Preliminarily Determined Not to be Used

We preliminarily determine that the following programs were not used by manufacturers, producers, or exporters in Israel of industrial phosphoric acid during the review period.

A. Encouragement of Industrial Research and Development Law (EIRD)

Petitioners allege that manufacturers, producers, or exporters in Israel of industrial phosphoric acid may benefit from research and development grants. Negev's response states that the company received no grants for research and development related to its production of industrial phosphoric acid.

B. Foreign Investment Company Benefits

Petitioners allege that under Amendment 15 to the ECIL a "Foreign Investment Company" is entitled to certain grants. Negev's response indicates that the company did not qualify for any benefits under this law.

C. Export Promotion Fund Benefits

Petitioners allege that exporters in Israel may receive benefits under this program. Negev's response indicates that it receives foreign currency loans under this program to establish a Paris office, but that it received no other benefits.

III. Program Preliminarily Determined to be Terminated

We preliminarily determine that the following program has been terminated.

A. Property Tax Exemptions on Buildings and Equipment

Petitioners allege that manufacturers, producers, or exporters in Israel of industrial phosphoric acid may benefit from tax incentives that allow eligible enterprises a five-year exemption from payment of two-thirds of property taxes on buildings and a ten-year exemption for payment of one-sixth of property taxes on equipment. According to the responses and our determinations in *OCTG* and *Potash*, the exemptions were repealed by Amendment No. 17, ECIL, 5738–1979. Also, property taxes on industrial buildings and equipment were repealed for all taxpayers in Israel on April 1, 1981. Property tax exemptions referred to in Section 53 of the ECIL are taxes on apartment buildings in residential areas.

IV. Programs for Which We Need Additional Information

We preliminarily determine that we need additional information in order to analyze accurately the following programs.

A. Preferential Accelerated Depreciation

Under section 42 of the ECIL, a company which has obtained approval enterprise status can choose to depreciate machinery and equipment at double the normal rate and buildings at four times the normal rate. Based on the responses, it is unclear whether Negev used accelerated depreciation under this law, or whether such accelerated depreciation is available to more than a specific enterprise or industry, or group of enterprises or industries. We therefore preliminarily determine that we need additional information to make a determination regarding this program.

B. Other ECIL Tax Benefits

Under Section 47 of the ECIL, a company which has obtained approved enterprise status is eligible for a reduced corporate and income tax rate. For the reasons provided in IV.A. above, we need additional information to make a determination regarding this program.

C. The Encouragement of Industry Law (EIL) Accelerated Depreciation and Further Tax Reductions

Petitioners allege that manufacturers, producers or exporters in Israel of industrial phosphoric acid may receive accelerated depreciation and further tax reductions under the EIL. For the reasons stated in IV.A. above, we need additional information to make a determination regarding this program.

Critical Circumstances

Petitioners allege that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act, with respect to imports of industrial phosphoric acid from Israel. In determining whether critical circumstances exist, we must examine whether there is a reasonable basis to believe or suspect that: (1) The alleged subsidy is inconsistent with the Agreement, and (2) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether imports have been massive over a relatively short period of time, we have considered the following factors: (1) the volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. A review of this information indicates that imports from Israel have not been massive over a relatively short period of time.

Since we have not found massive imports over a relatively short period of time, we do not need to consider whether the alleged subsidies are inconsistent with the Agreement. Therefore, we preliminarily determine that critical circumstances do not exist.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. We will not accept any statement in a response that cannot be verified for our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of industrial phosphoric acid from Israel which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for each such entry of this merchandise equal to 6.52 percent *ad valorem* for Negev Phosphates Ltd., 14.83 percent *ad valorem* for Haifa Chemicals Ltd., and 7.14 percent *ad valorem* for all other companies in Israel.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days after the Department makes its final determation.

Public Comment

In accordance with § 355.35 of the Commerce Regulations (19 CFR 355.35) we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination, at 10:00 a.m. on March 12, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of the publication of this notice in the **Federal Register.**

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of the proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by March 5, 1987. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, all written views will be considered if received not less than 30 days before the final determination is due, or, if a hearing is held, within 10 days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

January 29, 1987.

[FR Doc. 87-2430 Filed 2-4-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 4568-01]

Actions Affecting Export Privileges; Daniel J. O'Hara

Summary

Pursuant to the consent agreement reached by the Department of Commerce and Daniel J. O'Hara in the above captioned proceeding and approved by the Administrative Law Judge in his Recommended Decision and Order, Daniel J. O'Hara, individually and doing business as D.J. Associates, both with addresses at P.O. Box L, Sparks, Nevada 89432, is hereby denied all export privileges for 20 years from the date of this Order. Additionally, he is assessed a civil penalty in the amount of $20,000.

Order

On January 8, 1987, the Administrative Law Judge entered an order approving the consent proposal submitted by the parties in the above matter. The Order was referred to me pursuant to the Export Administration Amendments Act of 1985, 50 U.S.C. App. 2412, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) and 15 CFR 388.17(a), for final action. I note and hereby correct what apears to be a typographical error in the fourth sentence of paragraph seven of that Order to now read December 14, 1984. Having examined the record and based on the facts adduced in this case, I affirm the Order of the Administrative Law Judge as thus modified.

This constitutes final agency action in this matter.

Dated: January 30, 1987.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

In the Matter of Daniel J. O'Hara, Respondent; Docket No. 4658-01.

Order

A proceeding was initiated on April 23, 1986, against Respondent Daniel J. O'Hara, by the issuance of a charging letter by the Acting Director, Office of Export Enforcement (OEE), International Trade Administration, United States Department of Commerce (the Agency). In that notice the Respondent was charged with violating the Export Administration Act of 1979, 50 U.S.C. app. 2401-2402 as amended by the Export Administration Act Amendments of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985), (the Act) and the Export Administration Regulations (currently codified at 15 CFR Parts 368-399 (1985), (the Regulations).

In the charging letter, the Office of Export Enforcement alleged that Respondent violated the Act and Regulations in that:

(a) Between approximately February 1, 1981 and July 28, 1981, Daniel J. O'Hara conspired and acted in concert with John B. Pridmore-Smith to acquire and export two U.S.-origin automatic projection alignment systems, in violation of § 387.3 of Regulations; (b) Daniel J. O'Hara exported those systems without the export licenses from the Department which he knew were required by § 372.1(b) of the Regulations, in violation of §§ 387.4 and 387.6 of the Regulations, and (c) in order to export one of the automatic projection alignment systems, in connection with three separate shipments, Daniel J. O'Hara caused to be filed with the United States Customs Service three Shipper's Export Declarations which contained false and misleading statements, in violation of Section 387.5 of the regulations;

Pursuant to 15 CFR 388.17, the Agency and Daniel J. O'Hara have submitted a timely consent proposal to the officer whereby the parties have agreed to settle this matter:

(1) By O'Hara paying to the Agency a civil penalty in the amount of $20,000; and

(2) By denying O'Hara's export privileges for a period of 20 years from the effective date of this Order.

I find that these terms are sufficient to achieve effective enforcement of the Act and the Regulations. Therefore, pursuant to the authority delegated to me by Part 388 of the Regulations,

It is ordered

1. That a civil penalty in the amount of $20,000 is assessed against Respondent Daniel J. O'Hara.

2. That Respondent Daniel J. O'Hara shall pay to the Agency within 20 days of the service of the Final Order in this matter and in the manner specified in the attached instructions, the sum of $1,000. Payment of $4,000 of the civil penalty will be made in two equal installments of $2,000 each, the first due on or before November 1, 1987, and the second due on or before November 1, 1988. Payment of the remaining $15,000 is suspended, as authorized by § 388.16 of the Regulations, for a period of 3 years from the date of this Order. Payment of the suspended portion will be waived at the end of the 3-year period without further Order or action provided that Daniel J. O'Hara, his affiliates and subsidiaries, have committed no violations of the Act, or any regulation, order or license issued under the Act.

3. For a period of 20 years following the date of entry of this Order, Respondent Daniel J. Hara, individually and doing business as D.J. Associates, his successors or assignees, officers, partners, representatives, agents and employees hereby are denied all privileges of participating directly or indirecly in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity:

(a) As a party or as a representative of a party to a validated export license application;

(b) In preparing or filing any export license application or reexport authorization, or any document to be submitted herewith;

(c) In obtaining or using any validated or general export license or other export control document;

(d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, or storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(e) In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities or technical data which are subject to the Act and the Regulations.

4. Such denial of export privileges shall extend not only to Respondents, but also to their agents and employees and to any successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which any Respondent if now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

5. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related party, or whereby any Respondent or related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part or to be exported by, to, or for any Respondent or related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

6. That the Charging Letter, the Consent Agreement and Order shall be made available to the public.

7. By Order of December 14, 1984 (49 FR 49666, December 21, 1984), Daniel J. O'Hara and others were temporarily denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data. The temporary denial order was to remain in effect until the final disposition of any administrative or judicial proceedings initiated as a result of the then on-going investigation. This Order concludes the administrative proceeding initiated by the Department against Daniel J. O'Hara as a result of its investigation relating to the matter which gave rise to the temporary denial order. Accordingly, the following names and locations are deleted from the temporary denial order of December 14, 1986:

Daniel J. O'Hara, P.O. Box 1750, 1035 East York Way, Sparks, Nevada 89431
and
D.J. Associates with addresses at
P.O. Box 1750, 1035 East York Way, Sparks, Nevada 89431
and
18 Stewart Street, Reno, Nevada 89431
and
4200 Rewana Way, E505, Reno, Nevada 89502

8. This Order shall become effective upon entry of the Secretary's action in this proceeding pursuant to section 13(c) of the 1985 Amendments to the Export Administration Act.

Dated: January 8, 1987.

Hugh J. Dolan,

Administrative Law Judge.

Instructions for Payment of Civil Penalty.

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to: U.S. Department of Commerce, Office of Assistant General Counsel for Export Administration, Room H-3845, 14th Street and Constitution Avenue NW., Washington, DC 20230, Attn: Pamela P. Breed, Esq.

[FR Doc. 87-2432 Filed 2-4-87; 8:45 am]

BILLING CODE 3510-DT-M

Export Trade Certificate of Review

ACTION: Notice of amendment to export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the certificate should be amended.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International

Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than February 25, 1987 to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Fredom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 84-A0021."

Applicant: Apparatex International Trading Company, 4819 Park Road, Charlotte, North Carolina 28209, Telephone: 704-527-5270

Application #: 84-A0021

Date Deemed Submitted: January 23, 1987

Members (in addition to applicant): Stanwood Corporation, Charlotte, North Carolina

Summary of the Application

An Export Trade Certificate of Review was issued to Apparatex International Trading Company (Apparatex) on October 26, 1984 (Application # 84-00021). Members of that certificate included: the William Carter Company, the Stanwood Corporation, and Mr. Anthony J. Cascardi. These members controlled 40, 40 and 20 percent of the shares of Apparatex, respectively.

In its application of January 12, 1987, Apparatex states that only one of its members, Stanwood Corporation, continues to be a member of the export trading company, with the stock shares of the other two previous members having been redeemed. It is, therefore, the sole intent of this application to amend the membership portion of the Export Trade Certificate of Review to reflect that the Stanwood Corporation is now the only member of Apparatex, controlling all its stock shares.

Dated: February 2, 1987.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 87-2433 Filed 2-4-87; 8:45 am]

BILLING CODE 3510-DR-M

[Application 85-00013]

Issurance of Export Trade Certificate of Review

ACTION: Notice of Issurance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Basler Electric Company. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

A. Export Trade

Products

Static voltage regulators and accessories; static exciter-regulators and accessories; solid state protective relays; automatic synchronizers

Services

All services related to the sales and maintenance of the Products, including field repair services, advertising and marketing, and providing technical application assistance to end-users or their representatives; and the licensing (for the Export Markets) of patents, trademarks, trade names, know-how, or technical assistance.

B. Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

C. Members

William L. Basler; Floyd J. Basler; Carly Ann Maurer; Basler Electric Aviation, Inc.; Basler Electric Circuits, Inc.; and Summit Electronics, Inc.

Export Trade Activities and Methods of Operation

Basler may:

1. Enter into exclusive and nonexclusive agreements with individual suppliers of Products and Services to act as an Export Intermediary. These agreements may contain territorial, customer, price, and/or quanitity restrictions for the Export Markets.

2. For invitations to bid or sales opportunities in the Export Markets: (a) Indivdually contact U.S. suppliers of the Products and Services specified in the bid or purchase specifications, (b) invite the supplier(s) to provide independent quotations to Basler for the Products and Services, and (c) enter into individual agreements with the supplier(s) whereby Basler will submit a response to the bid invitation or request for quotation.

3. Enter into exclusive and nonexclusive agreements with distributors, sales representatives, and customers located in foreign countries and in the United States for Products and Services exported or in the course of being exported. These agreements may contain territorial, customer, price, and/or quantity restrictions for the Export Markets, and may provide for termination on the grounds that such restrictions have not been adhered to.

4. Refuse to enter into agreements with suppliers, distributors, sales representatives, and customers located in foreign countries and in the United States for Products and Services exported or in the course of being exported, unless the agreement contains any or all of the terms or restrictions described in paragraphs 1 or 3.

5. Sell, furnish, or offer for sale Products and Services exported or in the course of being exported of like grade or quality at discriminatory prices or on unequal terms.

6. Pay or grant, or receive or accept, or induce any person to pay or grant, or receive or accept, any commission, brokerage, or other compensation, to or from an intermediary, on unequal terms for Products and Services exported or in the course of being exported.

7. Sell or lease Products and Services exported or in the course of being exported on the condition that the purchaser or lessee not deal in Products and Services (exported or in the course of being exported) of a competitor.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: January 30, 1987

George Muller,

Deputy Director, Office of Export Trading Company Affairs.

[FR Doc. 87-2344 Filed 2-4-87; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Modification No. 3 to Marine Mammals Permit No. 464; Northwest and Alaska Fisheries Center (p77#9)

Notice is hereby given that pursuant to the provisions of 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 464 issued to the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115, on April 19, 1984 (49 FR 17795) as modified on April 18, 1985 (50 FR 18283) and May 2, 1986 (51 FR 17506) is further modified as follows:

Section B.7 is replaced by:

"7. This permit is valid with respect to the activities authorized herein until December 31, 1987."

The effective date of this modification is December 31, 1986.

The permit, as modified, is available for review in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC.;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry St., Terminal Island, California 90731-7415; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115-0070.

Dated: January 30, 1987.

Nancy M. Foster,

Director, Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87-2442 Filed 2-4-87; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Public Advisory Committee for Trademark Affairs; Open 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:

The Public Advisory Committee for Trademark Affairs will meet from 10:00 a.m. until 5:00 p.m. on March 9, 1987, at the U.S. Patent and Trademark Office in Room 11C24 of Building 3, Crystal Plaza, located at 2021 Jefferson Davis Highway, Arlington, Virginia.

The agenda for the meeting is as follows:

(1) Activities of the Trademark Examining Operation

(2) Operations of the Trademark Trial and Appeal Board

(3) Financial Reports

(4) Automation Activities.

The meeting will be open to public observation; approximately twelve (12) seats will be available for the public on first-come first-served basis.

If time permits, oral comments by the public of three (3) minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed.

Copies of the minutes will be available upon request.

For further information, contact Ellen J. Seeherman, Office of the Assistant Commissioner for Trademarks, Room CP3-11C17, Patent and Trademark Office, Washington, DC 20231. Telephone: 703-557-7464.

Dated: January 29, 1987.

Approved:

Donald W. Peterson,

Deputy Assistant Secretary and Deputy Commissioner of Patents and Trademarks.

[FR Doc. 87-2341 Filed 2-4-87; 8:45 am]

BILLING CODE 3510-16-M

COMMODITY FUTURES TRADING COMMISSION

New York Futures Exchange; Proposed Amendments Relating to the Commodity Research Bureau Futures Price Index Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The New York Futures Exchange (NYFE or Exchange) has submitted a proposal to amend the formula for calculating the Commodity Research Bureau (CRB) Futures Price Index (Index)—the pricing basis for the CRB futures contract. The amendments would eliminate five commodities from the Index, change the arithmetic averaging formula, and establish a liquidity criterion. The Deputy Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined that these proposals are of major economic significance and that, accordingly, publication of the proposals is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before March 9, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the proposed amendments to the NYFE's CRB Index futures contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Deputy Director, or Nancy McCabe, Economist, Market Analysis Section, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: The proposal includes the following three changes to the calculations of the CRB Index:

1. Eliminate the Winnipeg Grain Exchange's barley, flaxseed, rapeseed, and rye futures contracts and the Minneapolis Grain Exchange's wheat futures contract;

2. Provide for the arithmetic averaging of individual commodity futures prices over a nine-month period, rather than the current twelve-month period; and

3. Exclude contract months in which open interest is less than 25 contracts.

In a December 30, 1986, letter to the NYFE, the CRB stated that they are eliminating the above grain futures contracts from the Index because of the reduction in the relative importance of grains in the overall composition of the futures markets. The CRB noted that the four Winnipeg grain futures no longer comprise major markets, and that the Minneapolis wheat contract gives an unnecessary "double weighting" to wheat prices since the Chicago Board of Trade's wheat contract is also included in the Index.

The CRB further stated that converting to a nine-month averaging period, from the existing twelve-month period, will provide a more accurate picture of current futures market activiy since many commodities do not trade out a full calendar year. Finally, the CRB explained that the proposed "liquidity criterion" of including contract months with at least 25 contracts open interest ensures that only those contract months with sufficient trade interest will be included in the calculation of the Index.

The Exchange indicated that the CRB intends to begin calculating the revised Index on July 20, 1987, after the expiration of the July 1987 futures contract. The Exchange also indicated that the proposed amendments would apply beginning with the September 1987 contract, which may be listed prior to July 20, 1987.

The Deputy Director of the Division of Economic Analysis, on behalf of the Commission, has determined that the proposals submitted by the New York Futures Exchange regarding the CRB Futures Price Index are of major economic significance. This determination was made under the authority delegated by Commission Regulations 140.96 and in accordance with Section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982).

The NYFE proposals will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the NYFE in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.4 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Issued in Washington, DC, on January 30, 1987.

J. Blake Imel,

Deputy Director, Division of Economic Analysis.

[FR Doc. 87-2315 Filed 2-4-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: Monday, 23 February 1987, 9:00 a.m. to 5:00 pm.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Colonel Durate A Lopes, USAF, Acting Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on intelligence support systems.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1987.

[FR Doc. 87-2329 Filed, 2-4-87; 8:45 am]

BILLING CODE 3810-01-M

Advisory Council on Dependents' Education; Meeting

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense, DOD.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education. It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, due to space constraints, anyone wishing to attend should contact the Office of Dependents Schools (ODS) coordinator.

DATES: March 4, 1987, 9 a.m. to 4:30 p.m.; March 5, 1987, 9 a.m. to 12 p.m.

ADDRESS: Pentagon, Room 3E752, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Don Nolder, Special Projects Officer, DoDDS, 2461 Eisenhower Avenue, Alexandria, Virginia 22331-1100 (202/325-0867).

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Pub. L. 95-561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)-(5), of Pub. L. 99-145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is co-chaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. They include representatives of educational institutions and agencies, professional employee organizations, unified military commands, school administrators, parents of students enrolled in DoDDS, and one DoDDS student. The DoDDS Director serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform such other tasks as may be required by the Secretary of Defense. This will be the initial meeting of the Council since its transfer from the Department of Education. The agenda will include information presentations to the new membership on educational and support programs in DoDDS, discussion of the Council's goals and objectives, and identification of plans and requirements for the fall 1987 and subsequent meetings.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 30, 1987.

[FR Doc. 87-2330 Filed 2-4-87; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, March 3, 1987.

ADDRESS: The meeting will be held at the Night Vision & Electro-Optics Laboratories, Building 305, 4th Floor Conference Room, Fort Belvoir, Virginia 22060.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, NY 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electonic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1987.

[FR Doc. 87-2328 Filed 2-4-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Command and Control Management; Meeting

ACTION: Change in location of Advisory Committee Meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Command and Control Management scheduled for March 16-17, 1987 as published in the Federal Register (Vol. 51, No. 232, Page 43659, Wednesday, December 3, 1986, FR Doc. 86-27117) will be held at the MITRE Corporation, McLean, Virginia. In all other respects the original notice remains unchanged.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 30, 1987.

[FR Doc. 87-2331 Filed, 2-4-87; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement for the Caliente Creek Stream Group Investigation, California

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: *1. Proposed Action:* The Calinent Creek Stream Group Investigation for flood control is being conducted as part of the San Joaquin River Basin Comprehensive Investigation which was authorized by a resolution adopted May 8, 1964, by the Committee on Public Works of the House of Representatives. Investigation of flood problems and the preparation of a reconnaissance study of flood control alternatives were completed by the Corps of Engineers in 1985. This effort has produced a plan of action which appears to have general public acceptance and would provide significant flood control for the study area.

The potential project is located approximately 16 miles southeast of Bakersfield in Kern County, California. The creek is part of the internal drainage system of the Central Valley which historically contributed water to the Kern, Buena Vista, and Tulare Lakes. Due to water development and diversion within the watershed, Caliente Creek now only directly contributes to Kern Lake Bed and groundwater system. The Caliente Creek watershed covers approximately 470 square miles, flowing near State Highway 58 in a broad sandy wash, nearly one and one-quarter miles wide and four and one-half miles long. Downstream from this wash, the creek extends (during flood events) over a wide alluvial fan stretching west and south around the Communities of Lamont and Arvin. The tentatively selected plan of action would provide flood protection to the communities of Lamont and Arvin as well as adjacent agricultural areas.

The tentatively selected plan consists of a 16,000 acre-foot flood detention basin created by a earth fill embankment downstream of Highway 58. Downstream channel improvements extending around the perimeter of Arvin and Lamont over a distance of 35 miles, would drain the detention basin.

The Kern County Water Agency (KCWA) is the non-Federal sponsor of the Federal project. KCWA will insure project compliance with the California Environmental Quality Act.

2. Alternatives: Four alternative plans will be addressed in the DEIS. These include: (1) No Action; (2) the tentatively selected plan, featuring a detention basin and outlet channels; (3) a diversion dike and channel plan to convey flood flows to a terminal basin west of Lamont or south of Arvin; and (4) a wide, low-leveed training channel to capture flood flows before they enter Lamont and divert the flood flows past community to a point which approximates the pre-project flood plain. Plans eliminated from further study at the reconnaissance level of investigation will also be discussed.

3. Scoping of the DEIS: Close coordination is being maintained with Federal, State, and local agencies, conservation organizations, and concerned individuals. Information will be provided to interested parties concerning studies which evaluate potential impacts to endangered species. Wildlife resources, water quality testing, proposed mitigation measures and other resources. The impacts to wildlife and its habitat have been analyzed using habitat evaluation procedures. A field and literature survey of cultural resources has not identified significant resources of potential impacts. Any group or individual is requested to provide information on these or any other significant resources of the study area to the District Engineer at the address given below.

A public meeting will be held after release of the DEIS. This meeting will also be publicized by general announcement as well as by written invitation to those known to be interested. Comments received as a result of this notice will be used to assist in identifying and evaluating significant resources and impacts of the proposed project in the DEIS.

4. Scoping Meetings: An initial scoping meeting was held by the Kern County Water Agency of July 9, 1979, in Lamont, California. A summary of flood problems and a project scoping session were developed. Most concerns expressed were for the need for a solution to flooding problems experienced in Lamont. Other concerns expressed included the cost of flood control projects and the need to consider wildlife resources and geologic faults in the plan formulation. An environmental/recreational scoping meeting was held in Bakersfield on April 3, 1986. No interest or potential sponsors for a recreation component of the plan were identified. Several concerns were raised on potential adverse impacts to the sand ridge and associated candidate endangered species. Potential mitigation strategies were also discussed.

5. Estimated date for release of the DEIS: The DEIS is scheduled to be circulated for public review and comment in June 1987.

ADDRESS: Correspondence concerning this project and the DEIS should be addressed to Colonel Wayne J. Scholl, District Engineer, Sacramento District Corps of Engineers, 650 Capital Mall, Sacramento, California 95814–4794. Questions concerning the proposed action and the draft document can be answered by Jeff Groska at (916) 551–1860 or (FTS) 460–1860.

Wayne J. Scholl,

Colonel, Corps of Engineers District Engineer.

[FR Doc. 87–2312 Filed 2–4–87; 8:45 am]

BILLING CODE 3710–EH–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) on the Potential for Cumulative Impacts From Major Rehabilitation at Locks and Dams 2–22 on the Mississippi River, and at Locks and Dams on the Illinois Waterway From Lockport to La Grange

AGENCY: U.S. Army, DOD.

ACTION: Notice of Intent to prepare a draft environmental impact statement (DEIS).

SUMMARY:

1. Description of Proposed Action

Major rehabilitation of the Locks and Dams on both the Mississippi River and the Illinois Waterway is critical to extending the useful life of the navigation system. The majority of work consists of repair and replacement measures, such as repairing deteriorated concrete, replacing worn mechanical and electrical equipment, placing additional rockfill for increased scour protection, and repair to damaged or worn gate components. The Major Rehabilitation effort began in 1977 and is expected to continue into the 1990's. NEPA compliance to date for this repair and replacement work is being satisfied by the preparation and public review of site-specific Environmental Assessments.

During public review and coordination with other agencies for the Major Rehabilitation effort, certain features of the scheduled work were identified as having the potential to increase navigation traffic on the Upper Mississippi River System. Consequently, for the tentative list of measures below, an EIS will be prepared to specifically analyze not only the site-specific impacts, but also any cumulative impacts on the Upper Mississippi River System if navigation traffic is found to increase:

Submersible tainter gates at Peoria and La Grange L/Ds (Illinois Waterway)
Guardwall at L/D 22
Lower cell at L/D 21
Vertical lift gate at L/D 20
Bubbler systems at all sites (L/D 2–22; Illinois Waterway)
Modification to outlet structure at L/D 15
Construction of two cells above L/D 15
Upper and lower guidewall extension at L/D 21 and 22
Upper guidewall extension at L/D 11–20

The EIS is being prepared for Locks and Dams in both the St. Paul and Rock Island Districts of the Corps of Engineers. Rock Island District has the lead responsibility for EIS preparation and coordination.

2. Alternatives to the Proposed Action

Since this EIS will examine the potential for increased navigation traffic resulting from the proposed rehabilitation measures, alternatives will include various combinations of the proposed features, modifications to the features, and the No Federal Action alternative.

3. Public Involvement

Both the general public and other agencies have been involved in the Major Rehabilitation plans through availability of the Environmental Assessments for each Lock and Dam. It has been through public involvement and comments from interested parties that the decision was made to prepare an EIS to address potential cumulative impacts. The Rock Island District will continue to coordinate with all interested parties to assure the EIS process considers all pertinent concerns. Scoping meetings to determine significant resources and concerns are being planned for January-February 1987. The Rock Island District will notify agencies, special interest groups, and the general public, of meetings by public notice.

4. Estimated Release Date

The Draft EIS is scheduled to be released in March 1988. Point of contact for preparation of the EIS is Karen Bahus, Environmental Analysis Branch, Planning Division. She can be reached at (309) 788–6361, Ext. 384 or FTS 386–6384. Written questions or comments concerning the proposed EIS should be directed to: Neil A. Smart, Colonel, Corps of Engineers, District Engineer, U.S. Army Engineer District, Rock Island, Clock Tower Building, P.O. Box 2004, Rock Island, Illinois 61204–2004.

Dated: January 26, 1987.

Neil A. Smart,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87–2412 Filed 2–4–87; 8:45 am]

BILLING CODE 3710–HV–M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: National Advisory Council on Women's Educational Programs, Education.

ACTION: Notice of meeting.

SUMMARY: This document is intended to notify the general public of a meeting of the Executive Committee of the National Advisory Council on Women's Educational Programs. Due to budget constraints, the Committee will meet in closed session via teleconference on Wednesday, February 18, 1987, at 12:45 p.m. until business is completed, in suite 568, 2000 L Street NW., Washington, DC. The Committee is meeting in closed session to consider candidates and select an Executive Director for the National Advisory Council on Women's Educational Programs. These discussions will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemption (6) of section 552(b)(c) of Title 5 U.S.C.

FOR FURTHER INFORMATION CONTACT: Patricia A. Weber, Executive Director (Acting), National Advisory Council on Women's Educational Programs, suite 568, 2000 L Street NW., Washington, DC 20036 (202) 634–6105.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 95–561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The Executive Committee will meet in closed session via teleconference on February 18, 1987 from 12:45 p.m. until business is completed. The Committee is meeting in closed session to consider candidates and select an Executive Director for the National Advisory Council on Women's Educational Programs.

These discussions will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

The public is being given less than fifteen days notice of this closed session due to the difficulty of arranging the meeting because of scheduling conflicts and the unavailability of some Executive Committee members.

A summary of the activities of the closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 5526 will be available to the public within fourteen days of the meeting.

Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 2000 L Street NW., Suite 568, Washington, DC 20036.

Signed at Washington, DC on February 2, 1987.

Patricia A. Weber,

Executive Director (Acting).

[FR Doc. 87-2436 Filed 2-4-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Draft Amendment of Mission Plan for the Civilian Radioactive Waste Management Program

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Notice of Availability of a Draft Amendment to the Mission Plan for the Civilian Radioactive Waste Management Program for Public Inspection.

SUMMARY: Section 301 of the Nuclear Waste Policy Act of 1982 (NWPA, Pub. L. 97-425), requires the Secretary of Energy to ". . . prepare a comprehensive report, to be known as the Mission Plan, which shall provide an informational basis sufficient to permit informed decisions to be made in carrying out the repository program and the research, development, and demonstration programs required under this Act."

After incorporating changes in response to comments received on a draft version of the Plan, the Department of Energy prepared and submitted the Mission Plan (DOE/RW-0005, June 1985) to Congress.

The Department has prepared a draft amendment to the Mission Plan and is transmitting it to States, affected Indian Tribes, the Nuclear Regulatory Commission (NRC), and other Government agencies for comment. Comments have been requested by April 3, 1987. After the comment period, the Department will revise the amendment as appropriate and formally submit it to Congress. The draft amendment to the Mission Plan is intended to apprise the Congress, the affected States and Indian Tribes, other Federal agencies, and the public, of significant developments and new information in the Civilian Radioactive Waste Management Program. These items, in terms of the Department's priorities, include:

- Achievements in the first repository program including the nomination and recommendation of sites for detailed site characterization;
- As a result of reevaluations of the work necessary to proceed, a five-year extension of the schedule for the first repository;
- New waste-generation data that, along with other considerations, indicated that it was prudent to indefinitely postpone site-specific activities for the second repository while continuing technical development activities;
- Developments concerning the submission to Congress of a proposal for a monitored retrievable storage (MRS) facility as an integral part of the waste management system; and
- Actions taken and progress made toward better defining the consultation-and-cooperation process with eligible States and affected Indian Tribes.

Copies of the draft amendment are being mailed for information to nearly 7000 addressees on the Civilian Radioactive Waste Management Program's mailing list who have previously expressed an interest in receiving program documents and status reports.

A copy of the draft amendment to the Mission Plan may be obtained by contacting the Office of Civilian Radioactive Waste Management Washington, DC office, or any one of the Project Offices at the following addresses:

U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Office of Policy and Outreach, RW-40, 1000 Independence Avenue, SW., Washington, DC 20585, Tel. (202) 586-2277

Salt Repository Project Office, U.S. Department of Energy, 505 King Avenue, Columbus, Ohio 43201, Tel: (614) 424-5916

Nevada Nuclear Waste Storage Investigations, Waste Management Project Office, U.S. Department of Energy, Nevada Operations Office, 2753 South Highland Street, Las Vegas, Nevada 89109, Tel: (702) 295-3521

Basalt Waste Isolation Project, U.S. Department of Energy, Federal Building, 825 Jadwin Avenue, Room 630, Richland, Washington 99352, Tel: (509) 376-7501

Repository Technology and Transportation Division, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, Illinois 60439, Tel: (312) 972-2570

A copy of the draft amendment to the Mission Plan is also available for public inspection at the above Project Offices as well as at the following address:

U.S. Department of Energy, Public Reading Room, Room 1E-290, 1000 Independence Avenue, SW., Washington, DC 20585

Comments received in response to this notice will be available for public inspection at the Public Reading Room in Washington, DC at the address above.

Issued in Washington, DC, January 28, 1987.

Ben C. Rusche,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 87-2272 Filed 2-4-87; 8:45 am]

BILLING CODE 6450-01-M

Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board.

Date and Time: Monday, March 2, 1987, 8:00 a.m.–5:00 p.m., Tuesday, March 3, 1987, 8:00 a.m.–12:00 noon.

Place: Omni Georgetown Hotel, 2121 P. Street, NW., Washington DC 20037.

Contact: Susan D. Heard, Department of Energy, Forrestal Building—6A081, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202–586–8290.

Purpose of the Board: The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementing Energy Extension Service programs. Additionally, the Board is responsible for reporting on an annual basis to the Congress, the Secretary of Energy, and the Director of the Energy Extension Service.

Tentative Agenda: Monday, March 2, 1987

- Review of the draft of the Board's Eighth Annual Report
- Public comment (10 minute rule)
- Tuesday March 3, 1987
- Revisions to draft of Eighth Annual Report
- Acceptance of Eighth Annual Report
- Public comment (10 minute rule)

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Susan D. Heard at 202–586–8290. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday thru Friday, except Federal holidays.

Issued at Washington, DC, on January 30, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87–2271 Filed 2–4–87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Remedial Order to Tampimex Oil International, Ltd.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to Tampimex Oil International, Ltd.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Tampimex Oil International, Ltd., 811 Dallas, Houston, Texas 77002. This Proposed Remedial Order alleges violations in the amount of $689,997.00, plus interest, resulting from violations of 10 CFR 212.186, 10 CFR 205.202 and 10 CFR 210.62(c) with regard to certain crude oil resales during the period January 1978 through December 1980. The effect of the alleged violations is nationwide.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room 6F–078, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon:

Sandra K. Webb, Director, Economic Regulatory Administration, U.S. Department of Energy One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002

and upon:

Marshall Staunton, Acting Solicitor, Economic Regulatory Administration, U.S. Department of Energy, Room 3H–017, RG–40, 1000 Independence Ave., SW., Washington, DC 20585

Issued in Washington, DC, on the 22th day of January 1987.

Marshall Staunton,

Acting Solicitor, Economic Regulatory Administration.

[FR Doc. 87–2275 Filed 2–4–87; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Energy Research Advisory Board (ERAB).

Date and Time: Feburary 18, 1987—9:00 a.m.–5:00 p.m., Feburary 19, 1987—9:00 a.m.–12:00 Noon.

Place: Department of Energy, 1000 Independence Avenue, SW., Room 8E–089, Washington, DC 20585.

Contact: Sarah Goldman, Department of Energy, Office of Energy Research, ER–6, 1000 Independence Avenue, SW., Washington, DC 20585, Telphone: 202/586–5779.

Purpose of the Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas in the Department.

Tentative Agenda: The specific agenda items and times are subject to last minute changes. Written planning to attend for a specific topic should confirm the time prior to and during the day of the meeting.

Tentative Agenda

February 18

9:00 a.m., Administrative Items
—Approvel of November Meeting Minutes
—1987 Meeting Dates
—Summer Study
—Electronic Mail-New Procedures of the Energy Research Advisory Board
—Technical Panel on Magnetic Fusion of the Energy Research Advisory Board Follow-up
—Solid Earth Sciences Panel Follow-up
9:30 a.m., DOE FY 88 Budget
10:30 a.m., Break
11:00 a.m., Photo Session with the Secretary (ERAB Members)
12:00 noon, Lunch
1:15 p.m., Clean Coal Technology—Status
2:00 p.m., Superconducting Super Collider—Status
2:30 p.m., Physics Review Panel Report
3:15 p.m., Break
3:30 p.m., Physics Review Panel Report
4:15 p.m., Possible New Studies
4:50 p.m., Public Comment—(10 minute rule)
5:00 p.m., Adjourn

February 19

9:00 a.m., Possible New Studies
11:50 a.m., Public Comment (10 minute rule)
12:00 noon, Adjourn

Public Participation: The meeting is open to the public. The Chairman of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Sarah Goldman at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made received 5 days prior to the meeting and reasonable provison will be made to include the presentation on the agenda.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 29, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87–22–74 Filed 2–4–87; 8:45 am]

BILLING CODE 6450-01-M

High Energy Physics Advisory Panel; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP)

Date and Time: Thursday, February 19, 1987, 9:00 am—6:00 pm Friday, February 20, 1987, 9:00 am—4:00 pm

Place: U.S. Department of Energy Room 4A-104, 1000 Independence Ave., SW., Washington, DC 20585

Contact: Dr. P.K. Williams Executive Secretary, High Energy, Physics Advisory Panel, U.S. Department of Energy, ER–221: GTN, Washington, DC 20545, Telephone: 301/353–4829

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda:

Thrusday, February 19, 1987

—Presentation and Discussion of the FY 1988 Presidential Budget Request for the National Science Foundation Elementary Praticle Physics Program (If Available)
—Presentation and Discussion of the FY 1988 Presidential Budget Request for the Department of Energy High Energy Physics Program (If Available)
—Discussion of FY 1987 R&D Plans for the Superconducting Super Collider (SSC)
—Status Report on the Fermilab Tevatron Collider First Operation for Physics
—Status Report on the Standford Linear Collider Construction
—Status Report on Tristan First Operation for Physics
—Public Comment (10 minute rule)

Friday, February 20, 1987

—Discussion of Possible HEPAP Subpanel on University Programs in High Energy Physics
—Report on Meeting of the US/USSR Joint Coordinating Committee on Fundamental Properties of Matter
—Status Report on the Study of High Energy Physics Accomplishments by the DOE Office of Program Analysis
—Progress Report on ESNET Computer Network
—Further Discussion of Foregoing Items
—Public Comment (10 minute rule)

Pubic Participation: The meeting is open to the public. The Chairperson of the panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and resonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 29, 1987

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 87–2273 Filed, 2–4–87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87-225-000 et al.]

Duke Power Co. et al.; Electric Rate and Corporate Regulation Filings

January 30, 1987.

Take notice that the following filings have been made with the Commission:

[Docket No. ER87-225-000]

1. Duke Power Co.

Take notice that Duke Power Company (Duke) on January 21, 1987 tendered for filing a revision in its wheeling rate under the agreement between Duke Power Company (Duke) and the United States of America, Department of Energy, acting by and through the Southeastern Power Administration (SEPA), dated January 13, 1986 (designated Rate Schedule FFRC No. 283), as supplemented, which revision provides for a reduction in the wheeling rate from $1.62 per kilowatt month to $1.51 per kilowatt month for delivery by Duke of approximately 194,500 kilowatts from SEPA's Hartwell, Clarks Hill and Richard B. Russell Projects to preference customers of SEPA in Duke's service area in North Carolina and South Carolina.

Duke has requested a waiver of the Commission's notice requirements so that the revised rate becomes effective on January 21, 1987.

Copies of this filing were served on SEPA, the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: February 12, 1987, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ER87-154-000]

2. Florida Power & Light Co.

Take notice that on January 23, 1987, Florida Power & Light Company ("FPL") tendered for filing a revised Attachment B to each of the respective Agreements entitled: (1) Stanton Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency ("Stanton Transmission Agreement"); and (1) Stanton Tri-City Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency ("Stanton Tri-City Transmission Agreement").

As requested by the Commission Staff, these Attachments have been revised to delineate the specific values for FPL's currently effective rates for transmission services provided under each of the respective Agreements. Each revised Attachment B supersedes and replaces in its entirety the attachment B to each of the respective Agreements that were initially filed in Docket No. ER87-154.

Copies of the filing were served upon Florida Municipal Power Agency, the FMPA Participating Members (as listed in the initial filing) and the Florida Public Service Commission.

FPL requests that these revised Attachments be made effective upon commencement of the commerical operation of Stanton Unit No. 1 (estimated to be July 1, 1987).

Comment date: February 12, 1987, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ER86-684-001]

3. Jersey Central Power & Light Co., Metropolitan Edison Co. Pennsylvania Electric Co.

Take notice that on January 20, 1987, Jersey Central Power & Light Company, Metroplitan Edison Company and Pennsylvania Electric Company (GPU Companies) tendered for filing information requested by the Commission, after finding the agreement between GPU Companies and Niagara Mohawk Power Corporation (Niagara Mohawk) for the exchange of power and enrgy and the exchange of transmission service was deficient with respect to the Commission's regulation.

Comment date: February 12, 1987, in accordance with Standard Paragraph E at the end of this notice.

[Docket NO. ER87-224-000]

4. Kansas City Power & Light Co.

Take notice that on January 20, 1987, Kansas City Power & Light Company ("KCPL") tendered for filing an Amendatorv Agreement No. 3, and an associated Capacity Exchange Service provided to the City of Independence, Missouri—service Schedule H-MPA-1 (KCPL Rate Schedule FERC No. 101). KCPL states that the rates for the service covered by the above-mentioned schedule are the same rates as previously approved by this Commission for Capacity Exchange Service for the City of Independence.

Comment date: February 12, 1987, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ER87-169-000]

5. Public Service Co. of Indiana, Inc.

Take notice that Public Service Company of Indiana, Inc. (PSI), on January 21, 1987, tendered for filing additional data with respect to a Settlement Agreement for a rate increase previously filed on December 16, 1986.

Copies of the filing were served upon the Public Service Commission of Indiana, the City of Logansport, Indiana, Henry and Jackson County Rural Electric Membership Corporations, the Indiana Municipal Power Agency, and the Indiana municipalities of Advance, Bainbridge, Brooklyn, Coatesville, Dublin, Dunreith, Edinburg, Hagerstorn, Knightstown, Ladoga, Lewisville, Montezuma, New Ross, Pittsboro, Rockville, South Whitley, Spicelan, Straughn, Thorntown, Veedersburg, Waynetown and Williamsport.

Comment date: February 12, 1987, in accordance with Standard Paragraph E at the end of this notice.

[Docket No ER87-227-000]

6. Public Service Co. of Oklahoma

TAke notice that on January 23, 1987, Public Service Company of Oklahoma ("PSO") submited for filing changes in its fuel adjustment clause. The changes are limited in nature and are intended to bring PSO's fuel adjustment clause into conformity with the Commission's present fuel clause regulations. Specifically, PSO proposes to pass through its fuel adjustment clause the total cost of the purchase of "economic power" as defined in the Commission's regulations. PSO also seeks permission to include the cost of fuel avoided when purchases are made from Qualifying Facilities.

Copies of the filing have been the served on the customers of PSO affected by the filing and on the Oklahoma Corporation Commission.

Comment date: February 12, 1987, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ER86-547-001]

7. Wisconsin Power & Light Co.

Take notice that on January 21, 1987, Wisconsin Power & Light (WPL) tendered for filing documents which should enable the Commission to complete its review of the contract between South Beloit Water, Gas and Electric (SBWG&E) and WPL. WPL states that this current electric contract between themselves and SBWG&E was filed in June 1986.

Comment date: February 12, 1987, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2351 Filed 2-24-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRI-3152-1]

Financial Assistance Program Eligible for Review Under 40 CFR Part 29 and Subject to Section 204 of the Demonstration Cities and Metropolitan Development Act

AGENCY; Environmental Protection Agency.

ACTION: Notice of availability and review.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a new financial assistance program, the Leaking Underground Storage Tanks Trust Fund, to support the development of State corrective action and enforcement programs that address releases from underground storage tanks containing petroleum. In order to facilitate State involvement, funds will be available during fiscal year (FY) 1987 for cooperative agreements between EPA and States where the Administrator determines that the State has the capacity to effectively carry out corrective actions and enforcement activities.

FOR FURTHER INFORMATION CONTACT: Ronald Brand, Director, Office of Underground Storage Tanks, U.S. EPA, 401 M Street, SW., Washington, DC 20460, (202) 382-4756.

SUPPLEMENTARY INFORMATION: Subtitle I of the Resource Conservation and Recovery Act (RCRA) provides for the development and implementation of a comprehensive regulatory and response program for underground storage tanks (USTs) containing petroleum and other regulated substances. The Superfund Amendments and Reauthorization Act of 1986 (SARA), which amended Subtitle I, created the Leaking Underground Storage Tank Trust Fund. This Fund will pay for the cost of certain Federal and State response and enforcement activities for releases from USTs containing petroleum.

RCRA Subtitle I, section 9003 requires the Administrator to promulgate release detection, prevention, and corrective action and financial responsibility regulations applicable to owners and operators of underground storage tanks. Before the effective date of those regulations, the Administrator or a State may use the Trust Fund to pay for corrective action (and related enforcement and cost recovery activities) for a petroleum release from an UST whenever necessary to protect human health and the environment.

Once the regulations are in effect, the following additional conditions must be met in order to be eligible for assistance from the Fund:

(1) No owner or operator can be found, within 90 days or such shorter period as may be necessary to protect human health and te environment, who is subject to the corrective action regulations and capable of carrying out such corrective action properly;

(2) Prompt action by EPA or a State is necessary to protect human health and the environment;

(3) Corrective action costs exceed the required amount of financial responsibility demonstrated by an owner or operator and, considering the class or category of UST, expenditures are necessary to assure an effective corrective action; or

(4) The owner or operator has failed or refused to comply with an order to perform corrective action.

In addition, following the effective date of the regulations, States will pay ten percent of the costs of corrective actions taken with Trust Fund support.

