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

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 500

[No. 87-369]

Public-Use Forms; Technical Amendment

Dated: March 27, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its final regulation concerning Public-Use Forms published in the **Federal Register** on Friday, February 27, 1987 (52 FR 5942) in order to correct typographical and other technical errors contained in the Board's regulation.

EFFECTIVE DATE: April 2, 1987.

FOR FURTHER INFORMATION CONTACT: Colleen Devine, Chief, Management Analysis Staff, Administration Office (202) 377-6025, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because of the minor, technical nature of this corrective amendment, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Part 500

Organization and functions (government agencies).

Accordingly, the Board hereby amends Part 500, Subchapter A, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER A—GENERAL

PART 500—ORGANIZATION AND CHANNELLING OF FUNCTIONS

1. The authority citation for Part 500 continues to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 402, 48 Stat. 1256, as amended (12 U.S.C. 1725); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp., p. 1071; Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1986).

§ 500.31 [Amended]

2. In § 500.31, on page 5943, in the second column, remove line 37, and revise lines 38 to the end of the same column, excluding footnote #2, to read as follows:

AC—Application for Preliminary Approval for Conversion from Mutual to Stock Form (insured institutions).
PS—Proxy Statement in Connection with Conversion from Mutual to Stock Form (insured institutions).
OC—Offering Circular in Connection with Conversion from Mutual to Stock Form (insured institutions).

(2) Savings and Loan Holding Company forms (described more fully in § 584.10 of this chapter):

Form

H-(b)3—Registration Statement (Corporation as Trustee).
H-(b)4—Registration Statement (Creditor as savings and loan holding company).
H-(b)5—Registration Statement (Voting Trust).
H-(b)10—Registration Statement.
H-(b)11—Annual Report.
H-(b)12—Current Report.
H-(c)1—Notice Filing (Pursuant to § 584.2-1).
H-(d)2—Application under § 584.4.
H-(e)1—Application under § 584.4.

* * * * *

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87-7169 Filed 4-1-87; 8:45 am]

BILLING CODE 6720-01-M

12 CFR Part 564

[No. 87-368]

Recordkeeping Requirements; Technical Amendment

Dated: March 27, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; technical and clarifying amendment.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), has adopted a technical amendment and clarification to its regulation concerning the insurance coverage of joint accounts. The amended regulation clarifies that the signature card requirement of § 564.9(b) does not apply to any jointly held certificate of deposit account ("joint certificate accounts") evidenced by a negotiable instrument. In this regard, the amended regulation substitutes a general reference to joint certificate accounts issued in negotiable instrument form for the current reference to accounts issued pursuant to former §§ 545.1-5 and 563.3-3.

On March 3, 1987, the Board adopted a miscellaneous conforming and technical amendment to 21 parts of its regulations. (52 FR 7120 (March 9, 1987)). One of the sections amended was 12 CFR 564.9(b) (52 FR at 7124). Inadvertently the text of the regulatory language of the amendment to § 564.9(b) contained an incorrect reference to a section of the Code of Federal Regulations. By its action today the Board hereby revises § 564.9(b) to correct that error.

EFFECTIVE DATE: April 2, 1987.

FOR FURTHER INFORMATION CONTACT: Kathy Kresch, Attorney, (202) 377-6417 or Carol J. Johnson, Attorney, (202) 377-6357; Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Section 564.9(b) of the Board's Rules and Regulations for the FSLIC (the "Insurance Regulations") provides that, for a joint account to qualify for separate insurance coverage, each co-owner of the account must personally execute an account signature card and possess withdrawal rights. 12 CFR 564.9(b) (1986). However, in that section, the Board has exempted from the account signature card requirement "any account evidenced by a certificate of deposit which was issued pursuant to § 545.1-5 of this chapter or evidenced by a certificate which was issued pursuant to approval granted by § 563.3-3 of this chapter." *Id. See* 12 CFR 545.1-5 and 563.3-3 (1975). This reference is outdated because former §§ 545.1-5 and 563.3-3 of the Insurance Regulations, which prescribed certain terms for marketable certificate of deposit accounts issued by Federal associations and FSLIC-insured institutions, respectively, were deleted by Board Resolution No. 82-193 in 1982

as unnecessary. *See* 47 FR 13776 (1982). Since that time, however, references to §§ 545.1–5 and 563.3–3 in § 564.9(b) inadvertently have been left in place. Therefore, the Board is amending § 564.9(b) of its regulations to state that the signature card requirement of that section does not apply to any joint certificate account evidenced by a negotiable instrument.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because of the technical and clarifying nature of this amendment, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Part 564

Bank deposit insurance, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 564, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 564—SETTLEMENT OF INSURANCE

1. The authority citation for Part 564 continues 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. 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 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–405, 407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1728, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071. § 564.9 [Amended].

2. Revise the text of § 564.9(b) to read as follows:

§ 564.9 Joint accounts.

* * * * *

(b) *Qualifying joint accounts.* A joint account shall be deemed to exist for the purpose of insurance of accounts only if each co-owner has personally executed an account signature card and possesses withdrawal rights. The foregoing provisions of this paragraph (b) shall not be applicable with respect to any account evidenced by a certificate of deposit which was issued in negotiable instrument form.

* * * * *

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87–7170 Filed 4–1–87; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-ASW-33, Amdt. 39-5590]

Airworthiness Directives; Sikorsky Aircraft Model S-61 Series Helicopters

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 certain Sikorsky Model S–61 series helicopters certificated in any category by individual priority letters. The AD requires a reduction of the Sikorsky S–61 main rotor hub lower plate replacement time to 27,000 hours' time in service. The AD is needed to prevent cracking of the main rotor hub lower plate which could result in the loss of the helicopter.

DATES: *Effective Date:* April 21, 1987, as to all persons except those persons to whom it was made immediately effective by priority letter AD 86–23–08, issued November 17, 1986, which contained this amendment.

Compliance: As stated in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Donald F. Thompson, Boston Aircraft Certification Office, ANE–152, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 723–7113.

SUPPLEMENTARY INFORMATION: On November 17, 1986, priority letter AD No. 86–23–08 was issued and made effective immediately as to all known U.S. owners and operators of certain Sikorsky Model S–61 series helicopters. The AD was prompted by examination of additional data. The AD is needed to reduce the main rotor hub lower plate service life to 27,000 hours' total time in service. Specifically, any lower hub plate with more than 27,000 hours' time in service must be removed prior to further flight, unless previously accomplished, and thereafter removed on or before 27,000 hours' total time in service. This action is necessary to prevent operating with a main rotor lower hub plate which could develop cracks leading to the failure of the component.

Since it was found that immediate corrective action was required, it was determined that notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letters issued November 17, 1986, to all known U.S. owners and operators of certain Sikorsky Model S–61 series helicopters. These conditions still exist and the AD is hereby published in the **Federal Register**, with one minor editorial change, as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The FAA 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 Executive 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 action 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). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, 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.

§ 39.13 [Amended]

2. By adding the following new AD:

Sikorsky Aircraft: Applies to Model S–61 series helicopters, certified in any category, with main rotor hub lower plate, P/N S6110–23009–6 or –8, installed.

For helicopters with main rotor hub plates with more than 27,000 hours' time in service on the effective date of this AD, compliance is required prior to further flight, unless

already accomplished, and thereafter at intervals not to exceed 27,000 hours' time in service.

For helicopters with main rotor hub lower plate with 27,000 or less hours' time in service on the effective date of this AD, compliance is required prior to the accumulation of 27,000 hours' time in service, unless already accomplished, and thereafter at intervals not to exceed 27,000 hours' time in service.

To prevent cracking of the main rotor hub lower plate, accomplish the following:

(a) Remove and replace the main hub lower plate, P/N S6110–23009–6 or –8, with a new or an airworthy part of the same part number that has less than 27,000 hours' time in service.

(b) In accordance with FAR Sections 21.197 and 21.199, the helicopter may be flown to a base where compliance may be accomplished.