The purpose of this program is to prevent and reduce groundwater degradation by assuring rapid and effective response to releases from underground storage tanks containing petroleum. The first step in a response, typically done by the owner or operator, is recognizing and reporting that a release has occurred. Releases are likely to be recognized and reported sooner if an owner/operator's financial uncertainties associated with corrective action are reduced or removed. The Fund (in combination with financial responsibility requirements) is intended to reduce that uncertainty and encourage early reporting of releases. However, the Fund is *not* intended as a source of assistance to States for the development or implementation of UST *regulatory* programs, general technical capabilities, or programs to support State legal offices in carrying out their general responsibilities.

The Trust Fund cleanup program will be implemented by States and EPA Regional Offices under the guidance of the Office of Underground Storage Tanks in EPA Headquarters. States are expected to play key roles in cleanups because State officials are closer to the scene and know more about tasks in their States and about local site conditions than do Federal officials. EPA Regional Offices will have the lead in the negotiations of cooperative agreements and the subsequent State program approval process, with participation and assistance from the EPA Headquarters Office of Underground Storage Tanks.

This program is eligible for intergovernmental review under Executive Order 12372 and is subject to the review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act. States must notify the following office in writing within thirty days of this publication whether their State's official E.O. 12372 process will review applications in this program: Grants Policy and Procedures Branch, Grants Administration Division (PM-216), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Applicants (State agencies) must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to find out if the program is subject to the State's official E.O. 12372 review process and what material must be submitted to the SPOC for review. In addition, applications including projects within a metropolitan area must be sent to the areawide/Regional/local planning agency designated to perform metropolitan or Regional planning for the area for their review.

SPOCs and other reviewers should send their comments concerning applications to the appropriate EPA Regional Office, no later than sixty days after receipt of an application/other required material for review.

Dated: January 30, 1987.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 87-2425 Filed 2-4-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3151-8]

Limitations to Superfund Response Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of regulatory limitations.

SUMMARY: This notice will serve to advise the public of limitations on response claims, which may be filed against the Hazardous Substances Superfund (Superfund) established by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9601 et seq. These limitations are contained in the National Oil and Hazardous Substances Contingency Plan (NCP) 40 CFR Part 300 (1985).

FOR FURTHER INFORMATION CONTACT: William O. Ross, Office of Emergency and Remedial Response (WH-548), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4645, or The RCRA/CERCLA Hotline, (800) 424-9386 (or 382-3000 in the Washington DC metropolitan area). Superfund Docket: (202) 382-3046.

SUPPLEMENTARY INFORMATION: This notice serves to advise the public concerning limitations on response claims. Section 111(a)(2) of CERCLA authorizes the use of Superfund monies for:

> Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: *Provided, however,* That such costs must be approved under said plan and certified by the responsible Federal official.

Because a CERCLA response claim is a reimbursement, a claimant can only receive funds for response costs that have already been incurred in carrying out the NCP. The NCP, established under section 311(c) of the Clean Water Act and amended under section 105 of CERCLA, provides for efficient, coordinated, and effective response to discharges of oil and releases, or substantial threats of releases, of hazardous substances and to releases or substantial threat of releases of pollutants or contaminants which may present an imminent and substantial danger to public health or welfare. The Plan provides for the division and specification of responsibility among the Federal, State and local governments in response actions, and specifies the appropriate roles for private entities.

Section 300.25(d) of the NCP states that any other person who takes a response action and intends to seek reimbursement, in order to be in conformity with the NCP must both:

1. Notify the Administrator of EPA; and

2. Receive approval *prior* to undertaking the response action. This section continues that the process of prior approval is "preauthorization." Preauthorization will be only granted where EPA determines that the response action will be consistent with the NCP and that the person requesting preauthorization has demonstrated the technical and other capabilities to safely and effectively carry out the response.

EPA also plans to propose procedures for informing concerned persons of the response claims limitations pursuant to section 111(o) of CERCLA. Section 111(o) requires the President to develop and implement procedures to adequately notify concerned local and State officials and other concerned persons of the limitations on payment of response claims from the Superfund.

These procedures may be incorporated with the procedures for filing response claims which are described below.

Section 112(a) of CERCLA authorizes the President to develop forms and procedures for filing claims against the Superfund. EPA will soon propose a rule on section 112(a) response claims, which will contain further details on the prerequisites to a claim against the Superfund. When promulgated, the response claim rule will appear at 40 CFR Part 307.

Dated: February 2, 1987.

Jack McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 87-2426 Filed 2-4-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100035; FRL-3152-5]

Keydata Systems, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA).

Keydata Systems, Inc. (KSI) has been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to KSI as authorized by 40 CFR 2.307(h) and 2.308(h)(2), respectively. This action will enable KSI to fulfill the obligations of the contract and serves to notify affected persons.

DATE: KSI will be given access to this information no sonner than February 10, 1987.

FOR FURTHER INFORMATION CONTACT: By mail:

William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2613).

SUPPLEMENTARY INFORMATION: Under Contract No. 68-02-4267, KSI will receive and process formula statements, product chemistry data, and information regarding the sources of ingredients for various pesticide products. This contract involves no subcontractor.

OPP has determined that access by KSI to such information on all pesticide chemicals is necessary to the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with KSI prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, KSI is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in EPA. All information supplied to KSI by EPA for use in connection with this contract will be returned to EPA when KSI has completed its work.

Dated: February 2, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-2536 Filed 2-4-87; 8:45 am]

BILLING CODE 6560-50-M

Revision of Wisconsin National Polutant Discharge Elimination System (NPDES) Program To Issue General Permits

[FR-3151-9]

AGENCY: Environmental Protection Agency.

ACTION: Notice of Approval of the National Pollutant Discharge Elimination System General Permits Program of the State of Wisconsin.

SUMMARY: On December 19, 1986, the Regional Administrator for the Environmental Protection Agency (EPA), Region V approved the State of Wisconsin's National Pollution Discharge Elimination System General Permits Program. This action authorizes the State of Wisconsin to issue general permits in lieu of individual NPDES permits.

FOR FURTHER INFORMATION CONTACT: Almo Manzardo, Chief, Permits Section, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, 312/353-2105.

SUPPLEMENTARY INFORMATION:

Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of wastewater which result from substantially similar operations, are of the same type wastes, require the same effluent limitations of operating conditions, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits.

Wisconsin was authorized to administer the NPDES program in February, 1974. Their program, as previously approved, did not include provisions for the issuance of general permits. There are several categories which could appropriately be regulated by general permits. For these reasons the WDNR requested a revisin of their NPDES program to provide for issuance of general permits. The categories which have been proposed for coverage under the general permits program include: Non-Contact Cooling Water, Concrete Products Operations, Sand, Gravel or Crushed Stone Operations, Swimming Pools, Petroleum Storage Terminals, Water Treatment Plants, dredging Projects Involving Uncontaminated Sediments and Similar Facilities.

Each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

The State of Wisconsin submitted in support of its request, copies of the relevant statutes and regulations. The State has also submitted a statement by the Attorney General certifying, with appropriate citations to the statutes and regulations, that the State has adequate legal authority to administer the general permits program as required by 40 CFR

1223.23(c). I n addition, the State submitted a program description supplementing the original application fora the NPDES program authority and a modification to the Memorandum of Agreement between EPA and the WDNR. EPA has concluded, upon reviewing all of these submitted materials, that the State has the legal authority to administer the general permits program, including the authority to perform each of the activities set forth in 40 CFR 123.44. Based upon Wisconsin's program description and upon its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permits program.

III. "Federal Register" Notice of Approval of State NPDES Programs or Modifications

EPA will provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's **Federal Register** notice is to announce the approval of Wisconsin's authority to issue general permits.

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program
Arkansas *	11/01/86	11/01/86	11/01/86
Alabama	10/19/79	10/19/79	10/19/79
California	05/14/73	05/05/78	
Colorado *	03/27/75		
Connecticut	09/26/73		06/03/81
Delaware	04/01/74		
Georgia	06/28/74	12/08/80	03/12/81
Hawaii	11/28/74	06/01/79	08/12/83
Illinois *	10/23/77	09/20/79	
Indiana	01/01/75	12/09/78	
Iowa	08/10/78	08/10/78	06/03/81
Kansas	06/28/74	08/28/85	
Kentucky *	09/30/83	09/30/83	09/30/83
Maryland	09/05/74		09/30/85
Michigan	10/17/73	12/09/78	06/07/83
Minnesota	06/30/74	12/09/78	07/16/79
Mississippi	05/01/74	01/28/83	05/13/82
Missouri *	10/30/74	06/26/79	06/03/81
Montana *	06/10/74	06/23/81	
Nebraska	06/12/74	11/02/79	09/07/84
Nevada	09/19/75	08/31/78	
New Jersey *	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	
North Carolina	10/19/75	09/28/84	06/14/82
North Dakota	06/13/75		
Ohio	03/11/74	01/28/83	07/27/83
Oregon *	09/26/73	03/02/79	03/12/81
Pennsylvania	06/30/78	06/30/78	
Rhode Island *	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82
Tennessee	12/28/77		08/10/83
Vermont	03/11/74		03/16/82
Virgin Islands	06/30/76		
Virginia	03/31/75	02/09/82	
Washington	11/14/73		09/30/86
West Virginia *	05/10/82	05/10/82	05/10/82
Wisconsin *	02/04/74	11/26/79	12/24/80
Wyoming	01/30/75	05/18/81	

* Asterisks indicate approved general permit authority.

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State General Permits Program will not have a significant impact on a substantial number of small entities. Approval of the Wisconsin NPDES State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the Wisconsin NPDES State General Permits Program merely provides a simplified administrative process.

Dated: December 19, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 87-2427 Filed 2-4-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office Management and Budget for Review

January 30, 1987.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB No.: 3060-0106

Title: Section 43.61, Reports of Overseas Telecommunications Traffic

Action: Revision

Respondents: Common carriers providing international telecommunications services

Frequency of Response: Annually

Estimated Annual Burden: 12 Responses; 960 Hours

Needs and Uses: The overseas telecommunications traffic data reports are essential to the Commission and carriers for international facilities planning, facility authorization, monitoring and market analysis purposes. The data is used by FCC to determine whether to grant applicants authority to acquire and operate facilities for the provisions of telecommunications services between the United States and a new international point of communication. The Commission must determine whether the competition is feasible in the market(s) sought to be served and is in the public interest. The traffic data submitted is used to determine the feasibility of competition, i.e., whether there is sufficient traffic to support the applicant common carrier. The commission also uses the data to fulfill its regulatory responsibilities; in our facilities planning processes to estimate traffic and market trends in various regions of the world; in monitoring the development and competitiveness of each international market and in gauging the competitive impact of our decisions on the market.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-2400 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

Information Collection Requirements Approval by Office of Management and Budget

January 30, 1987.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0003

Title: Application for Amateur Radio Station and/or Operator License

Form No.: FCC 610

A revised application form FCC 610 has been approved for use through 12/31/89. The July 1985 and March 1986 editions with expiration dates of 3/31/88 will remain in use until revised forms are available.

OMB No.: 3060-0046

Title: Application for New or Modified Common Carrier Radio Station Authorization Under Part 22

Form No.: FCC 401

A revised application form FCC 401 has been approved for use through 11/30/89. The January 1985 edition with an expiration date of 4/30/87 will remain in use until revised forms are available.

OMB No.: 3060-0064

Title: Application for Station Authorization in the Private Operational Fixed Microwave Radio Service

Form No.: FCC 402

A revised application form FCC 402 has been approved for use through 10/31/89. The August 1985 edition with an expiration date of 4/30/88 will remain in use until revised forms are available.

OMB No.: 3060-0072

Title: Airborne Mobile Radio Telephone License Application

Form No.: FCC 409

A revised applicant form FCC 409 has been approved for use through 9/30/89. The October 1985 edition with an expiration date of 9/30/88 will remain in use until revised forms are available. At that time, a Public Notice will be issued containing information on availability and implementation.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-2401 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1641]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

January 30, 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 (insert date 16 days after date of publication) 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. (Hastings, Florida) (RM-5380)

Number of petitions received: 1.

Comment: This Proposal is mutually exclusive with a pending Proposal for Channel 227A at Baldwin, Florida (RM-5213).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-2402 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Stephen G. Kafka, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No	MM docket No.
A. Stephen G. Kafka	Laramie, WY	BPH-850708MM	87-4
B. Laramie Women's Hispanic Network	do	BPH-850710NM	
C. Ken Braddick	do	BPH-850712Q7	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Air Hazard	B
2. Comparative	A, B, C
3. Ultimate	A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding 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 may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief Audio Services Division Mass Media Bureau.

[FR Doc. 87-2404 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Pilgrims Pride Broadcasting Co., Ltd., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM docket No.
A. Pilgrims Pride Broadcasting Company, Ltd.	Harwichport, MA	BPH-831018AG	86-511
B. Women, Minorities and Disabled Americans for Better Broadcasting, Inc.	do	BPH-840217AE	
C. Sound Media, Inc.	do	BPH-840217AL	
D. Mary Jane Kelly	do	BPH-840217AP	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Misrepresentation	C
2. Air Hazard	A, B, C, D
3. Comparative	A, B, C, D
4. Ultimate	A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding 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 may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief Audio Services Division Mass Media Bureau.

[FR Doc. 87–2405 Filed 2–4–87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Ramon Rodriguez & Associates et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM docket No.
A. Ramon Rodriguez et al d/b/a Ramon Rodriguez & Associates.	Cabo Rojo, PR	BPH-821208AA	86-510
B. Guillermo A. Bonet & Hilda Acosta de Bonet d/b/a Bonet Associates.	Lajas, PR	BPH-830420AC	
C. Carmen B. Rodriguez & Frederick Gauthier de Castro d/b/a F.M Minority Broadcasting.	do	BPH-830420AK	
D. David Ortiz Radio Corporation	do	BPH-830722AL	(Dismissed)

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Air Hazard	B
2. Comparative	A, B, C
3. Ultimate	A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding 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 may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief Audio Services Division Mass Media Bureau.

[FR Doc. 87–2406 Filed 2–4–87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-552]

Bell Savings Bank, PaSa Upper Darby, PA; Final Action Approval of Conversion Application

Dated: January 30, 1987.

Notice is hereby given that on December 30, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Bell Savings Bank, PaSa, Upper Darby, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania 15222–4893.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87–2451 Filed 2–4–87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–002744–059

Title: Atlantic and Gulf/West Coast of South America Conference

Parties:

- Compania Chilena de Navigacion Interoceania, S.A.
- Compania Sud Americana de Vapores S.A.
- Lykes Bros. Steamship Co., Inc.
- Compania Peruana de Vapores
- Lineas Navieras Bolivianas, S.A.M.

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 202–007540–047

Title: United States Atlantic and Gulf/Southeastern Caribbean Conference

Parties:

- Puerto Rico Maritime Shipping Authority
- Sea-Land Service, Inc.
- Shipping Corporation of Trinidad and Tobago, Ltd.

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 202–007590–046

Title: United States Colombia Conference

Parties:

- Crowley Caribbean Transport, Inc.

Flota Mercante Grancolombiana, S.A.
Lykes Bros. Steamship Co., Inc.
CTMT, Inc.

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 204-010066-012
Title: Atlantic & Pacific/Colombia Equal Access Agreement
Parties:
Flota Mercante Grancolombiana, S.A.
United States Lines (S.A.) Inc.
Crowley Caribbean Transport, Inc.
CTMT, Inc.

Synopsis: The proposed amendment would delete the agreement's termination date. The parties have requested a shortened review period.

Agreement No.: 202-010390-014
Title: United States Atlantic and Gulf/Ecuador Conference
Parties:
Crowley Caribbean Transport, Inc.
Lykes Bros. Steamship, Inc.
Ecuadorian Line, Inc.

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 224-010946-002
Title: Brazos River Terminal Agreement
Parties:
Brazos River Harbor Navigation District of Brazoria County, Texas (Port)
American Rice, Inc. (ARI)

Synopsis: The proposed amendment would specify the amount to be paid by ARI in the event ARI chooses to exercise its option to repurchase property improvements sold to the Port and leased-back under the terms of the agreement.

Agreement No.: 202-010717-017
Title: United States Atlantic and Gulf/Central America Freight Association
Parties:
Crowley Caribbean Transport, Inc.
Ecuadorian Line, Inc.
Seaboard Marine Line, Ltd.
Sea-Land Service, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 224-011057
Title: San Francisco Terminal Agreement
Parties:
San Francisco Port Commission
South Seas Steamship Company (SSSC)

Synopsis: The proposed agreement would permit the Port to assess SSSC a reduced level of dockage, wharfage and demurrage fees in return for SSSC utilizing San Francisco as its published, regularly scheduled Northern California port of call. The agreement would have a ten year term.

Agreement No.: 224-011058
Title: Galveston Port Agreement
Parties:
Board of Trustees of the Galveston Wharves (Port)
Suderman Stevedore, Inc. (SSI)

Synopsis: The proposed agreement would permit the Port to assign shed space to SSI for use in SSI's unloading of United States Department of Agriculture Title II sacked cargo. The agreement would remain in effect for a period of sixty days. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: February 2, 1987.

Joseph C. Polking,
Secretary.

[FR Doc. 87-2409 Filed 2-4-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Chicago Corp.; Formations of, Acquisitions by and Mergers of Bank Holding Companies; Correction

January 30, 1987.

This notice corrects a previous **Federal Register** document.

1. (FR Doc. 87-54), published at page 359 of the issue for Monday, January 5, 1987.

Under the Federal Reserve Bank of Chicago, the entry for First Chicago Corporation is corrected to read as follows:

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation*, Chicago, Illinois, and American National Corporation, Chicago, Illinois; to acquire 5.017 percent of the voting shares of Suburban Trust and Savings Bank, Oak Park, Illinois.

Comments on this application must be received by February 20, 1987.

Board of Governors of the Federal Reserve System, January 30, 1987.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 87-2288 Filed 2-4-87; 8:45 am]

BILLING CODE 6210-01-M

First Intercity Banc Corporation et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 23, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Intercity Banc Corporation*, Cleveland, Ohio; to engage *de novo*

through its subsidiary, Firstco Mortgage Corporation, Cleveland, Ohio, in mortgage loan servicing pursuant to § 225.25(b)(1), and escrow servicing functions pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted in the State of Ohio.

2. *Trustcorp, Inc.*, Toledo, Ohio; to engage either through itself or a *de novo* subsidiary, in tax planning and preparation activities and services pursuant to § 225.25(b)(21)l of the Board's Regulation Y. Comments on this application must be received by February 25, 1987.

Board of Governors of the Federal Reserve System, January 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2290 Filed 2-4-87; 8:45 am]

BILLING CODE 6210-01-M

Alberto J. Gabrielli; Acquisition of Shares of Banks or Bank Holding Companies;

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act ((12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their view in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 20, 1987.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303;

1. *Alberto J. Gabrielli*, Buenos Aires, Argentina; to acquire 100 percent of the voting shares of Miami National Bancorp, Miami, Florida, and thereby indirectly acquire Miami National Bank, Miami, Florida.

Board of Governors of the Federal Reserve System, January 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2289 Filed 2-4-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86E-0492]

Determination of Regulatory Review Period for Purposes of Patent Extension; Noroxin

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Noroxin and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed 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 L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Noroxin (norfloxacin) which is indicated in the treatment of adults with complicated and uncomplicated urinary tract infections that are caused by certain susceptible strains of microorganisms. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Noroxin from Kyorin Seiyaku Kabushiki Kaisha, and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated December 22, 1986, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, norfloxacin, represented the first permitted commercial marketing or use of that active ingredient. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Noroxin is 1,959 days. Of this time, 1,303 days occurred during the testing phase of the regulatory review period, while 656 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* June 22, 1981. The applicant claims June 4, 1981, as the date the notice of claimed investigational exemption (IND) for the drug became effective. However, FDA records indicate that the IND became effective on June 22, 1981.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* January 14, 1985. FDA has verified the applicant's claim that the new drug application for the drug (NDA 19-384) was initially submitted on January 14, 1985.

3. *The date the application was approved:* October 31, 1986. FDA has verified the applicant's claim that NDA 19-384 was approved on October 31, 1986.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension.

In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 1, 1987 submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 4, 1987, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 2, 1987.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 87-2399 Filed 2-4-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86E-0491]

Determination of Regulatory Review Period for Purposes of Patent Extension; Tegison

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Tegison and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed 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 L. Chao, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extention that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be substrated as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Tegison (etretinate) which is indicated for the treatment of severe recalcitrant psoriasis, including the erythrodermic and generalized pustular types. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Tegison from Hoffmann-LaRoche, Inc., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated December 22, 1986, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that its active ingredient, etretinate, represented the first permitted commercial marketing or use of that active ingredient. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Tegison is 3,640 days. Of this time, 2,989 days occurred during the testing phase of the regulatory review period, while 651 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* October 14, 1976. FDA has verified the applicant's claim that the notice of claimed investigational exemption (IND) for the drug became effective on October 14, 1976.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* December 19, 1984. The applicant claims that a new drug application for the drug (NDA 19–369) was initially submitted on December 20, 1984. However, FDA records indicate that the application was received on December 19, 1984.

3. *The date the application was approved:* September 30, 1986. FDA has verified the applicant's claim that NDA 19–369 was approved on September 30, 1986.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 6, 1987, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 4, 1987, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 2, 1987.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 87-2350 Filed 2-4-87; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program; Announcement of Completed Short-Term Toxicology Studies on Five Chemicals; Request for Comments

As part of an effort to inform the public and allow interested parties to comment and provide information on chemicals prior to designing of studies for long-term toxicology and carcinogenesis studies, the National Toxicology Program (NTP) will routinely announce in the **Federal Register** the list of chemicals for which short-term toxicology studies have been completed.

Short-term toxicology studies on the chemicals listed in this announcement have been completed and the National Institute of Environmental Health Sciences (NIEHS)/National Toxicology Program (NTP) is in the process of evaluating the results. A decision on whether additional studies including long-term toxicology and carcinogenicity studies are needed will soon be made by the NTP. If you have relevant information (such as current production, use pattern, exposure levels, toxicological data) to share with the NTP on any of these chemicals, please contact the responsible NTP Scientist within 30 days of the appearance of this announcement by telephone or by mail to: NIEHS/NTP, P.O. Box 12233, Research Triangle Park, North Carolina 27709. The information provided will be considered by the NTP while determining which chemicals require additional studies and in designing these studies.

1. Bromobenzene (108-86-1)

4-day inhalation, 90-day gavage and 90-day inhalation studies in Fischer 344 rate and B6C3F1 mice. Contact person: Dr. Joseph Roycroft, telephone (919-541-3627).

2. Butyl Benzyl Phthalate (85-68-7)

26-week dosed feed study in male Fischer 344 rats, 10-week dosed feed study with mating trials in male F344 rats. Contact person: Dr. Elmer Rauckman, telephone (919-541-7981).

3. Scopolamine Hydrobromide (114-49-8)

14 and 90-day gavage studies in Fischer 344 rats and B6C3F1 mice. Contact person: Dr. Dennis Dietz, telephone (919-541-2927).

4. Nickel Subsulfide (12035-72-2)

14 and 90-day inhalation studies in Fischer 344 rats and B6C3F1 mice. Contact person: Dr. June Dunnick, telephone (919-541-4811).

5. Theophylline (58-55-9)

14 and 90-day gavage and 90-day dosed feed studies in Fischer 344 rats and B6C3F1 mice, and continuous breeding studies in CD-1 mice. Contact person: Dr. Jeffrey Collins, telephone (919-541-2264).

Please submit all comments and suggestions on chemical(s) by telephone or by mail to the responsible scientist (listed above) within 30 days of publication of this notice. Any submissions received after the above date will be accepted and utilized if possible.

Dated: January 27, 1987.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 87-2453 Filed 2-4-87; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Chlorpheniramine Maleate

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of chlorpheniramine maleate, a widely used antihistaminic drug in human and veternary medicine. These studies were conducted by administering this chemical in deionized water by gavage to groups of 50 male and 50 female F344/N rats and $B6C3F_1$ mice five days a week for 103 weeks. The doses used were: Male rats—0, 15, or 30 mg/kg; female rats—0, 30, or 60 mg/kg; male mice—0, 25, or 50 mg/kg; female mice—0, 100, or 200 mg/kg.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenicity [1] for F344/N rats or $B6C3F_1$ mice of either sex administered chlorpheniramine maleate in deionized water 5 days per week for two years. Due to high mortality in high dose female rats and high dose male mice, the sensitivitiy of these groups to detect a carcinogenic response was reduced. Chlorpheniramine maleate had a proliferative effect on the thyroid gland of female mice, as shown by the incresed incidences of follicular cells cysts and hyperplasia in both low dose and high dose groups.

Copies of *Toxicology and Carcinogenesis Studies of Chlorpheniramine Maleate in F344/N Rats and $B6C2F_1$ Mice (Gavage Studies)* (TR 317) 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: January 28, 1987.

David P. Rall,

Director.

[FR Doc. 87-2454 Filed 2-4-87; 8:45 am]

BILLING CODE 4140-01-M

---

[1] The NTP uses five categories of evidence of carcinogincity to summarize the strength of the evidence observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

National Toxicology Program Board of Scientific Counselors Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting on March 4, 1987, of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina.

The meeting will begin at 9:00 a.m. and be open to the public. The primary agenda topic is to peer review draft technical reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program. Review will be conducted by the Technical Reports Review Subcommittee of the Board in conjunction with an *ad hoc* Panel of Experts.

Draft technical reports of studies on the following chemicals (listed in alphabetical order with Chemical Abstracts Service registry numbers, routes of administration and species, and NTP chemical managers) are *tentatively* scheduled to be peer reviewed on March 4. The actual order of presentation will be available at a later date.

Chemical (CAS registry No.)	Route/species	Chemical manager (Phone No.)
2-Amino-5-Nitro-Phenol (121-88-0).	Gavage/mice, rats.	Dr. R.D. Irwin (919-541-3340)
Hexylresorcinol (136-77-6).	Gavage/mice, rats.	Dr. R.S. Chhabra (919-541-3386)

Chemical (CAS registry No.)	Route/species	Chemical manager (Phone No.)
Malonaldehyde Sodium (24382-04-5).	Gavage, mice, rats.	Dr. J.W. Spalding (919-541-7936)
Merchaptobenzothiazole (149-30-4).	Gavage, mice, rats.	Dr. M.P. Dieter (919-541-3368)
Mirex (2385-85-5)	Feed/rats	Dr. J.R. Huff (919-541-3780)
N-Phenyl-2-Naphthylamine (135-88-6).	Feed/mice, rats	Dr. K.M. Abdo (919-541-7819)

Program staff request that any persons wanting to make a presentation regarding a specific Technical Report during the public comment periods should please notify the Executive Secretary and provide a written copy in advance or at the beginning of the meeting so copies can be made for all attendees.

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P. O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919–541–3971), FTS (629–3971), will furnish final agenda, rosters of subcommittee and panel members, and other program information prior to the meeting, and summary minutes subsequent to the meeting.

Dated: January 27, 1987.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 87–2452 Filed 2–4–87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-87-1670; FR-2321]

Mortgage and Loan Insurance Programs under the National Housing Act; Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner (HUD).

ACTION: Notice of Change in Debenture Interest Rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning January 1, 1987, is 7 percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning January 1, 1987, is 8 percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Financial Policy Division, Room 9132, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 426–4325 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6) and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register.**

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning January 1, 1987, is 8 percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 8 percent for the six-month period beginning January 1, 1987. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the first six months of 1987.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1978:

Effective rate (percent)	On or after	Prior to
7⅛	Jan. 1, 1978	July 1, 1978.
7¾	July 1, 1978	Jan. 1, 1979.
8	Jan. 1, 1979	July 1, 1979.
8¼	July 1, 1979	Jan. 1, 1980.
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the six-month period beginning January 1, 1987, is 7 percent.

HUD expects to publish its next notice of change in debenture interest rates in July 1987.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Dated: January 23, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87–2301 Filed 2–4–87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination That the Samish Indian Tribe Does Not Exist as an Indian Tribe

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(f) (formerly 25 CFR 54.9(f)), notice is hereby given that the Assistant Secretary has determined that the Samish Indian Tribe, c/o Mr. Kenneth C. Hansen, P.O. Box 217, Anacortes, Washington 98221, does not exist as an Indian tribe within the meaning of Federal law.

This notice is based on a determination following a review of public comments on the proposed finding that this group does not meet three of the criteria set forth in 25 CFR 83.7 and, therefore, does not meet the requirements necessary for a government-to-government relationship with the United States.

A notice of the proposed finding to decline to acknowledge the Samish Indian Tribe was published in the **Federal Register** on Thursday, November 4, 1982 (page 50110, Volume 47, No. 214). The comment period required by the regulations (25 CFR 83.9(g)) was delayed several times in order to allow for the resolution of several issues concerning a Freedom of Information Act request by the Samish. The 120-day comment period began January 8, 1986. It was extended in May and again in August, and closed December 1, 1986.

The Samish submitted detailed reports, evidence, and arguments on August 7 in response to the proposed finding. Limited additional materials were submitted by letter of November 20. Letters of support were received from several private parties and two organizations in Washington State. These letters, however, contained little or no new evidence or argument not already considered in the proposed finding. A memorandum of support was received from the former Superintendent of the Bureau's Western Washington Agency, who had been part of a 1974 Bureau evaluation of Samish eligibility for recognition. The petitioner's response included a more detailed affidavit from this individual.

A letter opposing the petitioner was received from the legal representative of the Tulalip Tribes of Washington State. It contained an argument that the 1979 decision in *U.S.* v. *Washington* that the Samish were not a political continuation of the treaty-signer precluded the Department from making a decision on acknowledgment under 25 CFR Part 83. It contained no significant evidence concerning whether or not the Samish met the requirements of the regulations themselves.

The proposed finding concluded that the Samish met criteria a, d, f and g of the acknowledgment regulations. Criterion a was met because various entities with some links to each other and some consistency in membership had been identified as Samish throughout history. Criterion d, submission of a governing document and criteria for membership, was technically complied with, although some deficiencies were noted in the statement of membership criteria. Only 9 percent of the membership was enrolled with a recognized tribe, hence criterion f was met. The group was found to have not been terminated or forbidden the Federal relationship by act of Congress, and thus met criterion g.

The proposed finding concluded that the membership of the group consisted predominantly of Indian descendants who had not maintained substantial social contact with each other nor formed or been part of a cohesive Indian community since the 19th century. The independent Samish village which existed in the 19th century dissolved in the first decade of the 20th century and it was concluded that its members merged into the Lummi and Swinomish Reservation communities in the succeeding decades. Therefore, the group was found to not meet criterion b of the regulations.

The proposed finding concluded that separate political functioning, derived from the independent village, gradually ended in the 1920s and 1930s, as the older generation of leadership died off and the Samish gradually became part of the emerging Swinomish and Lummi reservation communities. The present petitioner organization and earlier organizations formed in 1913 and 1926 were primarily for claims purposes and did not function as tribal political authority for the members, who had little affiliation with each other outside of the context of the organization. Therefore, the group was found to not meet criterion c of the regulations.

Based on the genealogical evidence available for the proposed finding, 42 percent of the petitioner's membership was unable to satisfactorily document Samish Indian ancestry for acknowledgment purposes. Therefore, the petitioner was found to not meet the requirement in criterion e that the membership consist of individuals tracing ancestry from the historic tribe or from historic tribes which had combined and formed a single autonomous entity. Twenty-two percent of the membership was found to have only ancestry from the Noowhaha tribe. Another 10 percent was found to have other Indian ancestry and the Indian ancestry of the remaining 10 percent was undetermined. Therefore, the group was found to not meet criterion e of the regulations.

No evidence in the response to the proposed finding was presented supporting a conclusion that the traditional Samish leaders who may have continued to function to some extent as late as the 1940s were the leaders of the vast majority of the membership who were Indian descendants (as characterized above) or that this continued after the 1940s. No evidence was presented supporting a conclusion that the present petitioner organization, formed in 1951, had functioned as a tribal political body and would meet the requirements of criterion c. The new and re-evaluated data provided somewhat clearer evidence that a nonreservation Samish community had persisted longer after the end of the New Guemes village shortly after 1900 than had been previously determined. It also tended to support a conclusion that traditional Samish leaders within the Swinomish Reservation community functioned within the reservation's emerging political institutions and as well as being leaders of the Indian community Samish and that this continued to some degree until the 1940s.

The Samish submitted the results of a survey of a sample of the membership to measure the degree of social interaction within the group, in response to the conclusion that most of the membership had little social contact with each other. Because of deficiencies in design of the survey and because the sample was unrepresentative in one important respect, the survey data did not provide an adequate basis to conclude that extensive social interaction occurred within the membership and that the membership formed a community. Most of the survey questions focused on participation in formal activities of the organization or were ambiguous with regard to the kinds of activities being measured. The sample of respondents was disproportionately made up of present or former members of the council or employees or their immediate relatives. Despite this, between a third and a half of those responding to the questions indicated no activity or none beyond their immediate family. Responses to some of the questions did indicate the probability of a significant degree of interaction characteristic of a tribal community among the limited portion of the membership who lived on or were derived from a reservation. Responses to a few of the questions did indicate some wider interaction between families, but the limited degree of this, together with the limitations of the questions and sample, did not provide a basis for changing the conclusions in the proposed finding that the present-day membership did not meet the requirements of criterion b.

There was little new data concerning the social character of the Indian descendants in the past. The petitioner contended that the Indian descendant portion of their membership's almost universal marriage to non-Indians for the past several generations was equivalent to the aboriginal Samish cultural pattern and that therefore this should not be considered as evidence of a lack of cohesiveness as a community. The aboriginal pattern of almost universal marriage outside the tribe, at least among the higher-ranking families, functioned in an intertribal system to provide a network of kinship-based social ties influencing residence, economics and alliance. It was in no way comparable to marriage outside Indian society, dispersed among a vastly larger population, which created no such ties.

Insufficient evidence was presented to show that the portion of the membership that was enrolled on a reservation or derived from such families was socially distinct from those reservation communities. The proposed finding concluded that these Samish had been merged into the reservation communities for several generations, even though some separate identity as Samish had been maintained. There was somewhat better evidence than previously available that a sharp distinction is made on the Lummi, but not concerning the Swinomish Reservation. Re-evaluation of the evidence also indicated that this portion of the Samish membership constituted about a quarter rather than a tenth of the petitioner's enrollment.

The response contained comparisons of the interpretation of several aspects of the Samish case with interpretations of purportedly similar situations in other Acknowledgment findings. The petitioner's contention that the Samish case had not been treated in a comparable fashion was not accurate, and was found in most instances to be based on a misinterpretation or misstatement of the findings in the other cases. The response incorreclty stated that, unlike other cases, only formal organization was evaluated in judging the existence of tribal political process. Both formal and informal processes were evaluated to the extent the limited data made possible. The limited function of several Samish organizations, to pursue claims, was not found comparable to other cases where a tribe with functioning political processes pursued claims as one activity. The extent of marriage within the group or with other Indian groups was not comparable to that in other cases which were determined to be eligible for acknowledgment. Other comparisons are discussed in the report prepared to support this determination.

Based on additional evidence and arguments provided, we conclude that three additional family lines can trace their ancestry to the historic Samish tribe. One of the three family lines traces to a Noowhaha ancestor who had probably been incorporated in the Samish tribe in historic times and therefore should be considered to be of ancestry from the historic tribe. The total membership meeting the requirements of criterion e therefore changed froim 58 to 74 percent.

As a result of the new evidence and re-evaluation of previous data, the factual conclusions in the final determination differ in some respects from those in the proposed finding. While the re-examination resulted in changes in factual conclusions concerning the history and character of the petitioner, these were not sufficiently different to warrant a change in the determination concerning any of the three criteria that the petitioner previously did not meet.

The arguments and evidence presented, some additional staff research, and re-evaluation of previously available data do not provide a basis for changing the conclusion in the proposed finding that the Samish do not meet three of the criteria for Federal Acknowledgment. It is determined therefore that the Samish do not meet the requirements necessary under Federal law for a government-to-government relationship with the United States.

In accordance with 25 CFR 83.9(j) of the Acknowledgment regulations, an analysis was made to determine what, if any, option other than acknowledgment would be available under which the petitioning group could make application for services and other benefits as Indians. No alternatives were found due to the lack of social and political cohesion of the group. Some individual members may be eligible now or may become eligible in the future for enrollment with the recognized Swinomish or Lummi Tribes.

This determination is final and will become effective 60 days after the date on which this notice appears in the **Federal Register** unless the Secretary of the Interior requests reconsideration pursuant to 25 CFR 83.10(a–c).

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 87-2276 Filed 2-4-87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AZ-050-07-4331-12]

Big Maria Area of Critical Environmental Concern (ACEC); Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Formal Notice of Closure of ACEC to Public Use.

SUMMARY: The closure of the Big Maria ACEC is being implemented to protect significant and sensitive cultural resources from inadvertent damage caused by vehicle use. Other sensitive resources in the ACEC which will benefit from the closure include wildlife, the desert plant community, and several important natural areas.

The authority for the management decision for partial closure to vehicle use are (1) the Federal Antiquity Act of 1906; (2) 43 CFR Section 8000.0–6c2 4340, 8340, 8341, 8342 and 8364; (3) the Federal Land Policy and Management Act of 1976; (4) the National Environmental Policy Act of 1969; (5) the Sikes Act of 1974; (6) the National Historic Preservation Act of 1966; (7) the Archaeological Resources Protection Act of 1979; and (8) Executive Orders 11644 and 11989. The Big Maria Area contains approximately 4,400 acres of BLM-managed land in eastern Riverside County, California, located just to the west of Highway 95 between 8 and 15 miles north of the city of Blythe. This management designation is a result of plans contained in the Yuma District Resources Management Plan (1986) and the Big Maria Cultural Resources Management Plan (1986).

Copies of the above two documents and maps of the ACEC with road use designations are on file and available at the Yuma BLM District Office.

DATE: February 5, 1987.

FOR FURTHER INFORMATION CONTACT: Area Manager, Bureau of Land Management, Yuma Resource Area, P.O.

Box 5680, Yuma, Arizona 85364, (602) 726–6300.

SUPPLEMENTARY INFORMATION:

Vehicle Use

The Big Maria ACEC will be closed to all vehicle use except for the two following conditions:

1. The Blythe Intaglio road will be kept open for public use.

2. Several other designated and posted roads will be usable only by special Area Manager authorization for access to maintain existing transmission lines, radio/TV tower facilities, and rock quarries located within or beyond the Big Maria ACEC.

Dated: January 28, 1987.

J. Darwin Snell,

District Manager.

[FR Doc. 87–2321 Filed 2–4–87; 8:45 am]

BILLING CODE 4310-32-M

[UT-040-07-4121-16]

Environmental Statements; a Proposal Concerning 15 Coal Lease Readjustments in Wilderness Study Areas

AGENCY: Bureau of Land Management, Cedar City District, Interior.

ACTION: Notice of availability of draft environmental assessments.

SUMMARY: The Bureau of Land Management, Cedar City District is proposing to adjust the following coal leases U–0103107, U–0103109, U–0103129, U–0103130, U–0105418, U–0115792, U–115833, U–0115656, U–0115657, U–0130986, U–0130989, U–0136512, U–0140836, U–0140837, and U–0148535. Each of these leases have been evaluated and additional stipulations are proposed for the leases to increase the level of environmental protection and other considerations.

The Wilderness Study Areas involved are Carcass Canyon (076), Burning Hills (079), 50-Mile Mountain (080), Death Ridge (078), and Wahweap (248).

Draft Environmental Assessments have been prepared on these proposals and are now available for public review and comment. Comments should be submitted by March 9, 1987.

ADDRESS: To obtain a copy of these documents or to obtain additional information on the proposal, contact Dave Everett, Enviromental Specialist at the bureau of Land Management, Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah 84720 or telephone at 801–586–2401.

Dated: January 29, 1987.

Morgan S. Jensen,

Distict Manager.

[FR Doc. 87–2317–Filed 2–4–87; 8:45 am]

BILLING CODE 4310-DQ-M

[ID-050-4212-13; I-23536, I-23537]

Realty Action; Idaho

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action, I–23536, I–23537, exchange of public and private lands in Gooding and Lincoln County, Idaho.

SUMMARY: The following described public lands have been determined to be suitable for disposal through the development of land use decisions based upon public input and resource and use evaluation. They are suitable for exchange under Section 206 of the *Federal Land Policy and Management Act of 1976*, 43 U.S.C. 1716.

Parcel #1—

I–23536.

Legal Description

T. 6 S., R. 15 E., B.M., Gooding County, Idaho
Sec. 20: SW¼,
Sec. 29: NW¼,

containing 320 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from Faulkner Land and Livestock Company:

T. 6 S., R. 16 E., B.M., Lincoln County, Idaho
Sec. 16: N½

containing 320 acres of private land.

Parcel #2

I–23537

Legal Description

T. 6 S., R. 15 E., B.M., Gooding County, Idaho
Sec. 11: SE¼
Sec. 12: SE¼SW¼,
Sec. 13: NW¼,
Sec. 14: NE¼,

containing 520 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from Arthur Gnesa:

T. 6 S., R. 16 E., B.M., Lincoln County, Idaho
Sec. 16: S½

containing 320 acres of private land.

The purpose of this exchange is to allow blocking up into better management units by obtaining a block of private inholdings; and to dispose of public land, parcel #1, that has management problems due to unauthorized uses (materials trespass and illegal dumping) and access problems to portions of parcel #2 because of an existing canal that crosses it. The Federal government will also obtain a water well, pump, water storage tank, stock water tanks, and 1½ miles of fencing, and the public interest will be served by completing these exchanges as a unit.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved by adjusting acreages, or by payment to the Federal government, by the private party, of funds in an amount not to exceed 25 percent of the total values of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

Parcel #1, I–23536

a. I–06667—R/W for Highway, Idaho Department of Transportation
b. H–027418—R/W for canal, North Side Canal Company
c. I–1459—Material site R/W, Idaho Department of Transportation
d. Withdrawal—FPC 7/8/1960 for power transmission line, Idaho Power Company
e. Ditches and canals to U.S.—Act of August 30 1890, (43 U.S.C. 945)

Parcel #2, I–23537

a. Ditches and canals to U.S.—Act of August 30, 1890, (43 U.S.C. 945)
b. H–015523—R/W for canal, Big Wood Canal Company

Publication of this notice segregates the public lands from the operation of the public land laws, including the mining laws as provided in 43 CFR 2201.1(b).

DATES: Comments on the exchange may be submitted to the issuing officer for a period of 45 days from the date of publication in the **Federal Register.**

ADDRESS: Comments should be addressed to: District Manager, Bureau of Land Management, Shoshone District Office, P.O. Box 2–B, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: The Bennett Hills Resource Area Manager or District Realty Specialist at the above address or (208) 886–2206.

SUPPLEMENTARY INFORMATION: Comments received on this action will be evaluated and the proposed action may be vacated, modified or affirmed. In the absence of any further action by the issuing officer, this realty action will become the final action of the Department of the Interior.

Jon H. Idso,

District Manager.

[FR Doc. 87–2320 Filed 2–4–87; 8:45 am]

BILLING CODE 4310-GG-M

[Group 874]

Filing of Plat of Survey; California

January 27, 1987.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Humboldt Meridian, Del Norte County

T. 14 N., R 2 E.

2. This plat representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, and the survey of the subdivision of sections 22, 27, and 34, Township 14 North, Range 2 East, Humboldt Meridian, California, under Group No. 874, California, was accepted January 14, 1987.

3. This plat will immediately become the basis record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of the U.S. Forest Service, Department of Agriculture.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief Records & Information Section.

[FR Doc. 87-2318 Filed 2-4-87; 8:45 am]

BILLING CODE 4310-40-M

[CO-942-06-4520-12]

Colorado: Filing of Plats of Survey

January 23, 1987.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 A.M., January 23, 1987.

The plat, in two sheets, representing the corrective dependent resurvey of a portion of the subdivisional lines and U.S. Mineral Survey No. 19034, Vanadis No. 10 Lode, and the metes-and-bounds survey of Lot 18, section 26, T. 44 N., R. 11 W., New Mexico Principal Meridian, Colorado, Group No. 616, was accepted January 8, 1987.

This survey was executed to meet certain administrative needs of this Bureau.

The plat, representing the dependent resurvey of a portion of the Ninth Standard Parallel North (south boundary), T. 37 N., R. 3 W. and a portion of T. 37 N., R. 4 W., the east and south boundaries, a portion of the subdivisional lines, and the remonumentation of certain original corners, T. 36 N., R. 3 W., New Mexico Principal Meridian, Colorado, Group Nos. 750 and 773, was accepted January 14, 1987.

The plat, representing the dependent resurvey of portions of the west boundary, the subdivisional lines, and the Homestead Entry Survey (H.E.S.) No. 247 (identical with a part of the east and west center line of section 18), and portions of the survey of the subdivision of section 18 and right-of-way of Interstate 70, T. 5 S., R. 79 W., Sixth Principal Meridian, Colorado, Group No. 768, was accepted January 15, 1987.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 A.M., April 4, 1987.

The plat representing the metes-and-bounds survey of Public Land Tract 37, T. 37 N., R. 2 E., New Mexico Principal Meridian, Colorado, Group No. 812, was accepted January 20, 1987.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Jack A. Eaves,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 87-2323 Filed 2-4-87; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Availability of Final Environmental Impact Statement for the 5-year Outer Continental Shelf Oil and Gas Leasing Program for Mid-1987 to Mid-1992

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service (MMS) has prepared a final Environmental Impact Statement Statement (EIS) relating to the Proposed 5-year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for Mid-1987 to Mid-1992.