(c) An alternate method of compliance or adjustment of the initial compliance time which provides an equivalent level of safety may be approved by the Manager, Boston Aircraft Certification Office, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective April 21, 1987, as to all persons except those persons to whom it was made immediately effective by priority letter AD 86–23–08, issued November 17, 1986, which contained this amendment.

Issued in Fort Worth, Texas, on March 18, 1987.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 87–7201 Filed 4–1–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR PART 71

[Airspace Docket No. 86–AGL–35]

Establishment of Transition Area—Mora, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Mora, Minnesota, transition area to accommodate a new NDB Runway 35 Standard Instrument Approach Procedure (SIAP) to Mora 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 UTC, June 4, 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 Friday, January 16, 1987, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Mora, Minnesota, transition area (52 FR 1925).

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 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Mora, Minnesota, transition area to accommodate aircraft utilizing an NDB Runway 35 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.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Mora, MN [New]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Mora Municipal Airport (lat. 45°53'05"N., long. 93°16'20"W.); and within 3 miles each side of the 177° bearing from the Mora NDB (lat. 45°53'25"N., long. 93°16'04"W.) extending from the 5 mile radius to 8.5 miles south of the airport.

Issued in Des Plaines, Illinois, on March 18, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87–7204 Filed 4–1–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 86–ANE–37]

Amendment to Times of Designation for Restricted Areas R–4102A and B, Fort Devens, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the times of designation for Restricted Areas R–4102A and R–4102B, Fort Devens, MA, by reducing the published hours to more accurately reflect real time utilization of the airspace as a result of changing mission requirements of the using agency. Further, the Notice to Airmen (NOTAM) requirement is reduced from 48 hours in advance to 24 hours in advance for activation of R–4102A and R–4102B at other than the specified times.

EFFECTIVE DATE: 0901 UTC, June 4, 1987.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9253.

SUPPLEMENTARY INFORMATION:

History

On December 3, 1986, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to change the times of designation for Restricted Areas R–4102A and R–4102B, Fort Devens, MA (51 FR 43616). 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 73.41 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations reduces the times of designation for Restricted Areas R–4102A and R–4102B.

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

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

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

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

§ 73.41 [Amended]

2. Section 73.41 is amended as follows:

R–4102A Fort Devens, MA [Amended]

By removing the words "0000 Friday to 2359 Saturday local time; other times as specified by NOTAM issued 48 hours in advance." and substituting the words "0800 to 2200 Saturday local time; other times by NOTAM issued 24 hours in advance."

R–4102B Fort Devens, MA [Amended]

By removing the words "0000 Friday to 2359 Saturday local time; other times as specified by NOTAM issued 48 hours in advance." and substituting the words "0800 to 2200 Saturday local time; other times by NOTAM issued 24 hours in advance."

Issued in Washington, DC, on March 24, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–7202 Filed 4–1–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 87–AWP–3]

Alteration of Restricted Areas R–2531 A and B, Tracy, CA, and R–4809, Tonopah, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency for Restricted Areas R–2531 A and B located near Tracy, CA, and R–4809 located near Tonopah, NV. This action is necessary to reflect the change in name for the agency conducting energy and development research.

EFFECTIVE DATE: 0901 UTC, June 4, 1987.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9245.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to Part 73 of the Federal Aviation Regulations is to designate the Department of Energy as the using agency for R–2531 A and B and R–4809. The change in using agency does not alter the assignment of airspace or the type of activities conducted in the restricted areas. Since this amendment is procedural in nature and has no affect on airspace users, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Sections 73.25 and 73.48 of Part 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (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 73

Aviation safety, Restricted areas.

PART 73—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

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

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

§73.23 [Amended]

2. Section 73.23 is amended as follows:

R–2531A Tracy, CA [Amended]

By removing the present using agency and substituting the following: Using agency, Department of Energy, San Francisco Operations Office, CA.

R–2531B Tracy, CA [Amended]

By removing the present using agency and substituting the following: Using agency, Department of Energy, San Francisco Operations Office, CA.

§73.48 [Amended]

3. Section 73.48 is amended as follows:

R–4809 Tonopah, NV [Amended]

By removing the present using agency and substituting the following: Using agency, Department of Energy, Albuquerque Operations Office, NM.

Issued in Washington, DC, on March 24, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–7203 Filed 4–1–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

AGENCY: Customs Service, Treasury.

ACTION: Notice of Calculation of Interest.

SUMMARY: The Tax Reform Act of 1986 established a new method of determining the adjusted rate of interest on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate and is adjusted quarterly. This notice advises the public that the interest rate, as set by the Internal Revenue Service, will be 9 percent for underpayments and 8 percent for overpayments for the quarter beginning April 1, 1987. It is being published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Robert Hamilton, Revenue Branch, National Finance Center, U.S. Customs Service, P.O. Box 68901, Indianapolis, IN 46268, (317) 298–1245.

SUPPLEMENTARY INFORMATION:

Background

By notice published in the **Federal Register** on January 5, 1987 (52 FR 255), Customs advised the public that the Tax Reform Act of 1986 (Pub. L. 99–514), amended 26 U.S.C. 6621 mandating a new method of determining the interest rate paid on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate. As amended, 26 U.S.C. 6621 provides that the interest rate that Treasury pays on overpayments will be the short-term Federal rate plus 2 percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus 3 percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and are to fluctuate quarterly. The rates are determined during the first month of a calendar quarter and become effective for the following quarter. The notice of January 5, 1987, provided that the rate of interest for the period of January 1, 1987–April 1, 1987, was 9 percent for underpayments and 8 percent for overpayments. The Internal Revenue Service has announced that the interest rates will remain unchanged for the second quarter of 1987.

Determination

It has been determined that the rate of interest for the period of April 1, 1987–July 1, 1987, is 9 percent for underpayments and 8 percent for overpayments. This rate will remain in effect until July 1, 1987, when it is subject to change. These rates will remain in effect until changed by another notice in the **Federal Register**. Appropriate amendments will be made to the Customs Regulations in a future document.

Dated: March 27, 1987.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 87–7197 Filed 4–1–87; 8:45 am]

BILLING CODE 9104-25-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 6H5504/R870; FRL 3180–2]

Pesticide Tolerance for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a food additive regulation for the combined residues of the fungicide iprodione, its isomer and metabolite in or on the food commodity dried ginseng, when present therein as a result of application of the fungicide to the growing crop. The regulation to establish a maximum permissible level for residues of the fungicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: Effective on April 2, 1987.

ADDRESS: Written objections, identified by the document control number (FAP 6H5504/R870) may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of November 12, 1986, (51 FR 41004) that announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted food additive petition 6H5504 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project and the Agricultural Experiment Stations of Kentucky and North Carolina proposinge to establish a regulation to permit the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethy)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidine-carboxamide in or on the food commodity dried ginseng at 4 parts per million (ppm).

The data submitted in the petition and other relevant material have been evaluated and discussed in a related document [PP 6E3426/R410] proposing a tolerance for iprodione in or on ginseng, published in the **Federal Register** of February 11, 1987 (52 FR 4356).

The metabolism of iprodione is adequately understood and an adequate analytical method, gas liquid chromatography using an electron capture detector, is available for enforcement purposes. An analytical enforcement method is currently available in the Pesticide Analytical Manual (PAM) Volume II. The pesticide is considered useful for the purpose for which the regulation is sought, and it is concluded that the fungicide can be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended (86 Stat. 973, 7 U.S.C. 135(a) et seq.). Therefore, the food additive regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if

the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food additive levels or conditions for safe use of additives, or raising such food additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests, Recording and recordkeeping requirements.

Dated: March 16, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 193—[AMENDED]

Therefore, 21 CFR Part 193 is amended as follows:

1. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 193.253 is amended by adding and alphabetically inserting the food commodity dried ginseng to read as follows:

§ 193.253 Iprodione.