Information on the availability of the final EIS can be obtained from the Regional Director, Atlantic Region, Minerals Management Service 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180; Regional Director, Gulf of Mexico Region, Minerals Management Service 1201 Wholesalers Parkway, New Orleans, Louisiana 70123-2394; Regional Director, Pacific Region, Minerals Management Service, 1340 West Sixth Street—Room 244, Los Angeles, California 90017; or Regional Director, Alaska Region, Minerals Management Service, 949 East 36th Avenue, Anchorage, Alaska 99508.

Copies of the final EIS will be available for review in public libraries located throughout the coastal States. Information regarding the locations of libraries where copies of the statement will be available may be obtained from the offices listed above.

Dated: January 27, 1987.

Approved:

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 87-2286 Filed 2-4-87 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-57 (Sub-22X)]

Soo Line Railroad Co., Exemption Abandonment in Polk and Burnett Counties, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by the Soo Line Railroad Company of 51 miles of rail line between milepost 49.75 at Dresser and milepost 98.75 at Danbury, WI, and between milepost 49.96 at St. Croix Junction and milepost 51.96 at St. Croix Falls, WI, subject to standard labor protection conditions, and subject to the condition that Soo consult the Wisconsin Departments of Transportation and Natural Resources regarding salvage and clean-up operations.

DATES: This exemption will be effective on March 9, 1987. Petitions to stay must be filed by February 20, 1987, and petitions for reconsideration must be filed by March 2, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-57 (Sub-No. 22X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representatives: Wayne C. Serkland, William C. Sippel, Larry D. Starns, 105 South Fifth Street, Soo

Line Building, Suite 804, Minneapolis, MN 55440.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: January 21, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley, joined by Commissioner Simmons concurred with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-2335 Filed 2-4-87; 8:45 am]

BILLING CODE 7035-02-M

[Docket No. AB-57 (Sub-No. 21X)]

Soo Line Railroad Co.; Abandonment Exemption in Ashland and Iron Counties, WI, and Gogebic County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the Soo Line Railroad Company from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, to abandon its Bessemer line serving Ashland and Iron Counties, WI, and Gogebic County, MI, between milepost 409.83 at Mellen, WI, and milepost 443.38 at Bessemer, MI, a distance of approximately 33.55 miles.

DATES: This decision will be effective on March 9, 1987. Petitions for stay must be filed by February 16, 1987, and petitions for reconsideration must be filed by February 25, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-57 (Sub-No. 21X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Petitioner's representative: Larry D. Starns, 105 South Fifth Street, Soo Line Building, Suite 804, Minneapolis, MN 55440

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or call toll free (800) 424-5403.

Decided: January 27, 1987.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons and Commissioner Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 87-2336 Filed 2-4-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Industrial Asphalt, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16 (b) through (h), that a proposed Final Judgment and Competitive Impact Statement ("CIS") have been filed with the United States District Court for the Central District of California in *United States of America v. Industrial Asphalt, et al.*, Civil Action No. 85-4631-JGD(JRx). The Complaint in this case alleges that Huntmix, Inc.; CalMat Co., a part owner of Huntmix; and Coast Asphalt, Inc., the successor to Industrial Asphalt Inc.; merged competing businesses into an entity known as "Industrial Asphalt" in violation of section 7 of the Clayton Act, 15 U.S.C. section 18, and section 1 of the Sherman Act, 15 U.S.C. section 1. The Complaint alleges that the effect of the merger might be substantially to lessen competition in the markets for the manufacture and sale of asphalt concrete in the greater Los Angeles area in western San Diego County.

The proposed Final Judgment requires Industrial Asphalt to divest the assets of three (3) specified asphalt concrete plants in the greater Los Angeles area within six (6) months. If Industrial Asphalt cannot accomplish the divestiture during this time, then a trustee will be appointed to do so. In addition, with respect to western San Diego County, the proposed Final Judgment enjoins the defendants, for a period of ten (10) years, from acquiring any interest in, managing or operating, or entering into any exclusive agreement concerning Asphalt, Inc.'s Lakeside plant or from impeding the ability of that plant's owners to sell its output. Finally, the proposed Final Judgment enjoins and restrains the defendants, for a period of ten (10) years, from merging with, or acquiring an interest in, any person engaged in the production of asphalt concrete in the greater Los Angeles area or western San Diego County.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (telephone: 415-556-6300).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Howard J. Parker, Joel S. Sanders, and Patricia J. Falk, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102. Telephone: (415) 556-6300. Attorneys for the United States.

U.S. District Court For the Central District of California

United States of America, Plaintiff, v. Industrial Asphalt; Huntmix, Inc.; Calmat Co.; and Coast Asphalt, Inc., Defendants.

Civil No. 85-4631JGD(JRx)

Filed: January 26, 1987.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

(2) The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment; and

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff United States of America:

Charles F. Rule

Acting Assistant Attorney General

Judy Whalley

Gary R. Spratling

Howard J. Parker

Joel S. Sanders

Patricia J. Falk

Attorneys, Department of Justice, Antitrust Division, 450 Golden Gate Avenue, San Francisco, CA 94102, Telephone: (415) 556-6300.

For the Defendants Industrial Asphalt; Huntmix, Inc.; Calmat Co.; and Coast Asphalt, Inc.:

Latham & Watkins

By:

Michael J. Shockro, 555 South Flower Street, Los Angeles, CA 90071-2466, Telephone: (213) 485-1234.

Stipulation approved for filing.

Dated:

John G. Davies

United States District Judge

U.S. District Court for the Central District of California

United States of American, Plantiff, v. Industrial Asphalt; Huntmix, Inc.; Calmat Co.; and Coast Asphalt, Inc., Defendants

Civil No. 85-4631JGD (JRx)

Final Judgment

Filed January 26, 1987.

Plaintiff, United States of America, having filed its Complaint herein on July 15, 1985, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law here and upon consent of the parties hereto, it is hereby Ordered, Adjudged, and Decreed as follows:

I

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18), and under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

Definitions

As used in this Final Judgment:

A. "Aggregate" means rock, sand, and gravel suitable for mixture in asphalt conccrete.

B. "Asphalt concrete" means material that is used principally for paving and is produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") with rock, sand, or gravel.

C. "Assets to be Divested" means all the assets identified in Sections IV.A and IV.B, below.

D. "CalMat" means CalMat Co., a Delaware corporation with its principal place of business in Los Angeles, California.

E. "Coast Asphalt"means Coast Asphalt, Inc., a Delaware corporation with its principal place of business in Los Angeles, California.

F. "Greater Los Angeles area" means that area of Los Angles County, San Bernardino County, Riverside County, and Orange County with the following boundaries: on the west, the Pacific Ocean and the border between Los Angeles County and Ventura County; on the north, a line running through the intersection of Interstate 5 and Interstate 210 near Sylmar, California, due west to the Los Angeles County border and due east to the San Bernardino County border, and then southerly to the southeastern corner of the Angeles National Forest, and then due east to Interstate 15E/215; on the east, Interstate 15E/215; and on the south, a line running from the intersection of Interstate 405 and Interstate 5 due west to the Pacific Ocean and from the intersection of Interstate 405 and Interstate 5 northesterly to the intersection of Interstate 15E/215, California State Highway 60 and California State Highway 91.

G. "Hot-mix plant" means a plant that produces asphalt concrete.

H. "Huntmix" means Huntmix, Inc., a California corporation with its principal place of business in Van Nuys, California.

I. "Industrial Asphalt" means Industrial Asphalt, a California partnership with its principal place of business in Van Nuys, California.

J. "Ownership interest" means all right, title, andinterest, including but not limited to both fee and leasehold interests.

K. "Western San Diego County" means that area of San Diego County with the following boundaries: on the west, the Pacific Ocean; on the north, California State Highway 78; on the east, a line running due south from the intersection of California State Highways 78 and 67 near Ramona, California, to the Mexican border; and on the south, the Mexican border.

III

Applicability

A. The provisions of this Final Judgment apply to the defendants, to their successors and assigns, to their subsidiaries, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets in the greater Los Angeles area or western San Diego County involved in the production of asphalt concrete, or in the extracting, processing, and selling of aggregate, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV

Divestiture of Assets

A. Industrial Asphalt is hereby ordered and directed to divest, to an eligible purchaser or eligible purchasers, all of its ownership interest in all of the real and personal property used in the production and sale of asphalt concrete at:

1. either its plant located at 454 North Prospect Street, Orange, California (the "Orange Plant Assets") or its plant located at 24000 Santa Ana Canyon Road, Anaheim, California (the "Santa Ana Canyon Plant Assets");
2. its plant located at 19th Street and Campus Avenue, Upland, California (the "Upland Plant Assets"); and
3. either its plant located at 1380 East Arrow Highway, Irwindale, California (the "Arrow Highway Plant Assets") or its plant located at 13130 E. Los Angeles Street, Irwindale, California (the "Durbin Plant Assets").

Industrial Asphalt will warrant to the purchaser or purchasers of such assets that such assets will be operational on the date of sale, with its liability limited to repairing or replacing defects under the warranty. The Orange Plant Assets to be divested shall include the Sublicense Option Agreement executed on May 20, 1986 by Industrial Asphalt and Owl Rock Products Co., which provides an option to sublicense a site suitable for the operation of the Orange Plant Assets or a hot-mix plant of comparable batch capacity on Owl Rock Products Co.'s rock, sand, and gravel property on Gypsum Canyon Road in Orange County.

B. As part of any divestiture of plant assets under this Final Judgment, CalMat Co. shall agree that, for a period of ten (10) years from the date of divestiture, it shall, on request, supply aggregate to any purchaser or purchasers of such assets, from any of its aggregate producing sites in the greater Los Angeles area and western San Diego County then supplying aggregate to Industrial Asphalt, as long as CalMat is producing aggregate at that site, at f.o.b. prices and on other terms and conditions of sale that are at least as favorable as the f.o.b. price and other terms and conditions of sale at which aggregate of similar quantity and quality is sold at the same time by CalMat from that particular site to Industrial Asphalt. Provided, however, that nothing in this section IV.B shall preclude CalMat from conditioning the sale of aggregate to any such person on the reasonable approval of that person's credit. In the case of a shortage of aggregate, an interruption of the supply of aggregate, or other force majeure events, CalMat shall allocate aggregate to such persons on a reasonable and nondiscriminatory basis among all of its customers.

C. Unless plaintiff otherwise consents, divestiture under Sections IV.A and IV.B shall be made to a purchaser or purchasers who shall demonstrate to the plaintiff or, failing the plaintiff's approval, to the Court that (1) the purchase is for the purpose of competing in the manufacture and sale of asphalt concrete and (2) the purchaser or purchasers has or have the managerial, operational, and financial capability to compete in the manufacture and sale of asphalt concrete.

D. Industrial Asphalt shall take all reasonable steps to accomplish quickly the divestiture contemplated by Sections IV.A and IV.B.

V

Appointment of Trustee

A. In the event that Industrial Asphalt has not divested all of its ownership interests required by Section IV.A within six (6) months from the date of entry of this Final Judgment, the Court shall, on application of the plaintiff, appoint a trustee to effect the remainder of the divestiture required by Section IV.A. Such appointment shall become effective not more than forty-five (45) days following the filing of the petition. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the assets required to be divested pursuant to Section IV. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Industrial Asphalt shall not object to a sale by the trustee on any grounds other than malfeasance.

B. If Industrial Asphalt has not divested all of the ownership interests required by Section IV.A within five (5) months of the date of entry of this Final Judgment, the plaintiff and Industrial Asphalt shall immediately notify each other in writing of the names and qualifications of not more than two (2) nominees for the position of the trustee who shall effect the required divestiture. The parties shall attempt to agree upon one of the nominees to serve as the trustee. If the parties are able to agree on a trustee within thirty (30) days of the exchange of names, plaintiff shall notify the Court of the person upon whom the parties agreed, and the Court shall appoint such person as the trustee. If the parties are unable to agree within that time period, plaintiff shall furnish the Court the names of each party's nominees. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of Industrial Asphalt, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining money shall be paid to Industrial Asphalt and the trust shall then be terminated. The compensation of such trustee shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. The defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Assets to be Divested, and Industrial Asphalt shall develop financial or other information relevant to such assets as the trustee may request. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment. If the trustee has not accomplished such divestiture within twelve (12) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment.

VI

Notification

A. Industrial Asphalt or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiff of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Industrial Asphalt. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in any of the Assets to be Divested, together with full details of the same. Within fifteen (15) days after receipt of the notice, the plaintiff may request additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Industrial Asphalt or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, plaintiff shall notify in writing Industrial Asphalt and the trustee, if there is one, if it objects to the proposed divestiture. If the plaintiff fails to object within the period specified, or if the plaintiff notifies in writing Industrial Asphalt and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to Industrial Asphalt's limited right to object to the sale under Section V.A. Upon objection by the plaintiff or by Industrial Asphalt under Section V.A, the proposed divestiture shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date of entry of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed, Industrial Asphalt shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV of this Final Judgment. Each such affidavit shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in any of the Assets to be Divested, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Industrial Asphalt shall maintain full records of all efforts made to divest the Assets to be Divested.

VII

Preservation of Assets

A. Subject to Sections VII.E and VII.F, Industrial Asphalt shall preserve, hold, and, with the exception of the Arrow Highway Plant Assets, continue to operate as going businesses the Assets to be Divested. Industrial Asphalt shall use all reasonable efforts to maintain the Assets to be Divested as competitive entities, with the exception of the Arrow Highway Plant Assets, and shall not sell or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements or substitutes therefor), the Assets to be Divested, except that such component as is replaced in the ordinary course of business with a newly purchased component may be sold or otherwise disposed of, provided the newly purchased component is so identified as a replacement component for an Asset to be Divested. This provision includes but is not limited to: preserving all asphalt concrete plants, and their aggregate supply and right and ability to operate at the sites where they are located; preserving all air pollution and operating permits (including proceeding with such application or operation as is necessary to renew or make permanent any temporary permits); and preserving all administrative and support facilities.

B. Subject to Sections VII.E and VII.F, Industrial Asphalt shall preserve the Assets to be Divested except those replaced with newly acquired assets in the ordinary course of business, in a state of repair equal to their state of repair as of January 3, 1984.

c. Subject to Section VII.F, Industrial Asphalt shall identify separately for each asphalt concrete plant referred to in Section IV.A all assets or replacements for or proceeds therefrom that were used in the production and sale of asphalt concrete at such plant prior to the formation of Industrial Asphalt.

D. Subject to Section VII.F, Industrial Asphalt shall keep a separate bookkeeping record of the income and debits attributable to each asphalt concrete plant referred to in Section IV.A.

E. Industrial Asphalt shall be excluded from its failure to preserve, hold, operate, repair, or replace any asset when such failure is attributable to causes beyond its reasonable control, including explosion, fire, flood, storm or other acts of God, governmental regulation or the loss of Industrial Asphalt's right to operate at a plant's current location. In the event such a cause occurs, Industrial Asphalt promptly will provide notice thereof to plaintiff.

F. The requirement that Industrial Asphalt take certain steps to preserve and identify assets as set forth in Sections VII.A, VII.B, VII.C, and VII.D shall terminate with respect to:

1. The Orange Plant assets and the Santa Ana Canyon Plant Assets when the divestiture required by this Final Judgment of either the Orange Plant Assets to the Santa Ana Canyon Plant Assets has been accomplished;

2. The Upland Plant Assets when the divestiture required by this Final Judgment of the Upland Plant Assets has been accomplished; and

3. The Arrow Highway Plant Assets and the Durbin Plant Assets when the divestiture required by this Final Judgment of either the Arrow Highway Plant Assets or the Durbin Plant Assets has been accomplished.

VIII

Future Acquisitions

A. The defendants are enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from merging with, or directly or indirectly acquiring any asets or stock of, any other person engaged in whole or in part in the production of asphalt concrete in the greater Los Angeles area or western San Diego County without the prior written consent of plaintiff or, if such consent is refused, without the approval of the Court after an affirmative showing by the defenadants that the effect of any such acquisition wil not be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country.

B. Defendants are enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from: acquiring any interest in the asphalt concrete plant located in Lakeside, California, operated by Asphalt Inc. (the "Lakeside plant"); managing or operating, directly or indirectly, the Lakeside plant; acting as sole selling or buying agent for, or entering into any other exclusive agreement with, any person that holds an ownership interest in the Lakeside plant with respect to the Lakeside plant; or interfering with or impeding the Lakeside plant owners' ability to sell the output from that plant to whomever and at whatever price and on whatever other terms and conditions of sale that they choose.

C. Nothing in this Section VIII shall prohibit defendants from acquiring property, equipment, or materials from any source in the ordinary course of their busineses or from holding or acquiring one percent (1%) or less of the voting securities of any person engaged in whole or in part in the production of asphalt concrete in the greater Los Angeles area or western San Diego County.

IX

COMPLIANCE INSPECTION

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice, including consultants and other persons retained by the Department, shall, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their respective principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of defendants and without

restraint or interference from them, to interview officers, employees, and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendants at their respective principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to plaintiff, that defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and that defendant marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten (10) days notice to that defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

X

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance with this Final Judgment, or for the punishment of violations of this Final Judgment.

XI

TERM

This Final Judgment will expire ten (10) years after the date of its entry or earlier upon the granting of a motion for termination made by plaintiff.

XII

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated:

Honorable John G. Davies,
United States District Judge.

Howard J. Parker, Joel S. Sanders, Patricia J. Falk, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, Telephone: (415) 556-6300, Attorneys for the United States.

U.S. District Court for the Central District of California

United States of America, Plaintiff, v. *Industrial Asphalt; Huntmix, Inc.; Calmat Co.; and Coast Asphalt, Inc.,* Defendants.

Civil No. 85-4631JGD(JRx).

Competitive Impact Statement.

Filed: January 26, 1987.

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On July 15, 1985, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. § 25, and under Section 4 of the Sherman Act, 15 U.S.C. § 4, challenging the December 20, 1983 merger of Huntmix, Inc., with Industrial Asphalt Inc., as a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint names as defendants Industrial Asphalt, the new entity resulting from the merger; Huntmix, Inc.; Coast Asphalt, Inc., the successor to Industrial Asphalt Inc.; and CalMat Co., a part owner of Huntmix, Inc. The Complaint alleges that the effect of the merger may be substantially to lessen competition in the markets for the manufacture and sale of asphalt concrete in the greater Los Angeles area and in western San Diego County. The Complaint seeks divestiture from and reorganization of the new entity resulting from the merger and an injunction preventing defendants from merging with other asphalt concrete manufacturers in the relevant geographic areas for ten years.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the goverment withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations of the proposed Final Judgment.

II

Events Giving Rise to the Alleged Violation

On December 20, 1983, Huntmix, Inc. and Industrial Asphalt Inc. merged their asphalt concrete businesses by forming a partnership, 50% owned by each, to control both businesses. They named the partnership "Industrial Asphalt." Before the merger, Huntmix, Inc. and Industrial Asphalt Inc. had competed with each other in the manufacture and sale of asphalt concrete in the greater Los Angeles area and in western San Diego County. Industrial Asphalt Inc. had also engaged in the asphalt concrete business at other locations in California, Nevada, and Arizona.

Asphalt concrete is the black material used to pave city streets, parking lots, driveways, airport runways, and highways. Asphalt concrete is produced by heating and combining asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") and aggregate. A plant that produces asphalt concrete is commonly referred to as a "hot-mix plant."

In the greater Los Angeles area before the merger, Industrial Asphalt Inc. was the largest supplier of asphalt concrete and Huntmix, Inc. was the second or third largest supplier. As measured by production, Industrial Asphalt Inc.'s market share for 1983 was approximately 24% and Huntmix, Inc.'s was approximately 17%. As a result of the merger, this market became highly concentrated. The Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers, increased by more than 700 points to over 2100.

In western San Diego County before the merger, Industrial Asphalt Inc. and Huntmix, Inc. were two of the five largest suppliers of asphalt concrete. Industrial Asphalt Inc.'s market share based on production and sales for 1983 was approximately 18% and Huntmix, Inc.'s was approximately 11%. Industrial Asphalt Inc.'s 18% market share included asphalt concrete it marketed that was produced at a hot-mix plant in

Lakeside, California not owned by it. As a result of the merger, this market also became highly concentrated. The Herfindahl-Hirschman Index increased by more than 250 points to over 2400.

The Complaint alleges that the manufacture and sale of asphalt concrete constitutes a line of commerce (product market) for antitrust purposes and that the greater Los Angeles area and western San Diego County constitute sections of the country (geographic markets). Within each of these two geographic areas, the Complaint alleges, based upon the increase in concentration and other facts, the effect of the merger may be substantially to lessen competition in the manufacture and sale of asphalt concrete.

III

Explanation of the Proposed Final Judgment

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment constitutes no admission by any party as to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

The proposed Final Judgment requires defendants to divest their entire interest in three hot-mix plants in the greater Los Angeles area, absolutely and unconditionally, within six months of the entry of the Final Judgment. If defendants cannot accomplish the required divestiture within the above period, the proposed Final Judgment provides that, upon application by the plaintiff, the Court shall appoint a trustee to sell the three hot-mix plants.

One of the three plants to be divested is the former Huntmix, Inc. hot-mix plant in Upland, California ("Upland plant"). Defendants and the trustee have an option regarding the identity of the two remaining hot-mix plants to sell. Defendants must divest: (a) either the former Industrial Asphalt Inc. hot-mix plant in Orange, California ("Orange plant") or the former Huntmix, Inc. hot-mix plant in Anaheim, California ("Santa Ana Canyon plant") and (b) eiher the former Huntmix, Inc. hot-mix plant on East Arrow Highway in Irwindale, California ("Arrow Highway plant") or the former Huntmix, Inc. hot-mix plant on East Los Angeles Street in Irwindale, California ("Durbin plant"). The proposed Final Judgment requires that with each of the plants to be divested there will be a ten-year agreement that defendant CalMat Co. will supply aggregate from its pits on at least as favorable terms as to Industrial Asphalt. With the Orange plant to be divested there will be an option to sublicense an alternate hot-mix plant site adjacent to an Orange County gravel pit. The divestiture of this plant site will provide a purchaser of the Orange assets with an alternative location for the existing Orange plant, or for a replacement plant, should the ground lease on the current plant site be terminated.

The three hot-mix plants must be divested to a purchaser or purchasers who can and will operate each as a viable, ongoing business that can compete effectively in the relevant market. The defendants will take all reasonable steps necessary to accomplish divestiture and shall cooperate with bona fide prospective purchasers and the trustee.

The proposed Final Judgment provides that defendants will warrant to the purchaser or purchasers of the three hot-mix plants that the assets will be operational on the date of sale. Until the required divestiture has been accomplished, the defendants must preserve the assets subject to divestiture, including both the physical facilities and all permits and rights to operate. Defendants must keep separate bookkeeping records for each plant subject to divestiture, and, except for the Arrow Highway plant which is not currently operating, must continue to operate the plants as going businesses and use all reasonable efforts to maintain them as competitive entities.

If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. If after eleven months from the date of the trustee's appointment the required divestiture has not been accomplished, the trustee and the parties shall make recommendations to the Court and the Court shall enter such orders as it deems appropriate to effect divestiture.

The divestiture of these three hot-mix plants will add at least one additional significant competitor in the greater Los Angeles area and thereby restore competition to that market.

With respect to competition in the manufacture and sale of asphalt concrete in western San Diego County, the proposed Final Judgment contains an injunctive provision designed to minimize the danger of the merged entity acting as the principal seller of the output of a hot-mix plant in Lakeside, California operated by Asphalt, Inc.

At one time Industrial Asphalt Inc. and Asphalt, Inc. were both part owners of this hot-mix plant. By agreement, Industrial Asphalt Inc. was the principal seller of the output of the plant. Asphalt, Inc. operated the plant and used a portion of the output in its contracting business. In 1981, the then-owner of Industrial Asphalt Inc., a predecessor to Chevron Corporation, attempted to sell the company, but due to a failure of a condition of the sales transaction, Industrial Asphalt Inc.'s part ownership of the Lakeside asphalt plant was not transferred to the new owner. It remained with what is not Chevron Corporation. Despite the failure to transfer this plant interest along with the rest of the company, Industrial Asphalt Inc. and its successor, the entity created by the subject merger, have continued as the de facto marketers of the output of the plant.

The proposed Final Judgment addresses this Lakeside plant marketing arrangement. The merged entity is enjoined by the proposed Final Judgment from entering into any exclusive agreement regarding the Lakeside plant, such as one designating the merged entity as sole selling agent; from acquiring, merging with, managing or operating the plant; and from interfering with price or output decisions by the plant's owners. The injunctive provision is to be applicable for ten years from the date of entry of the proposed Final Judgment.

This relief is adequate to solve the competitive problem resulting from the acquisition in western San Diego County. Since the merged entity will not be able to control the Lakeside plant's output, the Lakeside plant will become, in effect, an independent source of asphalt concrete in the western San Diego area. It should be a competitively significant source, especially because of its favorable location in the market. It is located near the center of the western San Diego County market, and can effectively compete with the two hot-mix plants, currently owned by Industrial Asphalt, which are located near the northern and southern edges of the market.

The proposed Final Judgment also prohibits defendants from acquiring or merging with any other hot-mix plants in the greater Los Angeles area or western San Diego County for ten years from the date of entry of the proposed Final Judgment.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. §15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the Final Judgment will neither impair nor assist the bringing of any private antitrust damages actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

As provided by the APPA, any person wishing to comment upon the Final Judgment may, within the statutory 60-day comment period, submit written comments to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102. These comments and the Department's responses will be filed with the Court and published in the **Federal Register.** All comments will be given due consideration by the Department, which remains free to withdraw its consent to the Judgment at any time prior to entry. The Judgment provides that the Court retains jurisdiction over this action and any party may apply to the Court for any order necessary or appropriate for its modification, interpretation, or enforcement.

VI

Alternatives to the Proposed Final Judgment

As an alternative to the divestiture of three hot-mix plants in the greater Los Angeles area that is required by the proposed Final Judgment, the United States considered requiring divestiture of a greater or lesser number of plants. After consideration, the United States concludes that the requirement to divest three hot-mix plants in the greater Los Angeles area achieves the basic objective of the litigation for the greater Los Angeles area market: substantial, meaningful divestiture to reduce market concentration. Moreover, the three parts of greater Los Angeles where the proposed Final Judgment requires divestiture of hot-mix plants are the only areas where former Huntmix, Inc. and former Industrial Asphalt Inc. hot-mix plants are currently operated by the merged entity in close proximity to one another. Thus, the proposed relief will add one or more new competitors at those locations where the competitive impact of the merger is greatest. Accordingly, the United States concluded that the requirement that Industrial Asphalt divest three plants was appropriate to restore competition.

As an alternative to the injunctive relief with respect to the Lakeside plant that is required by the proposed Final Judgment, the United States considered requiring divestiture of one of the two hot-mix plants in western San Diego County that are wholly owned by Industrial Asphalt. After consideration, the United States concluded that relief with respect to the centrally located Lakeside plant would enhance competition more than would the divestiture of either of these two wholly owned plants, which are located at the northern and southern edges of the western San Diego County market. The central location of the Lakeside plant allows its output to be a strong competitive force throughout the western San Diego County market.

The United States also considered a provision in the proposed Final Judgment to enjoin Industrial Asphalt, beginning one year from the date of entry of the Judgment, from purchasing asphalt concrete produced at the Lakeside plant for Chevron Corporation. The purpose of the provision would have been directly to prevent Industrial Asphalt from marketing any of the plant's output, thereby giving greater incentive to the owner of that plant to use a new marketer for the output of that plant or to sell the plant to a new owner that would not have the historical ties with Industrial Asphalt. After consideration, the United States concluded that this provison placed an undue cost on Chevron Corporation, a third party to the litigation, and would not be needed to assure that the output of the Lakeside plant was not controlled by Industrial Asphalt. Specifically, the United States concluded that the current provisions of the proposed Final Judgment, which preclude Industrial Asphalt from acting as exclusive selling agent for the plant, or otherwise controlling the output or pricing decisions of that plant, would prevent Industrial Asphalt from exercising the type of control over Lakeside which would remove it as a potential independent source of asphalt in the western San Diego County market.

Finally, the United States considered two provisions intended to facilitate new entry into the relevant markets. One provision would have required defendant CalMat Co. to supply aggregate from its pits to all hot-mix plants so requesting on at least as favorable terms as to Industrial Asphalt. The second provision would have required defendant Calmat Co. to make available hot-mix plant sites for new entry at three specified locations in the greater Los Angeles area. After consideration, the United States concluded that these two provisions, which would have involved the government in significant regulation of competitive activity in the market, were unnecessary to restore competition. The United States concluded that the divestiture of three plants in the greater Los Angeles area, the Lakeside plant injunctive provisions, and the other relief concurrently in the proposed Final Judgment would be sufficient to remedy the potential anticompetitive effects of the merger challenged by the complaint.

VII

Determinative Materials and Documents

There are no materials or documents that the United States considered to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated:

Respectfully submitted,

Howard J. Parker,

Joel S. Sanders,

Patricia J. Falk,

Attorneys, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102, Telephone: (415) 556-6300.

[FR Doc. 87-2297 Filed 2-4-87; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act Notification; American Cyanamid Co.; Pine Oil Joint Research Venture

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 ("the Act"). American Cyanamid Company has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the Pine Oil Joint Research Venture and (2) the nature and objectives of the Pine Oil Joint Research Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties of the Pine Oil Joint Research Venture and its general areas of planned activities are provided below.

The parties to the Pine Oil Joint Research Venture are as follows:

American Cyanamid Company; Arizona Chemical Co.; Dow Consumer Products, Inc.; Hercules, Inc.; Johnson Chemical Co., Inc.; Lehn & Fink Products Corp.; Procter & Gamble Co.; SCM Organic Chemicals; T&R Chemicals, Inc.; Union Camp Corporation.

The objective of the Pine Oil Joint Research Venture is to sponsor and conduct toxicological research on the pesticide ingredient pine oil and to submit the results of the research to the U.S. Environmental Protection Agency ("EPA") in connection with the reregistration and data call-in of pesticides containing pine oil as an active ingredient. This research on pine oil, which is the active ingredient in certain commercially available pesticide products, will be conducted pursuant to a Data Call-In Notice issued by EPA on September 30, 1985 and a subsequent EPA letter dated August 25, 1986 concerning the requirements of the Data Call-In.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 87-2296 Filed 2-4-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Eli Lilly Industries, Inc., Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 1, 1986, and published in the **Federal Register** on December 5, 1986; (51 FR 43983), Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaquez, Puerto Rico 00708, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of dextropropoxyphene (non-dosage forms) (9273), a basic class of controlled substance list in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 28, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-2294 Filed 2-4-87 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Norac Co., Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 10, 1986, Norac Company, Inc., 405 South Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 9, 1987.

Dated: January 28, 1987.

Gene R. Haislip,

Deputy Assistant Administator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-2293 Filed 2-4-87; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Upjohn Co.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 23, 1986, Upjohn Company, 7171 Portage Road, Kalamazoo, Michigan 49001, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-dimethoxyamphetamine (7396)	I
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 9, 1987.

Dated: January 28, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-2292 Filed 2-4-87; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-10)]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC): Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee.

DATE AND TIME: February 25, 1987, 9:30 a.m.—5:30 p.m., February 26, 1987, 8:30 a.m.—5:15 p.m., February 27, 1987, 8:30 a.m.—12 p.m.

ADDRESS: National Aeronautics and Space Administration, Conference Room 226A, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey D. Rosendhal, Code E, National Aeronautics and Space

Administration, Washington, DC 20546 (202/453-1656).

SUPPLEMENTARY INFORMATION: The Space and Earth Science Advisory Committee will meet to review NASA FY 1988 budget submission and its implications, the status of the Explorer Program and NASA planning. The Committee is chaired by Dr. Louis Lanzerotti and is composed of 32 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including committee members and other participants).

Meeting: Open.

Agenda: February 25, 1987.

9:30 a.m.—Introduction, Announcements, Review, of Agenda, Purpose of Meeting, etc.

9:45 a.m.—Office of Space Science & Applications (OSSA) Program and Budget Status:

—The Federal Budget Proposal for FY 1988.
—NASA Organization and Personnel Changes.
—OSSA FY 1987 Operating Plan and FY 1988 Budget Proposal.
—Planetary Launch Situation.
—Prospects for the FY 1988 Budget in Congress.
—Longer-Range Implications of the FY 1988 Budget.

1 p.m.—European Space Agency Program Status and Planning.

2 p.m.—Solar System Exploration Committee Views of the State of the Solar System Exploration Program.

3:15 p.m.—Committee Discussion of the FY 1988 Budget and Its Implications.

5:30 p.m.—Adjourn. February 26, 1987.

8:30 a.m.—Status of the NAC "Mixed Fleet" study.

9 a.m.—Status of the Explorer Program, SESAC Review and Recommendations.

10:30 a.m.—Agency Wide Planning Activities.

10:45 a.m.—NASA Strategic Planning.

11:30 a.m.—Space 1995 Study.

1 p.m.—Committee Discussion:

—OSSA Near-Term and Long-Range Planning.
—Role of SESAC and Other Advisory Committees in the Planning Process.
—Follow-on Activities to the SESAC "Crisis" Report.

3:15 p.m.—Discussion and Drafting of Committee Recommendations on the FY 1988 Budget and Its Implications.

5:15 p.m.—Adjourn. February 27, 1987.

8:30 a.m.—Discussion and Final Formulation of SESAC Recommendations.

10 a.m.—The NASA Life Sciences Program: A preview of Possible Future Directions.

11:15 a.m.—Meeting Summary/Plans for the Next Meeting.

12 Noon—Adjourn.

Dated: January 30, 1987.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 87-2342 Filed 2-4-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Eukaryotic Genetics Program; Meeting

In accordance with the Federal Advisory Panel Act, as amended, P.L. 92-463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Eukaryotic Genetics.

Date and Time: Wednesday, Thursday, and Friday 18, 19, and 20, 1987.

Place: Inn by the Sea, 7830 Fay Avenue, La Jolla, California 92037.

Type Meeting: Closed.

Contact Person: DeLill Nasser, Program Director, Eukaryotic Genetics, Room 321L, Telephone: (202) 357-0112.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary of confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. The matters are within exemptions (4) and (6) of proposals U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. Panel Management Officer was delegated the authority to make such determinations by the Director, NSF of July 6, 1979.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-2285 Filed 2-4-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-206/361/362]

Southern California Edison Co.

San Onofre Nuclear Generating Station; Issuance of Director's Decision

Notice is hereby given that the Director, Office of Inspection and Enforcement, has issued a decision pursuant to 10 CFR 2.206 concerning a Petition dated May 27, 1986 filed on behalf of the City of Laguna Beach, California (Petitioner) by Mayor Martha Collison. The Petition requested that the Nuclear Regulatory Commission extend the 10-mile radius emergency planning zone (EPZ) for the San Onofre Nuclear Generating Station to include South Laguna and Laguna Beach.

The bases for the action requested in the Petition are concerns about the lack of emergency planning for Laguna Beach, the topography of the South Orange County coastline as it relates to the transportation network, and the effect on the residents of Laguna Beach as other who live to the south drive through Laguna Beach as part of an evacuation procedure. The Petition also referred to the "recent circumstances in the Soviet Union" as a basis for reconsidering the emergency planning zone issue for San Onofre.

The Director, Office of Inspection and Enforcement, has denied the Petitioner's request. The reasons for this denial are set forth in the "Director's Decision Under 10 CFR 2.206" (DD-87-01), issued today. A copy of the decision will be available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and in the Local Public Document Room for the San Onofre facility located at the University of California-Irvine, General Library, Irvine, California 02713.

A copy of the decision will be filed with the Secretary of the Commission for Commission review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the decision will become the final action of the Commission 25 days after issuance, unless the Commission on its own motion takes review of the decision within that time.

Dated at Bethesda, Maryland this 29th day of January 1987.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 87-2428 Filed 2-4-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-331]

Iowa Electric Light and Power Co., et al; Duane Arnold Energy Center; Exemption

I

Iowa Electric Light and Power Company (IELP/the licensee) is the holder of Facility Operating License No. DPR-49 which authorizes operation of the Duane Arnold Energy Center (DAEC/the facility). This license provides, among other things, that the facility is subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Linn County, Iowa.

II

By letter dated October 31, 1986, IELP requested an exemption from the requirements of Appendix J, 10 CFR Part 50, Sections III.D.2(a) and III.D.3 so that the required 2-year test interval between Type B and C testing of certain valves, vents drains, sumps and penetrations, which maintain containment integrity at design basis accident conditions, can be extended for 75 days to conform with the start of the next refueling outage for the facility.

Pursuant to Final Rule 10 CFR 50.12 (50 FR 50764) published on December 12, 1985, the special circumstances for granting this exemption have been identified as follows:

The DAEC shutdown for its end-of-cycle 7 refuel outage, which was scheduled to last 12 weeks, on February 2, 1985. The required Appendix J, Type B and C, local leak rate testing commenced shortly afterwards and continued through March 1985. The unit was originally scheduled to shutdown for its end-of-cycle-8 refuel outage on February 1, 1987. This would have allowed the Type B and C testing to be completed during the required 2 year interval. However, during the end-of-cycle 7 outage, the discovery of cracks in the reactor circulation system piping which required weld-overlay repairs and difficulties in performing the 10-year Inservice Test and Inspection Program delayed startup until July 20, 1985, an extension of more than 11 weeks. Due to this unanticipated extension of the 1985 refuel outage and other unscheduled shutdowns during Cycle 8, the target end-of-cycle core exposure for Cycle 8 will not be achieved until mid-March, 1987 if the unit, which has been in coastdown since November 1, 1986, operates continuously. This would result in extending the 2-year test interval required by Appendix J for Type B and C tests about 45 days. However, to provide a margin for contingencies, the licensee has asked that the extension be granted until April 17, 1987, about 75 days.

Because of the aforementioned outage extension, the operational period of DAEC between its startup for Cycle 8 (July 20, 1985) and the requested date for extension would be approximately 21 months. Therefore the operational challenge to the components required to be given the Type B and C tests within the 2-year interval would be, even with the proposed 75-day extension, less than usually occurs during the 2-year interval. Based on the above circumstances and the reduced power levels presently existing during coastdown, the staff believes that a significant safety margin still exists for these components. In addition, after discussions with the staff, the licensee in a letter dated January 2, 1987 provided clarifying information and agreed to test all isolation valves that have a leakage history and are capable of being tested at power. Therefore, with respect to a schedular exemption to the requirements of Appendix J to 10 CFR Part 50 for Type B and C testing of certain valves, vents, drains, sumps and penetrations, the strict application of the requirements is not necessary to achieve the underlying purpose of the regulation, which is to assure that there is regular periodic testing of containment penetrations (over intervals that are not excessive) to assure continued containment integrity. Consequently, the special circumstances described by 10 CFR 50.12(a)(2)(ii) are applicable in this instance.

Accordingly, based on the above analysis, the staff concludes that the likelihood of these components failing at design basis accident conditions during the additional 75 days is remote and that offsite doses during such an event will be within the values previously analyzed and found acceptable. Therefore, a one-time exemption from the requirements of Sections III.D.2(a) and III.D.3 of Appendix J to 10 CFR Part 50 is justified and should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest; furthermore, in accordance with 10 CFR 50.12(a)(2)(ii), special circumstances, as discussed above, are present. The Commission hereby grants an exemption as described in Section II above from Sections III.D.2(a) and III.D.3 of Appendix J to the extent that the 2 year interval for performing Type B tests, except for air locks, and Type C tests, except as noted, may be extended for 75 days, on a one-time basis only, for the Duane Arnold Energy Center.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (52 FR 3069).

A copy of the Commission's concurrently issued Safety Evaluation related to this action is available for public inspection at the Commission's Public Document Room, 1717 H. Street, NW., Washington, DC, and at the Cedar Rapids Public Library, 500 First Street, SE., Cendar Rapids, Iowa 52401.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland this 30th day of January 1987.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 87-2429 Filed 2-4-87; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

[Docket No.]

Pendency of Request for Determination of Substantial Damage With Respect to Cessation of Contributions by Pioneer Paper Stock to Freight Drivers and Helpers Local 557 Pension Fund

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from the Freight Drivers and Helpers Local 557 Pension Fund for a determination of substantial damage under section 4203(d)(4) of the Employee Retirement Income Security Act of 1974 with respect to the cessation of contributions under the plan by Pioneer Paper Stock. Section 4203(d) provides a special withdrawal rule for cessations of contributions involving plans and employers in the trucking industry (as defined in that section). Under that special rule, an employer that ceases contributions to a plan is considered not to have withdrawn from the plan if certain conditions are met. One of these conditions is that the employer must post a bond or deposit money in escrow. After the bond/escrow requirement has been satisfied, the Pension Benefit Guaranty Corporation may make a finding under section 4203(d)(4) that the cessation has caused substantial damage to the plan's contribution base, in which case the employer will be treated as having withdrawn from the plan and the bond or escrow will be paid to the plan. Any such finding must take into consideration any cessations

of contributions by other employers. Thus, a finding in any one case may have a bearing on other cases involving the same plan. The purpose of this notice is to advise interested persons of this request for such a finding and to solicit their views on it.

DATES: Comments must be submitted on or before March 23, 1987 to be assured of consideration.

ADDRESSES: All written comments should be addressed to: Director, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. The request for a finding of substantial damage and the comments received will be available for public inspection at the PBGC Public Affairs Office, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Steven Rothenberg, Attorney, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; (202) 778–8850 (778–8859 for TTY and TDD). (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Section 4203(d) of the Employee Retirement Income Security Act of 1974 ("ERISA") provides a special withdrawal liability rule for the trucking industry, which, for purposes of this rule, is considered to include the long and short haul trucking industry, the household goods moving industry, and the public warehousing industry. The rule is limited to trucking plans, i.e., plans under which substantially all of the contributions required are made by employers primarily engaged in the trucking industry. The rule is also limited to trucking employers, i.e., those that have an obligation to contribute under a trucking plan primarily for work in the trucking industry.

Under section 4203(d) of ERISA, a trucking employer will not be considered to have withdrawn from a trucking plan merely because the employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan, if certain conditions are met. One condition is that the employer must not continue to perform work within the jurisdiction of the plan. Another condition is that the employer must furnish a bond or an amount held in escrow in an amount equal to 50 percent of the withdrawal liability of the employer.

After the bond or escrow is established, the Pension Benefit Guaranty Corporation ("PBGC") may, within 60 months after the time the employer's covered operations or obligation to contribute ceased, make a determination about the effect of the cessation (considered together with any cessations by other employers) on the plan's contribution base. If the PBGC makes a finding under section 4203(d)(4) that the contribution base has suffered substantial damage, the employer will be treated as having withdrawn from the plan on the date when the obligation to contribute or covered operations ceased, the bond or escrow will be paid to the plan and the employer will be liable for the balance of its withdrawal liability. If the PBGC finds under section 4203(d)(5) that no substantial damage has occurred, or if it has not made a finding of substantial damage under section 4203(d)(4) within the 60-month time period referred to above, then the bond will be cancelled or the escrow refunded and the employer will have no further liability under the plan.

As noted above, each cessation must be considered within the context of other cessations under the same plan in determining its effect on the plan's contribution base. Thus, the treatment accorded one employer's cessation of contributions may have a bearing on the treatment given a cessation by another employer. Accordingly, not only the plan and employer involved in a particular case, but also other present and former contributing employers, as well as participants and beneficiaries, may have an interest in the outcome of a request for a finding of substantial damage or no substantial damage.

In this case, the Freight Drivers and Helpers Local 557 Pension Fund (the "Plan") has requested that the PBGC find that the cessation of contributions under the plan by Pioneer Paper Stock has substantially damaged the plan's contribution base. The Plan represents that 96% of the employers that contribute to the Pension Fund are trucking employers. It also asserts that Pioneer is a trucking employer and ceased all covered operations under the Plan in May 1984.

According to the Plan, Pioneer contributed for 4,042 base units in the plan year before its cessation and made contributions totaling $41,914 between 1979 and 1984. During the five year period beginning in 1980 and ending in 1984, the Plan states that its total contribution base units declined 26.3%, from 5,541,200 to 4,081,500. During that same period, the plan asserts that 32 employers completely ceased contributions to the Plan. All of the withdrawn employers were trucking employers. Due to their poor financial condition, only one of these employers has paid any withdrawal liability. The Plan further represents that the average contribution rate increased 53.7% between 1980 and 1984. Total contributions to the Plan dropped from $6,195,800 in the plan year ending December 31, 1980, to $5,502,200 in the plan year ending December 31, 1982 and rebounded to $7,087,900 in the plan year ending December 31, 1984. The plan states that it has had to borrow against the next year's contributions in plan years 1980 through 1984 in order to meet the previous year's minimum funding requirement.

The PBGC's decision on the plan's request will be based on the information previously submitted by the plan and any additional information received in response to this notice of pendency.

All interested persons are invited to submit written comments on the pending request to the PBGC at the above address by March 23, 1987. Each comment should include the commenter's name, address, and telephone number. All comments will be made part of the record. Comments received, as well as the determination request, will be available for public inspection at the above address.

Issued at Washington, DC, this 30th day of January, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87–2337 Filed 2–4–87; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

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 6a–3

No. 270–15

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 6a–3 (17 CFR 240.6a–3) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which requires each registered or exempted exchange to supplement its application and annual amendments by filing certain information with the Commission. The potential affected persons are 10 exchanges. Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395-7340, Office of Information and Regulatory Affairs, Room 3228, NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

January 27, 1987.

[FR Doc. 87-2415 Filed 2-4-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24025; File No. SR-CBOE-86-41]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc.; Relating to the Addition of One-Half Point Exercise Prices in Swiss Franc Option Contracts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 2, 1987 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would enable the Exchange to add one-half point exercise prices in Swiss franc option contracts, either singly or at the same time as the next exercise price is added.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to allow the listing of additional exercise prices in Swiss franc currency option contracts, so that the gap between strike prices quoted in European (used in the over-the-counter market) and American (used in exchange markets) terms is reduced. This would encourage market participants to use more often the options traded on the Exchange. The statutory basis for the proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934 (the Act), in that it is designed to facilitate transactions in Swiss franc currency option contracts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 26, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 23, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2416 Filed 2-4-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24031; File No. SR-CBOE-86-40]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating to Disciplinary Charges and Review

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 30, 1986, the Chicago Boad Options Exchange Incorporated ("CBOE") filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange has proposed changes to its disciplinary rules to codify the policy against ex parte communications with members of its Business Conduct Committee and to permit review by the CBOE Board of a decision by its Business Conduct Committee not to initiate charges.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Purpose Rule Change

The proposed rule change amends rules relating to the Exchange's disciplinary process. These amendments provide for: (i) The prohibition of ex parte communications between members or their associated persons concerning a pending disciplinary proceeding, and (ii) the review by the Board of a determination by the BCC not to initiate charges.

The Exchange believes that each of these provisions will strengthen its disciplinary processes. The proposed change to Rule 17.4, prohibiting ex parte communications between BCC members and members of the Exchange in relation to matters pending before the BCC, codifies a longstanding policy of the Exchange.

The proposed change to Rule 17.10 establishes the authority of the Board to review a decision of the BCC not to initiate charges. The Board may order a review of the decision not to initiate charges upon application by the President made within 30 days of the BCC's decision. It is contemplated that such a review would be applied for only if the President believes the BCC's decision not to initiate charges was erroneous and that review by the Board is warranted. Such a review by the Board will be based on the record before the BCC and the minutes containing the Committee's reasons for not initiating charges, supplemented by whatever statement the BCC determines to submit in justification of its decision. It is contemplated that if the Board overturns a decision of the Business Conduct Committee not to initiate charges the matter would be remanded to the Business Conduct Committee with an intruction from the Board to initiate charges.

The proposed rule change is consistent with the Securities Exchange Act of 1934 and, in particular, sections 6(b) (1), (5) and (6) thereof, in that proposed rule change enhances the Exchange's administrative and disciplinary processes.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Porposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities ane Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be availble for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days after the date of this publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 28, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2420 Filed 2-4-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24032; File No. SR-PSE-86-33]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Requirement that Buyers From Multiple Sellers Time-Stamp and Submit Trading Tickets

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 22, 1986, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Rule VI, section, 55(a) Commentary .01 and to adopt Options Floor Procedure Advice G-12 ("Reporting of Trade Information") relating to the party or parties responsible for recording the time of execution of options transactions and reporting options transactions to the Exchange. Currently, Exchange rules require that the seller report such transactions. The PSE proposes through this rule change to shift the responsbility to, in some cases, the buyer. In transactions in which there is but one buyer and multiple sellers, it is customary that the sellers hand their tickets to the buyer. The proposed rule change would place reporting and time-stamping responsibilities on the buyer if he/she decides to accept the tickets. In transactions involving only one buyer and one seller, the original requirement would still stand.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The PSE is proposing to change its rule with respect to reporting requirements on the Options Floor because of the actual design of the floor tickets and the manner in which they are used to report trades.

Floor tickets used by market makers to record transactions for their own account differ significantly from those used by floor brokers acting in an agency capacity. Specifically, a market maker's ticket can only show one contra side to a trade. A floor broker's ticket, however, can show multiple party contra sides. Consequently, in a multi-party transaction involving a floor broker buying from numerous selling market makers, the floor broker can record all selling contra sides on his/her ticket. The PSE believes that in such transactions, it makes sense to have the floor broker collect the tickets from the contra sides, match them with his/her ticket and submit them to the Exchange. To do otherwise would require the floor broker to write up separate "partial" tickets and hand them to each of the selling market makers. In turn each of the selling market makers would then match up each partial transaction and hand all of these tickets in to the Exchange. Consequently, the Exchange feels that it makes sense to require the principal participant in a trade to report such multiple party transactions.

Further, the Exchange feels that the present "seller's" reporting requirement creates an inequitable situation with respect to the ability of market makers to ascertain certain information not essential to trading when they are sellers. Due to the PSE's unique trade match system, which is derived from the matching of floor tickets on the floor, tickets representing off-floor orders contain detailed information which assists in the clearing process. This includes whether the order is for a customer or for a proprietary account of a member firm, whether such order is opening or closing, and, in some instances, the acutal customer account number.

Under the "seller's responsibility" scheme, a market maker involved in a sale is required to get the tickets from the buyer(s) in order to report, and, in the process is privy to this information. The PSE does not believe that this additional information should be available to a market maker simply because he/she is a buyer rather than a seller. Consequently, the PSE believes that in trades between market makers and floor brokers it should be the responsibility of the floor brokers to report transactions.

The basis for the proposed rule change is found in section 6(b)(5) of the Act which provides, in pertinent part, that the rules of the Exchange be designed to facilitate transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received. However, the proposed rule change was considered and approved by the Board of Governors at its meeting on December 18, 1986.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period:

(i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or

(ii) As to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 26, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 28, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2417 Filed 2-4-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15557; 812-6467]

Kidder, Peabody Acceptance Corp.; Notice of Application

January 30, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Kidder, Peabody Acceptance Corporation I ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order conditionally exempting it and certain trusts that it may form from time to time from all provisions of the 1940 Act for the limited purposes of issuing collateralized mortgage obligations, investing in certain mortgage certificates, and selling beneficial interests in such trusts.

Filing Date: The Application was filed on August 29, 1986, and amended on October 2, December 3, December 12, 17, 1986, January 14, 16, 27, and 28, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 23, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 3939 InterFirst Two, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Richard Pfordte at (202) 272-2811 or Special Counsel Karen L. Skidmore at (202) 272-3023, Office of Investment Company Regulation.

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).

Applicant's Representations

1. Applicant is a direct, wholly-owned limited purpose financing subsidiary of Kidder, Peabody Funding Corporation, a Delaware corporation. Applicant, a Delaware corporation, was organized to facilitate the financing of mortgage loans through the issuance of one or more series of bonds secured by such mortgages and it will not engage in any business or investment activities unrelated to such purpose.

2. Applicant will form separate trusts ("Trusts") for the limited purpose of issuing one or more series ("Series") of collateralized mortgage obligations ("Bonds") and investing in certain Mortgage Certificates [1] which will be used to collateralize such Bonds.

3. Each Trust will be established under a separate deposit trust agreement ("Trust Agreement") between Applicant, acting as depositor, and a bank or trust company or other fiduciary acting as owner-trustee ("Owner Trustee"). Each Trust will issue one or more Series of Bonds under the terms of an indenture ("Indenture") between the Owner Trustee and an independent trustee ("Trustee"), as supplemented by one or more series supplements. The Indenture will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

4. In the case of each Series of Bonds: (a) Each Trust will hold no substantial assets other than the Mortgage Certificates; (b) the Bonds will be secured by Mortgage Certificates having a collateral value determined under the Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (c) distributions of principal and interest received on the Mortgage Certificates securing the Bonds and any applicable reserve funds, plus reinvestment income thereon, will be sufficient to pay all interest on the Bonds and to retire each class of Bonds by its stated maturity; and (d) the Mortgage Certificates will be assigned by the Owner Trustee to the Trustee and will be subject to the lien of the related Indenture.

5. In addition to the issue and sale of the Bonds, Applicant intends to sell the beneficial interests in each Trust to a limited number, in no event more than one hundred, of sophisticated institutional investors in transactions exempt from the registration requirments of the Securities Act of 1933 ("1933 Act") under section 4(2) thereof. Such institutional investors may include one or more banks, savings and loan associations, insurance companies, and pension plans or other investors that would have prior experience in making investments in mortgage related securities or real estate ("Eligible Institutions"). Each Eligible Institution will be required to represent that it is purchasing such beneficial interests for investment purposes. In addition, the Trust Agreement relating to each Trust will further prohibit the transfer of any certificates for such beneficial interests if there would be more than one hundred owners of such certificates at any time.

6. Neither the holders of the beneficial interests of any of the Trusts, the Owner Trustee nor the Trustee will be able to impair the security afforded by the Mortgage Certificates to the holders of the Bonds. That is, without the consent of each Bondholder to be affected, neither the holders of the beneficial interest of any of the Trusts, the Owner Trustee nor the Trustee will be able to: (1) Change the stated maturity on any Bonds; (2) reduce the principal amount or the rate of interest on any Bonds; (3) change the priority of payment on any class of any Series of Bonds; (4) impair or adversely affect the Mortgage Certificates securing a Series of Bonds; (5) permit the creation of a lien ranking prior to or on a parity with the lien of the related indenture with respect to the Mortgage Certificates; or (6) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

7. The sale of the beneficial interests in each Trust will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account or any reserve fund created pursuant to the Indenture, to support payments of principal and interest on the Bonds.

8. No holder of a controlling interest in a Trust (as the term "control" is defined in Rule 405 under the 1933 Act), will be affiliated with either the custodian or the statistical rating agency rating the Bonds. None of the owners of the beneficial interests in a Trust will be affiliated with the Trustee.

9. The interests of the Bondholders will not be compromised or impaired by the ability of the Applicant to sell beneficial interests in each Trust, and there will not be a conflict of interest between the Bondholders and the holders of the beneficial interests for several reasons: (a) The collateral which initially will be deposited into each Trust and will be pledged to secure the Bonds issued by such Trust will not be speculative in nature because it will consist solely of GNMA Certificates, FNMA Certificates or FHLMC Certificates, which Mortgage Certificates are guaranteed as to timely payment of interest and timely or ultimate payment of principal by each respective agency; (b) the Bonds will only be issued provided an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories, which by definition means that the capacity of the issuing Trust to repay principal and interest on the Bonds is extremely strong; (c) the Indenture under which the Bonds will be issued subjects the collateral pledged to secure the Bonds, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Trustee on behalf of the Bondholders; [2] and (d) the owners of

---

[1] By definition, the "Mortgage Certificates" collateralizing the Bonds will consist of (1) "fully-modified" pass-through mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), (2) mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), and (3) guaranteed mortgage pass-through securities issued by the Federal National Mortgage Association ("FNMA Certificates"). All or a portion of the Mortgage Certificates securing a Series of Bonds may be "partial pool" Mortgage Certificates. Some of the GNMA Certificates securing a Series of Bonds may be backed by mortgage loans that provide for payments during the initial portion of their term that are less than the actual amount of principal and interest payable thereon on a level desk service basis ("GPM GNMA Certificates"). In addition to the Mortgage Certificates directly securing the Bonds, a series may have additional collateral which may include certain collection accounts and reserve funds as specified in the related Indenture.

[2] The Indenture further specifically provides that no amounts may be released from the lien of the Indenture to be remitted to the issuing Trust (and any owner of the beneficial interests thereof) until (i) the Trustee has made the scheduled payment of principal and interest on the Bonds, (ii) the Trustee has received all fees currently owed to it, and (iii) to the extent required by any supplemental indentures executed in connection with the issuance of the Bonds, deposits have been made to certain reserve funds which will ultimately be used to make payments of principal and interest on the Bonds. Once amounts have been released from the lien of the Indenture, the Trust Agreement for each Trust will provide that the Owner Trustee under the Trust Agreement will have a lien superior to that of the owners of the beneficial interests of the Trust to the remaining cash flow.

the beneficial interests will be entitled to receive current distributions representing the residual payments on the collateral from each Trust in accordance with the terms of the applicable Trust Agreement, which distributions are analogous to dividends payable to a shareholder of a corporate issuer of collaterialized mortgage obligations. Furthermore, if a Trust does not elect to be treated as a "real estate mortgage investment conduit" ("REMIC") under the Internal Revenue Code of 1986, the beneficial interest owners will be liable for the expenses, taxes and other liabilities of the Trust (other than the principal and interest on the Bonds) to the extent not previously paid from the trust estate. The choice of the form of issuer for the Bonds and the identity of the owners of the beneficial interests in such issuer, however, will not alter in any way the payments made to the Bondholders which payments are governed by an Indenture which will meet the requirements of the Trust Indenture Act of 1939.

10. The aggregate interests of the owners of the beneficial interests in the collateral and the expected returns earned by such owners will be far less than the payments made to Bondholders. Applicant does not intend to deposit in any Trust, Mortgage Certificates with a collateral value which exceeds 110% of the aggregate principal amount of the related Bonds.

11. Except to the extent permitted by the limited right to substitute collateral, it will not be possible for the owners of the beneficial interests to alter the collateral initially deposited into a Trust, and in no event will such right to substitute collateral result in a diminution in the value or quality of such collateral. Although it is possible that any collateral substituted for collateral initially deposited into a Trust may have a different prepayment experience than the original collateral, the interests of the Bondholders will not be impaired because: (a) The prepayment experience of any collateral will be determined by market conditions beyond the control of the owners of the beneficial interests, which market conditions are likely to affect all Mortgage Certificates of similar payment terms and maturities in a similar fashion; (b) the interests of the holders of the beneficial interests are not likely to be greatly different from those of the Bondholders with respect to collateral prepayment experience; and (c) to the extent that it may be possible for the owners of the beneficial interests to cause the substitution of collateral which has a different prepayment experience than the original collateral, this situation is no different for the Bondholders than the traditional collateralized mortgage obligation structure where bonds are issued by an entity that is a wholly-owned subsidiary. Further, due to the fact that there usually will be more than one owner of a Trust, it appears less likely that the owners will be able to agree on any desired substitution of collateral than if there were a single owner who could unilaterally decide on the timing and execution of the substitution.

12. Each Series of Bonds will consist of one or more classes of Bonds, including one or more classes of Non-Compound Interest Bonds, Compound Interest Bonds or adjustable interest rate Bonds. For additional representations and conditions concerning classes of Bonds, certain optional and mandatory redemption features, and the distribution of "excess cash flow," see the application.

13. The requested order is necessary and appropriate in the public interest because: (a) the Trusts should not be deemed to be entities to which the provisions of the 1940 Act were intended to be applied; (b) The Trusts may be unable to proceed with their proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) the Trust's activities are intended to serve a recognized and critical public need; (d) granting of the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act and thereafter by the Trustee representing their interests under the Indenture; and (e) the beneficial interests in the Trusts will be held entirely by the Applicant or offered only to a limited number of sophisticated institutional investors through private placements.

14. The election by any Trust to be treated as a REMIC will have no effect on the level of the expenses that would be incurred by any such Trust. If a Trust elects to be treated as a REMIC, it will provide for the payment of administrative fees and expenses incurred in connection with the issuance of the Bonds and the administration of the Trust by one of the following methods or a combination of one or more of such methods: (a) A third party, whose credit is acceptable to the agency or agencies rating the Bonds, the Trustee and the Owner Trustee, will guaranty the payment of such fees and expenses; (b) One or more reserve funds will be established to provide for the payment of such fees and expenses, which maximum fees typically shall be projected, assuming current inflation factor scenarios required by the independent agency or agencies rating the Bonds, at the time of the issuance of the Bonds and the establishing of such reserve funds. The procedure used to calculate the anticipated level of fees and expenses is reasonable and has been used successfully in the past, in that it has provided available funds sufficient to pay such fees and expenses and to insure that funds will be sufficient to cover future fees and expenses. In addition, under the Indenture, the Trustee will look solely to such reserve funds for the payment of the Trustee's fees and expenses; (c) The Bonds will be secured by collateral, the value of which is in excess of the amount necessary to make payments of principal and interest on the Bonds, and such excess or a portion thereof will be applied to the payment of such fees and expenses, and may be used in combination with any of the other methods described herein. In no event will Applicant deposit in any Trust, Mortgage Certificates with a collateral value which exceeds 110% of the aggregate principal amount of the related Bonds; and (d) The owners of the beneficial interest in any Trust will be personally liable, pursuant to the Trust Agreement, for the fees and expenses of the Trust not otherwise payable from one of the sources described above.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following conditions:

1. Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended.

However, the collateral directly securing the Bonds will be limited to GNMA Certificates, FNMA Certificates, or FHLMC Certificates.

3. If new mortgage collateral is substituted, the substitute collateral will: (i) Be of equal or better quality than the collateral replaced; (ii) have similar payment terms and cash flow as the collateral replaced; (iii) be insured or guranteed to the same extent as the collateral replaced; and (vi) meet the conditions set forth in paragraphs (2) and (4). In addition, new collateral may not be substituted for more than 40% of the aggregate face amount of the

Mortgage Certificates initially pledged as mortgage collateral. In no event may any new mortgage collateral be substituted for any substitute mortgage collateral.

4. All Mortgage Certificates, funds, accounts or other collateral securing a Series of Bonds ("Collateral") will be held by a Trustee, or on behalf of a Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant. The Trustee will be provided with a first priority perfected security or lien interest in and to all Collateral.

5. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with the Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

6. No less often than annually, an independent public accountant will audit the books and records of each Trust and, in addition, will report on whether the anticipated payments of principal and interest on the mortgage collateral continue to be adquate to pay the principal and interest on the Bonds in accordance with their arms. Upon completion, copies of the auditor's reports will be provided to the Trustee.

7. Each Trust will insure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which or all of the methods, summarized in the representations listed above, (which methods may be used in combination) are selected by such Trust to provide for the payment of such fees and expenses.

8. Each class of adjustable interest rate Bonds will have a set maximum interest rate (an interest rate cap).

9. At the time of the deposit of the Collateral with the issuing Trust, as well as during the life of the Bonds, the scheduled payments or principal and interest to be received by the Trustee on all Mortgage Certificates pledged to secure the Bonds, plus reinvestment income thereon, and funds, if any, pledged to secure the Bonds (as described in the application) will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each class of adjustable interest rate Bonds. Such Collateral will be paid down as the mortgages underlying the Mortgage Certificates are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds.

10. In addition, the above representations regarding the beneficial interests (and more fully described in the application) will be express conditions to the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2431 Filed 2-4-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24038; Filed No. SR-CBOE-86-38]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Accelerated Approval to Propose Rule Change Relating to Long-Term Incentive Program in Foreign Currency Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 22, 1986 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change is described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The rule change extends the sign up deadline for the long-term incentive program in foreign currency options from November 1, 1986 through January 31, 1987.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to enable additional market makers and floor brokers to sign up for the long term incentive program in foreign currency options, which program was approved by the Commission in Release Number 34-23584, dated September 2, 1986 and concerning SR-CBOE-86-13. The members that have already signed up for the program have stated that they have no objection to this extension. The statutory basis for the proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934 (the Act), in that it is designed to increase the Exchange's capacity to accommodate non-market-maker orders by attracting more members to the long term incentive program.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations there under applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to thirtieth day after the date of publication of the proposal in the **Federal Register** in that the CBOE's foreign currency option incentive program was considered and approved by the Commission in September, 1986 [1] and the current filing relates solely to an administrative aspect of the incentive program.

IV. Solicitation of Comments

Interested person are invited to submit written data, view and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

---

[1] *See* Securities Release No. 23584 (September 2, 1986).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 26, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 29, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2419 Filed 2-4-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area # 2265]

Declaration of Disaster Area; Territory of American Samoa

As a result of the President's major disaster declaration on January 24, 1987, I find that the Manua Islands in the Territory of American Samoa constitute a disaster loan area because of Hurricane Tusi occurring on January 17, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on March 25, 1987, and for economic injury until the close of business on October 26, 1987, at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, California 95853, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	7.500
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	9.500

The number assigned to this disaster is 226508 for physical damage and for economic injury the number is 649700.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: January 29, 1987.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 87-2287 Filed 2-4-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[No. 999]

Restriction on the Use of United States Passports for Travel to, in, or Through Lebanon

Pursuant to the authority of section 211a of Title 22, United States Code, Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.72(a)(3), all United States passports, with the exception of two categories, are declared invalid for travel to, in, or through Lebanon unless specifically validated for such travel. In addition, I hereby conclude that it is in the national interest of the United States to permit those American citizens now in Lebanon a reasonable period of time during which these passport controls shall not apply, in order to permit those American citizens to wrap up their personal affiars and depart from Lebanon. Accordingly, these passport controls shall not apply to American citizens now in Lebanon for 30 days from the effective date of this Public Notice. For humanitarian reasons I have also determined that it would be inappropriate at this time to apply passport controls to immediate family members of hostages in Lebanon.

The situation in Lebanon, and in west Beirut in particular, is so chaotic that I do not believe that any American citizen can be considered safe from terrorist acts. While the U.S. government will attempt to help citizens unlawfully detained in Lebanon or elsewhere, our ability to secure their release is limited both by the chaos of Lebanon and our responsibility to protect broad national interests, including the avoidance of actions which might encourage future acts of terrorism. Events over the past few days have indicted that private citizens in Lebanon have not paid heed to 12 years of U.S. Government warnings and that they have neither sufficient information to evaluate the threat against them, nor the means to protect themselves.

In light of these events and circumstances I have determined that Lebanon is an area "where there is imminent danger to the public health and physical safety of United States travelers" within the meaning of § 51.72(a)(3) of Title 22, Code of Federal Regulations. All United States passports shall remain invalid for travel to, in, or through Lebanon, except for those passport holders who are immediate family members of hostages in Lebanon and, for 30 days from the effective date of this Public Notice, for those passport holders currently in Lebanon, unless specifically validated for such travel by the Department of State.

This Public Notice will be effective upon publication in the **Federal Register** and shall expire at the end of one year unless extended or sooner revoked by Public Notice.

Date: February 3, 1987.

George P. Shultz,

Secretary of State.

[FR Doc. 87-2577 Filed 2-4-87; 9:33 am]

BILLING CODE 4710-06-M

[CM-8/1042]

Fine Arts Committee; Meeting

The Fine Arts Committee of the Department of State will meet on Saturday, March 21, 1987 at 10:00 a.m. in the John Quincy Adams State Drawing Room. The meeting will last approximately until 11:30 a.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in October 1986, the announcement of gifts, loans and financial contributions during calendar year 1986, and a report on the new Treaty Rooms on the 7th floor.

Public access to the Department of State is controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Monday, March 16, 1987, telephone (202) 647-1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: January 23, 1987.

Clement E. Conger,

Chairman, Fine Arts Committee.

[FR Doc. 87-2308 Filed 2-4-87; 8:45 am]

BILLING CODE 4710-38-M

[CM-8/1043]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting on February 18, 1987, at 9:30 am in Room 6319 at Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C.

The purpose of the meeting will be to prepare for the first session of the International Maritime Organization (IMO) Ad-Hoc Preparatory Committee on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, to be held March 2–6, 1987. The Ad-Hoc Committee was formed by the IMO Council to consider a draft Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. The draft Convention primarily concerns creation of criminal offenses, establishment of jurisdiction, and imposition of the obligation of a Party to extradite or prosecute an alleged offender. The following will be discussed at the meeting:

1. Background regarding the draft Convention.
2. The major provisions of the draft Convention.
3. Proposed positions for the Ad-Hoc Preparatory Meeting.

Members of the public may attend the meetings up to the seating capacity of the room.

For further information, contact Mr. Robert Horowitz, U.S. Coast Guard Headquarters (G-LMI), 2100 Second Street SW., Washington, DC 20593-0001, Telephone: (202) 267-1527.

Dated: January 21, 1987.

Michael E. McNaull,

Executive Secretary Shipping Coordinating Committee.

[FR Doc. 87-2309 Filed 2-4-87; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 998]

South African Parastatal Organizations; Receipt of Requests To Review Classification

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Requests have been submitted to the Department of State to review the classification of the following firms as South African "parastatal organizations" for purposes of the Comprehensive Anti-Apartheid Act of 1986, as amended (Public Law 99-440): Bophuthatswana National Development Corp. Ltd.; Cooperative Wine Growers (KWV); Council for Scientific and Industrial Research and its subsidiary institutes; South Africa Sugar Association; Thames Wire and Cable (Pty) Ltd.; and Transvaal Copper Rod Co. Ltd. Interested persons are invited to submit any writen comments relevant to the Department's review of the status of these firms.

DATE: Comments must be received no later than February 16, 1987.

ADDRESS: Comments should be sent to the Office of Southern African Affairs, Room 4238, Department of State, Washington, D.C. 20520.

FOR FURTHER INFORMATION CONTACT: Eric Benjaminson, Office of Southern African Affairs (202) 647-8433, or Lynda Clarizio, Office of the Legal Adviser (202) 647-4110.

SUPPLEMENTARY INFORMATION: State Department Public Notice No. 983, published on November 19, 1985 (51 Federal Register 41912), identified which South African firms are deemed to be "parastatal organizations" for purposes of the Comprehensive Anti-Apartheid Act of 1986. The notice provided that any person believing that, due to unique circumstances, a firm should be included or excluded from the list of parastatal organizations can request that the Department review the particular case. All requests must be submitted in writing to the Office of Southern African Affairs. Any submission should contain detailed information as to the stock ownership and composition of the board of directors of the particular firm as well as the amount of preferential financial assistance received by such firm from the South African Government. The notice stipulated that the Department of State may invoke the authorities set forth in section 603(b) of the Act in conducting a review. Any person who willfully makes a false or misleading statement in a submission to the Department will be subject to the civil and criminal penalties set forth in section 603 (b) and (c) of the Act and 18 U.S.C. 1001.

Requests have been submitted to the Department to review the classification of the following firms as South African parastatal organizations: Bophuthatswana National Development Corp. Ltd.; Cooperative Wine Growers (KWV); Council for Scientific and Industrial Research and its subsidiary institutes; South Africa Sugar Association; Thames Wire and Cable (Pty) Ltd.; and Transvaal Copper Co. Ltd. Interested pesons are invited to submit any written comments relevant to the Department's review of the status of these firms by February 3, 1987.

Dated: January 15, 1987.

Chas W. Freeman, Jr.,

Deputy Assistant Secretary for African Affairs.

[FR Doc. 87-1818 Filed 2-4-87; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on February 26, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Approval of the minutes of meeting held November 17, 1986; (2) Executive Director's Report on Administrative Activities; (3) Special Committee Activities Report for November-December 1986; (4) Fiscal and Management Subcommittees Report and Proposed Appointments; (5) Consideration of Appointments of RTCA Technical Advisors; (6) Consideration of Proposal to Establish New Special Committees; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 27, 1987.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 87-2282 Filed 2-4-87; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Winnebago County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway imporvement project in Winnebago County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Michael M. Moravec, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905; telephone (608) 264–5947.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the WisDOT, is currently preparing an environmental impact statement for the construction of a 3.5 mile extension of USH 45. The project is located in the north-eastern corner of Winnebago County, Wisconsin, on the western fringe of the Appleton urbanized area. The proposed project would consist of a four lane, at grade controlled access, divided highway and would serve to accommodate future increases in traffic generated by this rapidly developing section of the urbanized area.

Planning environmental, and engineering studies are underway to develop transportation alternatives. The EIS will assess the need, location, and environmental impacts of alternatives including: (1) *The No-Build Alternative*—This alternative assumes to continued use of existing facilities with the maintenance necessary to insure their use, (2) *The STH 441 Extension Alternative*—This alternative would project west from STH 441 on new location, (3) *The STH 441 Northern Extension Alternative*—This alternative is also on new location and is approximately ¼ mile north of alternative No. 2.

Coordination and Scoping Process

Coordination activities have begun. Agency coordination is being accomplished on an individual basis. A public informational meeting was held to receive input from citizens. No formal scoping meeting is proposed; however, questions and comments from individuals and agencies concerning this proposed action and the environmental impact statement should be directed to the FHWA at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activitis apply to this program)

Issued on January 26, 1987.

Frank M. Mayer,

Division Administrator Madison, Wisconsin.

[FR Doc. 87–2305 Filed 2–4–87; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement Programs; Public Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of reschedule of date of public meeting.

SUMMARY: This notice announces a change of date of a public meeting (originally announced at 51 FR 44967, December 15, 1986) at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs. The public meeting, originally scheduled for January 27, 1987, will now be held on March 4, 1987. The meeting will begin at 10:30 a.m., run until 1:00 p.m., and reconvene at 2:00 p.m., if necessary. It will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The agency will respond to those questions previously supplied, unless revisions, additions, or deletions are submitted. Any additional or revised questions must be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, no later than February 19, 1987.

Issued on February 2, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87–2407 Filed 2–4–87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 4–87]

7½% Treasury Bonds of 2016

January 29, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated 7½% Treasury Bonds of 2016 (CUSIP No. 912810 DX 3), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. Additional amounts of the Bonds may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be issued February 17, 1987, and are offered as an additional amount of 7½% Treasury Bonds of 2016 (CUSIP No. 912810 DX 3) dated November 15, 1986. Payment for the Bonds will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from November 15, 1986, to February 17, 1987. Interest on the Bonds offered as an additional issue is payable on a semiannual basis on May 15, 1987, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 2016, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public moneys. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form, and in denominations of $1,000, $5,000, $10,000, $100,000, nd $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986, apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Thursday, February 5, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, February 4, 1987, and received no later than Tuesday, February 17, 1987.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States hold membership; foreign central banks and foreign states; Federal Reserve banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Competitive tenders at yields higher than 8.14% will not be accepted, because the equivalent prices would fall below the original issue discount limit of 92.750. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted, and must include accrued interest from November 15, 1986, to February 17, 1987, in the amount of 19.47514 per $1,000 of Bonds allotted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, February 17, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 12, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds alloted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, February 17, 1987. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Bond are: each future seminannual interest payment (hereafter referred to as an Interest Component); and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2 In order for a Bond to be separated into the components described in Section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering is $80,000. Separation of Bonds into their components may be effected at any time from the issue date until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the Bonds. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.3. The Principal Component will be payable on November 15, 2016.

6.4. Each Interest Component will be payable on its particular due date designated in Attachmnt A hereto.

6.5. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

6.6. Once a Bond has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.7. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Bond will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.8. Interest Components and Principal components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2 The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3 The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachment A is incorporated as part of this offering circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A

CUSIP Numbers and Designations for the Principal Component and Interest Components of 7½% Treasury Bonds of November 15, 2016, CUSIP No. 912810 DX 3

The Principal Component is designated 7½% Treasury Principal (TPRN) 2016 due November 15, 2016 CUSIP No. 912803 AK 9.

INTEREST COMPONENTS

Designation	CUSIP No. 912833	Designation	CUSIP No. 912833
Treasury interest (TINT) due		Treasury interest (TINT) due	
May 15, 1987	EJ 5	May 15, 2002	FQ 8
Nov. 15, 1987	EK 2	Nov. 15, 2002	FR 6
May 15, 1988	EL 0	May 15, 2003	FS 4
Nov. 15, 1988	EM 8	Nov. 15, 2003	FT 2
May 15, 1989	EN 6	May 15, 2004	FU 9
Nov. 15, 1989	EP 1	Nov. 15, 2004	FV 7
May 15, 1990	EQ 9	May 15, 2005	FW 5
Nov. 15, 1990	ER 7	Nov. 15, 2005	FX 3
May 15, 1991	ES 5	May 15, 2006	FY 1
Nov. 15, 1991	ET 3	Nov. 15, 2006	FZ 8
May 15, 1992	EU 0	May 15, 2007	GA 2
Nov. 15, 1992	EV 8	Nov. 15, 2007	GB 0
May 15, 1993	EW 6	May 15, 2008	GC 8
Nov. 15, 1993	EX 4	Nov. 15, 2008	GD 6
May 15, 1994	EY 2	May 15, 2009	GE 4
Nov. 15, 1994	EZ 9	Nov. 15, 2009	GF 1
May 15, 1995	FA 3	May 15, 2010	JU 5
Nov. 15, 1995	FB 1	Nov. 15, 2010	JV 3
May 15, 1996	FC 9	May 15, 2011	JW 1
Nov. 15, 1996	FD 7	Nov. 15, 2011	JX 9
May 15, 1997	FE 5	May 15, 2012	JY 7
Nov. 15, 1997	FF 2	Nov. 15, 2012	JZ 4
May 15, 1998	FG 0	May 15, 2013	KA 7
Nov. 15, 1998	FH 8	Nov. 15, 2013	KB 5
May 15, 1999	FJ 4	May 15, 2014	KC 3
Nov. 15, 1999	FK 1	Nov. 15, 2014	KD 1
May 15, 2000	FL 9	May 15, 2015	KE 9
Nov. 15, 2000	FM 7	Nov. 15, 2015	KF 6
May 15, 2001	FN 5	May 15, 2016	KH 2
Nov. 15, 2001	FP 0	Nov. 15, 2016	KK 5

[FR Doc. 87-2460 Filed 2-3-87; 10:59 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 3-87]

7¼% Treasury Notes of November 15, 1996, Series D-1996

January 29, 1987.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designatd 7¼% Treasury Notes of November 15, 1996, Series D-1996 (CUSIP No. 912827 UF 7), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be issued February 17, 1987, and are offered as an additional amount of 7¼% Treasury Notes of November 15, 1996, Series D-1996 (CUSIP No. 912827 UF 7) dated November 15, 1986. Payment for the Notes will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from November 15, 1986, to February 17, 1987. Interest on the Notes offered as an additional issue is payable on a semiannual basis on May 15, 1987, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form or in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, February 4, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 3, 1987, and received no later than Tuesday, February 17, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $,1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Competitive tenders at yields higher than 7.57% will not be accepted, because the equivalent prices would fall below the original issue discount limit of 97.750. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, the price on each competitive tender allotted will be determined and each sucessful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted, and must include accrued interest from November 15, 1986, to February 17, 1987, in the amount of $18.82597 per $1,000 of Notes allotted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5, must be made or completed on or before Tuesday, February 17, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 12, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, February 17, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Note are: each future semiannual interest payment (hereafter referred to as an Interest Component); and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2 In order for a Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering is $800,000. Separation of Notes into their components may be effected at any time from the issue date until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the Notes. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.3. The Principal Component will be payable on November 15, 1996.

6.4. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.5. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

6.6. Once a Note has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.7. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Note will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.8 Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachment A is incorporated as part of this offering circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A

CUSIP Numbers and Designations for the Principal Component and Interest Components of 7¼% Treasury Notes of November 15, 1996, Series D-1996, CUSIP No. 912827 UF 7

The Principal Component is designated 7¼% Treasury Principal (TPRN) Series D-1996 due November 15, 1996, CUSIP No. 912820 AH 0.

INTEREST COMPONENTS

Designation	CUSIP No. 912833	Designation	CUSIP No. 912833
Treasury interest (TINT) due		Treasury interest (TINT) due	
May 15, 1987	EJ 5	May 15, 1992	EU 0
Nov. 15, 1987	EK 2	Nov. 15, 1992	EV 8
May 15, 1988	EL 0	May 15, 1993	EW 6
Nov. 15, 1988	EM 8	Nov. 15, 1993	EX 4
May 15, 1989	EN 6	May 15, 1994	EY 2
Nov. 15, 1989	EP 1	Nov. 15, 1994	EZ 9
May 15, 1990	EQ 9	May 15, 1995	FA 3
Nov. 15, 1990	ER 7	Nov. 15, 1995	FB 1
May 15, 1991	ES 5	May 15, 1996	FC 9
Nov. 15, 1991	ET 3	Nov. 15, 1996	FD 7

[FR Doc. 87-2461 Filed 2-3-87; 11:00 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 2-87]

Treasury Notes of February 15, 1990, Series S-1990

January 29, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $10,000,000,000 of United States securities, designated Treasury Notes of February 15, 1990, Series S-1990 (CUSIP No. 912827 UN O), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the Yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated February 17, 1987, and will accrue interest from that date, payable on a semiannual basis on August 15, 1987, and each subsequent 6 months on February 15 and August 15 through the date that the principle becomes payable. They will mature February 15, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Tuesday, February 3, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, February 2, 1987, and received no later than Tuesday, February 17, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders ony for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; federally-insured savings and loans associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the

Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all of most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, February 17, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 12, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, February 17, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the notes being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-2462 Filed 2-3-87; 11:00 am]

BILLING CODE 4810-40-M

[Number: 135-03]

Revocation of Commissioner of Public Debt Authority to Approve Requests of Production of Stamps and Transfer to Bureau of Engraving and Printing Director

Date: January 13, 1987.

Subject: Revocation of Commissioner of Public Debt Authority to Approve Requests of Production of Stamps and Transfer to Bureau of Engraving and Printing Director.

By virtue of the authority vested in me by 31 U.S.C. 321(b), the:

1. Commissioner of the Public Debt's authority to approve requests for the production of postage and other stamps and miscellaneous engraved work by the Bureau of Engraving and Printing for delivery to other departments, establishments, and agencies is revoked and that authority is conferred on the Director of the Bureau of Engraving and Printing, effective immediately.

2. Commissioner of the Public Debt shall continue to approve production requests for the production of non-legal tender notes, bills and certificates of indebtedness for a number of agencies.

3. Director, Bureau of Engraving and Printing, has the authority to approve other securities desired by the Territories and Island Possessions of the United States and by the Farm Credit Administration , Home Loan Bank Board, and other agencies of the Government.

4. This Order supersedes Treasury Order 127, "Revocation of Commissioner of Public Debt Authority to Approve Requests of Production of Stamps and Transferred to Bureau of Engraving and Printing Director," dated December 14, 1950.

James A. Baker, III,

Secretary of the Treasury.

[FR Doc. 87-2449 Filed 2-4-87; 8:45 am]

BILLING CODE 4810-25-M

[Number: 101-05]

Supervision of Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury

Date: January 13, 1987.

Subject: Supervision of Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury.

By virtue of the authority vested in me as Secretary of the Treasury, including the authority vested in me by 31 U.S.C. 321(b), it is ordered that:

1. The Deputy Secretary shall be under the direct supervision of the Secretary.

2. The following officials shall be under the supervision of the Secretary, and shall report to the Secretary through the Deputy Secretary, and shall exercise supervision over those officers and organizational entities set forth on the attached organizational chart:

Under Secretary of the Treasury for Finance
General Counsel
Assistant Secretary (Enforcement)
Assistant Secretary (International Affairs)

Assistant Secretary (Legislative Affairs)
Assistant Secretary of the Treasury (Management)
Assistant Secretary (Public Affairs and Public Liaison)
Assistant Secretary (Tax Policy)
Executive Secretary
Comptroller of the Currency
Commissioner of Internal Revenue
Inspector General

3. The following officials shall be under the supervision of the Under Secretary for Finance, and shall exercise supervision over those officers and the organizational entities set forth on the attached organizational chart:

Treasurer of the United States
Assistant Secretary (Domestic Finance)
Assistant Secretary (Economic Policy)
Fiscal Assistant Secretary

4. The Deputy Secretary, the Under Secretary of the Treasury for Finance, the General Counsel, and the Assistant Secretaries are authorized to perform any functions the Secretary is authorized to perform. Each of these officials shall perform functions under this authority in his or her own capacity and under his or her own title and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Each of these officials will ordinarily perform under this authority only functions which arise out of, relate to, or concern the activities or functions of, or the laws administered by or relating to, the bureaus, offices, or other organizational units over which the incumbent has supervision. Any action heretofore taken by any of these officials in the incumbent's own capacity and under his or her own title is hereby affirmed and ratified as the action of the Secretary.

5. The following officers shall, in the order of succession indicated, act as Secretary of the Treasury in case of the death, resignation, absence, or sickness of the Secretary and other officers succeeding the incumbent, until a successor is appointed, or until the absence or sickness shall cease:

a. Deputy Secretary;

b. Under Secretary of the Treasury for Finance;

c. General Counsel; and

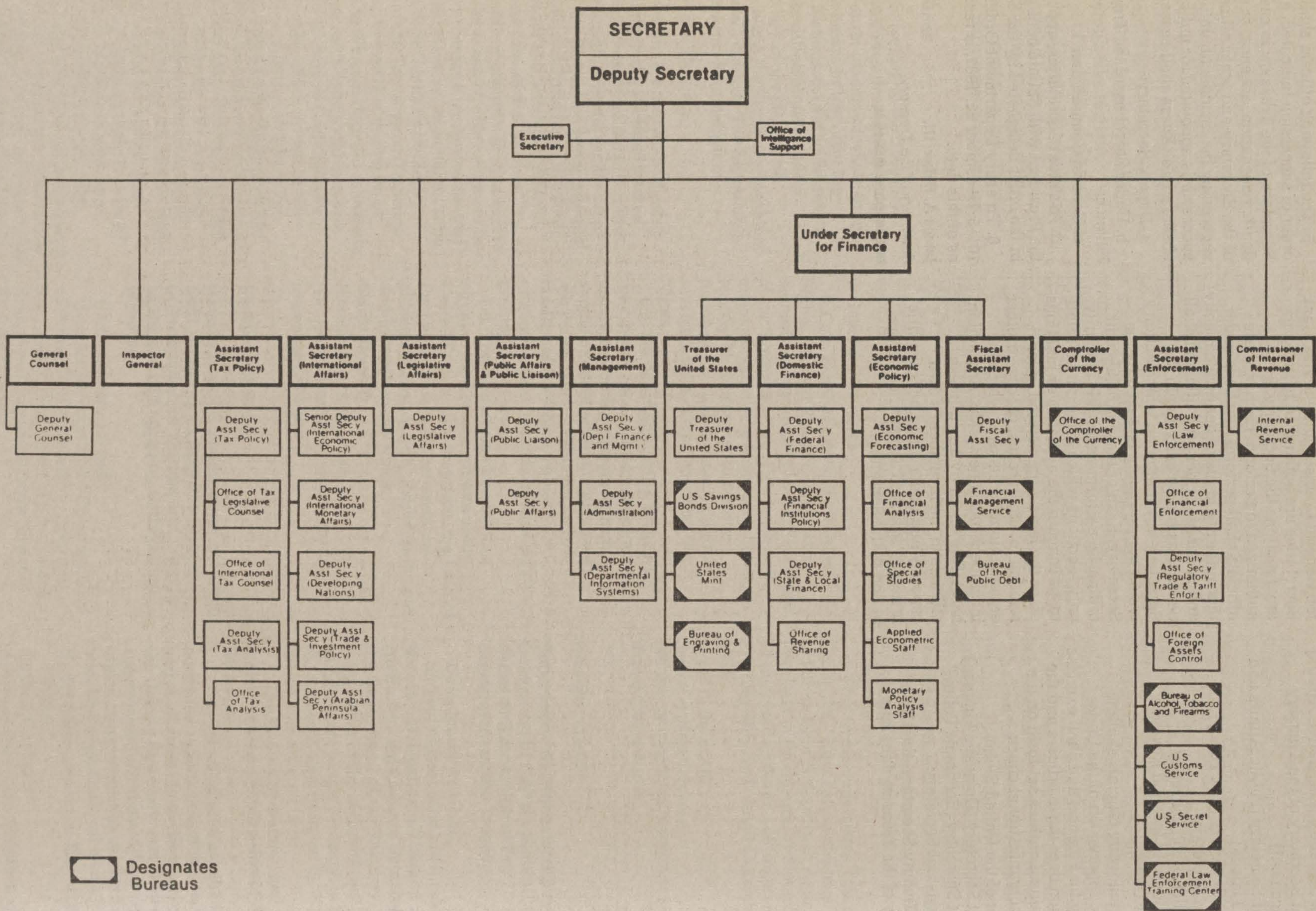
d. Assistant Secretaries, appointed by the President with Senate confirmation, in the order designated by the Secretary.

6. Treasury Department Order No. 101–5, December 21, 1981, is rescinded as of this date.

James A. Baker, III,
Secretary of the Treasury.

BILLING CODE 4810-25-M

THE DEPARTMENT OF THE TREASURY



As of 10-31-86

[FR Doc. 87-2445 Filed 2-4-87; 8:45 am]

BILLING CODE 4810-25-C

[Number: 107-01]

The Ethics in Government Act of 1978

DATE: January 13, 1987.

SUBJECT: The Ethics in Government Act of 1978.

Pursuant to the authority vested in me and in implementation of the Ethics in Government Act of 1978 (Pub. L. 95-521) and 5 CFR § 738.202, the Deputy General Counsel is appointed, "Designated Agency Ethics Official," and the Senior Counsel for Ethics is appointed, "Alternate Designated Agency Ethics Official," for the Department of the Treasury within the meaning of that law and regulation.

This Order supersedes Treasury Department Order 107-1, "Appointment of Designated Agency Official Under the Ethics in Government Act of 1978," dated October 11, 1983.

James A. Baker, III,

Secretary of the Treasury.

[FR Doc. 87-2444 Filed 2-4-87; 8:45 am]

BILLING CODE 4810-25-M

[Number: 100-03]

Functions of the Executive Secretariat

DATE: January 13, 1987.

SUBJECT: Functions of the Executive Secretariat.

This Order describes the functions and responsibilities of the Executive Secretariat, including the Executive Secretary, the Special Assistant to the Secretary (National Security), the Secretariat staff, and the Office of Intelligence support (OIS).

1. *The Executive Secretariat* shall perform the following:

a. Receive, screen, assign action for, and maintain records on all official correspondence addressed to the Secretary and Deputy Secretary;

b. Review all materials submitted to the Secretary and Deputy Secretary for completeness, quality and coordination with other offices; and

c. Coordinate execution of tasks involving various offices within the Department, as directed by the Secretary or Deputy Secretary.