* * * * *

Foods	Parts per million
Ginseng, dried	4.0

* * * * *

[FR Doc. 87–7259 Filed 4–1–87; 8:45 am]

BILLING CODE 6560–50–M

21 CFR Parts 193 and 561

[FAP 1H5280/R879; FRL 3180–3]

Pesticide Tolerances for Clopyralid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish food and feed additive regulations to permit residues of the herbicide clopyralid, in or on certain food and feed commodities. These regulations, to establish maximum permissible levels for residues of clopyralid, were requested by Dow Chemical Co., USA.

EFFECTIVE DATE: Effective on April 2, 1987.

ADDRESS: Written objections, identified by the document control number [FAP 1H5280/R879], may be submitted to the Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Richard Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of December 24, 1980 (45 FR 85153), which announced that Dow Chemical Co., USA, P.O. Box 1706, Midland, MI 48640 submitted food/feed petition 1H5280 proposing to amend 21 CFR Parts 193 and 561 by establishing regulations permitting residues of clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the commodity milling fractions (except flour) of wheat at 5 parts per million (ppm).

Dow Chemical Co. subsequently amended the petition (48 FR 32078; July 13, 1983) by proposing tolerances in or on the commodities milling fractions (except flour) of barley, wheat, and oats at 12 ppm.

There were no comments received in response to the notices of filing.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the tolerances were discussed in the final rule document [PP 1F2439, 4F3054/R878], appearing elsewhere in this issue of the **Federal Register.**

Based on the NOEL of 15 milligrams/kilogram (mg/kg) in a 2-year rat chronic feeding/oncogenicity feeding study and a 100-fold safety factor, the provisional acceptable daily intake (PADI) has been set at 0.15 mg/kg/day. These tolerances and those established in [PP 1F2439, 4F3054/R878] final rule document, have a theoretical maximum residue contribution of 0.0075 mg/kg/day and will utilize 5.06 percent of the PADI.

The nature of the residue is adequately understood and an adequate analytical method, gas chromatography, is available for enforcement purposes. Because of the long lead-time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Anallytical Manual Volume II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

William Grosse, Chief, Information Services Branch, Program Management and Support Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St: SW,

Office location and telephone number: Room 223, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Adequate tolerances for secondary residues in meat, milk, poultry, and eggs resulting from this use of the pesticide are established in the final rule document cited in the preceeding paragraph. There are currently no regulatory actions pending against the pesticide.

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animals feeds, Pesticides and pests.

Dated: March 23, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 21 CFR, Chapter I, is amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 193.472 is added to Subpart A to read as follows:

§ 193.472 Clopyralid.

Tolerances are established for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid), in or on the following foods:

Foods	Parts per million
Barley, milled fractions (except flour)	12.0
Oats, milled fractions (except flour)	12.0
Wheat, milled fractions (except flour)	12.0

PART 561—[AMENDED]

2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 561.439 is added to read as follows:

§ 561.439 Clopyralid.

Tolerances are established for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid), in or on the following feeds:

Feeds	Parts per million
Barley, milled fractions (except flour)	12.0
Oats, milled fractions (except flour)	12.0
Wheat, milled fractions (except flour)	12.0

[FR Doc. 87-7261 Filed 4-1-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 54 and 602

[T.D. 8133]

Payment of Excise Tax on Reversion of Qualified Plan Assets to Employer

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations regarding the payment of the excise tax by employers receiving (directly or indirectly) reversions of qualified plan assets required by the Tax Reform Act of 1986. The regulations would provide the public with guidance needed to file the appropriate returns and would affect all employers maintaining qualified plans who receive reversions of qualified plan assets. The text of the temporary regulations set forth in this document serves as the comment document for the notice of propose rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These amendments are applicable for reversions occurring after December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Suzanne K. Tank of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3938, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations regarding the payment of the excise tax on reversions of qualified plan assets imposed by section 4980 of the Internal Revenue Code of 1986. Since the excise tax added by section 1132 of the Tax Reform Act of 1986 applies to reversions occurring after December 31, 1985, there is a need for immediate guidance relating to the manner and time for paying the excise tax so that employers maintaining qualified plans can comply. These regulations will remain in effect until superseded by final regulations on this subject.

Explanation of Provisions

Section 1132 of the Tax Reform Act of 1986 adds section 4980 to the Internal Revenue Code of 1986. Section 4980 imposes a tax of 10 percent of the amount of any employer reversion from a qualified plan. The tax imposed shall be paid by the employer maintaining the plan.

This Treasury decision provides that employers shall pay this tax quarterly and the tax will be due not later than the last day of the second month following the calendar quarter in which the reversion occurs.

Nonapplicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Paperwork Reduction Act

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. The requirements have been approved by OMB under control number 1545-0575.

Regulatory Flexibility Act

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

Drafting Information

The principal author of this regulatory amendment is Suzanne K. Tank of Employee Plans and Exempt Organizations 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 54

Pensions.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of amendments to the regulations

Accordingly, 26 CFR Parts 54 and 602 are amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority for Part 54 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. New § 54.6011-1T is added immediately after § 54.6011-1 to read as follows:

§ 54.6011-1T General requirement of return, statement, or list (temporary).

Every employer liable for the tax imposed under section 4980(a) with respect to an employer reversion (as defined in section 4980(c)(2)) shall file a quarterly return on Form 5330 and shall include therein the information required by such form and the instructions issued with respect thereto. The quarterly return on Form 5330 shall be filed with respect to employer reversions from each qualified plan (as defined in section 4980(c)(1)).

Par 3. New § 54.6071-1T is added immediately after § 54.6011-1T to read as follows:

§ 54.6071-1T Time for filing returns (temporary).

(a) *In general.* Each quarterly return required by § 54.6011-1T shall be filed not later than the last day of the second

month following the calendar quarter in which the reversion occurs.

(b) *Extension of time for filing with respect to certain reversions.* All returns required by § 54.6011–1T for reversions occurring on or before March 31, 1987 shall be filed not later than May 31, 1987.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par 4. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101(c) [Amended]

Par 5. Section 602.101(c) is amended by inserting in the appropriate places in the table "§ 54.6011–1T. . . . . .1545–0575" and "§ 54.6071–1T. . . . . .1545–0575".

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it would be impractical to issue it first under the notice and comment procedure provided in 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: March 18, 1987.

J. Edger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 87–7306 Filed 4–1–87; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

Disposal of Mineral Materials

AGENCY: Forest Service, USDA.

ACTION: Interim rule; request for public comment.

SUMMARY: Existing regulations at 36 CFR Part 228, Subpart C authorize the noncompetitive sale of mineral materials up to 100,000 cubic yards in any one sale or 200,000 cubic yards in any one State for the benefit of any applicant in any period of twelve consecutive calendar months. This interim rulemaking would authorize the noncompetitive sale of larger amounts of mineral materials upon a determination by the Chief of the Forest Service that disposal of mineral materials in excess of the volume limitations is necessary to respond to emergency situations, to prevent the curtailment of locatable mineral operations which generate large volumes of mineral materials as a by-product, or to respond to a critical public need for the prompt development of mineral leases or mining claims on federal lands. The agency is also requesting comments on the interim rule which it will consider in developing a final rule.

DATES: This rule is effective April 2, 1987. Comments on this rule are due on or before June 1, 1987.

ADDRESS: Send comments or inquiries to: F. Dale Robertson, Chief, (2650), Forest Service, USDA, P.O. Box 96090, Washington DC 20013–6090. The public may inspect comments received at the office of the Minerals and Geology Management Staff located in Room 606, 1621 North Kent Street, Arlington, VA, during regular business hours (8:00 a.m. to 4:00 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Steve Marshall, Minerals and Geology Staff, Forest Service, USDA, (703) 235–3142.

SUPPLEMENTARY INFORMATION: The Materials Act of July 31, 1947 [30 U.S.C. 601 et seq.] allows the Secretary of Agriculture to sell mineral materials noncompetitively where their competitive sale would be impracticable. Existing regulations at 36 CFR Part 228, Subpart C covering sales of mineral materials limit the noncompetitive sale of mineral materials to 200,000 cubic yards or weight equivalent to any entity per year per State. These regulations require that the United States receive the appraised fair market value for any mineral materials sold noncompetitively. The existing regulations do not provide for situations where the disposal of larger quantities of mineral materials is necessary to respond to emergency situations affecting public health, safety, or property, to prevent the curtailment of locatable mineral operations which generate large volumes of mineral materials as a by-product, or to respond to a critical public need for the prompt development of mineral leases issued by the United States or mining claims located under the United States mining laws.