2. In addition to the above responsibilities, *the Executive Secretary* shall:

a. Coordinate briefings for the Secretary and Deputy Secretary;

b. Maintain direct liaison with the White House Staff Secretary, the Cabinet Secretary, the Executive Secretary of the National Security Council, and the Executive Secretaries (or equivalent) of the Cabinet Department;

c. Assist the Secretary and Deputy Secretary with coordination of the Department's policy development;

d. Carry out special tasks as assigned by the Secretary or Deputy Secretary;

e. Clear all Congressional testimony;

f. Approve transmittal of all regulations to the **Federal Register**; and

g. Review all press releases.

3. *The Special Assistant to the Secretary (National Security)* will report to the Secretary and Deputy Secretary. For purposes of administrative and managerial control, the Special Assistant to the Secretary (National Security) and the Office of Intelligence Support (OIS) will be part of the Executive Secretariat. The Special Assistant to the Secretary (National Security) will:

a. Provide day-to-day intelligence support to the Secretary and other officials;

b. Represent Treasury on intelligence community committees and maintain continuous liaison with elements of the community;

c. Review all proposals for support, or other arrangements of a continuing nature, between any Treasury office or bureau and the Central Intelligence Agency or other intelligence agenices, (except for the Federal Bureau of Investigation); and

d. Consult with the General Counsel and Inspector General on all such reviews, and report all such agreements and arrangements to the Secretary for his approval before implementation. This Order is intended to ensure proper coordination and review of all such agreements and arrangements but shall not affect in any way the normal reporting relationships and operational responsibilities of Treasury officials. Routine exchange between the intelligence community and Treasury of substantive intelligence information and reports will not be affected.

4. *The Office of Intelligence Support (OIS),* under the direction of the Special Assistant to the Secretary (National Security), will:

a. Screen and distribute to appropriate Treasury officials relevant State Department telegrams;

b. Prepare daily cable summaries and regular wire service news summaries on items of issues to Treasury officials;

c. Screen and distribute intelligence reports and publications to appropriate Treasury officials; and

d. Provide other intelligence support to the Secretary and other Treasury officials as appropriate.

5. *This Order supersedes the following Treasury Orders (TOs):*

a. TO 170-6, "Establishment of Executive Secretariat and Director," dated January 23, 1961;

b. TO 170-6 (Amendment 1), "Transfer of Communications Watch Functions," dated June 16, 1977;

c. TO 240 (Revision 1), "Liaison Between Subordinate Organizational Units of the Treasury and the CIA," dated June 16, 1977; and

d. TO 249, "Establishment of the Office of Intelligence Support," dated May 17, 1977.

James A. Baker, III,

Secretary of the Treasury.

[FR Doc. 87-2446 Filed 2-4-87; 8:45 am]

BILLING CODE 4810-25-M

[Number: 140-01]

Federal Law Enforcement Training Center

DATE: January 13, 1987.

SUBJECT: Federal Law Enforcement Training Center.

1. Authority and Establishment

By virtue of the authority vested in me as Secretary of the Treasury, including the authority in the Government Employees Training Act, 5 U.S.C. 4101-4118, as implemented by Executive Order 11348 of April 20, 1967, and 31 U.S.C. 321(b), I hereby reaffirm the establishment of the Federal Law Enforcement Training Center as a bureau within the Department of the Treasury to function as an interagency training facility, and place it under the supervision of the Assistant Secretary (Enforcement).

2. Center Functions

The Federal Law Enforcement Training Center shall:

a. Serve as an interagency law enforcement training center for Federal agencies as well as an intergovernmental law enforcement training facility for State, local and international agencies on a not-to-interfere basis with training provided to participating Federal organization personnel.

b. Provide the facilities, equipment, and support services necessary for conducting basic and advanced training for law enforcement personnel, including:

(1) Budgeting for, and administering funds for, construction, maintenance and operation of the Center; and

(2) Housing, feeding, and providing recreation programs and administrative services for students.

c. Provide support, administrative, and training personnel for common training programs to:

(1) Consolidate requirements of participating agencies and develop training curricula;

(2) Develop course content and teaching techniques to ensure that materials are designed to meet objectives; and

(3) Instruct and evaluate students.

d. Conduct research in law enforcement training methods and curriculum content to maintain state-of-the-art expertise in adult learning methodology.

e. Provide advice and assistance to the participating organizations in determining their needs for law enforcement training, in developing curriculum and course content, and in teaching methods and techniques for the advanced training which they provide at the Center.

3. Responsibilities of the Director

Under the supervision of the Assistant Secretary (Enforcement), the Director of the Center shall provide:

a. Executive direction and overall management to the Center's training programs and support activities while ensuring that organizational program goals and priorities are administered in the most sound, effective, efficient, and economical fashion.

b. Impetus for establishing and monitoring long-range Center plans and goal.

c. Overall managerial direction for the effective and efficient performance of the functions of the Center, including:

(1) Financial management, which includes planning, programming and budgeting for the Center, and fiscal operations;

(2) Administrative management, including personnel and managerial services;

(3) Development of the internal organization of the Center, including the designation of subordinate elements; and

(4) Evaluation of students including removal of students from training for such matters as deficiency in training, health, or conduct.

d. Advice to the Assistant Secretary relative to executive level policy and program administration of Federal law enforcement activities.

4. Authority of the Director

a. The Director of the Center shall have all the authority which has been delegated to heads of bureaus by Treasury orders and other issuances of the Office of the Secretary and which are necessary for the performance of his-her responsibilities, and the authority to redelegate such authority.

b. Pursuant to the authority vested in me, including that vested in me by delegation from the Administrator of General Services, FPMR Temporary Regulation D-54, dated January 29, 1976 (41 F.R. 5869), authority is hereby delegated to the Director, Federal Law Enforcement Training Center (1) to appoint uniformed guards as special policemen; (2) to make all needful rules and regulations; and (3) to annex to such rules and regulations such reasonable penalties (not to exceed those prescribed in 40 U.S.C. 318(c)) as will ensure their enforcement for the protection of persons and property at the Federal Law Enforcement Training Center (formerly Glynco Naval Air Station), Brunswick, Georgia. This authority shall be exercised in accordance with the Act of June 1, 1948, as amended (62 Stat. 281; 40 U.S.C. 318–318(c)).

c. In the absence of the Director, the Deputy Director shall have the authority of the Director.

5. Center Operations.

The Department of the Treasury is the Executive Agency for operating the Center and serves as the established point of authority for implementation of Federal regulations and policies having government-wide application. Within this concept:

a. All employees of the Center staff will be appointed under the authority of the Secretary of the Treasury and shall be employees of the Department of the Treasury.

b. Center operations will be financed by a separate appropriation to the Department of the Treasury to be used to pay costs of salaries, equipment, and other expenses in connection with:

(1) Administration;

(2) Maintenance and operation of the physical plant (including dormitories and dining facilities);

(3) Conducting common training programs;

(4) Operation of the laboratories, library, and other support services; and

(5) Research conducted in law enforcement curriculum and training methods.

6. Effect on Prior Treasury Orders.

This Order supersedes the following Treasury Department Orders which are hereby rescinded:

a. 217 (Revision 1), "Establishment of the Consolidated Federal Law Enforcement Training Center, dated June 30, 1970;

b. 217 (Revision 1) Amendment No. 1, "Change in Name of Consolidated Federal Law Enforcement Training Center, dated August 14, 1975; and

c. 217–1, "Delegation of Authority," dated February 25, 1976.

James A. Baker III,

Secretary of the Treasury.

[FR Doc. 87–2447 Filed 2–4–87; 8:45 am]

BILLING CODE 4810-25-M

[Number: 100–02]

Establishment of the Office of the Inspector General and Delegation of Authority to the Inspector General

DATE: January 13, 1987.

SUBJECT: Establishment of the Office of the Inspector General and Delegation of Authority to the Inspector General.

By virtue of my authority as Secretary of the Treasury, including the authority contained in 31 U.S.C. 321(b), and 5 U.S.C. 301 and 302, it is hereby ordered that:

1. Establishment of the Office of the Inspector General (OIG)

a. There is hereby established within the Department of the Treasury, *the Office of the Inspector General*, which shall conduct and supervise audits and investigations relating to programs and operations within the Department as detailed in this order.

b. *The Office of the Inspector General* shall also provide leadership and coordination and recommend policies for activities designed to:

(1) Promote economy, efficiency, and effectiveness in the administration of Departmental programs and activities;

(2) Prevent and detect fraud, waste, and abuse in Departmental programs and operations; and

(3) Inform the Secretary and Deputy Secretary of any problems or concerns with the administration of such programs and operations and the need for and progress of corrective action.

c. *The Office of the Inspector General* shall be independent of all other offices and bureaus within the Department.

d. *The head of the Office of the Inspector General* shall be the Inspector General (IG) who shall be appointed by the Secretary of the Treasury and who shall report to and operate under the general supervision of the Secretary and/or the Deputy Secretary.

e. *No officer or employee of the Department* shall prevent the Inspector General from initiating, carrying out, or completing any duly authorized audit or investigation, or prevent any duly appointed officer or employee of the Office of the Inspector General from obtaining access to any information or documentation which the Inspector General has determined is necessary to the execution of an audit or investigation.

2. Authority and Responsibility of the Inspector General for the Conduct and Oversight of Investigations

a. *The Inspector General* is hereby delegated the authority to receive, analyze and evaluate allegations of illegal acts, violations of the Rules of Conduct of the Treasury Department and of the bureaus, violations of the merit system, and any other misconduct concerning any official or employee of any Treasury office or bureau or, in the case of alleged illegal acts or misconduct, any Treasury contractor, subcontractor, or offeror.

b. *All employees and officials of the Department of the Treasury* shall report to the Inspector General all matters which they believe raise questions of illegality or wrongdoing pursuant to paragraph a. above. Employees and officials who work in bureaus or offices with internal affairs or inspection offices, shall report such matters either to the head of those offices or to the Inspector General.

c. *The Inspector General* is hereby delegated the authority to initiate, organize, conduct, direct and control investigations of any allegations received pursuant to paragraph a. above, concerning the Department's senior officials, i.e., Presidential appointees, SES members, and GS or GM-15s and above.

d. If the allegation to the investigated involves a non-senior official or employee of a Treasury law enforcement bureau, the Inspector General shall refer the investigation to that bureau's internal affairs or inspection office and shall receive a full report of the investigation and any action taken on the matter referred.

e. If the allegation to be investigated involves a non-senior official or employee of a Treasury bureau or office that does not have an internal affairs or inspection office, the Inspector General may refer the investigation to a bureau which has such an office, which will undertake the investigation and will prepare a full report for the Inspector General of the investigation and of any action taken on the matter referred.

f. Paragraphs d. and e. above notwithstanding, the Inspector General shall conduct any investigation which he or she is directed to conduct by the Secretary or Deputy Secretary concerning any allegation of misconduct by an official, employee or contractor of the Treasury. The Inspector General may also conduct any investigation which involves alleged notorious conduct or other matter which, in his or her opinion, is especially sensitive or of Departmental significance.

g. If an allegation involves a matter which is appropriate for the Departmental or a bureau grievance or appeal procedure, or other routine management action, the Inspector General may refer such matter to the appropriate office or bureau for handling.

h. This Order does not change or reduce the authority of Treasury offices or bureaus which had established internal affairs and inspection offices as of July 18, 1978, to conduct investigations in accordance with their own internal procedures, with the exception of those investigations being conducted by the Inspector General. However, when the Inspector General gives notice to a bureau or office that an OIG investigation is being conducted in that bureau or office, no internal investigation will be initiated and any ongoing investigation into the same matter will immediately cease.

i. *All law enforcement bureau internal affairs and inspection offices* shall periodically report to the Inspector General their significant current investigative activities.

j. *The Inspector General* may review, evaluate, and approve all Departmental and bureau programs, plans, policies and operations for investigative misconduct and may make recommendations for changes.

k. *The Inspector General* shall require, receive, review, and analyze all reports informing the Secretary or Deputy Secretary of any significant problems, abuses, or deficiencies disclosed in any bureau or office investigation and the actions taken to correct them.

1. *The Inspector General* may, at his or her discretion report the results of the investigation of any senior official to the Secretary or Deputy Secretary or other appropriate management official for action.

m. *The Inspector General* is hereby delegated authority to receive all matters referred to the Department of the Treasury by the Special Counsel of the Merit Systems Protection Board, regarding allegations or prohibited personnel practices. He or she may investigate such matters or, as appropriate, may refer such matters for investigation to a law enforcement bureau internal affairs or inspection office, except for matters concerning the Internal Revenue Service (IRS), which shall be referred directly to that bureau.

n. *The Inspector General* shall receive and review reports of investigations by any bureau or office conducting such investigations, except for IRS, and may prepare or delegate to the appropriate bureau or office for preparation, final reports to the Special Counsel for review and signature of the Deputy Secretary or Under Secretary as the Secretary's designees, except for IRS which shall prepare its own final reports to the Special Counsel.

3. Authority and Responsibility of the Inspector General for the Conduct and Oversight of Audits

a. *The Inspector General* is hereby delegated complete authority for performing internal audits of all Treasury bureaus and offices, with the exception of the law enforcement bureaus. The law enforcement bureaus are the: Internal Revenue Service, U.S. Customs Service, Bureau of Alcohol, Tobacco and Firearms, and U.S. Secret Service.

b. *The Inspector General* may audit or authorize law enforcement bureau internal affairs or inspection offices to audit any Treasury program, activity, or function, including any Treasury or bureau contractor, subcontractor, or offeror.

c. *The Inspector General* shall coordinate all requests submitted by IGs from the other Government departments and agencies for audit services within the Department.

d. *The Inspector General and, as appropriate, the Heads of Internal Audit in the law enforcement bureaus* shall distribute copies of final audit reports to all headquarters and field officials responsible for taking corrective action on matters covered by those reports.

e. *The Inspector General* shall keep the Secretary or Deputy Secretary informed of any significant problems, abuses, or deficiencies disclosed in audits and the actions taken to correct them.

f. *The Inspector General* is responsible for formulating Departmental audit policies and priorities and assuring implementation of Federal audit standards in the Department.

g. *The Inspector General* may review, evaluate, and approve law enforcement bureau internal affairs and inspection offices' programs, plans, policies, reports and operations for internal auditing and may make recommendations for changes.

h. *The Inspector General* shall receive and may review and analyze all law enforcement bureau internal affairs and inspection offices' audit plans and reports as a basis for evaluating audit services to management.

i. *All law enforcement Bureau internal affairs and inspection offices* shall periodically report to the Inspector General their significant current audit activities.

4. Authority of the Inspector General for Intelligence

a. Pursuant to Section 4 of Executive Order 12334, *the Inspector General shall, together with the General Counsel,* to the extent permitted by law, report to the President's Intelligence Oversight Board, concerning intelligence activities that he or she has reason to believe may be unlawful or contrary to Executive Order or Presidential directive.

b. *All Treasury employees* shall report to the Inspector General, the General Counsel, or the head of the inspection or internal affairs office of their bureau, any matters which they believe raise questions or propriety or legality under Executive Order 12333.

c. At appropriate intervals, *The Inspector General* shall review any foreign intelligence activities of the Treasury Department to determine whether any such activities raise questions of propriety under Executive Order 12333. Any questions arising from this review as to the legality of such activities shall be referred to the General Counsel.

d. *All law enforcement bureau internal affairs and inspection offices* shall review at appropriate intervals the activities of their bureaus in their relations with the United States foreign intelligence agancies to determine whether such activities raise questions of legality or propriety. Any questions of legality or propriety arising from this review shall be reported to the Inspector General who shall refer to the General Counsel any illegal activities.

e. *The Inspector General, together with the General Counsel,* shall review any agreement the Treasury Department or any of its bureaus or officers and the Central Intelligence Agency (CIA), dealing with arrangements of a continuing nature.

f. *The Inspector General, together with the General Counsel,* shall, when requested, consult with the Office of Intelligence Support regarding CIA or Treasury requests for support or assistance where there is no current written arrangements for such support or assistance.

g. *The Inspector General, together with the General Counsel,* consult with the Under Secretary, when requested, with regard to arrangements for support or assistance between the Treasury and any other intelligence agency of the Federal government except for arrangements between the Federal Bureau of Investigation and the Internal Revenue Service, which shall be the responsibility of the Commissioner of Internal Revenue.

5. Personnel Authority

a. *The Inspector General* may obtain as needed, under procedures he or she develops, investigative, audit, and support personnel from law enforcement bureau internal affairs and inspection offices for conducting investigations or audits under his or her direct supervision. Any detailed personnel shall remain on the rolls of the service or office from which they were detailed but will report exclusively to the Inspector General regarding the matter being investigated or audited.

b. *Bureau heads* shall consult with the Inspector General in recruiting and selecting candidates to head the internal affairs or inspection offices of the law enforcement bureaus. Bureau heads shall, prior to issuance, submit annual performance evaluations of incumbent heads of internal affairs or inspection offices to the Inspector General for review.

6. Regulatory Authority

The Inspector General is hereby delegated authority to promulgate any rules, regulations, directives, memoranda of understanding, policies and procedures necessary to implement his or her duties and responsibilities pursuant to this Order.

7. Cancellation and Consolidation of Previous Orders

a. This Order supersedes the following Treasury Department Orders (TDO):

(1) TDO 256, "Establishment of the Position of Inspector General," dated July 18, 1978;

(2) TDO 101–14, "Transfer of the Office of Audit to the Inspector General," dated February 20, 1980; and

(3) TDO 101–28 "Transfer of Internal Audit Function and Internal Investigative Functions and Positions to the Office of the Inspector General," dated June 7, 1982.

b. This Order supersedes those parts of the following orders which set forth duties of the Inspector General:

(1) TDO 240 (Revision 1), "Liaison Between Subordinate Organizational Units of the Treasury and the Central Intelligence Agency," dated July 18, 1978;

(2) TDO 246 (Revision 1), "Responsibilities for Oversight of Foreign Intelligence Activities Under Executive Order 12036," paragraphs number 1, 3, 5, and 6;

(3) TDO 101–4, "Delegation of Authority to the Inspector General to Receive Referrals from the Merit Systems Protection Board, and Delegation to the Deputy Secretary, to the Under Secretary and to the Commission of Internal Revenue to Sign Final Reports," dated April 13, 1979. Inspector General's duties are set forth in Part 1 of this Order; and

(4) TDO 101–15, "Delegations of Authority to the Deputy Secretary and Inspector General Relating to Treasury Auditing and Inspection Activities," dated February 27, 1980.

James A. Baker III,

Secretary of the Treasury.

[FR Doc. 87–2447 Filed 2–4–87; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Exchange Visitor Program; Amendment of Skills List

AGENCY: United States Information Agency.

ACTION: Amendment to Exchange Visitor Skills List.

SUMMARY: The Exchange Visitor Skills List is amended to reflect the indefinite suspension of Libya from the country skills list and the addition of two public administration fields to Group (1) of the country skills list for the People's Republic of China.

DATES: The indefinite suspension of the skills list for Libya is retroactive. With regard to the addition of Public Health Administration in the skills list for the People's Republic of China, this notice shall take effect 30 days after publication in the **Federal Register**.

ADDRESS: Comments and requests for further information should be addressed to: Richard L. Fruchterman, Assistant General Counsel, Office of the General Counsel and Congressional Liaison, USIA, Suite 700, 301–4th Street, SW., Washington, DC 20547. Telephone (202) 485–7976.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 212(e) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(e)), the Secretary of State designated on April 25, 1972 a list of fields of specialized knowledge or skill (Referred to as the Exchange-Visitor Skills List) and those countries which clearly required the services of persons engaged in one or more of such fields. Any alien who was a national or resident of one of those countries and obtained an exchange-visitor visa and/or became a participant in an Exchange Visitor Program involving a designated field of specialized knowledge or skill after the effective date of that notice was subject to the 2-year foreign residence (home-country physical presence) requirement of section 212(e) of said Immigration and Nationality Act as provided by said section and 22 CFR 41. 65(b).

Pursuant to the provisions of Reorganization Plan No. 2 of 1977, section 217 of United States Information Agency Authorization Act of August 24, 1982 (Pub. L. 97-241) and Executive Orders Nos. 12038 (March 27, 1978) and 12388 (Oct. 14, 1982), the Director, United States Information Agency, on June 12, 1984 further amended the 1972 Exchange Visitor Skills List, as revised in 1978, to increase the designated fields of specialized knowledge or skills. The 1984 amendment gave notice of the addition of the People's Republic of China as the deletion of Cambodia, Iran and Viet-Nam from the skill list as well as the indefinite suspension of Afghanistan. On Sept. 30, 1986 (50 FR 34701 et seq.), the Exchange Visitor Skills List, as amended in 1984, was further amended to reflect the deletion of South Africa, addition of Iraq and changes in Group 4 in the country skills list for the People's Republic of China.

The Exchange Visitor Skills List, as amended in 1986, is further amended by the following:

1. *Libya*

The indefinite suspension of the country-skill list for Libya. Libyan exchange visitors who were subject to the home residence requirement pursuant to the skills list are no longer so, retroactively. No skills list will be applied to exchange visitors from Libya.

2. *People's Republic of China*

The addition to Group (1)—Fields in the Administration of Public or Public-Oriented Affairs—of IA. Public Administration and IB. Public Social Administration to the skills list for the People's Republic of China. Both IA. Public Administration and IB. Public Social Administration were inadvertently omitted from the 1984 publication of the country skills list for China. Exchange visitors from the People's Republic of China who specialize in this field shall be subject to the home residence requirement pursuant to the skills list 30 days after publication of this notice in the **Federal Register.**

The Exchange Visitor Skills List, as amended, is used in conjunction with the two prior existing lists.

This Notice amends Public Notice No. 356-37, 37 FR 8099-8177 April 25, 1972, Public Notice No. 591, 43 FR 5910-5912, February 10, 1978, Public Notice, Vol. 49 No. 114 FR 24194-24242, June 12, 1984 and Public Notice, Vol. 51, No. 189, FR 34701, Sept. 30, 1986.

Dated: February 2, 1987.

C. Normand Poirier,

Acting General Counsel, United States Information Agency.

[FR Doc. 87-2304 Filed 2-4-87; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 24
Thursday, February 5, 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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:35 p.m. on Wednesday, January 28, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) Accept the bid submitted by Lafayette National Bank, Lafayette, Indiana, for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Farmers National Bank of Remington, Remington, Indiana, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, Thursday, January 29, 1987; and (2) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(B)(1) Accept the bid submitted by The Bank, National Association, McAlester, Oklahoma, for the purchase of certain assets of and the assumption of the liability to pay deposits made in Peoples State Bank & Trust Company, Holdenville, Oklahoma, which was expected to be closed by the Bank Commissioner for the State of Oklahoma on Thursday, January 29, 1987; and (2) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(C)(1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for a purchase and assumption transaction, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, make funds available for the payment of the insured deposits of the closed bank, with respect to each of the following: (a) First State Bank of Pattonsburg, Pattonsburg, Missouri, which was expected to be closed by the Commissioner of Finance for the State of Missouri on Thursday, January 29, 1987; (b) Montgomery County Bank, National Association, Montgomery County (P.O. The Woodlands), Texas, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller, on Thursday, January 29, 1987; (c) The La Pryor State Bank, La Pryor, Texas, which was expected to be closed by the Acting Banking Commissioner for the State of Texas on Thursday, January 29, 1987; and (d) Bear Creek National Bank, Houston, Texas, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, January 29, 1987; and

(D) Consider matters relating to the possible failure of an insured bank.

At that same meeting, the Board of Directors also considered a personnel matter.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(6), (c()8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: January 30, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-2491 Filed 2-3-87; 12:44 pm]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., February 11, 1987.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Commonwealth of Puerto Rico—Executive order 4482-B.
2. Enforcement matters.
3. Responses to Section 15 Orders Re Use of High Cube Containers in U.S./Japan Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 87-2541 Filed 2-3-87; 3:50 pm]

BILLING CODE 6730-01-M

federal register

Thursday
February 5, 1987

Part II

Environmental Protection Agency

40 CFR Parts 261, 264, 265, 269, 270, and 271

Hazardous Waste Treatment, Storage, and Disposal Facilities; Air Emission Standards for Volatile Organics Control; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 264, 265, 269, 270, and 271

[FRL No. 3078-2]

Hazardous Waste Treatment, Storage, and Disposal Facilities; Air Emission Standards for Volatile Organics Control

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standards would limit emissions of volatile organics (VO) at hazardous waste treatment, storage, and disposal facilities (TSDF) where (a) equipment at the facilities contain hazardous wastes or derivatives of hazardous wastes and (b) these wastes or their derivatives contain 10 percent or more total organics. The proposed standards implement, in part, Section 3004(n) of the Resource Conservation and Recovery Act (RCRA), as amended. The intent of this proposed rule is to reduce the threat to human health and the environment posed by air emissions from certain hazardous organic waste management practices, e.g., reclamation and equipment associated with incineration of organic hazardous wastes.

DATES: *Comments.* The EPA will accept comments from the public on the proposed standards until April 6, 1987. A public hearing will be held on this proposed rulemaking to provide interested parties an opportunity for oral presentations of data or views concerning the proposed standards. See Section XI of this preamble for the schedule and location of this public hearing and a brief summary of how it will be conducted.

Incorporation by reference. The incorporation by reference of certain publications in these standards will be approved by the Director of the **Federal Register** as of the date of publication of the final rule.

ADDRESSES: *Comments.* Comments may be mailed to the Docket Clerk (Docket Number F-86-AESP, Air Emission Standards for Volatile Organics Control), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Comments received by EPA and all references used in this document may be inspected in Room S-212, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Background information document. The technical notes for the proposed standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777. Please refer to "RCRA TSDF Air Emissions—Background Technical Memoranda for Proposed Standards" (EPA-450/3-86-009).

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000, or call Cynthia Monroe at (919) 541-5578.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Authority and Executive Summary

A. Authority

These regulations are proposed under the authority of Sections 1006, 2002, 3001-3007, 3010, 3014, 3015, 3017, 3018, 3019, and 7004 of the Solid Waste Disposal Act of 1970, as amended by RCRA, as amended (42 U.S.C. 6905, 6912, 6921-6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974).

B. Executive Summary

Today's proposal would establish new standards under Section 3004(n) of RCRA for the control of air emissions from hazardous waste treatment, storage, and disposal facilities (TSDF) that are already required to have a RCRA permit. The standards would reduce volatile organic (VO) emissions from such facilities managing organic hazardous waste by a combination of performance, design, and operating standards. The proposed standards include requirements for installation, operation, and maintenance of control equipment, leak detection and repair, and recordkeeping and reporting. Today's proposal also amends the requirements for facilities recycling certain "recyclable materials" (i.e., hazardous waste being recycled) to include regulation of the process of reclamation.

Facility owners or operators must determine (based on the procedures in the standards) which equipment at their facilities is subject to these air emission standards. The standards would cover equipment containing or contacting liquids, gases, or other emanations (derivatives) from hazardous waste in concentrations greater than 10 percent total organics located at affected TSDF. Total organics are a measure of whether sources potentially emit the VO emissions covered by the standards. The decision as to whether equipment is covered by the rule can be based either on testing the wastes and derivatives according to specified test procedures, or on engineering judgment as to these materials' total organic content. In questionable cases, the test procedures will be required to determine if equipment is subject to this regulation.

The proposed standards contain two major features. First, the proposal requires 95 percent reduction in VO emissions from product accumulator vessels, including process vents and surge control vessels. Both new and existing units would be required to operate systems designed to achieve 95 percent reduction and to operate within this design. Once in operation, the facilities would demonstrate compliance with the requirements by monitoring the operation of the system. Second, the standards require leak detection and repair programs for valves, pumps, compressors, pressure relief devices, and closed-vent systems used to handle hazardous wastes and their derivatives at TSDF. Control systems, leak detection methodology, leak definition, and repair schedule are based on existing standards developed under sections 111 and 112 of the Clean Air Act (CAA).

Product accumulator vessels include units used to distill and steam and air strip volatile components from hazardous waste; therefore, the proposed regulations would regulate the process of reclamation for the first time. Only recycling facilities that are already subject to RCRA permit requirements or facilities that perform recycling and need a permit for another part of their operation would be subject to the proposed air emission standards. Therefore, the proposed rule would add 40 CFR 261.6(d) so that reclamation activities at facilities subject to permit requirements are subject to the air emission standards.

These proposed air emission standards would be effective in all States and territories when promulgated, regardless of authorization status. Section 3006(g) of the Hazardous and Solid Waste Amendments of 1984 (HSWA) requires immediate implementation of all regulations mandated by HSWA. Until authorized programs are updated, EPA will administer the program.

For more details, the following sections of this preamble should be consulted.

II. Background

A. Existing Air Emission Regulations Under RCRA

To date, the RCRA regulatory program has focused primarily on preventing exposure to humans and the environment through the ground water and surface water pathways. However, EPA also is charged under RCRA with ensuring that hazardous waste management is accomplished while protecting human health and the environment from exposure through the air pathway. As described below, several rulemaking activities related to the control of air emissions have been undertaken under authority of RCRA. Air standards for TSDF initially were proposed by EPA on December 18, 1978, in 40 CFR 250.42-3 (43 FR 58999). These regulations would have required that facilities be designed, constructed, and operated to prevent emissions from exceeding limits established under the CAA. However, these regulations were not promulgated by the Agency. On January 12, 1981 (46 FR 2867), the interim final regulations for permitted hazardous waste tank systems were promulgated under 40 CFR Part 264. Under an accompanying proposal (46 FR 2895), all tanks would have been required to have treatment process controls "to protect human health and the environment from toxic or otherwise harmful fumes, wastes, or gases." The tank regulations, while recently revised (see 51 FR 25470, July 14, 1986) to require secondary containment controls for ground water and surface water protection, do not include standards for air emissions.

Even though standards for air emission monitoring under 40 CFR Part 264 were proposed in conjunction with Subpart F ground water requirements for land disposal units on February 5, 1981 (46 FR 11165), the standards were promulgated on July 26, 1982 (47 FR 32349), without the air component. However, these standards [40 CFR 264.250(c)(3), 264.301(f), and 264.273(f)] require the implementation of design and operating practices at permitted wastepiles, landfills, and land treatment operations that prevent the release of particulate emissions.

Air standards have been developed for the control of hazardous waste incinerator emissions. Regulations were promulgated May 19, 1980, for air emissions from interim status incinerators. These 40 CFR Part 265 Subpart O regulations require monitoring of visible emissions and operating conditions. The operating conditions are controlled so as to ensure 99.99 percent destruction and removal efficiency for primary organic hazardous constituents as demonstrated by test burns. Standards for permitted incinerators, promulgated on January 23, 1981 (46 FR 7689), and June 24, 1982 (47 FR 27532), limited air emissions of organics, hydrochloric acid, and particulates from incinerator stacks. Interim status standards for other thermal treatment units are found in 40 CFR Part 265 Subpart P. Certification standards for thermal treatment units burning dioxin-containing acute hazardous wastes are found at 40 CFR 265.383.

Today's proposal would regulate point source and nonpoint source air emissions associated with certain hazardous wastes and their management. The proposal is authorized not only by general RCRA authorities over air emissions, but also by a specific directive contained in Section 3004(n), added by the 1984 amendments, which requires EPA to promulgate standards for the monitoring and control of air emissions from hazardous waste TSDF. The role of Section 3004(n) within the RCRA program is discussed below.

B. Role of Section 3004(n) in RCRA

Congress directed EPA to ". . . promulgate such regulations for the monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment" [provision added to HSWA in Section 3004(n)]. This provision does not confer any new authority, but rather requires the Agency to exercise its preexisting authority over air emissions from hazardous waste management (S. Rep. No. 284, 98th Cong. 2d Sess. at 63).

Air emissions are generated or released from numerous sources at TSDF. Air emission sources include process vents, control systems, surface impoundments, open tanks, equipment leaks, transfer, storage, and handling operations, landfills, and land treatment operations. Depending on the source, air emissions can be classed as VO (including toxics, carcinogens, and ozone precursors) or particulates (including metals, aerosols of organics, dust, as well as toxics and carcinogens). Note that, as mentioned previously, EPA has established certain incinerator standards and currently is developing additional air regulations for incinerators and thermal treatment units. Today's proposed rules, also referred to as the "accelerated program," would require controls for certain of these sources. The rules are being developed for those situations for which sufficient information is currently available to support a rulemaking effort. The EPA is continuing to study the other sources and plans to propose comprehensive air standards by November 1987. The accelerated program is discussed further in the next subsection of this preamble.

Two other provisions added by the 1984 RCRA amendments also confer authority over air emissions resulting from hazardous waste management. These provisions are the corrective action authority in Section 3004(u) and the so-called omnibus permit authority in Section 3005(c)(3). Under section 3004(u), EPA must require corrective action to address releases of hazardous constituents from solid waste management units at all facilities seeking a Subtitle C permit, as may be necessary to protect human health and the environment. This provision is applicable to releases of hazardous constituents to the air (50 FR 28713, July 15, 1985). Permit writers under the omnibus permit authority [Section 3005(c)(3)] may impose permit conditions beyond those contained in EPA regulations as may be necessary to protect human health and the environment from risks posed by that particular facility. These provisions thus provide additional authority to control certain types of air emissions.

The EPA has a duty to act under all three of these provisions. In considering how best to implement each provision, it appears clear that Congress envisioned development of national air emission standards, rather than exclusive reliance on ad hoc mechanisms imposed by other regulatory authorities on a potentially uncertain timetable. At the same time, there is a definite role for corrective action and omnibus permit authorities in controlling hazardous waste air emissions. Because corrective action decisions may precede development of section 3004(n) standards in certain instances, the Agency intends to issue guidance and order corrective action to control air emissions at those facilities where air emissions are clearly posing an imminent threat. Where it is difficult to pinpoint the extent of risk posed by a facility's air emissions, the Agency may order various types of monitoring. In any case, facilities-issued permits are not exempt from standards developed under section 3004(n). Rather, monitoring and other collected data should assist in developing regulations under Section 3004(n) for monitoring of air emissions resulting from hazardous waste management.

The omnibus permit authority likewise ties into the national standard-setting process. The EPA intends to develop national standards that protect against the significant risks posed by hazardous waste air emissions. However, these standards in some cases will not be the most protective possible because this degree of control would appear unnecessary for most facilities. The omnibus permit authority allows permit writers to impose more stringent conditions where warranted at individual facilities. In essence, EPA envisions that the national emission standards under 3004(n) will achieve major across-the-board emission and risk reductions that will be protective of human health and the environment in most cases. The omnibus permit authority then provides a means of fine-tuning these standards at individual facilities where incremental reduction would be significant for protection of human health and the environment. The EPA, in fact, intends to issue guidance to permit writers as to when the omnibus permit authority may appropriately be used to expand regulatory controls on hazardous waste air emissions, identifying such factors as particular pollutants and meteorological conditions warranting special controls, and identifying particular additional control options.

In addition, under section 3004(m) of RCRA, EPA is setting standards that are achievable by the best demonstrated available technologies (BDAT) that could be used to treat waste solvents prior to their land disposal in Subtitle C units. In these rules that were issued on November 7, 1986 (51 FR 40572), EPA did not set limits on air emissions from treatment units used to comply with the BDAT standards. Rather, EPA will establish limits controlling air emissions under authority of section 3004(n). Today's rulemaking proposes air emission standards that would apply to TSDF that employ certain treatment technologies identified as BDAT for waste solvents. The EPA believes that this use of section 3004(n) is entirely appropriate and will result in the protection of human health and the environment, as may be necessary, for all environmental pollution media associated with TSDF.

C. Rationale for Accelerated Air Program

Today's proposal would regulate air emissions from certain types of hazardous waste treatment in advance of the more comprehensive rules on air emissions now under development. The EPA is acting to control these activities on an accelerated basis for the following reasons.

The 1984 amendments to Section 3004 of RCRA were designed to avoid substantial risks to human health and the environment from disposal, transfer, and storage of hazardous wastes. These amendments include provisions that prohibit land disposal of all hazardous wastes by specified dates if EPA has not established treatment standards under section 3004(m) that substantially diminish the risks associated with land disposal of wastes or granted a case-specific petition demonstrating that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. As previously discussed, the 1984 amendments to Section 3004 of RCRA also specifically require EPA to establish standards for the monitoring and control of air emissions from hazardous waste TSDF.

The first group of wastes subject to the statutory prohibition include specified spent solvents (hazardous wastes numbered F001–F005) and dioxin-containing wastes (F020, F021, F023, F026, F027, and F028). Treatment standards for waste solvents and dioxins were promulgated on November 7, 1986 (51 FR 40572), based on concentrations of constituents allowed in disposal units after the application of BDAT. These wastes would have been prohibited from land disposal effective November 8, 1986, if EPA had not set treatment standards under Subsection(m) or granted a waiver based on no migration from a unit for as long as waste remains hazardous. Other categories of hazardous wastes will become subject to the land disposal prohibition over a 66-month period from enactment of the 1984 amendments. For example, treatment standards are required by July 1987 for halogenated organic hazardous wastes, many of which are treated in a way similar to the way solvents are used.

Section 3004(n) requires EPA to establish standards for air emissions at TSDF by May 8, 1987. If the land ban regulations and the air emission standards were both promulgated at the deadlines specified in RCRA, the result could be the construction or expansion of waste solvent treatment facilities (WSTF) without emission controls, and, later, RCRA requirements that would cause retrofit at extra costs in terms of equipment and operation for those WSTF and TSDF treating waste solvents which are hazardous wastes. Recent Congressional comments on the January 1986 proposed land disposal restrictions indicated that treatments that replace land disposal should not be allowed to pose undue risks. The EPA's mandate is to set standards for these technologies to protect human health and the environment adequately. Because the first two groups of wastes scheduled for land disposal restrictions include many volatile compounds, today's accelerated rule will reduce air emissions from technologies expected to be used in lieu of land disposal. In particular, air emissions from solvent reclamation currently are unregulated under Subtitle C. Without today's early action by EPA, the timing of these initial land disposal restrictions could result in: (1) additional sources of uncontrolled air emissions from WSTF and (2) subsequent RCRA requirements to retrofit air emission controls to WSTF (and TSDF in general). Because EPA desires to minimize the impact of the timing of these Section 3004 efforts, EPA accelerated the schedule for a portion of its air emission project.

The EPA has available data to accelerate the portion of its air emission project associated with certain emission sources of total organics, in particular, process vents and equipment leaks. The proposed standards do not apply to other emission sources' such as surface impoundments, nor to other emissions, such as particulates or toxic metals. The standards do not apply to such sources and emissions because EPA has not completed its data collection and technical and regulatory analyses that would form the basis of such standards. As discussed below, EPA focused its analysis for today's proposed standards on existing data based on (1) the need for accelerated standards and (2) certain treatment and control technologies discussed in the following paragraphs.

The EPA reviewed the treatment technologies associated with TSDF to decide which sources could be covered by the accelerated effort for air emissions. In reviewing the treatment technologies expected to be used as alternatives to land disposal of waste solvents and hazardous organic compounds, EPA considered whether information was readily available to use in setting air emission standards and whether accelerated air emission standards were needed for the applicable treatment technologies. As explained in Section III of this preamble, EPA decided to accelerate the standards for air emissions associated with vents from distillation and stripping (air and steam) technologies used to treat waste solvents and also fugitive emissions from valves, pumps, and other equipment associated with the handling of rich organic streams (both wastes and derivatives of these wastes).

As explained in Section III of this preamble, technologies for the control of air emissions from distillation and stripping processes and equipment leaks at WSTF currently are available and, therefore, do not require further study by EPA. These technologies have been proven effective for reducing or eliminating the health threat posed by volatile air emissions based on EPA's extensive studies of similar sources under the CAA. Thus, EPA has based its regulatory approach for the accelerated program on existing standards issued under Section 112 of the CAA for control of benzene emissions. Accordingly, today's proposed standards are intended to reduce the immediate health and environmental threat posed by air emissions from waste solvent treatment operations that are similar to air emissions regulated under the CAA.

The benzene standards can be logically and technologically extended to any facility managing total organics with similar equipment to that affected by the final benzene standards. Thus, today's proposed standards also are intended to reduce the health and environmental threat posed by air emissions from sources in other TSDF similar to those in WSTF. For example, these sources include equipment associated with fugitive emissions (valves, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, and pipeline flanges) and product accumulator vessels (certain process vents, distillate receivers, surge control vessels, product separators, and hot wells that are vented to the atmosphere either directly or through a vacuum-producing system). The equipment covered by the proposed standards is discussed further in Section III of this preamble. The technologies for controlling air emissions from spent solvent distillation and separation and for controlling fugitive emissions from leaking equipment are equally suitable for controlling sources at TSDF performing distillation of organic-rich hazardous waste and separation techniques or generating fugitive emissions. After reviewing the engineering basis for the standards and the regulatory approach for control of the air emissions, EPA concluded that the proposed approach would be applicable to all RCRA waste streams and derivatives from these wastes with greater than 10 percent total organic content in the specified equipment. This percent criterion is discussed in Section III.C of this preamble.

In summary, data currently are available to estimate the emissions and health impacts posed by these emissions at WSTF and at certain other TSDF. Air toxics from the numerous fugitive sources at these TSDF also pose risks comparable on a facility basis to WSTF and contribute to the ambient ozone problem. For these reasons, EPA subsequently broadened this rulemaking to include emission controls for affected TSDF. Therefore, although today's proposal focuses primarily on WSTF and the cross-media effects of land disposal restrictions, the rulemaking also is applicable to the TSDF community as a whole.

Equipment leak controls can be applied at WSTF and the larger TSDF community now, based on the same technology already required for other similar industries under the CAA. The EPA believes that proceeding with available standards based on CAA regulations is in the best interests of the Section 3004(n) mandate—protection of human health and the environment from hazards posed by air emissions. Data currently are being collected and analyzed to determine the air emission impact from the many TSDF processes apart from distillation and separation operations that may be used at TSDF. Standards for these and other air sources are scheduled for later proposal.

III. Overview: Accelerated Regulation of Air Emissions

A. Regulatory and Technical Approach

Today's proposed standards are based on EPA's 10-year study of air emissions from the synthetic organic chemical manufacturing industry (SOCMI) and other major industrial sources of benzene and VO emissions (e.g., petroleum refineries, coke by-product plants, natural gas production plants, and manufacturing and recovery processes related to benzene and vinyl chloride). Regulations established under Sections 109, 110, 111, and 112 of the CAA that control certain process and fugitive emissions (i.e., equipment leaks) of VO and benzene have been applied to numerous industries that have equipment in benzene or volatile hazardous air pollutant service (see 40 CFR Part 60 Subpart VV and 40 CFR Part 61 Subpart V). In general, these industries handle organic liquid streams substantially the same as those handled at TSDF. Just as the organic liquid streams are similar, the equipment, sources of leakage, and applicable repairs are the same. Thus the regulatory approach used in developing today's regulations is based on the same technologies used to set these CAA standards for hazardous air pollutants and VO.

Today's proposed standards differ from the CAA standards only in the manner in which the standards are expressed and the way their impacts are characterized. The standards would reduce total VO emissions from TSDF as the basis for providing the protection required by section 3004 of RCRA. The EPA characterized the impacts of the standards by estimating the effects of the VO expected to be emitted by the sources covered by the standards. That is, VO is a surrogate or indicator for the many individual hazardous organic compounds, ambient ozone precursors, and other chemicals listed as hazardous under RCRA. By using VO as a surrogate, EPA can identify the overall air emissions generated from WSTF and certain TSDF, rather than focusing on constituent-based estimates. Using these air emission estimates, EPA is able to project the health and environmental effects (at least, those that are quantifiable) associated with these emissions as part of its risk assessment.

The EPA viewed several impacts with an awareness of the uncertainty associated with them while considering the need for and the protection provided by the proposed standards. The impacts considered to be indicators of the protection that will be provided upon compliance with the standards include reductions in VO emissions, cancer annual incidence, and cancer risk to the most exposed individuals. In estimating these impacts, EPA developed emission estimates, unit risk estimates, and other factors after reviewing all the available data for these estimates. Based on this review, EPA estimated medium or average factors for nationwide emission and risk estimates and reasonable worst-case estimates for the risks to the most exposed individuals. There is, of course, uncertainty in making these estimates. The EPA performed a risk assessment based on a Gaussian-based air dispersion model. For nationwide estimates, the risk assessment contained a range of expected locations to reflect variations in meteorological conditions and proximity to population. For the risks to the most exposed individuals, a location was selected based on exposure typical of urban areas. The dispersion model is similar to those EPA uses in development of standards under section 112 of the CAA and is mathematically similar to air dispersion models used in development of standards under RCRA. (The basis for these factors and modeling can be found in the introduction to the background information documentation.)

The EPA believes, as discussed below, the impacts associated with the proposed standards indicate that the standards are needed. In addition, EPA believes the protection envisioned by Section 3004 of RCRA is achieved by the standards because the standards are based on the most effective control except where additional controls would result in nonquantifiable reductions in impacts at high costs.

Although EPA believes its estimates are appropriate to use in considering the protection provided by this national standard, unusual situations (e.g., unexpectedly large emissions or emissions of particular chemicals) at particular sites could require additional control. Thus, if data and information become available showing exceptional health risks posed by specific operations at particular sites, the Agency will apply the omnibus authority of section 3005(c)(3) of RCRA to reduce emissions further when it issues the permit for that facility.

The EPA also transferred the use of control technologies. The technologies upon which current CAA standards are based have been proven effective in terms of emissions and costs for controlling emissions of benzene, VO, and other toxic or carcinogenic compounds emitted from process and fugitive sources. As discussed above, the equipment and repairs required by the proposed standards can be transferred from SOCMI because the equipment is substantially the same and the repairs and other control techniques apply equally well regardless of the industry in which it is used. Based on these considerations, EPA believes the data base and analysis used to select these technologies under the CAA are applicable to TSDF air emissions.