A situation has arisen in California wherein a claimant mining locatable minerals on a National Forest may be forced to periodically cease its operations because of the 200,000 cubic yard limitation currently in effect. The claimant has a mining operation for locatable minerals where sand and gravel are produced as a by-product. Until now, this sand and gravel has been disposed of through noncompetitive sales to the claimant. It has been impractical to offer the material competitively. This impracticality is brought on by the sand and gravel production being an integral part of the mining operation. The production rate of sand and gravel is determined by the production schedule for locatable minerals. Previously, by-product sand and gravel has been of small enough volumes that the yardage limitation has not posed a problem. Now, however, increased production of locatable minerals is scheduled. This will result in more sand and gravel being produced than can be accommodated noncompetitively under the existing regulations. This situation has convinced the Agency that it needs the flexibility to meet such rare needs in the future, wherever they may arise.

In addition to the current situation, future emergency need for disposal of this class of materials may not permit the time-consuming competition required by 36 CFR 228.58. Emergencies might include such situations as large volumes of sand and gravel being needed for constructing dikes during floods. The Agency has determined that it cannot meet a current or future emergency need without amending the existing regulations in Part 228.

This interim rulemaking will give the Forest Service the flexibility to meet a request for the noncompetitive sale of large amounts of mineral materials and to meet situations where property, health and safety are threatened. This authority will be equally applicable to all entities, whether large or small. It is similar to a rulemaking made by the Bureau of Land Management in June of 1986 [43 CFR Part 3610; 51 FR 22079; June 18, 1986].

Immediate provision for authorizing noncompetitive sales of mineral materials in excess of the volume limitations presently set forth at 36 CFR 228.59 is necessary to ensure that environmental damage and safety hazards on National Forest System Lands are prevented. If this authority is not effective immediately, the Forest Service also may be unable to respond to emergencies affecting public health, safety and property that may occur in the short-term. Therefore, in accordance with the exception in the rulemaking procedures 5 U.S.C. 553(b) and Department of Agriculture policy (36 FR 13804), it has been found upon good public cause that prior notice and other public procedures with respect to this interim rule are both impracticable and contrary to the public interest. Making the interim rule effective immediately upon publication also is consistent with the exception in the rulemaking procedures at 5 U.S.C. 553(d) which

allows a rule to take effect without thirty days prior public notice when the rule relieves a restriction such as the unconditional volume limitation set forth at 36 CFR 228.59. The Forest Service invites the public to comment on the interim rule. These comments will be considered in development of a final rule.

Based on both past experience and environmental analysis, this proposed rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

This rule has been reviewed under Executive Order 12291 and USDA procedures and it has been determined that this rule is not a major rule. Additionally, it will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The interim rulemaking contains no information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3501 et. seq.

List of Subjects in 36 CFR Part 228

Administrative practice and procedure, Environmental protection, Mines, National forests, Public lands—mineral resources, Rights of way, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

Therefore, for the reasons set forth above, Subpart C of Part 228 of Title 36 of the Code of Federal Regulations is amended as follows:

PART 228—[AMENDED]

1. The Authority citation for Part 228 continues to read as follows:

Authority: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551), and 94 Stat. 2400.

2. Amend § 228.59 by adding a new paragraph (e) to read as follows:

§ 228.59 Negotiated or noncompetitive sales.

* * * * *

(e) *Exceptions.* (1) The Chief of the Forest Service may authorize the noncompetitive sale of mineral materials in excess of the volume limitations in paragraphs (a), (b), and (d) of this section when necessary to:

(i) Respond to an emergency affecting public health, safety or property;

(ii) prevent the curtailment of operations conducted under the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 et seq.) which generate large volumes of mineral materials as a by-product; or

(iii) respond to a critical public need for the prompt development of a mineral lease issued by the United States or a mining claim located under the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 et seq.).

(2) Any noncompetitive sale of mineral materials in excess of the volume limitations in paragraphs (a), (b), and (d) shall be subject to such restrictions as the Chief of the Forest Service determines to be in the public interest.

(3) Nothing in this paragraph shall otherwise alter the requirements of paragraphs (a) through (d) of this section.

Dated: March 27, 1987.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 87-7304 Filed 4-1-87; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 1F2439, 4F3054/R878; FRL 3180-1]

Pesticide Tolerances for Clopyralid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide clopyralid, in or on certain raw agricultural commodities. This regulation, to establish maximum permissible levels for residues of clopyralid in or on the commodities, was requested by Dow Chemical Co., USA.

EFFECTIVE DATE: Effective on April 2, 1987.

ADDRESS: Written objections, identified by the document [PP 1F2439, 4F3054/R878], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued notices which announced the filing and/or amendment of pesticide petition (PP) 1F2439 by Dow Chemical Co., USA, P.O. Box 1706, Midland, MI 48640, proposing tolerances for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid), in or on certain raw agricultural commodities in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

The following chart shows a summary of actions on PP 1F2439 for various raw agricultural commodities, from the initial filing notice (45 FR 85153; December 24, 1980) to the amendments in 52 FR 8528 of March 18, 1987. The series of amendments during the period July 13, 1983 to March 18, 1987, consist of increasing the tolerance levels and/or proposing additional tolerances.

Commodities	45 FR 85153 Dec 24, 1980	48 FR 32078 Jul 13, 1983	51 FR 30542 Aug 17, 1986	51 FR 36853 Oct 16, 1986	52 FR 8528 Mar 18, 1987
Barley:					
Forage	5.0	9.0			
Grain	1.5	3.0			
Straw	8.0	9.0			
Cattle:					
Fat	0.05	0.1	0.2	1.0	
Meat	0.05	0.1	0.2	1.0	
Mbyp†	0.05	0.1	0.2	*1.0	
Kidney	0.10		5.0	12.0	
Eggs	0.05				
Goats:					
Fat			0.2	1.0	
Meat			0.2	1.0	
Mbyp			0.2	*1.0	
Kidney			5.0	12.0	
Hogs:					
Fat	0.05	0.1			0.2
Meat	0.05	0.1			0.2
Mbyp	0.05	0.1			0.2
Horses:					
Fat	0.05		0.2	1.0	
Meat	0.05		0.2	1.0	
Mbyp	0.05		0.2	*1.0	
Kidney			5.0	12.0	
Milk, whole	0.05				

Commodities	45 FR 85153 Dec 24, 1980	48 FR 32078 Jul 13, 1983	51 FR 30542 Aug 17, 1986	51 FR 36853 Oct 16, 1986	52 FR 8528 Mar 18, 1987
Oats:					
Forage	5.0	9.0			
Grain	2.0	3.0			
Straw	5.0	9.0			
Poultry:					
Fat	0.05				0.2
Meat	0.05				0.2
Mbyp	0.05				0.2
Sheep:					
Fat	0.05	0.1	0.2	1.0	
Meat	0.05	0.1	0.2	1.0	
Mbyp			0.2	*1.0	
Kidney	0.05	0.1	5.0	12.0	
Wheat:					
Forage	5.0	9.0			
Grain	1.5	3.0			
Straw	8.0	9.0			

† Meat byproducts.
*Tolerance for liver withdrawn.

In the **Federal Register** of April 18, 1984 (49 FR 15267) EPA announced that Dow Chemical Co., USA filed PP 4F3054 proposing a tolerance for residues of the herbicide clopyralid in or on forage grasses at 100 ppm, subseqently amended in 51 FR 36853, October 16, 1986, by increasing the tolerance level to 500 ppm and changing the commodity description to "grasses, forage and hay".

There were no comments received in response to the notices of filing.

A related document (FAP 1H5280/R879), establishing regulations permitting residues of clopyralid in or on certain food and feed items, appears elsewhere in this issue of the **Federal Register.**

The Agency has evaluated the data submitted in the petition and other relevant material. The data considered include:

1. Plant and animal metabolism studies.
2. A rat oral lethal dose (LD50) with an LD50 of 4,300 milligrams/kilogram (mg/kg) of body weight.
3. A 13-week mouse feeding study with a no-observed-effect level (NOEL) of 750 mg/kg/day.
4. A 180-day feeding study with a NOEL greater than (>) 150 mg/kg/day, the highest dose tested (HDT).
5. A pilot rabbit teratology and a rabbit teratology study with a developmental NOEL >250 mg/kg/day (HDT).
6. A rat teratology study with a developmental NOEL of 250 mg/kg/day (HDT) and a maternal toxicity NOEL of 75 mg/kg/day.
7. A 2-generation rat reporoduction study with a reproductive NOEL of >1,500 mg/kg/day.
8. A 1-year dog feeding study with a NOEL of 100 mg/kg/day.
9. A 2-year rat chronic feeding/oncogenicity study with a NOEL of 50 mg/kg/day with no observed oncogenic potential under conditions of the study up to and including 150 mg/kg/day (HDT).
10. A repeat 2-year rat chronic feeding/oncogenicity study with a NOEL of 15 mg/kg/day with no observed oncogenic potential under conditions of the study up to 1,500 mg/kg/day (HDT).
11. A 2-year mouse oncogenicity study with no observed oncogenic potential under conditions of the study up to and including 2,000 mg/kg/day (HDT).
12. A dominant lethal assay, negative.
13. *In vivo* rat cytogenic study, negative.
14. *In vitro Salmonella* and *Saccharomyces* assay, negative.
15. An *in vivo* mouse host mediated assay, negative.

Based on a NOEL of 15 mg/kg/day in the repeat 2-year chronic feeding oncogenicity study and a 100-fold safety factor, the provisional acceptable daily intake (PADI) has been set at 0.15 mg/kg/day. These tolerances, and those established elsewhere in this issue of the **Federal Register,** have a theoretical maximum residue contribution of 0.0075 mg/kg/day and would utilize 5.06 percent of the PADI.

There are no regulatory actions pending against the registration of clopyralid. The metabolism of clopyralid in plants and animals is adequately understood for purposes of the tolerances set forth below. An analytical method, gas chromatography, is available for enforcement purposes. Because of the long lead-time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual Volume II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

William Grosse, Chief, Information Service Branch, Program Management and Support Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Room 223, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

The tolerances are adequate to cover residues that would result in meat, milk, poultry, and eggs. The Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register,** file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subject in 40 CFR Part 180

Administrative practice and procedure, Agricultural commmodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 23, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.431 is added to Subpart C to read as follows:

§ 180.431 Clopyralid; tolerances for residues.

Tolerances are established for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the following raw agricultural commodities:

Commodities	Parts per million
Barley, forage	9.0
Barley, grain	3.0
Barley, straw	9.0
Cattle, fat	1.0
Cattle, kidney	12.0
Cattle, meat	1.0
Cattle, meat byproducts (except kidney)	1.0
Eggs	0.1
Goats, fat	1.0
Goats, kidney	12.0
Goats, meat	1.0
Goats, meat byproducts (except kidney)	1.0
Grasses, forage and hay	500.0
Hogs, fat	0.2
Hogs, meat	0.2
Hogs, meat byproducts	0.2
Horses, fat	1.0
Horses, Kidney	12.0
Horses, meat	1.0
Horses, meat byproducts (except kidney)	1.0
Milk	0.1
Oats, forage	9.0
Oats, grain	3.0
Oats, straw	9.0
Poultry, fat	0.2
Poultry, meat	0.2
Poultry, meat byproducts	0.2
Sheep, fat	1.0
Sheep, kidney	12.0
Sheep, meat	1.0
Sheep, meat byproducts (except kidney)	1.0
Wheat, forage	9.0
Wheat, grain	3.0
Wheat, straw	9.0

[FR Doc. 87-7260 Filed 4-1-87; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 5F3299/R877; (FRL-3179-8)]

Pesticide Tolerance for Lactofen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide lactofen in or on soybeans. This regulation to establish the maximum permissible level for residues of lactofen in or on soybeans was requested by PPG Industries, Inc.

EFFECTIVE DATE: Effective on April 2, 1987.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of November 6, 1985 (50 FR 46178), which announced that PPG Industries, Inc., One PPG Place, Pittsburgh, PA 15272, had submitted a pesticide petition (5F3299) to EPA proposing that 40 CFR Part 180 be amended by establishing tolerances for the herbicide lactofen, 1-(carboethoxy) ethyl-5-[2-chloro-4-(trifluoromethyl) phenoxy]-2-nitrobenzoate, in or on the commodity soybeans at 0.01 part per million (ppm).

PPG Industries subsequently amended the petition, and notice was published in the **Federal Register** of March 25, 1987 (52 FR 9535), proposing that 40 CFR Part 180 be amended by establishing tolerances for combined residues of lactofen, 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl) phenoxy]-2-nitrobenzoate and its associated metabolites containing the diphenyl ether linkage expressed as lactofen in or on the commodity soybeans at 0.05 ppm.

There were no comments received in response to the original notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered include plant and animal metabolism studies; a rat oral lethal dose (LD_{50}) with an LD_{50} of 5,960 milligrams/kilogram (mg/kg) of body weight; a 90-day rat feeding study with a no-observed-effect level (NOEL) of 10 mg/kg/day (200 ppm); a rat teratology study with a maternal and developmental NOEL of 50 mg/kg/day with no terata up to and including 150 mg/kg/day (highest dose); a rabbit teratology study with a maternal NOEL of 4 mg/kg/day with no developmental toxicity up to and including 20 mg/kg/day (highest dose); a two-generation rat reproduction study with a NOEL of 2.5 mg/kg/day (50 ppm); a 1-year dog feeding study with a NOEL of 5 mg/kg/day (200 ppm); an 18-month mouse oncogenicity study with a statistically significant increased combined incidence of liver adenomas and carcinomas in both sexes at 37.5 mg/kg/day (250 ppm, highest dose) and a systemic Lowest Effect Level (LEL) of 1.5 mg/kg/day based on increased liver weight and hepatocytomegaly; a 2-year rat chronic feeding/oncogenicity study with a systemic NOEL of 25 mg/kg/day (500 ppm) and a statistically significant increased incidence of neoplastic nodules and foci of cellular alteration in the liver of both sexes at 100 mg/kg/day (2,000 ppm, highest dose); a rat hepatocyte unscheduled DNA synthesis assay, negative; a DNA Covalent Binding in mouse liver suggests a very low binding capacity; a chromosomal aberration study in Chinese hamster ovary cells (CHO), negative; an Ames test, negative; a second Ames test, positive in strain TA 1538 of *Salmonella typhimurium* at 5,000 and 7,500 ug/plate (precipitates formed in plates); and a mouse hepatocyte primary culture/DNA repair assay, negative.

The Agency has evaluated dietary exposure to lactofen residues for the commodity proposed. Assuming that 100 percent of the soybean crop will have residues at the tolerance level (0.05 ppm), using a multistage model the "worst case" incremental dietary oncogenic risk is calculated to be 2.9 incidences in one million (2.9×10^{-6}). Actual risk will be less, since not all of the soybean crop will be treated, and those crops treated and sold will have residues less than 0.05 ppm. The 0.05 ppm level is based on a very conservative assumption that the herbicide and four metabolites could each be present in an amount just below the level of detection of the individual compounds (0.01 ppm).

Based on the LEL at the lowest dose tested of 1.5 mg/kg/day in the mouse oncogenicity study and a thousandfold safety factor, the acceptable daily intake (ADI) has been set at 0.0015 mg/kg/day with a maximum permissible intake of 0.09 mg/day for a 60-kg person. These tolerances have a theoretical maximum residue contribution of 0.000017 mg/day in a 1.5 kg diet and would utilize 1.13 percent of the ADI.