B. Need for Regulation

As discussed below, VO emissions from TSDF managing organic hazardous wastes increase cancer risks and contribute to ambient ozone formation. The overall breakdown of facilities affected by the proposed standard is estimated at about 100 WSTF that distill or strip F001–F005 solvents containing over 10 percent total organics and at about 1,300 TSDF that manage other RCRA wastes with over 10 percent total organics. Based on available data, it is estimated that emissions of VO from equipment at these types of activities at RCRA facilities pose cancer risks, contribute to ambient ozone formation, and cause other environmental impacts comparable to impacts produced by sources evaluated under the CAA.

Nationwide emissions of total VO from fugitive and process sources at WSTF are estimated at more than 8,660 megagrams/year (Mg/yr). Nationwide emissions of total VO from fugitive and process sources at other TSDF affected by the standards are estimated at more than 17,800 Mg/yr. Sources regulated under the CAA with similar emissions are considered significant. Similarly, WSTF and other TSDF affected by the standards are viewed as significant sources of VO and air toxics by EPA.

Annual cancer incidence associated with these emissions is estimated at 1.0 case/yr, with a range of 0.1 to 10.0 cases/yr. This range is associated with the variation in unit risk estimates associated with chemicals affected by the proposed standards. Similarly, a nationwide maximum lifetime risk (MLR) on the order of 1×10^{-3} (i.e., 1 in 1,000) could result from uncontrolled VO emissions that would be regulated by today's proposed rules.

VO emissions, as previously mentioned, also contribute to ambient ozone formation. The health and environmental effects of ambient ozone can be measured in terms of monetary losses totaling hundreds of millions of dollars each year. Ozone, a very reactive form of oxygen, is a primary constituent of photochemical smog. Unlike many other pollutants, ozone results from a series of chemical reactions between oxidant precursors [nitrogen oxides (NO_x) and VO] in the presence of sunlight. VO and NO_x are the two basic precursor classes controlling the ozone production process.

Ozone is a pulmonary irritant that affects the respiratory mucous membranes, other lung tissues, and respiratory functions. Clinical and epidemiologic studies have demonstrated that ozone can impair the normal mechanical function of the human lung and cause clinical symptoms such as chest tightness, coughing, and wheezing. Toxicologic studies show it increases susceptibility to bacterial infections in laboratory animals; other effects such as biochemical changes, morphological abnormalities, and genetic changes have been found in some studies of animals exposed to ozone.

In terms of public welfare and the environment, ozone can reduce the yields of citrus, cotton, potatoes, soybeans, wheat, spinach, and other sensitive crops, including visible injury to a variety of plant species. Entire ecosystems can be affected by ozone, as evidenced by damage to mixed conifer forests in California, reduction in the fruit and seed diets of small mammals, and alterations in species composition and wildlife habitat.

The VO emissions emitted from WSTF (and from TSDF in general) contribute to ambient ozone formation and cancer risks. The magnitude of these impacts is similar to those regulated by EPA under the CAA. Consequently, EPA believes standards limiting air emissions from facilities treating organic hazardous waste are needed to reduce the risk to human health. Such standards—among other advantages—will ensure that treatment alternatives to land disposal do not merely transfer the primary route of exposure from one environmental medium to another. Ambient ozone formation and the resulting health and environmental effects, including cancer risks, can be reduced by controlling VO emissions. Standards limiting air emissions from waste solvent treatment and associated sources are appropriate to reduce VO emissions that threaten human health as well as contribute to the formation of ambient ozone. One of EPA's current goals is to improve the nationwide program to help States and industries reduce VO emissions from major and minor sources. Today's proposed standards will assist in that goal.

The EPA currently is examining certain chemicals that may be contained in VO emissions and their role as potential depleters of stratospheric ozone. Stratospheric ozone depletion may result in increased cases of skin cancer in humans. The Agency is continuing to study stratospheric ozone depletion and its environmental and health risk impacts. The reduction in VO emissions provided by the proposed standards also may reduce emissions of potential ozone depleters. Any reduction in these VO emissions containing potential ozone depleters also may assist in protecting stratospheric ozone.

There also have been several reported damage incidents attributable to air emissions from hazardous waste solvent recycling operations (50 FR 659, January 4, 1985, damage incidents numbers 30 and 32). These incidents point out that harm to human health and the environment from these operations is not merely a potential occurrence but has in fact occurred.

C. Types of Facilities That Would Be Covered by Proposed Standards for Air Emissions

Today's proposed rule would control air emissions from certain equipment in volatile hazardous air pollutant (VHAP) service at RCRA facilities already required to obtain a RCRA permit for reasons other than those contained in today's proposal. To be covered, (a) a TSDF must have equipment, process vents, or accumulator vessels affected by the standards, (b) these sources must be in VHAP service (i.e., contain hazardous wastes or their derivatives with concentrations greater than 10 percent total organics, and (c) the TSDF is required to obtain a permit for an independent reason. The EPA explains these concepts and the reasons for structuring the rule in this way in the following sections of the preamble.

1. Equipment That Would Be Covered

Today's proposed rule generally would apply to facilities treating organic-rich hazardous waste to recover a usable product (e.g., solvent reclamation via distillation) or to generate a disposable residue. The standard affects ancillary equipment within a TSDF coming into contact with or containing fluids in concentrations greater than 10 percent total organics (either the wastes or derivatives from these hazardous wastes). "Equipment" is defined to include equipment generating both process and nonprocess (i.e., fugitive) air emissions. "Product accumulator vessels" are the types of equipment that generate process emissions and include process vents, distillate receivers, surge control vessels, product separators, or hot-wells that are vented to the atmosphere either directly or through a vacuum-producing system [proposed 40 CFR 269.30(b)]. Examples include most distillation columns, steam stripping columns, carbon adsorption vents, certain air stripping vents, and thin-film evaporation vents located in TSDF. Types of equipment associated with fugitive emissions are valves, pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, and pipeline flanges.

The standards apply only to the specifically enumerated types of equipment. Devices such as piping or open tanks thus would not be "equipment" for purposes of today's rule and so would not be covered by today's proposal. On the other hand, a closed tank that otherwise satisfied the definition of "product accumulator vessel" would be "equipment" for purposes of the rule. [The EPA is investigating appropriate controls for air emissions from devices not covered by today's proposed rule in the context of the broader section 3004(n) standards.]

It should be noted that facilities can be covered by today's proposed rule if any type of equipment (including nonprocess equipment) is in VHAP service. The equipment need not be recovering solvents or other organics from hazardous waste. For example, hazardous waste incinerators use valves, pumps, and other equipment to transfer wastes or their derivatives to the incinerator: that equipment would be covered by today's proposed rule.

2. Limitation of Applicability to Facilities Requiring Permits for an Independent Reason

Applicability of today's proposed standards would be limited to facilities required to obtain RCRA permits for reasons independent of today's rule. The EPA is proposing this course to avoid further burdening an already stressed RCRA permitting system at a time when the Agency and authorized States are attempting to issue final permits in the timeframes mandated by RCRA Section 3005(c)(2). More importantly, EPA needs more time to study the implications of the rule for certain types of facilities, particularly certain small quantity generators and small businesses with continuous reclamation processes that would not qualify as 90-day accumulation tanks (see 40 CFR 262.34) because they are not physically emptied each 90 days.

The EPA also believes that today's proposed standards will apply to the bulk of air emissions from facilities with equipment in VHAP service. The EPA, moreover, believes that many of the production facilities with such equipment not covered by today's proposal are in fact subject to the same standards under the CAA. The EPA established identical standards under the CAA for new and modified sources covering production of all petroleum products and most organic chemicals (see 40 CFR Part 60 Subparts VV and GGG). The EPA also has established guidelines for use by States to cover similar existing production facilities. In estimating the impacts of these standards, EPA found that, by about the year 1990, almost all petroleum and organic chemical production would be affected by the CAA standards. Thus, the majority of process equipment in VHAP service associated with production facilities is covered by CAA standards. Consequently, EPA believes that today's proposal covers a significant part of the problem posed by currently unregulated air emissions from hazardous waste management facilities with equipment in VHAP service.

The following examples illustrate how coverage under today's proposal is affected by the requirement that facilities be required to obtain a RCRA permit for a reason independent of this proposal.

1a. Facility A is an offsite reclaimer of hazardous waste spent solvents by distillation. The spent solvents are stored in tanks before being reclaimed.

Facility A's distillation column and associated equipment would be subject to today's proposed rule (assuming the spent solvents or their derivatives contain greater than 10 percent organics; see Section III.C. of this preamble). This is because Facility A s storage of spent solvent before distillation already requires a permit [40 CFR 261.6(c)].

1b. Same facts as Example 1a, except that Facility A is able to distill solvent without any prior storage.

Facility A's distillation activities are not subject to today's proposal because the facility is not already required to obtain an RCRA permit. The EPA believes that this situation is unlikely to occur; nonetheless, EPA requests specifically for comments on the number of offsite recyclers who recycle without storing the waste.

1c. Same facts as Example 1b, except that Facility A stores its distillation bottoms consisting of hazardous waste in drums for more than 90 days before sending them offsite for disposal.

Facility A's distillation activities would be subject to today's proposal because the storage of distillation bottoms requires a permit. Furthermore, the result would be the same if the hazardous waste storage resulted from a process unrelated to the spent solvent distillation.

2a. Facility B recycles hazardous waste spent solvents generated on site, storing the solvents and distilling the spent solvents in tanks for a total of fewer than 90 days from time of generation. There is no other hazardous waste management at the facility.

Facility B's distillation is not covered by today's proposed rule because Facility B is not required to obtain a permit (40 CFR 262.34).

2b. Same facts as Example 2a, except that the tank preceding distillation stores for more than 90 days.

Facility B's distillation is covered by today's proposed rule because Facility B already requires a storage permit. Note, however, that this type of configuration could potentially constitute an excluded closed loop reclamation system if it meets the conditions in 40 CFR 261.4(a)(8) (i)–(iv), July 14, 1986.

2c. Same facts as Example 2a, except that Facility B also operates a surface impoundment managing a different hazardous waste.

Facility B's distillation of a hazardous waste is subject to today's proposal because the facility requires a permit for the impoundment.

2d. Facility B generates hazardous waste spent solvents and sends them to onsite distillation without prior storage.

The distillation activities are not subject to today's proposal. They would be covered if Facility B had an independent unit requiring a RCRA permit, as in Example 2c.

3. Facility C operates a manufacturing process that distills organic-rich feedstocks and generates a distillation bottom that is a listed hazardous waste.

The distillation column is not covered by today's proposal because it processes raw materials, not hazardous wastes and so is not in VHAP service. In addition, no storage permit is required for the still bottom while it is in the distillation column [40 CFR 261.4(c)]. It should be noted that this facility would likely be covered under a CAA requirement (e.g., 40 CFR Part 60 Subpart VV).

D. Hazardous Wastes and Their Derivatives Covered by Today's Proposal

1. Hazardous Waste Containing Greater Than 10 Percent Organics

As noted above, today's proposed rule is limited in applicability to equipment "in VHAP service," defined as being equipment associated with hazardous waste treatment, storage, or disposal. The equipment must contain or be in contact with organic hazardous wastes or derivatives of hazardous wastes containing greater than 10 percent total organics by weight. Percent total organic content of these hazardous waste process fluids is determined by using Method 9060 of SW–846, Test Methods for Evaluating Solid Waste: Physical/Chemical Methods, or an appropriate ASTM method such as ASTM Method D 2267–68, E 169–63, E 168–67, or E 260–73 [40 CFR 269.34(a)(1)]. Owners or operators also may use engineering judgment to determine percent total organic content, but they have the burden of proof on the issue and are at risk if their judgment is incorrect [40 CFR 269.34(a)(2)]. In addition, equipment containing or contacting wastes with fluctuating organic content are considered to be in VHAP service if the wastes ever contain greater than 10 percent total organics [40 CFR 269.34(a)(1)]. Even though EPA does not believe owners or operators would dilute wastes in an attempt to avoid the need to comply with the standards, EPA will not accept dilution as a means of avoiding compliance with the standards. The Agency expects that hazardous spent solvents are a principal example of such wastes covered by the standards.

The Agency is proposing the 10-percent cutoff for a number of reasons. As elaborated in the rulemaking on CAA benzene standards, a 10-percent cutoff deals with the air emissions from equipment most likely to cause significant human health and environmental harm. In addition, EPA has not yet determined whether the control technologies for organic-rich waste streams are suitable for low organic streams, how effective these technologies would be, or whether regulation of these streams is necessary to protect human health and the environment. The EPA is continuing to investigate these questions as part of its overall rulemaking activities to implement Section 3004(n) of RCRA.

The determination associated with whether equipment are in VHAP service is based on total organics. The standards cover VO emissions and are intended to reduce impacts on human health and the environment associated with total organics. The basic reason for measuring total organics is that the original collection of data used to support the proposed standards measured total organics. In practice, most organic wastes and their derivatives affected by the proposed standards are considered volatile even though some may be relatively nonvolatile. The standards have been drafted to distinguish between sources containing or coming into contact with wastes or their derivatives which are more or less volatile. For example, the standards for pressure relief devices in gaseous service require no detectable emissions and the standards for pressure relief devices in liquid service only require gaseous leak detection if indications of liquid leaks are detected or otherwise sensed. Since the standards are based on volatile organics, however, the Agency solicits comment on the use of total volatile organics (e.g., as determined by Method 8240 of SW–846), rather than total organics, in determining the applicability of today's rule.

IV. Proposed Air Standards for Waste Solvent Treatment Facilities

A. Background

Some of the restrictions on land disposal of waste solvents, specifically spent solvents, will be effective in November 1986. Applicable treatment processes for these solvent wastes include: incineration, use as a fuel, distillation (which includes thin-film evaporation and simple and fractional distillation), and sometimes stripping (steam and air). Other treatment processes that may be used, such as biological treatment, carbon/resin adsorption, and chemical oxidation applied to solvent-water mixtures, are not considered expressly in this rulemaking because EPA is not prepared to address air emissions from treatment technologies used for most solvent-water mixtures at this time. In addition, EPA is not prepared to address air emissions from treatment technologies for waste solvents containing less than 10 percent total organics. Stack emissions from facilities burning waste solvents in incinerators and reusing waste solvents as fuel are being considered under separate standards for air emissions. Consequently, the development of air standards for WSTF (and TSDF) was limited to air evaluation of emissions of VO from distillation and stripping (steam and air) treatment technologies. The evaluation of emissions and controls was limited to VO because other pollutants such as metals or toxic particulate matter are not likely to be released to the atmosphere by these processes. The EPA has not evaluated emissions and controls for highly volatile organometallics such as tetraethyl lead or dimethyl mercury and requests comments on these emissions and controls for them.

Distillation and stripping (air and steam) treatment processes separate organic components through volatilization and condensation of the more volatile components in the waste stream. The equipment used by these processes are similar when treating any type of spent solvent (indeed, any organic liquids) and embody the sources of fugitive and process air emissions. The organic liquids and sources are substantially the same as EPA has found in SOCMI. The wastes affected by the proposed standards are generally generated in SOCMI. For example, the solvents affected by the proposed standards are produced and used in SOCMI. Generally, process air emissions are associated with enclosed tanks that vent to the atmosphere as part of the treatment process. Fugitive air emissions are associated with ancillary equipment (e.g., pumps and valves) used in handling the spent solvents. The EPA studied these sources across several industries and found that their emissions are independent of industry. This is documented in an EPA information document covering these sources (EPA 450/3–81–002). These treatment processes use tanks and ancillary equipment to separate solvents from the waste stream.

Fugitive emissions from distillation and stripping treatment processes are those that escape directly to the atmosphere from leakage of gases, vapors, and liquids through faulty or inadequate seals in ancillary equipment used in the processes. This equipment is used to move and to control the movement of process fluids through these processes. In EPA and industry studies on fugitive emissions from ancillary equipment in various refining and organic chemical manufacturing industries, EPA has found that the quantity of fugitive emissions from facilities varies with the number of equipment components (e.g., pumps and valves used in the processes), the materials being handled, and the specific operation and maintenance practices applied to the equipment. Because the ancillary equipment used in WSTF (and certain TSDF) contain the same organic liquids found in these industries, EPA believes that fugitive emissions from WSTF ancillary equipment can be estimated using these studies. The studies include similar processes (distillation and stripping for product recovery) and identical ancillary equipment.

Control technologies for fugitive emissions comprise the use of control equipment, inspection of equipment, and repair programs to limit or reduce emissions from leaking equipment. These control technologies have been studied and evaluated for equipment containing fluids with more than 10 percent organics. The 10-percent criterion was used in EPA's original benzene/SOCMI studies to focus on air emissions from equipment containing relatively concentrated organics and presumably having the greatest potential for air emissions. The EPA has not decided at this time whether to set standards for equipment containing fluids with less than 10 percent organics. Fugitive emission controls and test methodology for equipment leaks have been proposed or established under both Sections 111 and 112 of the CAA. (See 46 FR 1136, January 5, 1981; 46 FR 1165' January 5, 1981; 48 FR 279, January 4, 1983; 48 FR 37598, August 18, 1983; 48 FR 48328' October 18, 1983; 49 FR 22598, May 30, 1984: 49 FR 23498, June 6, 1984; 49 FR 23522, June 6, 1984.) Emission reductions achievable with such programs are limited primarily by the number of components used in the operation, the frequency of monitoring, the ability to repair leaks, and the volatility of the organic waste (solvent). For operations such as are expected at WSTF, fugitive emission reductions of almost 75 percent are estimated for the program required by the proposed standards.

Process emissions from WSTF are those released to the atmosphere through process vents such as vents on the condenser column, the accumulator vessel, or the hotwell. (The hotwell is a vessel that contains the unvolatilized process stream.) Emissions from process vents include the noncondensible vapors and emissions resulting from any overload of the condenser during operations. These emissions are expected to be VO and are not expected to include emissions of metals or other solid materials in the waste solvent. Emissions from process vents vary with the throughput capacity, the vapor pressure of the compound(s) being recovered, and condenser operating conditions. In addition, vent emissions from batch operations vary over the operating cycle, with higher emission rates occurring at the start of the cycle.

The EPA has carried out studies of air emission control technologies for processes similar to those in WSTF such as distillation operations (EPA–450/3–83–005a, EPA–450/3–80–032a,b). National emission standards also have been established for equipment containing or contacting streams with a benzene content of 10 percent or more by weight (40 CFR 61 Subparts J and V). Air emission control technologies for process emissions include secondary condensers, flares, thermal afterburners, incinerators, scrubbers' and carbon adsorbers. The emission reduction potentially achievable by these control technologies depends on physical parameters associated with the process vent stream and the design and operation of the control technologies. For example, the efficiency of condensers is dependent on the physical properties of the solvents being condensed and the temperature of the cooling water used by the condenser. Of these possible control technologies, EPA believes condensers, flares, carbon adsorbers, and incinerators are generally applicable, feasible means of VO emission reduction and most likely will be used to reduce process emissions of VO at WSTF. However, the other control measures might be applicable in some situations. Properly designed and operated, all these control technologies can achieve 95 percent emission reduction or better. For further information on EPA technology decisions on emission control technologies for similar streams, see 46 FR 1165' January 5, 1981; 49 FR 23498, June 6, 1984.

Process and fugitive emission sources found at WSTF also are found at other TSDF. As explained previously, EPA believes that emissions from TSDF with waste streams containing more than 10 percent organics are significant. The EPA has determined that these emissions warrant control for protection of human health and the environment and are wholly appropriate for inclusion in this accelerated rulemaking. Emission controls for other TSDF processes, area sources, and waste categories are under development and will be proposed under a separate rulemaking. This inclusion of emission controls for TSDF with waste streams containing 10 percent or more organics treated by the designated types of equipment is discussed later in this preamble.

B. Need and Basis for Proposed Standards

The proposed air emission standards are based on the control technologies discussed in this preamble and provide emission reductions that are needed to protect the public health and the environment. These technologies have been demonstrated to achieve reductions in VO emissions for the ancillary equipment like those used in TSDF. Control technologies for process emissions that can be applied now are secondary condensers, carbon adsorbers, flares, and incinerators; these techniques can be designed and operated to achieve at least 95 percent VO emission reduction. Control technologies for fugitive emissions consist of inspection and maintenance programs like those currently required by national emission standards for petrochemical facilities under the CAA. The control technologies discussed above for process emissions and fugitive emissions were used as the engineering and regulatory basis of the national emission standard for benzene equipment leaks (40 CFR Part 61 Subpart V). These technologies were selected as candidates for the reduction of air emissions in view of the need to develop accelerated air emission standards under RCRA section 3004(n). Further information on the selection and application of these control techniques is available in the **Federal Register** notices cited previously for proposal and promulgation of related standards under Sections 111 and 112 of the CAA. In this and the next section of the preamble, EPA summarizes the selection and application of these control techniques to WSTF and other TSDF.

The EPA considered the impacts of the control techniques as applied to WSTF when selecting the basis of the proposed standard. The EPA considered these impacts because they represented a complete and well-analyzed data collection for the air emission sources affected by this proposed rule. These control techniques result in an emission reduction of about 85 percent overall and at least 95 percent for process emissions. As indicated in the "Impacts of Proposed Standards" section of this preamble (Section IX), EPA made estimates on the basis of a range of impacts, which indicated that WSTF typically would emit about 8,660 Mg/yr of VO nationally without the proposed standards. This estimate of emissions is based on about 95 WSTF processing, about 440 million gallons of spent solvents. (See 51 FR 1727 concerning the recycling capacity of organic liquids.) Based on a scoping analysis, the nationwide annual incidence of cancer in the population living within 50 kilometers (km) of WSTF is estimated to be about 0.34 case/yr without the proposed standards. The nationwide maximum lifetime risk (MLR) to the most exposed individuals is estimated at 3.7×10^{-3}, or almost 4 in 1,000. With the proposed standards in place, WSTF typically would emit about 700 Mg/yr nationally with a corresponding nationwide incidence of about 0.028 case/yr. The estimated MLR would be reduced by the proposed standards to approximately 2.6×10^{-4} with WSTF process and fugitive controls. The estimated MLR is considered a reasonable indicator of the health risk posed by WSTF emissions. These impacts indicate the need to establish, and the protection provided by, the proposed air emission standards.

The proposed rules generally are based on the most stringent, technologically feasible controls for industry-wide application at new and existing sites. In certain cases, however, EPA did not select the highest level of control that could be achieved. For example, application of sealed bellows valves could achieve 100 percent control for certain manufacturing process streams but is generally not feasible for WSTF or TSDF because of the likelihood of corrosion due to contact with waste chemicals. (The EPA solicits comments on whether WSTF or TSDF routinely treat chemicals that would not destroy sealed bellows valves.) For certain other sources, however, the most effective controls that also are technologically feasible were not selected. These include dual seals for pumps and flaring or incinerating process vent emissions. (Note that the standards automatically allow the use of any controls equally or more effective than the prescribed controls; the rule includes provisions allowing for alternative controls. For example, pressure relief devices can be controlled by rupture discs or by venting emissions to flares via a closed system.) The EPA's reasons for not selecting the highest level of control available for pumps and product accumulator/process vents are discussed below.

Pumps are an air emission source for which additional emission reductions are feasible. Pumps can be controlled either by the use of dual seals to capture essentially all the fugitive emissions or by the use of the leak detection and repair program (contained in the proposed standards) that reduces the fugitive emissions by about 75 percent. The overall standard for WSTF, including leak detection and repair, would achieve an expected VO emission reduction of about 7,960 Mg/yr at an expected annualized cost of about $1.3 million/yr. The estimated MLR would be reduced from 3.7×10^{-3} to about 2.6×10^{-3}. In comparison, including dual seals would achieve an overall emission reduction of about 8,010 Mg/yr at a cost of $1.9 million/yr. The overall standard reduces the nationwide incidence from about 0.34 case/yr to about 0.028 or 0.023 case/yr based on including leak detection and repair or dual seals, respectively. With dual mechanical seals, the estimated MLR would be reduced to about 2.4×10^{-4}—an incremental MLR reduction of about 2×10^{-5}.

The EPA considered these impacts when deciding whether to require WSTF to install dual seals on pumps to control air emissions rather than to rely on monthly leak detection and repair. These impacts indicate that including leak detection and repair results in less emission reductions than including dual seals for pumps. However, the incremental decrease in emission reductions attributable to implementing a monthly leak detection program rather than more stringent dual seals appears to be small in comparison to the results of the overall standards; the decrease amounts to less than 1 percent of the overall emission reduction. In addition, this small incremental emission reduction does not clearly lead to a quantifiable reduction in risk because the data and models on which the risk estimates are based are not precise enough to quantify risk meaningfully to this exact a level. These data and models include the emission estimates, the air dispersion modeling, and the risk assessment, including location, population, and meteorologic uncertainties. If EPA were to present the risk estimates based on the number of significant digits in these estimates, they would include one digit, and the difference between the risk estimates would be zero.

Given the smallness and the imprecise nature of the emission and risk reductions associated with including dual seals in the overall standard, EPA believes the costs of achieving these reductions may not be warranted. More important, EPA cannot attribute a meaningful reduction in risk to use of the more expensive dual seals and, therefore, is proposing to select the less expensive control technology of monthly leak detection and repair for pumps. The EPA believes the use of leak detection and repair for pumps would provide the protection that is needed and that the use of the more expensive dual seals is not warranted by the emissions and risk reductions [see 45 FR 33089, May 19, 1980 (cost effectiveness is a relevant factor under RCRA in selecting among equally effective control technologies)].

Furthermore, EPA intends to prepare guidance to permit writers as to when imposition of dual seal pumps (through exercise of omnibus permit authority) may be appropriate (provided that it is technologically feasible). Through exercise of this authority, a means exists to impose the extra control if a significant reduction in risk would result.

The EPA also reviewed the application of flares and incinerators achieving 98 percent control in comparison to 95 percent control for WSTF process emission control. Although flares and incinerators may achieve 98 percent efficiency (or more) for many waste solvent streams, EPA cannot conclude, based on information and data currently available, when flares or incinerators rather than condensers or other 95-percent control devices should be applied to WSTF processes. (It should be noted that EPA has established requirements for hazardous waste incinerators that combust wastes very similarly to the way fuel oil furnaces combust oil. The incinerators and flares discussed in this preamble are different in that the air pollutants are combusted in a lean air stream heated by a flame rather than through the flame as is the case with combustion in fuel oil furnaces.)

In addition to the question of technical applicability, EPA reviewed the health, environmental, and cost impacts of secondary condensers (reflecting 95 percent control) compared to flares and incinerators (reflecting 98 percent control) as further information in deciding whether to require 98 percent control. Application of flares or incinerators for WSTF process emissions would be expected to reduce nationwide emissions from about 8,660 Mg/yr to about 470 Mg/yr. Condensers would reduce the emissions to about 700 Mg/yr. Thus, an incremental emission reduction of about 230 Mg/yr results with flares. Even though the models upon which the risk estimates are based are not sufficiently precise to quantify risk meaningfully to an exact level, EPA estimates that including flares or incinerators in the overall proposed standard would reduce annual cancer incidence from about 0.34 case/yr to about 0.018 case/yr in comparison to 0.028 case/yr for including condensers in the overall proposed standard. The estimated MLR associated with WSTF emissions would be reduced from about 3.7×10^{-3} to about 2.0×10^{-4} with flares or incinerators and 2.6×10^{-4} with condensers, an incremental MLR reduction of 6×10^{-5}.

Based on available information and data, 95 percent control appears to provide essentially the same level of protection for public health as 98 percent control. This level of control is achievable to WSTF processes and, as explained below, can be achieved at significantly less cost. In addition, if the Agency discovered that emissions from a facility resulted in an unacceptable overall impact to human health and the environment, section 3005(c)(3) of RCRA may be used to require the additional control. For these reasons, EPA selected 95 percent control over 98 percent control as the basis of the proposed standard.

As discussed above, a secondary point is that the costs of flares or incinerators do not appear to warrant their selection as the basis of the standard for process vents in WSTF. The net annual cost of secondary condensers is estimated at an overall credit of $620,000 nationwide, considering the recovery credit achievable. In comparison, the incremental nationwide annual net cost of flares or incinerators over condensers is estimated at about $7.2 million/yr. This incremental cost does not seem to warrant additional emission reduction of 230 Mg/yr when this nonquantifiable further health risk reduction is achieved.

C. Summary of Proposed Standards

The proposed standards apply to certain equipment at facilities treating waste solvents (i.e., WSTF) and, as discussed later, at TSDF in general. These facilities treat waste solvents (F001–F005) by distillation, air stripping, steam stripping, thin-film evaporation, or related chemical engineering processes to allow: (1) the use or reuse of the waste solvent or chemical or (2) disposal of the residual waste. (See discussion later in this notice on EPA's reasons for eliminating the current regulatory exemption for reclamation units and the proposal to cover TSDF handling organic hazardous wastes or their derivatives in concentrations greater than 10 percent.) The equipment affected by the proposed standards contains organic concentrations greater than 10 percent; this equipment includes valves, pumps, compressors pressure relief devices, sampling connection systems, open-ended valves or lines, pipeline flanges, product accumulator vessels, and closed-vent systems and control devices used to comply with the standard.

This equipment is used to move waste solvents and recycled solvents through various recycling operations at WSTF and TSDF. The proposed standards apply to the ancillary equipment containing or contacting fluids with more than 10 percent total organics that are hazardous wastes or derived from hazardous wastes within a facility. The approach of covering total organics as the basis for providing the protection as necessary under RCRA section 3004(n) is discussed in Section II.A of this preamble. Also as discussed before, the 10-percent criterion was selected because EPA has not studied and evaluated control technologies for equipment containing less than 10 percent total organics.

The details associated with the proposed standards can be found at 40 CFR Part 61 Subpart V. The following is a summary of Subpart V and how it applies to facilities affected by the proposed standards.

1. Valves

A monthly leak detection and repair program is required by the proposed standard for valves. This program should not be confused with the program required under Subpart J of 40 CFR Parts 264 and 265. The proposed standard allows quarterly leak detection for valves that have been found not to leak for 2 successive months; this is monthly/quarterly leak detection and repair. Leak detection is to be performed with a portable organic vapor analyzer according to Method 21 (see Appendix A of 40 CFR Part 60). If a reading of 10,000 parts per million (ppm) or greater of organic materials is obtained, a leak is detected. Initial repair of the leak must be attempted within 5 days, and the repair must be completed within 15 days. Delay of repair is allowed if repair is not technically feasible without a process unit shutdown; repair must occur at the next process unit shutdown. Delays are allowed for other specific reasons; all delays must be recorded and explained by the operator. The EPA expects few delays of repair and anticipates that no repairs would be delayed for more than 1 year. The standard also includes provisions that (1) exempt unsafe-to-monitor or difficult-to-monitor valves from the monthly monitoring program and that (2) allow use of alternative programs (e.g., skip period monitoring) if certain conditions are met (see 40 CFR 61.243–2 and 40 CFR 61.244).

The EPA concluded that the technological feasibility of control technologies for equipment leaks is limited by several factors including the

10,000-ppm reading, the frequency of monitoring, and the ability to repair a leak. The 10,000-ppm reading is measured at the equipment-atmosphere interface. For this reason, this reading should not be compared to concentration readings from area-wide monitoring systems or personnel monitoring systems where lower readings are technologically feasible. In addition, the 10,000-ppm reading should not be confused with the 500-ppm reading that is used to confirm that no leakage is present at a leakless technology source (e.g., sealless valves); see 40 CFR 61.242–7(f), no detectable emissions for valves. The 10,000-ppm reading reflects the most restrictive level of control technologically feasible; EPA has not concluded that repairs are feasible or effective for concentration levels less than 10,000 ppm. The monitoring and repair frequencies reflect the most restrictive frequencies considered technologically feasible by EPA and are based on studies of existing, effective leak detection and repair programs.

These monitoring frequencies should not be confused with spill or leak detection and response requirements for hazardous waste tank systems or secondary containment systems [e.g., 40 CFR 264.15(b)(4)]; those frequencies of detection and response address soil and ground/surface water pollution, and are based on the application of visual inspection techniques.

The delay of repair provisions is required to make the program technologically achievable and to eliminate situations in which resulting emissions could be greater than allowing a delay in repair (e.g., during a process unit shutdown). Likewise, EPA included provisions that address the practical limitation associated with valves that are located in elevated pipe racks (e.g., difficult to monitor) and alternative leak detection and repair programs that are as effective as the required program. These alternative programs are based on never exceeding 2 percent of the valves leaking within a TSDF process unit, which reflects the performance of the best leak detection and repair programs within SOCMI; these programs allow TSDF operators to continue effective programs such as routine replacement of valve seals without the need to perform the required inspection program. Effective alternative programs (as measured by the 2-percent criterion) result in the same impacts as the required program.

2. Pumps

A monthly leak detection and repair program is required by the proposed standard for pumps. Leak detection is to be performed with a portable organic vapor analyzer according to Method 21. If a reading of 10,000 ppm or greater of total organic materials is obtained, a leak is detected. Initial repair of the leak must be attempted within 5 days, and the repair must be completed within 15 days. Delay of repair will be allowed for pumps that cannot be repaired without a process unit shutdown because emissions from a shutdown could easily exceed those from delaying a repair. Delay of repair, up to 6 months after detecting a leak, also is allowed when the plant owner or operator determines that repair of the pump requires using a dual mechanical seal system. Delay of repair is not expected to be needed for most situations, however, because pumps commonly are spared.

3. Compressors

The proposed standard for compressors requires the use of mechanical seals with barrier fluid systems and controlling degassing vents. The controlling degassing vents must use a closed-vent system and a control device that complies with the requirements as discussed in the "Product Accumulator Vessels, Closed-Vent Systems, and Control Devices" section of this preamble. The standard also would allow the use of alternative control systems (i.e., enclosed and leakless compressors) that provide equivalent emission reductions. [See 40 CFR 61.242–3(h) and (i).] Although these systems provide equivalent emission reductions, they cannot be used as the sole basis for this proposed standard because they are not technologically feasible in all situations. Compliance with these alternatives would be determined by review of records and inspection.

4. Pressure Relief Devices

The use of control equipment (rupture disc systems or closed-vent systems to flares) is the basis for the proposed standard for pressure relief devices in gas service. These requirements address leaks from pressure relief devices; they do not regulate discharges of air emissions through these devices. (The EPA notes that such discharges may be subject to the reportable quantity requirements of 40 CFR Part 302 and that these discharges will be considered further in setting air emission standards for TSDF.) For control techniques that eliminate equipment leaks, such as the use of rupture disc systems, an emission limit measurement for "no detectable emissions" can be established. An instrument reading of less than 500 parts per million volume (ppmv) above a background concentration based on Method 21 will be used to indicate whether equipment leaks are not detectable.

The "no detectable emission" limit will not apply to discharges through the pressure relief device during overpressure relief because the function of relief devices is to discharge process fluid, thereby reducing dangerously high pressures within the equipment. The standard specifies, however, that the relief device be returned to a "no detectable emission" status within 5 days after such a discharge. Plant owners or operators also may comply with this standard by connecting pressure relief devices in gas service to a system that complies with the requirements as discussed in the "Product Accumulator Vessels, Closed-Vent Systems, and Control Devices" portion of this section.

5. Sampling Connection Systems

Closed-purge sampling is the required standard for sampling connection systems and is the most stringent feasible control. Closed-purge sampling connection systems eliminate emissions due to purging by either returning the purge material directly to the process or by collecting the purge in a collection system that is not open to the atmosphere. Collected purge material must be destroyed or recovered in a system that complies with requirements discussed in the "Product Accumulator Vessels, Closed-Vent Systems, and Control Devices" portion of this section.

6. Open-Ended Valves or Lines

The standard for open-ended valves or lines requires the use of caps, plugs, or any other equipment that will effect enclosure of the open end. These are the most stringent controls possible. If a second valve is used, the standard requires the upstream valve to be closed first. After the upstream valve is closed completely, the downstream valve must be closed. This operational requirement is necessary to prevent trapping process fluid between the two valves, which could result in a situation equivalent to the uncontrolled open-ended valve or line.

7. Pipeline Flanges and Pressure Relief Devices in Liquid Service

Flanges and pressure relief devices in liquid service will be excluded from the routine leak detection and repair requirements. The EPA has not completely evaluated these sources at TSDF and may regulate them further in setting future emission standards. Even though these sources appear not to warrant routine leak detection and repair requirements at this time, they do warrant certain inspection requirements similar to those practiced by prudent operators. Thus, if indications of leaks are seen, heard, or smelled from these sources when operators perform routine inspection or other work practices, the operators must determine if a leak is detected based on Method 21. The same allowable repair interval that applies to valves and pumps will apply to leaks detected through this procedure.

8. Product Accumulator Vessels, Closed-Vent Systems, and Control Devices

The proposed standards affect product accumulator vessels and other process vent sources containing total organics in concentrations greater than 10 percent. Product accumulator vessels generally include overhead and bottoms receiver vessels used with fractionalization or stripping columns and product separator vessels used in series with reactor vessels to separate reaction products. Specifically, a product accumulator vessel includes any distillate receiver, condenser, bottoms receiver, surge control vessel, product separator, or hot well. Typically, accumulator vessels are vented directly to the atmosphere or indirectly to the atmosphere through a blowdown drum or through vacuum systems. Process vents are covered under the proposed rule only if they are in VHAP service or are associated with another type of product accumulator vessel, e.g., a distillate receiver in VHAP service. Surge control vessels and other vessels do not include equalization basins unless they are in VHAP service and are vented to the atmosphere. Venting occurs because mechanical or process-related effects cause the gases in an accumulator vessel to move through the vessel; tanks such as fixed or floating roof storage tanks are not accumulator vessels unless they vent VO emissions to the atmosphere. When an accumulator vessel contains VO (including toxics) and vents to the atmosphere, emissions are released. The EPA requests comment on whether the definitions of process vents and surge control vessels are defined clearly.

The proposed standards for product accumulator vessels would require that each vessel be equipped with a closed-vent system capable of capturing and transporting any leakage to a control device that is designed and operated to recover the organic vapors at an efficiency of 95 percent or greater. The efficiency of 95 percent or greater will be determined by estimating the mass of organics entering the control device and by estimating the mass of organics exiting the control device. Operational parameters (such as temperature of condenser cooling fluids and temperature of incinerators) then will be monitored to ensure that the mass recovery (or destruction) of 95 percent is maintained during operation of the control device. Method 21 will be used to verify that a closed-vent system has been designed and installed properly. The standards for control devices are design and operation requirements that ensure continuous effective removal of the emissions. Although EPA expects that TSDF sites will choose condensers to comply with the standards, approved alternatives to condensers are flares, incinerators, and adsorbers that achieve 95 percent control (or greater). Permit requirements relating to these design and operational (monitoring) requirements are discussed in Section VI, "Permits and Other Aspects of Implementation," of this preamble.

If an enclosed combustion device is used, the unit must be designed and operated for an efficiency of 95 percent or more. Alternatively, a minimum residence time of 0.5 second at a minimum temperature of 760 °C is required under Subpart V (40 CFR 61.242–11). If flares are used, the owner or operator must meet the design and operational provisions of 40 CFR 60.18. Subpart V also requires the monitoring of control devices to ensure that they are operated and maintained in conformance with their design. Additionally, closed-vent systems and control devices must be operated at all times when emissions may be vented to them.

Leak detection requirements for closed-vent systems are similar to those for fugitive sources. That is, all closed-vent systems must be designed and operated with no detectable emissions (i.e., 500 ppm above background by instrument reading using Method 21). The closed-vent system must be monitored initially to determine compliance. Followup monitoring is required annually and at any other time requested by EPA. If a leak is detected (by instrument reading or visible inspection), it must be repaired no later than 15 calendar days after detection. However, a first attempt at repair must be made within 5 days of detection.

V. Applicability of Proposed Standards to Other TSDF Operations

After selecting the proposed standards for WSTF, EPA considered the applicability of the standards to WSTF that could be applied to other RCRA facilities treating organic-rich hazardous waste with equipment identical to those for WSTF. Based on a review of the engineering basis for the proposed standard and the regulatory approach taken under RCRA for WSTF, as discussed above, EPA concluded that the proposed standard for WSTF could be broadened to cover all TSDF process streams with greater than 10 percent organics. Simply put, there is no technical basis for limiting the proposed controls on equipment in VHAP service at solvent treatment operations. The control technologies control VO emissions uniformly and indeed are already applicable under the CAA to many nonsolvent-emitting sources. In addition, there do not appear to be differences in emissions and risks that would justify not regulating equipment in VHAP service at TSDF.

Data currently are too limited to perform a detailed analysis of the impacts of the proposed standards on TSDF process streams greater than 10 percent organics. Specifically, the number of TSDF affected by the proposed standards cannot be determined accurately. However, EPA performed a rough analysis of these impacts as discussed below. Additional TSDF controls for other process emissions and area sources are currently under study and will be proposed in a later rulemaking.

Roughly speaking, extension of the proposed standards to TSDF with hazardous waste streams or other derivatives containing greater than 10 percent organics would affect from 269 to 2,332 sites, with a midrange estimate of 1,300 facilities. Using this midrange estimate, fugitive emissions of VO at these sites are expected to be in the area of 17,800 Mg/yr and result in an annual cancer incidence of approximately 0.65 case/yr nationwide. These estimates do not include estimated emissions or health risks associated with process vents at TSDF because data are insufficient at this time to provide such estimates. The EPA believes, however, that few, if any, of these vents (except those found at WSTF) are found at other TSDF; and, if they do exist, they would be appropriately covered by the proposed standards. The EPA requests comments on the types of process equipment and number of vents that would be regulated by these standards. (As noted earlier, TSDF with any equipment in VHAP service already required to obtain an RCRA permit would be covered by this proposal. They need not be engaged in distillation or other activities using product accumulation vessels or otherwise have process vents. TSDF with valves or pumps in VHAP service and otherwise required to obtain a permit would be covered by the proposal.) Further information on this topic is requested as described elsewhere in this preamble. Controls proposed for WSTF are applicable, available, and would achieve the same reductions—about 75 percent overall—at TSDF. Based on this overall control efficiency, nationwide emissions and risks would be reduced to about 4,500 Mg/yr, with residual annual cancer incidence of about 0.13 case/yr. The nationwide, annual net cost of this action would be roughly $9.6 million/yr.

VI. Permits and Other Aspects of Implementation

The EPA considered the proposed standards for WSTF and TSDF in light of the permitting process, the requirements for final permits, and the relation of these standards to similar CAA regulatory requirements.

A. Interim Status and Permitted Facilities

After selecting the standards for affected TSDF, EPA considered how to implement the standards with respect to interim status and final compliance. In doing so, EPA considered the overall burden for TSDF owners and operators and Agency personnel in preparing, reviewing, and approving final permits or modifications to permits. Although the administrative burden associated with the proposed standards would add to this overall burden, EPA believes that the incremental effort will be small. Because air emissions from these facilities are currently unregulated under RCRA and, as discussed above, the Agency believes these emissions are capable of posing significant risk to human health and the environment, the Agency believes it important to move to control these emissions expeditiously. The EPA, therefore, has examined the appropriateness of applying air emission standards to interim status facilities. [See, e.g., 50 FR 26484, June 26, 1985 (similar considerations justify adoption of 40 CFR Part 265 standards for tanks similar or identical to 40 CFR Part 264 standards).] In addition, because EPA needs to assign higher permitting priority to land disposal and treatment technologies, EPA considered whether the proposed standards could be self-implementing, i.e., without the burden associated with negotiations between the TSDF owner/operator and a permit writer.

The proposed standards, as discussed above, are based on the standards for equipment leaks of benzene, which were established under a regulatory program that inherently uses standards that are self-implemented. The standards for equipment leaks of benzene are self-implementable because either the specifications for a requirement are explicit (e.g. the leak definition of 10,000 ppm is explicitly specified in the standards) or, to the extent they are not explicit, the specifications include specific design criteria (e.g. the 95-percent design criterion) that can serve as the primary basis for determining compliance with the standards. All the requirements are set out explicitly in the rule except the design and operation requirements for control devices.

The requirements for control devices are not as completely explained in the rule because the proposed standards provide for many types of control devices that can be used to comply with the standards. However, engineering design practices for the control devices customarily used to comply with air emission standards are well enough established to provide the necessary documentation to show the ultimate levels of performance are achieved. Essentially, one can determine that a control device is achieving 95 percent reduction of VO by evaluating device design and—to ensure that the device is operating to achieve the designed level of performance—by monitoring certain parameters during operations. Appropriate parameters are discussed below and are based on monitoring performance of control device rather than measuring emissions directly. The parameters utilized are related to the physical and chemical nature of the removal or destruction mechanisms used as the basis for the control devices, design. For example, condensers use cooling fluids to reduce the temperature of an exhaust gas stream low enough to condense the organics in the stream. By designing a system to remove 95 percent of the organics entering the system, an exhaust gas temperature, along with other factors, such as the temperature of the cooling fluids, is estimated. Based on such parameters, the control device can be monitored to ensure it is operated as designed. The EPA considers these requirements reasonably self-implementable.

Compliance (for interim status facilities) with the standards for equipment leaks can be accomplished within a relatively short period of time (6 months) after the promulgation date of the standards. However, compliance with the standards requiring closed-vent systems and control devices could take longer. Based on EPA's experience under the benzene standard, compliance can be achieved within 24 months after the promulgation date of these standards. Thus, EPA is proposing to allow TSDF owners and operators up to 24 months to comply with the proposed standards requiring closed-vent systems and control devices. The EPA also is proposing that design of these systems and devices occur within 6 months and that construction begin within 9 months after promulgation of the standard to ensure that steady progress toward compliance with the standards occurs.