There are no regulatory actions pending against the registration of lactofen. The metabolism of lactofen in plants and animals is adequately understood for purposes of the tolerances set forth below. An analytical method, electron capture gas chromatography, is available for enforcement purposes. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the "Pesticide Analytical Manual Volume II," the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

William Grosse, Chief, Information Services Branch, Program Management and Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 223, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

There is no expectation of secondary residues in meat, milk, poultry, and eggs.

Based on the information cited above, the Agency has determined that establishing the tolerances for residues of the pesticide in or on the listed commodity will protect the public health. Therefore, tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objection must state the issues for the hearing and the grounds for the objection. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Section 408(e), 68 Stat. 514 (21 U.S.C. 346(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 18, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.431 is added to read as follows:

§ 180.431 Lactofen; tolerance for residues.

Tolerances are established for the combined residues of lactofen, 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate and its associated metabolites containing the diphenyl ether linkage expressed as lactofen in or on soybeans at 0.05 part per million.

[FR Doc. 87–7258 Filed 4–1–87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[FRL–3179–2]

Oregon; Schedule of Compliance for Modification of Oregon's Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Notice of Oregon's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986, EPA promulgated amendments to 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 Oregon to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: David Hanline (HW–112), Waste Management Branch, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442–2858.

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 (Sec. 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. Oregon

Oregon received final authorization of its hazardous waste program on January 31, 1986 (51 FR 3779, Thursday, January 30, 1986). Today EPA is publishing a compliance schedule for Oregon to obtain program revisions for the following Federal program requirement:

3006(f)—Availability of Information

The Oregon Department of Environmental Quality has agreed to obtain the needed program revisions according to the following schedule.

Regulations drafted by 2/27/87
Regulations submitted to EPA for review by 3/6/87
Public hearing on regulations by 4/17/87
Regulations submitted to the Oregon Environmental Quality Commission for adoption by 5/29/87

Oregon expects to submit an application to EPA for authorization of the above mentioned program revisions by July 1, 1987.

Authority

This notice is issued under the authority of Sec. 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: March 20, 1987.

Robie G. Russell,

Regional Administrator.

[FR Doc. 87–7257 Filed 4–1–87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73, 74, and 78

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends regulations in 47 CFR Parts 2, 73, 74 and 78. Amendments are made to correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for clarity and ease of understanding.

EFFECTIVE DATE: April 2, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division, Mass Media Bureau: (202) 632–5414.

SUPPLEMENTARY INFORMATION:

Order

Adopted: February 26, 1987.
Released: March 12, 1987.
By the Chief, Mass Media Bureau.

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) In § 73.37, Applications for broadcast facilities, showing required, there are cross references to paragraph (o) of § 73.182. The references appear in

paragraphs (e) and (f). Both references should read § 73.182(1), and are corrected to so state herein. (See rule change item 3).

(b) Section 73.40 was removed from the rules in the Report and Order in Mass Media Docket 85–125 (51 FR 2704, January 21, 1986).

Cross references to it remain in three rule sections: 2.983, Application for type acceptance; 73.51, Determining operating power and 73.1690, Modification of transmission systems.

Deletion of references to § 73.40, and adding new cross references, as appropriate, are accomplished in this Order. (See rule change items 2, 4 and 11).

(c) In § 73.51, Determining operating power, paragraph (c)(2)(ii) incorrectly cross references § 73.1590(b)(1) (i) through (v), and § 73.40. (The amendment to § 73.51 to remove the § 73.40 reference is addressed in paragraph (b) above).

Section 73.1590, Equipment performance measurements, was amended in February and May, 1986. Those amendments substantially revised paragraph (b) of the section. It presently states that "measurements for spurious and harmonic emissions must be made to show compliance with transmission system requirements of § 73.44 for all AM stations. . . .", thereby directing the rule user to "AM transmission system emission limitations" found in that section.

We change § 73.51 herein to directly reference § 73.44 without detouring via § 73.1590. (See rule change item 4).

(d) The term "Hertz", as a synonym for cycle per second, has been used internationally for some years along with its derivatives kilohertz (kHz), megahertz (MHz), etc.

The Commission previously adopted an Order making the change from cycles per second to Hertz wherever appropriate in our rules. Several cycles per second designations still remain in Parts 73 and 74. Via this Order corrective changes are made. (See rule change items 5, 7, 8 and 14).

(e) The opening sentence of § 73.186 refers to the requirements of § 73.45, mentioning specifically minimum height and field strength requirements. Section 73.45, in turn, directs the rule user to see § 73.189 for this information. The opening reference in § 73.186 is changed to directly refer to § 73.189 rather than § 73.45. (See rule change item 6).

(f) The FCC's multiple broadcast station ownership rules were formerly in the separate service subparts for AM, FM and TV: Subparts A, B and E respectively. In the Report and Order in the multiple ownership proceeding (BC Docket 78–239, MM Docket 83–46; 49 FR 19482, May 8, 1984) the Commission eliminated the separate rule sections in Subparts A, B and E and adopted a single new rule, § 73.3555, Multiple ownership, and located it in Subpart H—Rules Applicable to All Broadcast Stations.

Cross references to the eliminated rule sections remain in three rules in Parts 73 and 74: Sections 73.311, 74.732 and 74.1232. Revisions are made herein to correct the cross references to read § 73.3555. (See rule change items 9, 13 and 15).

(g) By Order, adopted March 4, 1986 (51 FR 9963, March 24, 1986), the Commission added a Note to § 73.315, Transmitter location, following paragraph (a). The Note clarified that minimum field strengths specified in § 73.315(a) did "not apply to noncommercial educational FM broadcast stations." However, this exclusion is only applicable if the noncommercial FM station operates on reserved channels. Some operate on commercial channels. The Note is clarified herein to grant exclusion as originally intended to the field strength requirements of § 73.315(a) only if the noncommercial FM station *operates on reserved channels 200 through 220.* (See rule change item 10).

(h) In the Report & Order, BCD 81–497 (47 FR 9214, March 4, 1982) the Commission added a new paragraph (e) to § 74.633.

In the Report & Order in BCD 81–793 (47 FR 55931, Dec. 14, 1982) the text of paragraph (e) was inadvertently eliminated from § 74.633 designating it paragraph "(e) RESERVED".

In an Order adopted May 17, 1985, (50 FR 23697, June 5, 1985), amendments were made to convert distance and measurement designations to the metric system. One such conversion was in § 74.633(c); however the Order incorrectly redesignated paragraph (f) as (e), removing what was assumed to be a meaningless "RESERVED" designation from the rule section.

Via *this* Order we will re-insert the missing text of paragraph (e), which was originally added to the rule to conform it to §§ 74.433 and 74.833 which pertain to special temporary authority. The present text of paragraph (e) will simultaneously be moved to its former (and correct) location as paragraph (f). (See rule change item 12).

(i) Section 78.18, Frequency assignments, shows the assignments of the bands of frequencies for the Cable TV Relay Service (CARS). Errors appear in the channel tables and in the footnotes thereto. Cross references to paragraph (m) of this section; which was redesignated paragraph (l) in an earlier proceeding, is corrected; and the footnotes, which tend to be confusing as now presented, are repositioned after *each* Group Channel Table for clarity. (See rule change item 16).

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are inapplicable pursuant to the Administrative Procedure Act. 5 U.S.C. 553(b)(3)(B).

4. Since a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

5. Accordingly, it is ordered, That pursuant to section 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Parts 2, 73, 74 and 78 of the FCC Rules and Regulations are amended as set forth below, effective on the date of publication in the **Federal Register.**

6. For further information on this *Order,* contact Steve Crane, (202) 632–5414, Mass Media Bureau.

Federal Communications Commission

James C. McKinney,

Chief, Mass Media Bureau.

List of Subjects

47 CFR Part 2

Frequency allocations, Radio.

47 CFR Part 73

Radio broadcasting.

47 CFR Part 74

Radio broadcasting, Television broadcasting.

47 CFR Part 78

Cable television, Relay service.