Compliance determinations (for interim status facilities) with the standards would occur through inspections and review of records and reports. The records are mainly associated with documenting the ongoing efforts of the leak detection and repair associated with equipment leaks and with demonstrating that add-on control devices achieve 95 percent reduction in organics by design and during operation. The design of these devices must show the basis for estimating the 95-percent control and the basis for the operating parameters used to monitor compliance with the device's design. The 95-percent control would be indicated by showing on a mass balance basis that the control device removes 95 percent of the organics entering the device. Specific operating or monitoring parameters are (1) coolant fluid temperature and exit gas temperature for condensers, (2) exit gas breakthrough of organics and carbon bed temperature for carbon adsorbers, (3) flue gas temperature for incinerators, and (4) pilot light flame detection and visible emission readings for flows. These general requirements are found at 40 CFR 61.242-11 and 61.245 Subpart V; EPA is proposing to add specific requirements at 40 CFR 269.33. These parameters would be monitored to ensure that the control device is performing according to its design. A review of these records and an inspection would serve to confirm whether a facility complies with the standards.

The final permit standards are the same as those for interim status facilities. The final permit requirements would include submitting documentation that the control equipment satisfying the interim status standards has been installed and that interim status standards are being achieved. A review of compliance with the interim status standards could occur. The EPA may request information to help determine if EPA should invoke the provisions of RCRA Section 3005(c)(3) to require control beyond that required in the standards. Most of this information (such as population distributions, facility location, wastes handled, and other specifics), will be available in other required RCRA information or in existing EPA data bases, so EPA does not anticipate the need to request additional data very often.

B. Additions to 40 CFR Part 270

Based on the approach used in implementing interim status and final permit standards, EPA decided to specify particular permitting requirements in 40 CFR Part 270 to help reduce the burden associated with preparing, reviewing, and approving Part B RCRA permits. The regulations and associated records and reports are detailed enough for the proposed standards to require the Part B permit application to document compliance with the standards. However, EPA concluded that further specific documentation would be helpful to demonstrate compliance with the standards for process vents.

Documentation is needed when demonstrating compliance with the standards for process vents and other product accumulator vessels because these standards require the operator to design and operate the control device to achieve 95 percent emission reduction. Although documentation can only be done on a case-by-case basis, it would be helpful for TSDF owners or operators and permit review personnel to follow similar guidelines. Thus, in 40 CFR Part 270, EPA is proposing a requirement that the operators compare their control devices, design and operation against a textbook analysis. This analysis would be used to determine whether the operator's approach appears to comply reasonably with the requirements of the standard. The textbook currently under consideration is the EPA Air Pollution Training Institute's Control of Gaseous Air Pollutants. Based on this comparison, EPA can decide if the operator's design and operation achieves the standards for process vents/accumulator vessels.

C. Relation to Similar CAA Requirements

The proposed standards contain a provision to ensure that no duplicative recordkeeping and reporting are required for any TSDF governed by the proposed rule and by existing CAA regulations (i.e., 40 CFR Part 60 Subpart VV and Part 61 Subpart V). For such facilities, proposed Section 269.33(e) provides that the owner or operator may elect to continue keeping records and reports pursuant to CAA requirements in order to comply with the recordkeeping and reporting requirements of the proposed rule. For facilities covered by RCRA only, the owner or operator must comply with the requirements in the proposed rule at Section 270.22.

The recordkeeping and reporting requirements under the proposed rule and the CAA are identical except for the documents described by proposed Section 270.22(a)(2)(i)–(ii), (3). Section 269.33(e) of the proposed rule, applicable to a TSDF facility governed under CAA and RCRA, allows the owner or operator to keep only one set of records and reports regarding operation and maintenance. It should be noted, however, that additional reporting and recordkeeping requirements, which are contained at Section 270.22, for example, and are required to obtain a final RCRA permit, apply to all TSDF, even those that are governed under the CAA.

RCRA Section 1006(b) allows the Administrator to eliminate duplicative regulation under RCRA and other Federal laws including the CAA. EPA has decided not to alter the applicability of CAA regulations to TSDF affected by today's proposed rule. As discussed above, a duplicative recordkeeping or reporting burden is not imposed on any TSDF by today's proposal. Other provisions under RCRA [e.g., omnibus permitting, pursuant to RCRA 3005(c)(3)] and the CAA (e.g., determination of attainment of any applicable NAAQS) will continue to apply to TSDF already subject to both regulatory schemes.

Because the CAA standards were adapted for the accelerated rule, the recordkeeping and reporting requirements differ from existing requirements in RCRA standards. Leaking equipment is flagged with labels indicating its identification number, until repairs are achieved, except that valves are marked until repaired for 2 successive months. Records of leaks are kept for 2 years, rather than maintained for a 3-year inspection record.

Reporting requirements for air emissions include the leak detection schedule and twice-a-year reporting of leaks and unrepaired leaks [which are records kept at the facility under 40 CFR 264.15(b) (2) and 265.15(b) (2)]. In contrast, 40 CFR 264.56(j) and 265.56(j) require written reports within 15 days of events that demand use of a facility contingency plan, which will, however, usually show more significant releases than those detected during leak monitoring.

The EPA requests comments on the integration of these recordkeeping and reporting requirements in the RCRA program. As proposed, the reporting and recordkeeping requirements of 40 CFR Part 270 apply to air emissions, along with the circumstances that implement use of the contingency plan.

VII. Relation to Other RCRA Regulatory Provisions

Today's proposal relates to other RCRA regulatory exemptions and these exemptions merit discussion. These provisions are discussed below in turn.

A. Product Storage Exemption

Paragraph 261.4(c) of the RCRA regulations exempts from regulation hazardous wastes that are generated in process-related equipment such as product or raw material storage tanks, or product or raw material pipelines. The exemption applies until the waste is physically removed from the unit in which it was generated.

This exemption would not be affected by today's proposal. Thus, such units as product distillation columns generating organic hazardous waste still bottoms containing greater than 10 percent organics would not be subject to today's proposed regulation while they are in the distillation column unit. As EPA noted in promulgating the exemption, risks posed by these units are incidental to the risk posed by the contained product or raw material. (See 45 FR 72025, October 30, 1980, and 45 FR 80286, December 4, 1980.) In addition, direct regulation of these units under RCRA could interfere impermissibly with the act of production and, therefore, would be beyond the Agency's RCRA authority. (See 51 FR 25487, July 14, 1986, and 50 FR 617, 637–38, January 4, 1985.)

B. Totally Enclosed Treatment Facility Exemption

Under 40 CFR 264.1(g)(5) and 40 CFR 265.1(c)(9), totally enclosed treatment facilities are exempt from RCRA regulation. A "totally enclosed treatment facility" is a facility treating hazardous waste that is "directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or constituent thereof into the environment during treatment" (40 CFR 260.10).

Treatment facilities located off the site of generation are not directly connected to an industrial process. Thus, commercial waste treatment facilities with equipment affected by the proposed standards, such as solvent reclamation facilities, by definition ordinarily would not be totally enclosed. In addition, storage facilities, disposal facilities, and ancillary equipment not used for treating hazardous waste do not fall within the definition of a totally enclosed treatment facility.

The EPA believes that many onsite treatment facilities also are not totally enclosed. Process emissions from recovery distillation columns and other treatment technologies generally are designed to release air emissions of the hazardous waste or constituent into the air environment. Therefore, by definition, these onsite technologies are generally not totally enclosed. [See 45 FR 33218, May 19, 1980 (no constituents released to air during treatment).] However, it is possible to construct a product accumulator vessel or distillation column that prevents the release of air emissions or is otherwise totally enclosed. Generally, EPA interprets "prevents" to include the use of effective controls such as those required by the proposed standard. In addition, the ancillary equipment affected by these proposed standards can be designed and operated/maintained to prevent releases. As a consequence, EPA believes that some onsite treatment would be totally enclosed. The EPA requests comments on this interpretation of the totally enclosed facility exemption and the number and type of onsite totally enclosed facilities with descriptions of the control devices and monitoring used to meet the totally enclosed treatment exemption.

C. Eliminating the Exemption for the Act of Reclamation

Today's proposal would regulate the activity of reclamation at certain types of RCRA facilities for the first time. This exemption dates from May 19, 1980 (45 FR 33084), and was continued when the Agency amended its regulations relating to hazardous waste recycling [40 CFR 261.6(c)(1), August 20, 1985]. The basis for this exemption was the Agency's initial uncertainty as to an appropriate regulatory regime for the act of any type of recycling (45 FR 33084). As the Agency began studying these questions, EPA began revoking the exemption by promulgating standards for various types of recycling activities, beginning with those most closely resembling classic types of hazardous waste management [see 40 CFR 266.23, January 4, 1985 (uses constituting disposal, analogous to land disposal): 40 CFR 266.31, November 29, 1985 (prohibition on burning hazardous waste fuel in nonindustrial boilers, analogous to incineration)].

Today's proposal marks a further step in this process. After studying the environmental problems associated with reclamation of organic-rich hazardous wastes, EPA believes there is a substantial problem requiring redress. Further, after studying various means of controlling air emissions from reclamation units and associated conveyance systems, the Agency believes that the controls proposed today provide an appropriate and protective regulatory regime. Consequently, the existing regulatory exemption for the process of reclamation is no longer appropriate. Accordingly, EPA is proposing to amend 40 CFR 261.6 to allow covering reclamation of hazardous wastes affected by today's proposal. It should be recognized, however, that today's proposed rule only applies at facilities otherwise needing a permit. Therefore, not all reclamation units will necessarily be affected by this rule.

Today's proposal does not consider whether to extend coverage of air emission controls to waste-handling generators with onsite recycling or recovery operations for waste solvents who do not store the spent solvents. The EPA believes that most generators with onsite recycling perform this operation in tanks and are exempt from regulation based on the provisions of 40 CFR 262.34, which allows accumulation of hazardous wastes onsite for 90 days or less without requiring a TSDF permit. Although EPA has the statutory authority to require controls for these operations, EPA has not completed a technical and administrative assessment at this time. The EPA is concerned about the impact of regulating commercial recyclers more than regulating generators with onsite recycling. The extent of this discontinuity is unclear: however, EPA has some reason to believe that it is insignificant. Generators with onsite recycling of solvents generally are covered under air emission standards associated with Sections 111 and 112 of the CAA. Although CAA standards would cover all onsite recycling of benzene and newly constructed onsite recycling of many organic solvent chemicals (many of which are affected by today's proposal), EPA does not know how many existing onsite recycling operations would remain unaffected by either CAA or RCRA standards for air emissions. Therefore, EPA is requesting data on the number of onsite recycling operations and any comments on the impact of regulating commercial recyclers and not generators with onsite recycling. The EPA will study this issue and decide on an appropriate strategy for public review and comment as more information becomes available.

D. Wastewater Treatment Tank Exemption

Paragraphs 264.1(g)(6) and 265.1(c)(9) exempt wastewater treatment tanks and elementary neutralization units (defined in 40 CFR 260.10) from Subtitle C regulation. Today's action does not affect the scope of that exemption. Thus, recovery devices such as steam strippers treating organic-rich hazardous wastes that would otherwise qualify for the wastewater treatment exemption are not covered by today's rule. The Agency believes there are few or no such units because wastewater streams are invariably more dilute than 10 percent organics. Because so few units would be covered, EPA does not regard the present proposal as the appropriate instrument to examine the scope of the wastewater treatment exemption. The Agency is considering the question in other contexts, including the comprehensive Section 3004(n) standards now under development.

E. Application of Air Emission Standards to Equipment that Meets the Definition of a Generator's Accumulation Tank

Section 262.34 of the RCRA regulations states that generator tanks that accumulate hazardous wastes for 90 days or less are not subject to interim status or final permit standards, provided they comply with most of the substantive standards for tanks storing hazardous wastes. Certain of the product accumulator vessels affected by today's proposed rule would be 90-day accumulation tanks, namely those that store or treat (51 FR 25422, July 14, 1986) hazardous wastes, are emptied every 90 days (51 FR 25427, July 14, 1986), and otherwise meet the substantive tank standards enumerated in 40 CFR 262.34(a) (1) and (4).

The Agency expects that there will be comparatively few of these tanks affected by today's proposed rule because most distillation columns and other recovery-type tanks are not operated on a continuous basis and thus are not physically emptied within a 90-day timeframe. (As explained, such tanks would be subject to today's regulation if the facility needed a RCRA permit for some independent reason.) However, certain columns involved in batch operations may be so emptied and meet other conditions as well and so qualify as accumulation tanks. For these tanks, the question is whether they should meet today's proposed air emissions standards as part of the conditioned exemption from permitting an interim status.

The EPA has tentatively determined not to apply the proposed air emission standards to these tanks at the present time. The EPA is concerned that many of the batch columns involved are extremely small, so that the technical controls proposed today might not be appropriate. In addition, these columns may be located at small quantity generator or small business facilities, and the Agency needs more time to study the impacts of imposing controls on these types of entities.

The EPA specifically requests data on the following pertinent issues:

• Physical dimensions of these columns.

• Types of facilities having such columns.

• Types and volumes of hazardous wastes treated by these columns.

The EPA should note that it is currently reassessing the exemption from permitting an interim status for accumulation tanks (51 FR 25487). Today's proposal does not represent any departure from the issues raised in that advance notice of proposed rulemaking.

F. Applicability of Other Standards for Tanks and Tank Systems

Today's proposal for controlling air emissions would apply standards to product accumulator vessels and associated ancillary equipment, as well as eliminate (for air emissions) the exemption for the act of recycling contained in 40 CFR 261.6(c). This equipment meets the definitions of "tank" and "tank system" found in 40 CFR 260.10 (e.g., distillation columns are stationary devices containing an accumulation of hazardous waste, and they are constructed of nonearthen materials and would be self-supporting if waste is removed).

The question is thus presented whether these tanks and tank systems should be covered by the same standards as other hazardous waste tanks and tank systems. The fact that there has been at least one instance of ground water contamination directly attributable to a leaking distillation column distilling spent solvents heightens the Agency's concern. (See Florida Ground Water Contamination Sites, Florida Department of Environmental Regulation, September 1982: Spent solvent contamination of wells at Pratt and Whitney Aircraft, West Palm Beach.) The EPA is currently studying whether there is any difference in design or other structural features or waste-handling practices that would make imposition of the normally applicable tank standards inappropriate. The EPA solicits comment on this point. The EPA also requests information on the number of tanks potentially affected, on the types and nature of the tank systems of which they are part, and on the types of controls already in place for the tanks and tank systems (e.g., do most distillation columns already have secondary containment). The EPA emphasizes that it may decide to require the tanks otherwise affected by today's proposal to meet the normally applicable standards as part of its final rule.

G. Impacts on Small Quantity Generators

Under RCRA Section 3001(d), in drafting regulations affecting generators of greater than 100 kilograms (kg) and less than 1,000 kg a month of hazardous waste, EPA must weigh the impacts of regulation against the need to protect human health and the environment (although any regulations must adequately protect human health and the environment). See generally 50 FR 31283–286, August 1, 1985; 51 FR 10146, March 24, 1986. The EPA does not believe the present proposal affects such small quantity generators. Today's proposed rules apply only to facilities already required to obtain an RCRA permit. The EPA knows of no such small quantity generator facilities. In addition, as noted above, EPA is not proposing to apply the standards to any generators' 90-day accumulation tanks. Consequently, EPA sees no impacts on small quantity generators as a result of today's proposal.

VIII. State Authorization

A. Applicability of Rules in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under Sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the HSWA, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the newly enacted Section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. The EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. Although States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

Today's proposed rule would be promulgated pursuant to Section 3004(n) of RCRA, with provisions added by HSWA. Thus, it would be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorization

As noted above, EPA will implement today's proposed rule, when promulgated, in authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Because the rule will be promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA Section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications under RCRA Section 3006(b) are described in 40 CFR 271.21. The same procedures should be followed for RCRA Section 3006(g)(2).

Applying 40 CFR 271.21(e)(2), States that have final authorization must modify their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within 2 years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases [40 CFR 271.21(e)(3)].

States with authorized RCRA programs may already have requirements similar to those in today's proposed rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of EPA until the State program modification is approved. States with existing rules may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts.

States that submit official applications for final authorization in fewer than 12 months after promulgation of EPA's regulations may be approved without including standards equivalent to those promulgated. Once authorized, however, a State must modify its program to include standards that are substantially equivalent or equivalent to EPA's within the time periods discussed above.

IX. Impacts of Proposed Standards

A. Introduction

To evaluate the need for the requirements to reduce emissions, EPA developed order-of-magnitude estimates of the air emissions from and control costs for WSTF and TSDF. These estimates were derived using available information and judgment to develop best estimates of parameters needed to characterize emissions, operating parameters of WSTF and TSDF with fluids containing organic concentrations greater than 10 percent, and health risks. Because insufficient information was available to characterize the composition of the organic wastes beyond the total VO content, the uncontrolled emission rate could not be quantified precisely. Thus, to provide a broad overview of potential impacts of air standards, estimates were developed of the maximum emission rate expected for highly volatile solvents and of a likely small emission rate from a WSTF and from a TSDF with waste streams containing 10 percent or more organics. The emission rates for a single WSTF were projected based on a January 1986 nationwide estimate [assuming 436 million gal (i.e., the sum of the 428 million gal currently distilled and 8.3 million gallons potentially requiring treatment)] for waste solvents treated by distillation processes. The emission rates for a single affected TSDF were projected based on 1,300 TSDF affected nationally, reflecting a range of 269 to 2,300 potentially affected TSDF. Control costs and health effects also were estimated for the expected emission rates and were projected to a nationwide basis.

Although these estimates were developed from the best available information, they must be viewed with considerable uncertainty because there is a paucity of information on operations of WSTF and other affected TSDF. The EPA believes these estimates will serve to guide discussion on the problem and to solicit additional information.

The facility and nationwide estimates of air impacts and control costs are presented below with expected lower values and with upper bound estimates indicated in parentheses to provide an indication of the potential variation in impacts of the proposed air standards. The health impact estimates (which focus on cancer risks and do not include other plausible health effects) are presented as overall nationwide estimates that consolidate the effects of variations in populations (rural and urban population densities), meteorology, and expected emission rates. Accordingly, the impacts of any individual TSDF may differ from the impacts presented in the preamble.

B. Air Impacts

It is estimated that the proposed standard will reduce VO emissions to the atmosphere from WSTF and other TSDF by approximately 85 and 75 percent, respectively, from the uncontrolled level at plants with typical emission rates (93 percent for WSTF facilities with maximum emission rates). For the model WSTF used in the impact analysis' this control represents an emission reduction from at least 27 Mg/yr (based on a range of 27 to 155 Mg/yr) to about 4 Mg/yr (based on a range of 4 to 11 Mg/yr). Because about 100 model WSTF would be needed to treat the estimated 436 million gal of waste solvents recycled annually, nationwide emissions would be reduced from a minimum level of 2,550 Mg/yr (maximum level of 14,700 Mg/yr) before control to a minimum level of 400 Mg/yr (a maximum level of 1,000 Mg/yr) after control. Nationwide fugitive emissions from other TSDF would be reduced from about 17,800 Mg/yr to about 4,500 Mg/yr. Together, the standards proposed for WSTF and TSDF are expected to reduce nationwide emissions from about 26,460 Mg/yr to about 5,460 Mg/yr after control—an overall reduction of nearly 80 percent.

The magnitude of the estimated emission reductions for TSDF and WSTF are uncertain because of differences in volatility of solvents, uncertainties in waste stream composition, and difficulties in developing emission factors for operations that vary widely. However, this overall reduction in VO emissions will assist in the attainment of the National Ambient Air Quality Standard for Ozone by reduction in ozone precursors, and it will reduce the risks to human health and the environment from hazardous waste management.

C. Health Impacts

A health impact analysis was conducted to assess the magnitude of cancer risk from exposure to air emissions from WSTF with extrapolated results applied to TSDF. Although cancer risks are not the only health impacts associated with air emissions from WSTF and TSDF, they are the most available measure of direct health effects associated with chronic low-level exposures to organic solvents. It should be noted that uncertainties associated with possible additive effects, synergism, antagonism, and heightened susceptibilities cannot be overemphasized. The health impacts were estimated using a representative range of unit risk factors (e.g., 2×10^{-7} to 2×10^{-5} cases per microgram per cubic meter per person) to estimate the magnitude of risks posed by WSTF at both typical and maximum emissions rates. The nationwide maximum individual lifetime risk was assumed to be the highest individual risk calculated for the model cases analyzed. The Human Exposure Model (HEM) was used to predict nationwide health effects of exposure to suspected carcinogens in the VO emissions from WSTF. It is considered a reasonable indicator for this screening evaluation. The HEM has been used successfully in many EPA risk assessments, but it does add an additional element of uncertainty because of the inherent assumptions of the model. However, a more detailed risk assessment cannot be performed until further information and data are available. Consequently, the nationwide annual incidence was calculated as the average annual incidence considering the projected number of WSTF and the range in emission rates, geographic location, and urban/rural sites expected for WSTF. This scoping analysis showed that the standard will reduce the maximum individual lifetime risk of cancer from WSTF operating at the upper bound emission rate from about 3.7×10^{-3} to 2.6×10^{-4}. The nationwide annual incidence of cancer in the population living within 50 km of uncontrolled WSTF is estimated to be about 0.34 case/yr assuming the midpoint of the unit risk factor range. The proposed standard will reduce this nationwide incidence rate to about 0.028 case/yr. The proposed standard for TSDF would reduce annual incidence from about 0.65 case/yr to about 0.13 case/yr. Nationwide annual incidence from TSDF and WSTF together would be reduced from about 1 case/yr to about 0.16 case/yr.

Because of the assumptions that were made in estimating emissions and in calculating these maximum lifetime risk and annual incidence estimates, there is considerable uncertainty associated with these risk estimates. These uncertainties are the result of the uncertainties in the emission estimates and to a number of simplifying assumptions made in the health risk analysis and in extrapolation of the estimates to a nationwide basis. In particular, there are uncertainties regarding the appropriate magnitude of the individual pollutant unit risk factors for this analysis. This sort of uncertainty is exacerbated because unit risk factors have been developed for only a few of the Appendix VII compounds that might be emitted by WSTF and TSDF. There are also uncertainties concerning possible additive effects of multiple pollutants, synergistic or antagonistic health effects, and heightened susceptibilities to some cancers by some population subgroups. Although exposure to ozone may be related to a variety of both health and environmental effects, it is unclear how ozone-related impacts will be quantified until some ongoing analyses are completed. These factors make it difficult to determine the absolute magnitude of the risk to human health.

D. Cost Impacts

Upper and lower bound estimates of control costs for a model WSTF were developed for process emission control using add-on control devices (such as secondary condensers, incinerators, or flares) and for fugitive emission control. These estimates were extrapolated to a nationwide basis assuming that approximately 100 model WSTF would be controlled and two basic combinations of control devices would be used. Depending on the process control device assumed in the estimation, the nationwide capital cost for the standard is estimated to range from approximately $2.9 million to $16.6 million, and the 1986 annualized cost is estimated to range from approximately $1.3 million/yr to $11 million/yr without recovery credit, or from $100,000/yr to $10.6 million/yr with the assumption of a recovery credit. (The average capital cost/model plant is estimated to range from $30,200 to $174,500, and the annualized costs without recovery credit range from $13,600/yr to $115,000/yr per model plant.) These cost estimates are based on assumptions that may represent significant overestimates of control costs compared to what actually may be experienced, particularly if the facilities use existing boilers or furnaces to control process-vent VO emissions. Consequently, it is expected that the actual cost of the standard will be closer to the lower, which reflects use of secondary condensers, than the upper cost estimate, which reflects use of add-on combustion control devices.

Annual net costs are estimated at about $7,400/yr for the TSDF model facility, considering recovery credits. Assuming a midpoint estimate of 1,300 facilities, the estimated nationwide annual cost of control under the proposed standards is about $9.6 million/yr. Combined nationwide net annual and capital costs for TSDF and WSTF are estimated at $9.7 million/yr and $35.3 million/yr, respectively.

X. Request for Further Information

As discussed in Section IX of this preamble, order-of-magnitude estimates of air emissions, health risks, and control costs were developed for WSTF. These estimates were developed using the best available information but contain considerable uncertainties because the available information was not comprehensive. To refine these assessments of potential impacts and benefits of emission control, EPA is specifically requesting comments in several areas.

The EPA requests comments, including data, on factors that may affect the feasibility of complying with the proposed standards for WSTF and TSDF or of achieving the proposed emission reductions. In particular, EPA requests that commenters submit data on emission rates, including information on composition and content of the wastes being processed; factors affecting emissions, including the effect of batch operations on process and fugitive emission rates; the number of WSTF and TSDF currently controlling process and fugitive emissions; and the number of process vents, accumulator vessels, and other tanks affected by the proposed standards. The EPA requests information that would help reduce the uncertainty with the number of TSDF, including recyclers, covered by the standards, and data on the number of offsite recyclers who recycle without prior storage. The EPA requests comments on the number of totally enclosed treatment units currently excluded from coverage under RCRA. The EPA also requests comments on the public health and environmental effects of VO emissions from these WSTF operations and TSDF operations in general. The EPA also requests comments on the approach based on using VO as measured by total organics in comparison to an approach based on using specific chemical constituents in regulating the air pollution affected by today's proposed standards. If commenters believe a particular standard is unsuitable for their equipment' they should document why the standard should not apply in light of the standards' widespread applicability to other types of VO-emitting equipment and industries.

The EPA derived the cost-related operating conditions for WSTF and TSDF based on an analysis of control costs from operating conditions observed in the petroleum and chemical industries. Because there are many similarities in operating conditions for these industries, EPA believes the assumed conditions should be representative of WSTF and TSDF operations recognizing, however, that uncertainties exist in the assumed conditions. Consequently, EPA requests information on: (1) Capital and annual costs for controlling process emissions, including information on annual operating hours, capacity, waste stream(s) treated, and product recovery credits; (2) the effect of batch operations on control costs, including the basis for the cost comparison: and (3) costs for inspection and maintenance programs used to control fugitive emissions.

The EPA is proposing that compliance with the standards for control devices, such as condensers, be demonstrated through documenting the design and monitoring the operation of these devices. This approach is the one utilized in the CAA standards, which are used as the basis for the proposed standards. The EPA believes this is a reasonable approach because studies of these devices used in many industries and applications indicate that their design can be documented with sufficient and precise detail to allow the EPA to decide whether the device has been designed to achieve the proposed standards. The engineering involved in designing these devices is straightforward and well understood by practicing professionals in the air pollution control field. The monitoring of these devices, in contrast to performing emission tests, to determine proper operation of these devices is also straightforward and understood by practicing professionals in the air pollution control field. The monitoring of these devices is done to ensure that they are operated within their design and therefore that they achieve the intended results of the standards. The EPA is requesting comments on this approach and the decision to use design and monitoring requirements rather than performance testing as the basis for determining compliance with these standards.

In order to estimate the potential cost, economic, and risk impacts associated with requiring waste solvent recovery units to comply with the 40 CFR Part 61 Subpart J hazardous waste tank regulations, the Agency must characterize the solvent recovery unit and facility population. At this time, the Agency has limited data available to conduct such impact analyses. As a result, the Agency today requests comments that provide the specific information necessary to decide whether the waste solvent recovery units should comply with the 40 CFR Part 61 Subpart J requirements.

The EPA's Office of Solid Waste (OSW) has conducted a 1986 TSDF screening survey that, once final, will provide a current estimate of the number of TSDF with waste solvent recovery operations. However, the survey will not provide information on the number of waste solvent recovery units per TSDF. Other needed waste solvent recovery unit characteristics include design capacity, dimensions, length of ancillary piping, types of ancillary equipment such as pumps, material of construction, age, and waste solvent throughput (e.g., gal/day, gal/mo). In addition to waste solvent recovery unit characteristics, EPA needs waste solvent characteristic data. Such information includes waste constituents and constituent concentrations. Moreover, the Agency needs information on the facilities that have waste solvent recovery operations such as the number of waste solvent recovery units per facility, types of industries, number of employees, net income, or sales.

If EPA does not receive adequate information from public comments, the Agency must rely on waste solvent recovery or distillation unit characteristic information from a 1981 TSDF survey. These survey data provide such information for a sample of about 11 waste solvent recovery or distillation units. The 1981 survey data include information on design capacity, material of construction, and age. Other important factors such as extent of ancillary equipment or waste characteristics must be estimated using best professional judgment. Because the Agency prefers to base the decision of how to regulate waste solvent recovery tanks on the most current, thorough, and reliable data, EPA is today requesting detailed information on the potentially regulated waste solvent recovery unit and facility population.

The EPA is proposing in today's notice to add a new part to 40 CFR. The EPA had the option of adding the proposed standards to 40 CFR Parts 264 and 265, or possibly Part 266. However, because the proposed standards cover several units regulated under 40 CFR Parts 264 and 265 and, therefore, would have been added to several subparts within these parts, EPA decided to add a separate part that concerned air emission standards. In addition, EPA is considering which program office should implement the air emission standards. If EPA Regional or State air program offices implement RCRA air emission standards, then a separate part would allow these offices to implement the standards without first learning the entire RCRA regulatory framework. The EPA requests comments on adding a new 40 CFR Part 269 to contain air emission standards under RCRA.

The EPA will base the final standards on the evaluation used as the basis for the proposed standards and consideration of comments on and data concerning the proposed standards. In particular, the final standards will reflect appropriate reconsideration of the proposed standards based on revisions to the analysis resulting from significant comments on the feasibility, the effectiveness, and costs of process and fugitive emission controls. Comments on the regulatory approach used to establish the proposed standards and to cover recyclable materials and TSDF in general also are requested.

XI. Administrative Requirements

A. Public Hearing

The Agency will hold a public hearing on March 23, 1987. The hearing will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina, beginning at 10:00 a.m. Anyone wishing to make a statement at the hearing should notify, in writing, Ms. Geraldine Wyer, Public Participation Officer, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Oral and written statements may be submitted at the public hearing. Persons who wish to make oral presentations must restrict them to 15 minutes and are encouraged to have written copies of their complete comments for inclusion in the public record.

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) to allow interested parties to identify and locate documents so they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review.

Additional information on the basis for the emissions, contract cost, and health risk estimates is presented in "RCRA TSDF Air Emission Standards—Background Technical Memoranda for Proposed Standards" EPA-450/3-86-009). Other technical information considered in the development of the estimates also is presented in Docket F-86-AESP. The docket is available for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays, in room S-212 U.S. Environmental Agency, 401 M Street, SW, Washington, DC 20460.

C. External Participation

Development of the basic background information included consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The EPA will welcome comments on all aspects of the proposed regulation, including economic and technological issues.

D. Office of Management and Budget Reviews

1. Impacts of Reporting and Recordkeeping Requirements

The proposed standard includes provisions that require semiannual reports of leak detection and repair efforts within a process unit. The EPA believes that the required reporting and recordkeeping requirements are necessary to assist EPA in (1) identifying sources, (2) determining initial compliance, and (3) enforcing the standards.

The Paperwork Reduction Act (PRA) of 1980 (P. L. 96-511) requires that the Office of Management and Budget (OMB) approve reporting and recordkeeping requirements that qualify as an "information collection request" (ICR). To accommodate OMB review, EPA uses 3-year periods in its impact analysis procedures for estimating the labor-hour burden of reporting and recordkeeping requirements.

The average annual burden on WSTF and TSDF to comply with the reporting and recordkeeping requirements of the proposed standards over the first 3 years after the effective date is estimated to be about 230 person-years. This amounts to about 6.5 person-hours per week per affected WSTF and TSDF. Most of this burden is already included in the annualized cost of the proposed standards.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the PRA of 1980, 44 U.S.C. 3501 et seq. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Officer for EPA," as well as to EPA. The final rule will respond to any OMB or public comments on the information collection requirements.

3. Executive Order 12291 Review

Under Executive Order (E.O.) 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis (RIA). This proposed regulation is not major because it would result in none of the adverse economic effects set forth in Section 1 of E.O. 12291 as grounds for finding a regulation to be major. The industry-wide annualized costs in the 5th year after the standards would go into effect would be less than $10 million, which is less than the $100 million established as the first criterion for a major regulation in E.O. 12291. Price increases associated with the proposed standards would not be considered a "major increase in costs or prices" specified as the second criterion in E.O. 12291. The proposed standards, effect on the industry would not result in any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms (the third criterion in E.O. 12291).

This proposed regulation was submitted to OMB for review as required by E.O. 12291. Any written comments from OMB to EPA and any EPA responses to those comments will be included in Docket F-86-AESP. This docket is available for public inspection at the address indicated under the **ADDRESSES** section in this notice.

4. Regulatory Flexibility Act Compliance

Pursuant to the Regulatory Flexibility Act (U.S.C. 601 et seq.), whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the impact of the rules on small entities (i.e., small business, small organizations, and small governmental jurisdictions). No RFA is required, however, if the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The EPA considered the impacts on small businesses for this proposed rulemaking.

The EPA has established guidelines for determining whether an RFA is required to accompany a rulemaking package. The guidelines state that if at least 20 percent of the universe of "small entities" is affected by the rule, then an RFA is required. In addition, EPA criteria should be applied to evaluate if a regulation will have a "significant impact" on small entities. If any one of the following four criteria is met, the regulation should be assumed to have a "significant impact":

(1) Annual compliance costs will increase the relevant production costs for small entities by more than 5 percent.

(2) The ratio of compliance costs to sales will be 10 percent higher for small entities than for large entities.

(3) Capital costs of compliance will represent a significant portion of the capital available to small entities, taking into account internal cash flow plus external financing capabilities.

(4) The costs of the regulation will likely result in closures of small entities.

In considering whether an RFA was required, EPA first considered whether small entities would be affected by the rule. The only entities affected by the rule are those required to have a permit for treatment, storage and disposal of a hazardous waste. Few, if any, of these facilities are "small entities." Thus, EPA has concluded that the proposed rule would not have a substantial impact on small entities and, therefore, did not prepare an RFA.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities because the economic impact of the proposed rule is not significant.

XII. List of Subjects in 40 CFR Parts 261, 264, 265, 269, 270, and 271

Administrative practice and procedure, Air pollution control, Confidential business information, Hazardous materials, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Packaging and containers, Recycling, Reporting and recordkeeping requirements, Security measures, Surety bonds, Treatment, storage, and disposal facilities, Waste treatment and disposal, Water pollution control, Water supply.

Dated: January 13, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Chapter I, Title 40, of the Code of Federal Regulations, is proposed to be amended as follows.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, 3002, and 3017, of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 as amended (42 U.S.C. 6905, 6912, 6921, 6922, and 6937.

2. Section 261.6 would be amended as follows:

a. By revising the parenthetical text at the end of paragraph (c)(1) to read as follows:

* * * * *

(c)(1) * * * (The recycling process itself is exempt from regulation except as provided in 261.6(d)).

* * * * *

b. By adding new paragraph (c)(2)(iii) and new paragraph (d) to read as follows:

* * * * *

(c) * * *

(2) * * *

(iii) Section 261.6(d) of this chapter.

(d) Owners or operators of facilities that store and treat recyclable materials are subject to the requirements of 40 CFR Part 269 Subpart A and C, except as provided in paragraph (a) of this section, if they must obtain a permit under Part 270 of this chapter for a reason independent of Part 269 of this chapter, and if they own or operate equipment in VHAP service (as defined in Subpart C of Part 269).

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 264 continues to read as follows:

Authority: Sections 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

2. Section 264.1 is amended by adding paragraph (h) as follows:

§ 264.1 Purpose, scope, and applicability.

* * * * *

(h) The regulations of Part 269 apply to owners and operators for all hazardous waste facilities, except as provided in § 264.1(b) and in Part 269.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 265 continues to read as follows:

Authority: Sections 1006, 2002(a), 3004, 3005, and 3015 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6095, 6912(a), 6924, 6925, and 6935).

2. Section 265.1 is amended by adding paragraph (d) as follows:

§ 265.1 Purpose, scope and applicability.

* * * * *

(d) The regulations of Part 269 apply to owners and operators of all hazardous waste facilities, except as provided in § 265.1 and in 40 CFR Part 269.

PART 269—AIR EMISSION STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. Part 269 is added to read as follows:

PART 269—AIR EMISSION STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

Authority: Sections 1006, 2002, 3001–3007, 3010, 3014, 3015, 3017, 3018, 3019, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 as amended [42 U.S.C. 6905, 6912, 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974].

Subpart A—General

§ 269.1 Purpose, scope, and applicability.

(a) The purpose of this part is to establish minimum national standards that define acceptable air pollution control management of hazardous wastes.

(b) The standards of this part apply to owners and operators of all facilities that treat, store and dispose of hazardous waste, except as specifically provided otherwise in this part or Parts 261, 262, 264, 265, and 270 of this chapter.

§ 269.2 Incorporation by reference.

The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the **Federal Register** on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Office of the **Federal Register**, Room 8401, 1100 L Street NW., Washington, DC, and at the Library (MD–35), U.S. EPA, Research Triangle Park, North Carolina.

(a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; or the University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ASTM. E 169–63 (reapproved 1977), General Techniques of Ultraviolet Quantitative Analysis, IBR approved for § 269.34(a).

(2) ASTM E 158–67 (reapproved 1977), General Techniques of Infrared Quantitative Analysis, IBR approved for § 269.34(a).

(3) ASTM E 260–73. General Gas Chromatography Procedures. IBR approved for § 269.34(a).

(4) ASTM D 2267–68 (reapproved 1978), Aromatics in Light Naphthas and Aviation Gasoline by Gas Chromatography, IBR approved for § 269.34(a).

(b) The following materials are available for purchase from the following address: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

(1) Control of Gaseous Air Pollutants, IBR approved for § 270.22(a).

(2) SW–846, Test Methods for Evaluating Solid Waste: Physical/Chemical Methods, IBR approved for § 269.34(a).

Subpart B—[Reserved]

Subpart C—Equipment Leaks and Accumulator Vessels

§ 269.30 Applicability.

(a) The regulations in this subpart apply to owners or operators of facilities that treat, store, or dispose hazardous wastes except as provided in § 269.1, if they must obtain a permit under Part 270 for a reason independent of Part 269.

(b) The regulations in this subpart control and monitor air emissions associated with equipment, process vents, and accumulator vessels in volatile hazardous air pollutant (VHAP) service.

§ 269.31 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act; Parts 260, 261, 262, 263, 264, 265, or 266; and Subpart V of Part 61:

(a) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, flange, or product accumulator vessel in VHAP service, and any control devices or systems required by this subpart.

(b) "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly or through a vacuum-producing system. A process vent is in VHAP service if the vapor is at least 10 percent by weight VHAP.

(c) "Product accumulator vessel" means any distillate receiver, condenser, bottoms receiver, surge control vessel, product separator, or hot well (i.e., container holding unvolatilized process stream) that is vented to the atmosphere either directly or through a vacuum-producing system. A product accumulator vessel is in VHAP service if the liquid or the vapor is at least 10 percent by weight VHAP.

(d) "Vented" means discharged through an opening, typically an openended pipe or stack, permitting the passage of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or process-related means such as evaporation produced by heating and not by natural means such as diurnal temperature changes.

(e) "In VHAP service" means that a piece of equipment either contains or contacts an organic fluid (slurry, liquid, or gas or other emanation) associated with management of a hazardous waste, hazardous wastes, or their derivatives in concentrations greater than 10 percent by weight. "In VHAP service" is determined according to the provisions of § 269.34(a). The provisions of § 269.34(a) also specify how to determine that a piece of equipment is not in VHAP service.

(f) "Surge control vessel" means any tank used to control or equalize the flow of process fluids within a process unit that is vented.

(g) "VHAP" means organic liquids or gases (1) that are either hazardous wastes or derivatives of these hazardous wastes and (2) that are associated with hazardous waste management.

§ 269.32 Standards for facilities with final permit.

(a) Owners and operators of facilities subject to the provisions of this subpart shall comply with the requirements of 40 CFR Part 61 Subpart V, except as provided in this subpart.

(b) Each process vent shall be equipped with a closed-vent system capable of capturing and transporting any emissions from the vent to a control device as described in § 61.242–11.

(c) The provisions of 40 CFR 61.244 Subpart V do not apply in this regulation.

§ 269.33 Standards for facilities during interim status.

(a) Owners and operators of facilities subject to the provisions of this subpart shall comply with the requirements of 40 CFR Part 61 Subpart V during interim status, except as provided in this subpart.

(b) Each process vent shall be equipped with a closed-vent system capable of capturing and transporting any emissions from the vent to a control device as described in § 61.242–11.

(c) The provisions of 40 CFR 61.242–11 Subpart V apply during interim status on the following basis:

(1) The owner and operator shall comply with this paragraph within 24 months after_______ (date of promulgation in **Federal Register**).

(2) The owner and operator shall complete construction of the control device and closed-vent system used to comply with this paragraph within 21 months after_______ (date of promulgation in **Federal Register**).

(3) The owner and operator shall commence construction of the control device and closed-vent system used to comply with this paragraph within 9 months after _______ (date of promulation in **Federal Register**).

(4) The owner and operator shall complete the design of the control device and closed-vent system used to comply with this paragraph within 6 months of the effective date.

(5) The owner or operator shall monitor the control device using the following parameters in conjunction with the requirements of § 61.242–11:

(i) For condensers, coolant fluid temperature and exhaust gas temperature.

(ii) For carbon adsorbers, carbon bed temperatures and exhaust gas organic-breakthrough.

(iii) For incinerators, exhaust gas temperature.

(iv) For flares, visible emissions and pilot flame detection.

(v) For any recovery system, annual material balances.

(d) The provisions of 40 CFR 61.244 Subpart V do not apply in this regulation.

(e) The owner or operator of any facility that is subject to this subpart and to regulations at 40 CFR Part 60 Subpart VV or 40 CFR Part 61 Subpart V may elect to demonstrate compliance with this subpart by documentation either pursuant to § 270.22 of this subpart, or pursuant to those provisions of 40 CFR Part 60 or 61, to the extent the documentation under the regulation at 40 CFR Part 60 or Part 61 duplicates the documentation required under this subpart.

§ 269.34 Special requirements.

(a)(1) Each piece of equipment within a facility that can conceivably be in VHAP service is presumed to be in VHAP service unless an owner or operator demonstrates that the piece of equipment is not in VHAP service. For a piece of equipment to be considered not in VHAP service, it must be determined that the percent organic content of the process fluid can be reasonably expected never to exceed 10 percent by weight. For purposes of determining the percent organic content of the process fluid that is contained in or contacts equipment, procedures that conform to the methods described in ASTM Method D-2267–68, E 169–63, E 168–67, E 260–73 or Method 9060 of SW–846 (incorporated by reference as specified in § 269.2) shall be used.

(2) An owner or operator may use engineering judgment rather than the procedures in paragraph (a)(1) of this section to demonstrate that the percent organic content of the process fluid does not exceed 10 percent by weight, provided that the engineering judgment demonstrates that the organic content clearly does not exceed 10 percent by weight. When an owner or operator and the Administrator do not agree on whether a piece of equipment is not in VHAP service, however, the procedures in paragraph (a)(1) of this section shall be used to resolve the disagreement.

(3) If an owner or operator determines that a piece of equipment is in VHAP service, the determination can be revised only after following the procedures in paragraph (a)(1) of this section.

(4) Samples used in determining the percent organic content shall be representative of the process fluid that is contained in or contacts the equipment.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for Part 270 continues to read as follows:

Authority: Sections 1006, 2002, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 as amended [42 U.S.C. 6905, 6912, 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974].

2. Section 270.22 is added as follows:

§ 270.22 Specific Part B information requirements for air emission standards under Part 269.

Except as otherwise provided in § 269.1, owners or operators of facilities affected by the requirements of Part 269 must provide the following information:

(a) For Subpart C of Part 269,

(1) Documentation that demonstrates compliance with the provisions of 40 CFR Part 61 Subpart V, excluding § 61.242–11. This documentation shall contain the reports and records required under §§ 61.245, 61.246, and 61.247. The Administrator may request further documentation before deciding if compliance with the interim status standards has been demonstrated.

(2) Documentation that demonstrates compliance with § 61.242–11. In addition to the reports and records required under §§ 61.245 and 61.246, the documentation shall include the following information:

(i) A listing of the background information material used in preparing the documentation.

(ii) An analysis based on appropriate sections of "Control of Gaseous Air Pollutants" [incorporated by reference as specified in § 269.2], which presents the basic information.

(3) Based on review of the documentation provided in paragraphs (a) (1) and (2) of this section, the Administrator may request further information and analysis before deciding to issue the permit.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for Part 271 continues to read as follows:

Authority: Sections 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 692.6).

2. It is proposed to amend § 271.1(j) by adding the following entry to Table 1 in chronological order by date of publication:

§ 271.1 Purpose and Scope.

* * * * *

TABLE 1. REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date of publication in the FEDERAL REGISTER	Title of regulation
* * *	* *
[Insert promulgation date]	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.
* * *	* *

[FR Doc. 87-2079 Filed 2-4-87; 8:45 am]

BILLING CODE 6560-50-M

federal register

Thursday
February 5, 1987

Part III

Department of Labor

Office of the Secretary

29 CFR Part 20

Debt Collection Act of 1982; Salary Offset; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 20

Debt Collection Act of 1982; Salary Offset

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: The Debt Collection Act of 1982 (Pub. L. 97-365), and other applicable authority, authorizes the Federal government to deduct from the current pay account of an employee ("salary offset") when the employee owes money to the United States. This final rule establishes the procedures and policies the Department of Labor will follow in making a salary offset.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis McDaniel, Office of the Solicitor, Department of Labor, Room N-2428, 200 Constitution Avenue NW., Washington, DC 20210, telephone number (202) 523-7721.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Pub. L. 97-365) amends the Federal Claims Collection Act of 1966 to authorize the Federal government to employ various debt collection techniques for the collection of debts owed to the United States. Among these techniques are those for deducting from the current pay account of an employee ("salary offset") when the employee owes money to the United States. This rule was originally published for public comment as a proposed rule in the **Federal Register** on December 16, 1985. Comments were to be submitted to the Labor Department, in duplicate, on or before January 30, 1986. No public comments were received. The only substantive change from the proposed regulations is found in § 20.78(b)(7), which affords employees of the Labor Department's Office of Administrative Law Judges the right to elect to have the review of an agency's determination on a debt heard and decided by a person not in the Office of Administrative Law Judges, and not under the supervision and control of the Secretary of Labor.

This final rule establishes the procedures the Department of Labor will employ in making a salary offset.

Executive Order 12291

The final rule is not a "major rule" under Executive Order 12291 because it is not likely to result in (1) an annual effect in the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) signficant 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 foreign markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that the final rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96-354, 94 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the final rule does not, in itself, impose any additional requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 1225-0038.

List of Subjects in 29 CFR Part 20

Government employees, Loan programs, Claims, Credit, Administrative practice and procedure.

Accordingly, Part 20 of Title 29 of the Code of Federal Regulations is amended as set forth below:

1. The authority for Part 20 is revised to read as follows:

Authority: Pub. L. 97-365, Oct. 25, 1982, 96 Stat. 1749; 31 U.S.C. 3711 et seq. Subpart D is also issued under 5 U.S.C., 5511 et seq.

2. Subpart D is added to read as follows:

PART 20—DEBT COLLECTION ACT OF 1982

* * * * *

Subpart D—Salary Offset

Authority: Pub. L. 97-365, Oct. 25, 1982, 96 Stat. 1749; 31 U.S.C. 3711 *et seq.*; 5 U.S.C. 5511 *et seq.*

Subpart D—Salary offset

§ 20.74 Purpose.

(a) The regulations in this subpart establish procedures to implement section 5 of the Debt Collection Act of 1982 (Pub. L. 97-365), 5 U.S.C. 5514. This statute authorizes the head of each agency to deduct from the current pay account of an employee ("salary offset") when the employee owes money to the United States. This subpart specifies the agency procedures that will be available in a "salary offset" by the Department of Labor of an employee's current pay account.

(b) Administrative offset is defined in 31 U.S.C. 3701(a)(1) as "withholding money payable by the United States Government, to or held by the Government for a person to satisfy a debt the person owes the Government."

A salary offset is a form of administrative offset and is separately authorized and governed by 5 U.S.C. 5514. This authority is consistent with and supplemented by administrative offset regulations of subpart B of 29 CFR Part 20.

§ 20.75 Scope.

(a) This subpart applies to debts owed to the United States (arising under Labor Department programs) by Labor Department employees, debts owed to the United States (arising under Labor Department programs) by employees of other federal agencies, and debts owed the United States (arising under programs of other federal agencies) by Labor Department employees. "Other agency" means:

(1) An executive agency as defined in section 105 of title 5, United States Code (but not including the Labor Department), including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military Department as defined in § 102 of title 5, United States Code;

(3) An agency or court in the judicial branch, including a court as defined in Section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) The procedures contained in this subpart do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 et seq.), the Social Security Act (42 U.S.C. 301 et seq.), or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g.) travel advances in 5 U.S.C. § 5705 and employee training expenses in 5 U.S.C. 4108).

(c) This subpart does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, this subpart does not preclude an employee from requesting waiver, if waiver is available under any statutory provisions pertaining to the particular debt being collected.

§ 20.76 Definitions.

(a) "Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105 (b) through (f) to determine disposal pay subject to salary offset.

(b) As used in this subpart, the terms "claim" and "debt" are deemed synonymous and interchangeable. A "debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(c) "Employee" means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(d) "Paying agency" means the agency employing the individual and authorizing the payment of his or her current account.

(e) "Credit agency" means the agency to which the debt is owed.

(f) "Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(g) "FCCS" means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR 101.1 *et seq.*

(h) "Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 20.77 Agency responsibilities.

(a) Each Department of Labor agency which has delinquent debts owed under its program and administrative activities is responsible for collecting its claims by means of salary offset, in accordance with guidelines established by the Assistant Secretary for Administration and Management.

(b) Before collecting a claim by means of salary offset, the responsibile agency should be satisfied that salary offset is feasible, allowable and appropriate, and, as otherwise provided in these regulations, must notify the debtor of the Department's policies for collecting a claim by means of salary offset.

(c) Whether collection by salary offset is feasible is a determination to be made by the creditor agency on a case-by-case basis, in the exercise of sound discretion. Agencies shall consider not only whether salary offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate cricumstances, agencies may give due consideration to the debtor's financial condition, and are not required to use offset of the full or partial amount of the claim in every instance in which there is an available source of funds.

(d) Before advising the debtor that the delinquent debt will be subject to salary offset, the agency head (or designee) responsible for administering the program under which the debt arose shall review the claim and determine that the debt is valid and overdue. In the case where a debt arises under the programs of two or more Department of Labor agencies, or in such other instances as the Assistant Secretary for Administration and Management, or his or her designee, may deem appropriate, the Assistant Secretary for Administration and Management, or his or her designee, may determine which agency (or agencies), or official (or officials), shall have responsibility for carrying out the provisions of this subpart.

(e) Agencies may not initiate offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the right to collect the debt were not known and could not reasonably have been known by the official of the Agency who was charged with the responsibility to discover and collect such debts. When the debt first accrued should be determined according to existing laws regarding the accrual of debts, such as under 28 U.S.C. 2415.

§ 20.78 Notifications.

(a) The agency head (or designee) of the creditor Labor Department agency shall send appropriate written demands to the debtor in terms which inform the debtor of the consequences of failure to repay claims. In accordance with guidelines as may be established by the Assistant Secretary for Administration and Management, a total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of the demand letters, agencies should given due regard to the need to act promptly so that a debt to be collected by salary offset will be recovered during the employee's anticipated period of employment with the Government.

(b) In accordance with guidelines as may be established by the Assistant Secretary for Administration and Management, the creditor Labor Department agency shall send (at least 30 days prior to any deduction) written notice to the debtor, informing such debtor as appropriate:

(1) Of the origin, nature and amount of the indebtedness determined by the agency to be due;

(2) Of the intention of the agency to initiate proceedings to collect the debt by means of deduction from the employee's current disposable pay account;

(3) Of the amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) Unless such payments are excused in accordance with the FCCS, of the creditor agency's policy concerning assessment of interest, penalties, and administrative costs;

(5) Of the employee's right to inspect and copy Government records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(6) If not previously provided, of the opportunity (under terms agreeable to the creditor agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, be signed by both the employee and the creditor agency, and be documented in the creditor agency's files (4 CFR 102.2(e));

(7) Of the employee's right to a hearing conducted by an administrative law judge of the Department of Labor, if a petition is filed as prescribed by the Department of Labor. In the event the debtor is an employee working in the Office of Administrative Law Judges, the notification shall inform such debtor of the right to elect to have the review of the agency's determination heard and decided by a person who is not in the Office of Administrative Law Judges, and not under the supervision and control of the Secretary of Labor; in such a case, all provisions in this subpart will otherwise apply, unless stated otherwise in the notification;

(8) Of the method and time period for petitioning for hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings, unless the creditor agency determines that § 20.81(d) applies and further informs the debtor of the basis for its determination;

(10) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the administrative law judge grants a delay in the proceedings;

(11) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code, Part 752 of title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, sections 3729-3731 of title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001 and 1002 of title 18, United States Code or any other applicable statutory authority.

(12) Of any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(c) Creditor Labor Department agencies shall also include in their demand letters the notice provisions to debtors required by other regulations of the Labor Department, pertaining to disclosures to credit reporting agencies, administrative offset from other sources of funds, and the assessment of interest, penalties and administrative costs, to the extent inclusion of such is appropriate and practicable.

(d) The responsible agency head (or designee) shall exercise due care to ensure that demand letters are mailed or hand-delivered on the same day that they are actually dated. If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken to obtain a current address.

(e) The creditor Labor Department agency shall, in the initial demand letter to the debtor, provide the name of an agency employee who can provide a full explanation of the claim.

(f) If any internal Labor Department collection, the provisions of § 20.78 (a)–(e) need not be applied to any adjustment to pay which is not considered to be the result of collection of a debt, such as excess pay or allowances caused by (1) an employee's election of coverage or a change of coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated in four pay periods or less; or (2) ministerial adjustments in pay rates or allowances which cannot be placed into effect immediately because of normal processing delays, if the amount to be recovered was accumulated in four pay periods or less.

§ 20.79 Examination of records relating to the claim; opportunity for full explanation of the claim.

Following receipt of the notice specified in § 20.78(b), the debtor may request to examine and copy agency records pertaining to the debt.

§ 20.80 Opportunity for repayment.

(a) The creditor Labor Department agency shall afford the debtor the opportunity to (1) repay the debt or (2) enter into a repayment plan which is agreeable to the agency head (or designee) and is in a written form signed by such debtor and the creditor agency. The head of the agency (or designee) may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

(b) Agencies have discretion and should exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, an agency should effect an offset unless the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience, or the agency otherwise determines that offset would be contrary to sound judgment.

§ 20.81 Review of the obligation.

(a) The debtor shall have the opportunity to obtain a hearing by an administrative law judge of the agency's determination concerning the existence or amount of the debt, or the repayment schedule proposed by the agency, and except as provided in § 20.75(c), review by an administrative law judge is to be the exclusive administrative review remedy on the agency's determination under these regulations.

(b) The debtor seeking a hearing shall make the request in writing to the Chief Administrative Law Judge, pursuant to 29 CFR Part 18, not more than 15 days from the date the notice of proposed salary offset was received by the debtor. The request for hearing shall be signed by the employee and state the basis for challenging the determination. If the debtor alleges that the agency's information relating to the debt is not accurate, timely, relevant or complete, such debtor shall fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes supports his or her position.

(c) The hearing ordinarily shall be based on written submissions and documentation by the debtor. However, an opportunity for an oral hearing shall be provided an individual debtor when the administrative law judge determines that (1) an applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or (2) an individual debtor requests reconsideration of the and the administrative law judge determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity; or (3) in ther situations in which the administrative law judge deems an oral hearing appropriate. Unless otherwise required by law or these regulations, any oral hearing under this section shall be conducted under the procedures in 29 CFR Part 18. Except as provided under § 20.79, the provisions for discovery shall not be applicable unless otherwise ordered by the administrative law judge. Procedural and evidentiary rules shall be relaxed by the administrative law judge to provide informality and to facilitate the hearing.

(d) Agencies may effect a salary offset against the current pay account of a debtor prior to the completion of the hearing procedures required by this subpart, if failure to initiate the offset would substantially prejudice the agency's ability to collect the debt; for example, if the employee's anticipated period of employment with the Government would not reasonably permit the completion of the hearing and recovery of the debt prior to termination of employment. Offset prior to completion of the hearing must be promptly followed by the completion of that hearing.

(e) If the debtor seeking a hearing under this section makes the request for review of the obligation after the expiration of the period for filing as described in paragraph (b) of this section, the administrative law judge may accept the request for hearing if the debtor can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it).

(f) Upon completion of the hearing, the administrative law judge shall transmit to the debtor a written decision. This decision shall state, at a minimum: the facts purported to evidence the nature and origin of the alleged debt; the administrative law judge's findings and conclusions, as to the employee's and/or creditor agency's grounds; the amount and validity of the alleged debt; and, where applicable, the repayment schedule. If appropriate, the notification shall also indicate any changes in the information to the extent such information differs from that provided in the notification under § 20.78(b).

(Approved by the Office of Management and Budget under control number 1225–0038)

§ 20.82 Cooperation with other DOL agencies and Federal agencies.

(a) Appropriate use should be made of the cooperative efforts of other DOL and Federal agencies in effecting collection by salary offset. Generally, paying agencies should comply with requests from other agencies to initiate salary offset to collect debts owed to the United States, unless the creditor agency has not complied with applicable regulations or the request would otherwise be contrary to law.

(b) Unless otherwise prohibited by law, a DOL agency may request that the current pay account of a debtor in another DOL or Federal agency be administratively offset in order to collect debts owed the creditor DOL agency by the debtor. In requesting a salary offset, the creditor DOL agency must provide the paying DOL agency or other paying Federal agency with written certification stating (1) that the debtor owes the creditor agency a debt (including the basis and amount of the debt); (2) the date on which payment was due; (3) the date on which the Government's right to collect the debt first accrued; and (4) where the paying agency is another federal agency, that the creditor agency's regulations under 5 U.S.C. 5514 have been approved by the Office of Personnel Management, and that the creditor agency has followed such regulations to the best of its information and belief.

§ 20.83 DOL agency as paying agency of the debtor.

Whenever a salary offset is sought by another DOL or Federal agency from a paying DOL agency, the paying DOL agency should not initiate the requested offset until it has been provided by the creditor organization with an appropriate written certification as described in § 20.82(b). Where the creditor agency is not another DOL agency, the creditor agency must certify that its regulations under 5 U.S.C. 5514 have been approved by the Office of Personnel Management and that it, the creditor agency, has followed such regulations to the best of its information and belief. When the creditor agency is not also the paying DOL agency, the creditor agency should also be required to certify that if an administrative or judicial order is issued directing the paying DOL agency to pay a debtor an amount previously paid to the creditor agency, the creditor agency will reimburse the paying DOL agency or pay the debtor directly within 15 days of the date of the order.

§ 20.84 Collections.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalties, and administrative costs should be collected in full in one lump sum. This is true whether the debt is being collected by salary offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. Installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be except as provided in § 20.84 (c) and (d). Where a DOL agency is the paying agency, salary offset will ordinarily begin with the salary payment made to the employee for the first full pay period following expiration of the 30 day notice period described in § 20.78(b), or if a hearing is pending under § 20.81, the first full pay period following the date of the administrative law judge's written decision.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, agencies should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

(c) If the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, under 5 U.S.C. 5514, salary offset shall be from subsequent payments of any nature (e.g., final salary payment, lump-sum leave, etc.) due the employee from the paying agency as of the date of separation to the extent necessary to liquidate the debt.

(d) If the debt cannot be liquidated by salary offset from any final payment due the former employee as of the date of separation, under 5 U.S.C. 5514, administrative offset shall be from later payments of any kind due the former employee from the United States.

§ 20.85 Notice of offset.

Prior to effecting a salary offset, the paying DOL agency should advise the debtor of the impending offset. This notice should state that the debtor has been provided his/her rights under 5 U.S.C. 5514, that a determination has been made that collection by salary offset would be in the best interests of the United States, the amount of the offset, the date the salary offset will begin, and that the source of funds shall be from current disposable pay, except as provided by (c) and (d) of § 20.84. If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken to obtain a current address.

§ 20.86 Non-waiver of rights by payments.

An employee's involuntary payment, of all or any portion of a debt being collected under 5 U.S.C. 5514, shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

§ 20.87 Refunds.

(a) Agencies shall promptly refund to the appropriate party amounts paid or deducted under this subpart when—

(1) A debt is waived or is otherwise not owing to the United States (unless refund is expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

§ 20.88 Additional administrative collection action.

Nothing contained in this subpart is intended to preclude the utilization of any other administrative remedy which may be available.

§ 20.89 Prior provision of rights with respect to debt.

To the extent that the rights of the debtor in relation to the same debt have been previously provided by the creditor agency under some other statutory or regulatory authority, the creditor agency is not required to duplicate those efforts before taking salary offset.

§ 20.90 Responsibilities of the Assistant Secretary for Administration and Management.

The Assistant Secretary for Administration and Management, or his or her designee, shall provide appropriate and binding written or other guidance to Department of Labor agencies and officials in carrying out this subpart, including the issuance of guidelines and instructions, which he or she may deem appropriate. The Assistant Secretary shall also take such administrative steps as may be appropriate to carry out the purposes and ensure the effective implementation of this subpart.

Signed at Washington, DC, this 30th day of January, 1987.

William E. Brock,

Secretary of Labor.

[FR Doc. 87-2295 Filed 2-4-87; 8:45 am]

BILLING CODE 4510-23-M

federal register

Thursday
February 5, 1987

Part IV

Department of Health and Human Services

Food and Drug Administration

Cumulative List of Orphan Drug and Biological Designations; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N-0102]

Cumulative List of Orphan Drug and Biological Designations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) previously announced the availability of a list to be updated quarterly identifying the drugs and biologicals granted orphan drug designation in accordance with section 526 of the Federal Food, Drug, and Cosmetic Act (see the **Federal Register** of April 13, 1984 (49 FR 14808)). By this notice, FDA is publishing a cumulative list of designated orphan drugs and biologicals.

ADDRESS: A copy of the list of orphan designations for calendar year 1987 will be updated quarterly and will be available for review at, and individual copies may be obtained from, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Roger C. Gregorio, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4903.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development reviews and takes final action on applications submitted by sponsors seeking orphan designation under the interim guidelines for section 526 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360bb). In accordance with section 526 of the act, which requires public notification of designations, FDA maintains a list identifying designated orphan drugs and biologicals for the current calendar year, e.g., 1987. The list is updated on a quarterly basis and is available upon request from FDA's Dockets Management Branch (address above) under Docket Number 84N-0102. The agency intends to continue to publish in the **Federal Register** at the end of each calendar year a cumulative list of designated orphan drugs and biologicals to include the name of the designated compound, the specific disease/condition for which the compound is designated, and the sponsor's name and address. The cumulative list of compounds receiving orphan designation through 1985 was published in the **Federal Register** of January 30, 1986 (51 FR 3844).

This notice lists designated orphan drugs and biologicals through December 31, 1986, and, therefore, updates the January 30, 1986, publication. The designation of a drug or biological applies only to the sponsor who requested the designation. Each sponsor interested in developing an orphan drug or biological must apply for designation. Copies of the interim guidelines for use in compiling an application for designation may be obtained from the Office of Orphan Products Development (HF-35) (address above).

Dated: January 28, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1986

[Biological designations]

Name of biological	Designated use	Sponsor's name and address
Generic—alpha-I-anti-trypsin (recombinant DNA origin); *Trade*—Not established.	Supplemenatation therapy for alpha-I antitrypsin deficiency in the ZZ phenotype population.	Cooper Biomedical, Inc., 3145 Porter Drive, Palo Alto, CA 94304.
Generic—alpha-I-proteinase inhibitor (Alpha-I PI); *Trade*—Not established.	Replacement therapy in the Alpha I PI congenital deficiency state	Cutter Laboratories, P.O. Box 1986, Berkeley, CA 94701.
Generic-anti-J5mAb; *Trade*-Not established	Treatment of patients with gramnegative bacteremia which has progressed to endotoxin shock.	Centocor, Inc., 244 Great Valley Parkway, Malvern, PA 19355.
Generic—anti pan T lymphocyte monoclonal antibody H-65 ricin A chain confugate; *Trade*—Anti T Lymphocyte immunotoxin XMMLY-H65-RTA.	For ex vivo treatment to eliminate mature T cells from potential bone marrow grafts and for in-vivo treatment of bone marrow recipients to prevent graft rejection and graft vs host disease (GVHD).	XOMA Corporation, 2910 Seventh Street, Berkeley, CA 94710.
Generic—antimelanoma antibody XMMME-0001-DTPA-III IN; *Trade*—Same as generic.	Diagnostic use in imaging systemic and nodal melanoma metastasis	Xoma Corporation, 3516 Sacramento Street, San Francisco, CA 94118.
Generic—antimelanoma antibody XMMME-001-RTA; *Trade*—Same as generic.	Treatment of Stage III melanma not amenable to surgical resection	Xoma Corporation, 3516 Sacramento Street, San Francisco, CA 94118
Generic—antithrombin III (AT-III); *Trade*—Not established.	For use as replacement therapy in congenital deficiency of AT-III for prevention and treatment of thrombosis and pulmonary emboli.	Cutter Laboratories, P.O. Box 1986, Berkeley, CA 94701.
Generic—antithrombin III concentrate I.V.; *Trade*—Kybernin.	Prophylaxis and treatment of thromboembolic episodes in patients with genetic AT-III deficiency.	Hoechst-Roussel Pharmaceuticals, Inc., Route 202-206 North, Somerville, NJ 08876.
Generic—antithrombin III (human); *Trade*—Antithrombin.	Hereditary AT-III deficiency	Kabi Vitrum Inc., 1311 Harbor Bay Parkway Alameda, CA 94501.
Generic—antithrombin III (human); *Trade*—Antithrombin III (Human).	For use in preventing or arresting episodes of thrombosis in patients with congenital antithrombin III deficiency and/or to prevent the occurrence of thrombosis in patients with antithrombin III deficiency who have undergone trauma or who are about to undergo surgery or parturition.	The American National Red Cross, National Headquarters, 17th and E Street, NW., Washington, DC 20006.
Generic—botulinum A toxin; *Trade*—Oculinum	Treatment of strabismus and blepharospasm	Alan B. Scott, M.D., 2232 Webster Street, San Francisco, CA 94115.
Generic—botulinum toxin; *Trade*—Ortholinum	For use in the treatment of spasmodic torticollis	Alan B. Scott, M.D., 2232 Webster Street, San Francisco, CA 94115.
Generic—digoxin-specific antibody fragments; *Trade*—Digibind [1]/[2].	Treatment of potentially life-threatening digitalis intoxication in patients who are refractory to management by conventional therapy.	Burroughs-Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic—erwinia 1-asparaginase; *Trade*—Not established.	Treatment of acute lymphocytic leukemia	Porton Products Ltd., 5445 Balboa Boulevard Suite 115, Encino, CA 91316.
Generic—erwinia 1-asparaginase; *Trade*—Not established.	Acute lymphoblastic leukemia	Lypho Med, Inc., 2020 Ruby Street, Melrose Park, IL 60160.
Generic—factor XIII; *Trade*—Fibrogammin	Congenital Factor XIII deficiency	Hoechst-Roussel Pharmaceuticals, Inc., Route 202-206 North, Somerville, NJ 08876.
Generic—hemin; *Trade*—Panhematin [1] [2]	Amelioration of recurrent attacks of acute intermittent porphyria temporally related to the menstrual cycle in susceptible women and similar symptoms which occur in other patients with acute intermittent porphyria, porphyria variegata and hereditary coproporphyria.	Abbott Laboratories, North Chicago, IL 60064.
Generic—interferon alfa-nl; *Trade*—Wellferon	Treatment of Kaposi's sarcoma in AIDs patients	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic—monoclonal antibodies (murine or human) recongnizing B-cell lymphoma idiotypes; *Trade*—Not established.	For the treatment of B-cell lymphoma	IDEC, Inc., 291 North Bernardo Avenue, Mountain View, CA 94043.

Name of biological	Designated use	Sponsor's name and address
Generic—pentastarch; *Trade*—Not established	For use as an adjunct in leukapheresis, to improve the harvesting and increase the yield of leukocytes by centrifugal means.	DuPont Critical Care, 1600 Waukegan Road, McGaw Park, IL 60085.
Generic—recombinant human erythropoietin; *Trade*—Not established.	Treatment of anemia associated with end stage renal disease (ESRD)	Amgen, 1900 Oak Terrace Lane, Thousand Oaks, CA 91320.
Generic—sheep antidigoxin fab; *Trade*—Digidote	Life-threatening acute cardiac glycoside intoxication manifested by conduction disorders, ectopic ventricular activity and (in some cases) hyperkalemia.	Boehringer Mannheim Corporation, 1301 Piccard Drive, Rockville, MD 20850.

[1] Approved for Marketing.
[2] Exclusive Approval.

[Drug designations]

Name of drug	Designated use	Sponsor's name and address
Generic—allopurinol riboside; *Trade*—Not established.	Treatment of cutaneous and visceral leishmaniasis and Chagas' disease	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic—amsacrine; *Trade*—Amsidyl	Treatment of patients with acute adult leukemia	Warner-Lambert Co., 201 Tabor Road, Morris Plains, NJ 07950.
Generic—anagrelide; *Trade*—Not established	Treatment of polycythemia vera	Bristol-Myers Co., P.O. Box 4755, Syracuse, NY 13221-4755.
Generic—anagrelide; *Trade*—Not established	Treatment of thrombocytosis in chronic myelogenous leukemia	Bristol-Myers, Co., Pharmaceutical Research and Development Division, 5 Research Parkway, P.O. Box 5100, Wallingford, CT 06492.
Generic—antipyrine; *Trade*—Not established	Antipyrine test as an index of hepatic drug-metabolizing capacity	Upsher-Smith Laboratories, Inc., 14905 23rd Avenue North, Minneapolis, MN 55441.
Generic—azidothymidine (AZT) (BW A509U); *Trade*—Not established.	Treatment of acquired immunodeficiency syndrome (AIDS)	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic—bacitracin, U.S.P.; *Trade*—Not established	Antibiotic-associated pseudomembranous enterocolitis caused by toxins A and B elaborated by Clostridium difficile.	A.L. Laboratories, Inc., 452 Hudson Terrace, P.O. Box 1621, Englewood Cliffs, NJ 07632.
Generic—benzoate/phenylacetate; *Trade*—Ucephan	For adjunctive therapy in the prevention and treatment of hyperammonemia in patients with urea cycle enzymopathy (UCE) due to carbomylphosphate synthetose, ornithine transcarbamylase, or argino-succinate synthetase deficiency.	Kendall McGaw Laboratories, P.O. Box 25080, Santa Ana, CA 92799-5080.
Generic—BW B759U; *Trade*—Not established	Treatment of severe human cytomegalovirus infections (HCMV) in specific immuno-suppressed patient populations (e.g., bone marrow transplant recipients and AIDS).	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic—chenodiol; *Trade*—Chenix [1 2]	For patients with radiolucent stones in well opacifying gallbladders, in whom elective surgery would be undertaken except for the presence of increased surgical risk due to systemic disease or age.	Reid-Rowell, Inc., 210 Main Street West, Baudette, MN 56623-0370.
Generic—chlorhexidine gluconate mouthrinse; *Trade*—Peridex.	For use in the amelioration of oral mucositis associated with cytoreductive therapy used in conditioning patients for bone marrow transplantation therapy.	The Procter and Gamble Co., Sharon Woods Technical Center, HB Building, 11511 Reed Hartman Highway, Cincinnati, OH 45241.
Generic—clofazimine; *Trade*—Lamprene [1 2]	Treatment of lepromatous leprosy, including dapsone-resistant lepromatous leprosy and lepromatous leprosy complicated by erythema nodosum.	Pharmaceuticals Division, Ciba-Geigy Corporation, 556 Morris Avenue, Summit, NJ 07901.
Generic—colchicine; *Trade*—Not established	For use in arresting the progression of neurologic disability caused by chronic progressive multiple sclerosis.	Pharmacontrol Corporation, P.O. Box 931, 661 Palisade Avenue, Englewood Cliffs, NJ 07632.
Generic—cromolyn sodium; *Trade*—Cromoral	Mastocytosis	Fisons Corporation, 2 Preston Court, Bedford, MA 01730.
Generic—cromolyn sodium 4% ophthalmic solution; *Trade*—Opticrom 4% Ophthalmic Solution [1 2].	Treatment of vernal keratoconjunctivitis (VKC)	Fisons Corporation, 2 Preston Court, Bedford, MA 01730.
Generic—cyproterone acetate; *Trade*—Cypoterone/Androcur.	Treatment of severe hirsutism	Berlex Laboratories, Inc., 110 East Hanover Avenue, Cedar Knolls, NJ 07927.
Generic—cysteamine (2-aminoethanethiol); *Trade*—Not established.	Treatment of nephropathic cystinosis	Jess G. Thoene, M.D., Section of Biochemical Genetics and Metabolism, Department of Pediatrics, University of Michigan School of Medicine, Ann Arbor, MI 48109.
Generic—defibrotide; *Trade*—Not established	Treatment of thrombotic thrombocytopenic purpura	Crinos International, Via Belvedere 1, 22079 Villa Guardia (Como), Italy.
Generic—diaziquone; *Trade*—Not established	Treatment of primary brain malignancies (Grade III-IV astrocytomas)	Warner-Lambert Co., 201 Tabor Road, Morris Plains, NJ 07950.
Generic—diethyldithiocarbamate; *Trade*—Imuthiol	Treatment of acquired immunodeficiency syndrome (AIDS)	Merieux Institute, Inc., 7855 N.W. 12th Street, Suite 114, Miami, FL 33126.
Generic—dimethyl sulfoxide (DMSO); *Trade*—Sclerosol.	Treatment of cutaneous manifestations of scleroderma	Research Medical, Inc., a Subsidiary of Research Industries Corporation, 1847 West 2300 South, Salt Lake City, UT 84119.
Generic—disodium silibinin dihemisuccinate; *Trade*—Legalon.	Treatment of hepatic intoxication by Amanita phalloides (mushroom poisoning)	Pharmquest Corporation, 201 Tamal Vista Blvd., Corte Madera, CA 94925 and Dr. Madaus GmbH and Co., Ostmerheimer Str. 198, 5000 Koln 91, Federal Republic of Germany.
Generic—eflornithine HCl (DFMO); *Trade*—Not established.	Trypanosoma brucei gambiense sleeping sickness Treatment of Pneumocystis carinii pneumonia in AIDS patients.	Merrell Dow Research, P.O. Box 6300, 2110 East Galbraith Road, Cincinnati, OH 45215-6300.
Generic—epoprostenol prostacyclin, PGI_2 PGX; *Trade*—Flolan.	Replacement of heparin in patients requiring hemodialysis and who are at increased risk of hemorrhage.	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic—epoprostenol; *Trade*—Cyclo-Prostin	Replacement of heparin in patients requiring hemodialysis and who are at increased risk of hemorrhage.	The Upjohn Co., 301 Henrietta Street, Kalamazoo, MI 49001.
Generic—epoprostenol, prostacyclin, PGI_2 PGx; *Trade*—Flolan.	For use in the treatment of primary pulmonary hypertension (PPH)	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic—etidronate disodium, intravenous solution; *Trade*—Didronel I.V.	Treatment of hypercalcemia of a malignancy inadequately managed by dietary modification and/or oral hydration.	Norwich Eaton Pharmaceuticals, Inc., P.O. Box 191, Norwich, NY 13815.
Generic—ethanolamine oleate; *Trade*—Not established.	Bleeding esophageal varices	Glaxo, Inc., P.O. Box 13960, Five Moore Drive, Research Triangle Park, NC 27709.
Generic—flumecinol; *Trade*—Zixoryn	Hyperbilirubinemia in newborn infants unresponsive to phototherapy	Farmacon, Inc., P.O. Box 586, Westport, CT 06881
Generic—flunarizine; *Trade*—Sibelium	Treatment of alternating hemiplegia	Janssen Pharmaceutica, 40 Kingsbridge Road, Piscataway, NJ 08854.
Generic—ganciclovir (DHPG); *Trade*—Not established.	Treatment of of cytomegalovirus (CMV) infections of a serious life- or sight-threatening nature in immunocompromised patients.	Syntex (USA), Inc., 3401 Hillview Avenue, Palo Alto, CA 94304.
Generic—glucocerebrosidase/beta-glucosidase (placenta-derived); *Trade*—Not established.	Replacement therapy in patients with Gaucher's Disease Type I	Genzyme Corporation, 75 Kneeland Street, Boston, MA 02111.
Generic—guanethidine monosulfate; *Trade*—Ismelin I.V.	Treatment of moderate to severe reflex sympathetic dystrophy and causalgia	Ciba-Geigy Corporation, 556 Morris Avenue, Summit, NJ 07901.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1986—Continued

[Drug designations]

Name of drug	Designated use	Sponsor's name and address
Generic—HPA-23; *Trade*—Not established	Treatment of acquired immunodeficiency syndrome (AIDS)	Rhone-Poulenc Pharmaceuticals, Division of Rhone Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852.
Generic—Hexamethylmelamine; *Trade*—Hexastat	Treatment of advanced adenocarcinoma of the ovary	Ives Laboratories, 685 Third Avenue, New York, NY 10017.
Generic—human epidermal growth factor (urogastrone); *Trade*—Not established.	Acceleration of corneal epithelial regeneration and healing of stromal incisions from corneal transplant surgery. Promotion of cutaneous wound healing in extreme burn treatment protocols	Chiron Corporation, 4560 Horton Street, Emeryville, CA 94608.
Generic—human superoxide dismutase (hSOD); *Trade*—Not established.	Protection of donor organ tissue from damage or injury mediated by oxygen-derived free radicals that are generated during the necessary periods of ischemia (hypoxia, anoxia), and especially reperfusion, associated with the operative procedure.	Pharmacia-Chiron Partnership, 4560 Horton Street, Emeryville, CA 94608.
Generic—hydroxycobalamin/sodium thiosulfate; *Trade*— Not established.	Treatment of severe acute cyanide poisoning	Evreka, Inc., P.O. Box 1513, 1990 Broadway, New York, NY 10023.
Generic—ifosfamide; *Trade*—Not established	Treatment of soft tissue and bone sarcomas	Bristol-Myers Company, P.O. Box 4755, Syracuse, NY 13221-4755.
Generic—1-alpha-acetylmethadol (LAAM); *Trade*—Not established.	Treatment of heroin addicts suitable for maintenance on opiate agonists	Dixon and Williams, Pharmaceutical Co., Inc., 43 Old Wood Road, Bernardsville, NJ 07924.
Generic—1-carnitine; *Trade*—Vita Carn [1]	Genetic carnitine deficiency	Kendall McGaw Laboratories, P.O. Box 25080, Santa Ana, CA 92799-5080.
Generic—1-carnitine; *Trade*—Vita Carn	Treatment of manifestations of carnitine deficiency in patients with end stage renal disease (ESRD) who require dialysis.	Kendall McGaw Laboratories, P.O. Box 25080, Santa Ana, CA 92799-5080.
Generic—1-carnitine; *Trade*—Carnitor [1,2]	Primary and secondary carnitine deficiency of genetic origin	Sigma Tau, Inc., 723 North Beers Street, Holmdel, NJ 07733.
Generic—leucovorin; *Trade*—Leucovorin Calcium	For use in combination with 5-fluorouracil for the therapy of metastatic adenocarcinoma of the colon and rectum.	Lederle Laboratories Div., American Cyanamid Company, Pearl River, NY 10965.
Generic—L-5 hydroxytryptophan (L-5HTP); *Trade*—Not established.	Treatment of postanoxic intention myoclonus	Bolar Pharmaceutical Co., Inc., 130 Lincoln Street, Copiague, NY 11716.
Generic—mazindol; *Trade*—Sanorex	Treatment of Duchenne muscular dystrophy (DMD)	Platon J. Collipp, M.D., 176 Memorial Drive, Jesup, GA 31545.
Generic—mesna; *Trade*—Uromitexan	For use in inhibiting the urotoxic effects induced by ifosfamide	Bristol-Myers Company, P.O. Box 4755, Syracuse, NY 13221-4755.
Generic—methotrexate sodium; *Trade*—Methotrexate.	Treatment of osteogenic sarcoma	Lederle Laboratories, Pearle River, NY 10965.
Generic—midodrine HCl; *Trade*—Midamine	Treatment of idiopathic orthostatic hypotension	Roberts Laboratories, Inc., 230 Half Mile Road, Red Bank, NJ 07701.
Generic—monoclonal antiendotoxin antibody XMMEN-0E5; *Trade*—Same as generic.	Treatment of patients with gram-negative sepsis which has progressed to shock	Xoma Corporation, 2910 Seventh Street, Berkeley, CA 94710.
Generic—monooctanoin; *Trade*—Moctan [1,2]	Dissolution of cholesterol gallstones retained in the common bile duct	Ascot Pharmaceuticals Inc., 7701 N. Austin Avenue, Skokie, IL 60077.
Generic—naltrexone HCl; *Trade*—Trexan [1,2]	Blockade of the pharmacological effects of exogenously administered opioids as an adjunct to the maintenance of the opioid-free state in detoxified formerly opioid-dependent individuals.	E.I. duPont de Nemours (Inc.), dba Du Pont Pharmaceuticals, 1000 Stewart Avenue, Garden City, NY 11530.
Generic—oxymorphone HCl; *Trade*—Numorphan H.P.	Relief of severe intractable pain in narcotic-tolerant patients	Du Pont Pharmaceuticals, Inc., P.O. Box 12, Manati, PR 00701.
Generic—PEG-adenosine deaminase (PEG-ADA); *Trade*—Imudon.	For use as enzyme replacement therapy for ADA deficiency in patients with severe combined immunodeficiency (SCID).	Enzon, Inc., 300C Corporate Court, South Plainfield, NJ 07080.
Generic—pentamidine isethionate; *Trade*—Pentam 300 [1,2].	Pneumocystis carinii pneumonia	LyphoMed, Inc., 2020 Ruby Street, Melrose Park, IL 60160.
Generic—pentamidine isethionate; *Trade*—not established.	Pneumocystis carinii pneumonia	Rhone-Poulenc, Inc., 52 Vanderbilt Ave., New York, NY 10017.
Generic—physostigmine salicylate; *Trade*—Antilirium	Friedreich's and other inherited ataxias	Forrest Pharmaceuticals, Inc., 2510 Metro Boulevard, Maryland Heights, MO 64043-99.
Generic—potassium citrate; *Trade*—Urocit-K [1,2]	Prevention of calcium renal stones in patients with hypocitraturia and for the avoidance of the complication of calcium stone formation in patients with uric lithiasis. Prevention of uric acid nephrolithiasis	Charles Y.C. Pak, M.D., The Univ. of Texas Health Science Center at Dallas, 5323 Harry Hines Blvd., Dallas, TX 75235.
Generic—potassium citrate and citric acid; *Trade*—Polycitra-K.	For use in the dissolution and control of uric acid and cystine calculi in the urinary tract.	Willen Drug Company, 18 North High Street, Baltimore, MD 21202.
Generic—prednimustine; *Trade*—Sterecyt	Treatment of malignant non-Hodgkin's lymphomas	Smith Kline and French Laboratories, 1500 Spring Garden Street, Philadelphia, PA 19101.
Generic—quinacrine HCl; *Trade*—Not established	For use in the prevention of recurrence of pneumothorax in patients at high risk of recurrence, e.g., patients with cystic fibrosis.	LyphoMed, Inc., 2020 Ruby Street, Melrose Park, IL 60160.
Generic—rifampin; *Trade*—Rifadin I.V	For use as antituberculosis treatment where use of the oral form of the drug is not feasible.	Merrell Dow Pharmaceuticals, 2110 E. Galbraith Road, Cincinnati, OH 45215.
Generic—rifampin, isoniazid, pyrazinamide; *Trade*—Rifater V.	Short course treatment of tuberculosis	Merrell Dow Research Inst., 2110 E. Galbraith Rd., Cincinnati, OH 45215.
Generic—selegiline HCl; *Trade*—Deprenyl	Adjuvant to levodopa or levodopa and carbidopa treatment of idiopathic Parkinson's disease (paralysis agitans), postencephalitic parkinsonism, and symptomatic parkinsonism.	Somerset Pharmaceuticals, One Olde Town Court, Bernardsville, NJ 07924.
Generic—sodium gamma hydroxybutyrate (GHB); *Trade*—Catabate.	Narcolepsy and the auxiliary symptoms of cataplexy, sleep paralysis, hypnagogic hallucinations and automatic behavior.	Sigma F and D Division, Ltd., Sigma Chemical, Co. 3050 Spruce Street, St. Louis, MO 63103.
Generic—sodium monomercaptoundecahydro-*closo*-dodecaborate; *Trade*—Borolife.	Treatment of glioblastoma multiforme as an alternative to conventional photon therapy.	Nuclear Medicine, Inc., 900 Atlantic Drive, N.W., Atlanta, GA 30332.
Generic—sodium pentosan polysulphate; *Trade*—Elmiron.	Treatment of interstitial cystitis	Medical Market Specialities, Inc., P.O. Box 150, Boonton, NJ 07005.
Generic—sodium tetradecyl sulfate; *Trade*—Sotradecol.	Treatment of bleeding esophageal varices	Elkins-Sinn, Inc., 2 Esterbrook Lane, Cherry Hill, NJ 08003-4099.
Generic—somatrem; *Trade*—Protropin [1,2]	For long-term treatment of children who have growth failure due to a lack of adequate endogenous growth hormone secretion.	Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080.
Generic—somatrem; *Trade*—Protropin	Short stature associated with Turner's syndrome	Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080.
Generic—somatropin; *Trade*—Humatrope	For long-term treatment of children who have growth failure due to inadequate secretion of normal endogenous growth hormone.	Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285.
Generic—spiramycin; *Trade*—Rovamycine	For use in the symptomatic relief and parasitic cure of chronic cryptosporidiosis in patients with immunodeficiency.	Rhone-Poulenc, Inc., 52 Vanderbilt Ave., New York, NY 10017.
Generic—surface active extract of saline lavage of bovine lungs; *Trade*—Infasurf.	Treatment and prevention of respiratory failure due to pulmonary surfactant deficiency in preterm infants.	ONY Inc., TDC Incubation Center, 2211 Main Street, Buffalo, NY 14214.
Generic—surfactant TA (modified bovine lung surfactant extract); *Trade*—Not established.	For the prevention and treatment of neonatal respiratory distress syndrome (RDS)	Ross Laboratories, Division of Abbott Laboratories, 625 Cleveland Avenue, Columbus, OH 43216

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1986—Continued

[Drug designations]

Name of drug	Designated use	Sponsor's name and address
Generic—teniposide (VM-26); *Trade*—Not established.	Treatment of refractory childhood acute lymphocytic leukemia (ALL)	Bristol-Myers Co., Pharmaceutical Research & Development Division, P.O. Box 4755, Syracuse, NY 13221-4755.
Generic—terlipressin; *Trade*—Glypressin	For the treatment of bleeding esophageal varices	Ferring AB, Soldattorspvagen 5, Box 30651, 200 62 Malmo, Sweden.
Generic—thymone (TRH); *Trade*—Protirelin	Amyotrophic lateral sclerosis (ALS)	Abbott Laboratories, North Chicago, IL 60064.
Generic—tiopronin; *Trade*—Thiola	For use in the prevention of cystine nephrolithiasis in patients with homozygous cystinuria.	Charles Y.C. Pak, M.D., The Univ. of Texas Health Science Center at Dallas, 5323 Harry Hines Blvd., Dallas, TX 75235.
Generic—tranexamic acid; *Trade*—Cyklokapron	Treatment of hereditary angioneurotic edema	Kabi Vitrum, Inc., 1311 Harbor Bay Parkway, Alameda, CA 94501.
Generic—tranexamic acid; *Trade*—Cyklokapron [1 2]	Treatment of patients with congenital coagulopathies who are undergoing surgical procedures e.g. dental extractions.	Kabi Vitrum, Inc., 1311 Harbor Bay Parkway, Alameda, CA 94501.
Generic—tretinoin; *Trade*—Not established	Treatment of squamous metaplasia of the ocular surface epithelia (conjunctiva and/or cornea) with mucuos deficiency and keratinization.	Spectra Pharmaceutical Services, Inc., Hanover Business Park, 155 Webster Street, Hanover, MA 02339.
Generic—trientine HC1; *Trade*—Cuprid [1 2]	Treatment of patients with Wilson's disease who are intolerant, or inadequately reponsive to penicillamine.	Merck Sharp and Dohme Research Laboratories, Division of Merck and Co., Inc., West Point, PA 19486.
Generic—trimetrexate glucuronate; *Trade*—Not established.	Treatment of metastatic colorectal adenocarcinoma, metastatic carcinoma of the head and neck (i.e., buccal cavity, pharynx and larynx), and pancreatic adenocarcinoma. Treatment of Pneumocystis carinii pneumonia (PCP) in AIDS patients	Warner-Lambert Company, 2800 Plymouth road, P.O. Box 1047, Ann Arbor, MI 48106.
Generic—viloxazine hydrochloride; *Trade*—Vivalan	Treatment of narcolepsy and cataplexy	Stuart Pharmeceuticals Division of ICI Americas Inc., Wilmington, DE 19897.
Generic—zinc acetate; *Trade*—Not established	For use in the treatment of Wilson's disease	Lemmon Company, 650 Cathill Road, Sellersville, PA 18960.
Generic—^{131} I-metaiodobenzylquanidine; *Trade*—Not established.	Diagnostic adjunct in patients with pheochromocytoma	William H. Beierwaltes, M.D., Physician-in-charge, Nuclear Medicine, University of Michigan Medical Center, 1405 E. Ann Street, Ann Arbor, MI 48109.
Generic—^{131} I-6b-iodomethly-19-norcholesterol; *Trade*—Not established.	Adrenal cortical imaging	William H. Beierwaltes, M.D., Physician-in-charge, Nuclear Medicine, University of Michigan Medical Center, 1405 E. Ann Street, Ann Arbor, MI 48109.
Generic—2'-3'-dideoxycytidine; *Trade*—Not established.	Treatment of acquired immune deficiency syndrom (AIDS)	The Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A49, National Institutes of Health, Bethesda, MD 20892.
Generic—2,3-dimercaptosuc-cinic acid (DMSA); *Trade*—Not established.	Treatment of lead poisoning in children	Johnson and Johnson, Baby Products Co., Grandview Road, Skillman, NJ 08858.

[1] Approved for Marketing.
[2] Exclusive Approval.

[FR Doc. 87-2348 Filed 2-4-87; 8:45 am]

BILLING CODE 4160-01-M

Reader Aids

Federal Register

Vol. 52, No. 24

Thursday, February 5, 1987

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-1184
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-5240
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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 February 3, 1987