47 CFR Parts 2, 73, 74 and 78 are amended as follows:

1. The authority citation for Parts 2, 73, 74 and 78 continues to read as follows:

PART 2—[AMENDED]

Authority: 417 U.S.C. 154 and 303.

2. Section 2.983 is amended by revising paragraph (j) to read as follows:

§ 2.983 Application for type acceptance.

* * * * *

(j) An application for type acceptance of an AM broadcast stereophonic exciter-generator intended for interfacing with existing type-accepted transmitters shall include measurements made on a complete stereophonic transmitter. The instruction book required under paragraph (d)(8) of this section shall include complete specifications and circuit requirements for interconnecting with existing transmitters. The instruction book must also provide a full description of the equipment and measurement procedures for making equipment performance measurements and modulation monitoring to determine that the combination of stereo exciter-generator and transmitter meet the minimum specifications given in 73.1590.

PART 73—[AMENDED]

3. Section 73.37 is amended by revising paragraphs (e) and (f)(2) introductory text to read as follows:

§ 73.37 Applications for broadcast facilities, showing required.

* * * * *

(e) In addition to a demonstration of compliance with the requirement of paragraphs (a), and as appropriate, (b), (c) and (d) of this section, an application for a new AM broadcast station, or for a major change (see § 73.3571(a)(1) of this Chapter) in an authorized AM broadcast station, as a condition for its acceptance, shall make a satisfactory showing, if new or modified nighttime operation by a Class II or Class III station is proposed, that objectionable interference will not result to an authorized station as determined pursuant to § 73.182(1) of this chapter.

* * * * *

(f) * * *

* * * * *

(2) Unlimited time operation, by other than a Class IV facility, will not cause objectionable skywave interference at night to an existing station, pursuant to § 73.182(1). In addition, each proposal for unlimited time operation (including Class IV proposals) shall meet at least one of the following conditions:

* * * * *

4. Section 73.51 is amended by revising paragraph (c)(2)(ii) to read as follows:

§ 73.51 Determining operating power.

* * * * *

(c) * * *

(2) * * *

(ii) Where the proposed transmitter power output level(s) is less than 90% of the rated power of the transmitter, equipment performance measurements must be made to confirm that the station transmissions conform to the emission limitation specified in § 73.44, under all conditions of program operation.

* * * * *

5. Section 73.182 is amended by revising paragraph (a) introductory text to read as follows:

§ 73.182 Engineering standards of allocation.

(a) Sections 73.21 to 73.34, inclusive, govern allocation of facilities in the AM broadcast band of 535 to 1605 kHz. Section 73.21 establishes three classes of channels in this band, namely, clear channels for the use of high-powered stations, regional channels for the use of medium-powered stations, and local channels for the use of low-powered stations. The classes and power of AM broadcast stations which will be assigned to the various channels are set forth in § 73.21. The classifications of the AM broadcast stations are as follows:

* * * * *

6. Section 73.186 is amended by revising paragraph (a) introductory text to read as follows:

§ 73.186 Establishment of effective field at one kilometer.

(a) Section 73.189 provides that certain minimum field strengths are acceptable in lieu of the required minimum physical heights of the antennas proper. Also, in other situations, it may be necessary to determine the effective field. The following requirements shall govern the taking and submission of data on the field strength produced:

* * * * *

7. Section 73.189 is amended by revising paragraph (b)(6) to read as follows:

§ 73.189 Minimum antenna heights or field strength requirements.

* * * * *

(b) * * *

(6) The main element or elements of a directional antenna system shall meet the above minimum requirements with respect to height or effective field strength. No directional antenna system will be approved which is so designed that the effective field of the array is less than the minimum prescribed for the class of station concerned, or in case of a Class I station less than 90 percent of the ground wave field which would be obtained from a perfect antenna of the height specified by Figure 7 of § 73.190 for operation on frequencies below 1000 kHz, and in the case of a Class II or III station less than 90 percent of the ground wave field which would be obtained from a perfect antenna of the height specified by Figure 7 of § 73.190 for operation on frequencies below 750 kHz.

8. Section 73.201 is amended by revising the introductory text to read as follows:

§ 73.201 Numerical designation of FM broadcast channels.

The FM broadcast band consists of that portion of the radio frequency spectrum between 88 MHz and 108 MHz. It is divided into 100 channels of 200 kHz each. For convenience, the frequencies available for FM broadcasting (including those assigned to noncommercial educational broadcasting) are given numerical designations which are shown in the table below:

* * * * *

9. Section 73.311 is amended by revising paragraph (b)(2) to read as follows:

§ 73.311 Field strength contours.

* * * * *

(b) * * *

(2) In connection with problems of coverage arising out of application of § 73.3555.

* * * * *

10. Section 73.315 is amended by revising the Note following paragraph (a) to read as follows:

§ 73.315 Transmitter location.

(a) * * *

Note.—The requirements of paragraph (a) of this section do not apply to noncommercial educational FM broadcast stations operating on reserved channels. (Channels 200 through 220)

* * * * *

11. Section 73.1690 is amended by revising paragraph (e)(6)(i) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(e) * * *

(6) * * *

(i) The combination of the utility load management exciter and transmitter conforms to the requirements of § 73.44.

* * * * *

PART 74—[AMENDED]

12. Section 74.633 is amended by redesignating paragraph (e) as paragraph (f); and by adding new paragraph (e) to read as follows:

§ 74.633 Temporary authorizations.

* * * * *

(e) When the transmitting equipment utilized is not licensed to the user, the user shall nevertheless have full control

over the use of the equipment during the period it is operated.

* * * * *

13. Section 74.732 is amended by revising paragraph (b) to read as follows:

§74.732 Eligibility and licensing requirements.

* * * * *

(b) More than one low power TV or TV translator station may be licensed to the same applicant whether or not such stations serve substantially the same area. Low power TV and TV translator stations are not counted for purposes of § 73.3555, concerning multiple ownership.

* * * * *

14. Section 74.961 is amended by revising paragraph (a) to read as follows:

§ 74.961 Frequency tolerance.

(a) The frequency of the visual carrier shall be maintained within 60 kHz of the assigned frequency at all times when the station is in operation.

* * * * *

15. Section 74.1232 is amended by revising paragraphs (b) and (f) to read as follows:

§ 74.1232 Eligibility and licensing requirements.

* * * * *

(b) More than one FM translator may be licensed to the same applicant, whether or not such translators serve substantially the same area, upon an appropriate showing of need for such additional stations. FM translators are not counted as FM stations for the purpose of § 73.3555, concerning multiple ownership.

* * * * *

(f) No numerical limit is placed upon the number of FM booster stations which may be licensed to a single licensee. A separate application is required for each FM booster station. FM broadcast booster stations are not counted as FM broadcast stations for the purposes of § 73.3555, concerning multiple ownership.

* * * * *

PART 78—[AMENDED]

16. Section 78.18 is amended by adding new footnotes following Group Channel Tables A, C, D and E; by revising existing footnotes following Group Channel Tables B, F and K; and by revising the entries for channel boundaries for B11 and B12 in Table B and F10 and F11 in Table F to read as follows:

§ 78.18 Frequency assignments.

(a) * * *

(1) * * *

Group A Channels

* * * * *

[1] Appropriate polarization designation:
H=Horizonally polarized propagated radio wave.
V=Vertically polarized propagated radio wave.
R=Right-handed (clockwise) elliptically polarized propagated radio wave.
L=Left-handed (counter-clockwise) elliptically polarized propagated radio wave.

[2] See paragraph (1) of this section.

Note.—Polarization designations shall be in accordance with IEEE standard 100–1972 as amended.

Designation	Channel boundaries (GHz)
GROUP B CHANNELS	
* * * *	
B11 [1]	12.9625–12.9875
B12 [1]	12.9875–13.0125
* * * *	

[1] See footnote 1 following GROUP A CHANNELS.
[2] See paragraph (1) of this section.

Note.—Polarization designations shall be in accordance with IEEE standard 100–1972 as amended.

* * * *	
GROUP C CHANNELS	
* * * *	

[1] See footnote 1 following GROUP A CHANNELS.
[2] For transmission of pilot subcarriers or other authorized narrow band signals

GROUP D CHANNELS	
* * * *	

[1] See footnote 1 following GROUP A CHANNELS.
[2] See footnote 2 following GROUP C CHANNELS.

GROUP E CHANNELS	
* * * *	

[1] See footnote 1 following GROUP A CHANNELS.
[2] See footnote 2 following GROUP C CHANNELS.
[3] See paragraph (1) of this section.

GROUP F CHANNELS	
* * * *	
F10 [1]	[3]13.0645–13.0665
F11 [1]	[3]13.0665–13.0725
* * * *	

[1] See footnote 1 following GROUP A CHANNELS.
[2] See footnote 2 following GROUP C CHANNELS.
[3] See paragraph (1) of this section.

* * * *	
GROUP K CHANNELS	
* * * *	

[1] See footnote 1 following GROUP A CHANNELS.
[2] See paragraph (1) of this section.

* * * *	

[FR Doc. 87–7268 Filed 4–1–87; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 22

[CC Docket No. 80–57]

Revision and Update of Part 22 of the Public Mobile Service Rules

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rules.

SUMMARY: The Commission has determined that the Public Mobile Radio Service Rules revised in 1983 need subsequent revision. The rules were also partially revised in 1985 due to petitions for reconsideration which had been filed. The Commission now also had petitions for reconsideration before it which have been partially granted. The Commission determined that other rules besides the ones petitioned about needed clarification or corrections. The rules have been amended to rewrite them into plain language, bringing their text up to date consistent with existing technology. In addition, revisions were made to eliminate or reduce government regulations where possible, in favor of self-regulation and a competitive marketplace.

EFFECTIVE DATE: May 4, 1987.

FOR FURTHER INFORMATION CONTACT: Carmen Borkowski, Mobile Services Division, Common Carrier Bureau, tele: (202) 632–6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Further Reconsideration* in CC Docket No. 80–57, FCC 87–81, Adopted March 5, 1987 and Released March 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 Order on Further Reconsideration

1. In this Order on Further Reconsideration we are considering various petitions for reconsideration and requests for clarification of the Order on Reconsideration. 101 FCC2d 799 (1985).

2. We find merit to the petitions filed and are granting them in part. In addition, we have found that other rules need further clarifications and have proceeded to amend them. Moreover, we are taking this opportunity to correct typographical or other errors in the rules. We are granting in part a petition requesting a change in the time frame for filing Form 489 to notify completion of construction. Licensees will be able to start operating on the day they mail to the FCC the Form 489. We have also clarified the procedures for applying for fill-in transmitters in the 43 MHz band. Applicants need to file a Form 489 with a schedule B on Form 401.

3. Rules §§ 22.502(b) and 22.15(b)(2) are being amended to further clarify when interference studies are required for stations which exceed the height/power limitations. All proposed stations must do interference studies to all co-channnel stations within 125 miles when one of the eight radials within a 45 degree arc of the direction of that co-

channel station exceeds the height/power limitations of § 22.505. We are also clarifying that the only way a construction permit can be extended is by filing an FCC Form 489 which specifies circumstances why the period should be extended. If a major modification at an existing location, is filed during a construction period, a Form 489 should be filed with the Form 401 if additional time to construct is needed. If both forms are not timely filed or if a Form 489 is not filed in conjunction with the 401 the original construction permit will automatically expire on the date specified in the authorization. We wish applicants to take note of the fact that the Form 489 for an extension of time should be timely filed. If the extension is denied and the construction period has expired the authorization will automatically be cancelled. However, if the modification is for a relocation, the filing of a Form 401 for a major modification, prior to the expiration date of the construction permit, extends the underlying construction permit, pending disposition of the modification application. If the modification application is granted, a new construction permit will be issued to replace the previous authorization. If the modification application is denied, the underlying construction permit would simultaneously expire.

4. The following amendments which clarify our rules are non-substantive, therefore, the notice and comments provisions of the Administrative Procedure Act (APA) are inapplicable. *See* 5 U.S.C. 553. These amendments are: Sections 22.9(b)(2); 22.15(b)(1) (i), (ii), (iii) and (b)(2)(i); 22.16(a); 22.39(b)(5)(ii); 22.40; 22.43(a)(3); 22.43(c)(1), (2) and (4); 22.44; 22.104; 22.106; 22.516; 22.917 and 22.920.

5. Additionally, while we believe the remaining alterations are non-substantive, even assuming *arguendo* that they are substantive, we believe good cause exists for dispensing with the APA's requirements. In light of the generally beneficial and non-controversial nature of these rule changes, notice and public comment on these changes is unnecessary and not in the public interest. These rule changes are: Sections 22.9(b)(1); 22.9(d); removal of § 22.9 (e) and (f); revision of §§ 22.43(b)(1)(i), (ii); 22.43(c)(3) and (5); 22.110; 22.117; 22.501 and 22.502.

Ordering Clauses

6. Accordingly, it is ordered, that the petitions for reconsideration filed in CC Docket 80–57 are granted to the extent indicated herein and otherwise denied.

7. It is further ordered, that pursuant to the authority found in section 4, and 303(r) of the Communications Act of 1934, as amended, Part 22 of the Commission's Rules and Regulations are amended effective May 4, 1987.

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Rules

47 CFR Part 22 is amended as follows:

PART 22—PUBLIC MOBILE RADIO SERVICES

1. The authority citation for Part 22 continues to read:

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

2. Section 22.2 is amended by adding the following definition in alphabetical order to read as follows:

§ 22.2 Definitions.

* * * * *

Cardinal Radials. Those eight radials at 0, 45, 90, 135, 180, 225, 270 and 315 degrees of azimuth with respect to true north.

* * * * *

3. Section 22.9 is amended by redesignating existing paragraph (b)(2) as (b)(3); adding new paragraph (b)(2); removing paragraphs (e) and (f) and by revising paragraphs (b)(1) and (d) to read as follows:

§ 22.9 Standard application forms and permissive changes or minor modifications for Public Land Mobile, Rural Radio, Domestic Public Cellular Radio Telecommunications, and Offshore Radio Services.

* * * * *

(b)(1) *Notification of status of facilities (FCC Form 489).* When construction has been completed in accordance with the radio station authorization, the licensee shall so notify the Commission using Form 489. Licensees can commence service the day Form 489 is placed in the mail to the FCC.

(2) *Extensions of time and reinstatement.* When a licensee has not completed construction in accordance with the provisions of § 22.43 of this part, a timely application for extension of time (FCC Form 489) must be filed. Form 489 shall also be used for requests for reinstatements of authorizations if filed within 30 days after the authorization expired (§ 22.44(a)(2)).

* * * * *

(d) *Permissive changes or minor modifications of authorization.* The following changes do not require prior Commission authorization but merely notification. A Form 489 must be filed to notify of any permissive change and the licensee may commence service the day Form 489 is postmarked.

* * * * *

4. Section 22.15 is amended by revising paragraphs (b)(1) (i), (ii), (iii) and (b)(2)(i) to read as follows:

§ 22.15 Technical content of application.

* * * * *

(b) * * *

(1) * * *

(i) One-way facilities from 35 to 162 MHz—within 67 miles.

(ii) Two-way facilities:

(A) From 152 to 162 MHz—within 84 miles.

(B) From 450 to 460 MHz—within 67 miles.

(iii) Co-channel facilities within 125 miles when the bearing to the co-channel facility is within 22.5 degrees of a cardinal radial, where the effective radiated power exceeds the limits indicated in § 22.505 for the center of radiation height above average elevation in that radial direction.

(2) *Interference studies.* (i) The application shall contain interference studies demonstrating that the proposed facilities will not cause harmful electrical interference to those co-channel facilities (existing or proposed) identified in response to paragraph (b)(1) of this section: Provided, however, that interference studies are not required for stations which meet the minimum distance requirements established in § 22.502 and § 22.503. A notation must be made for each station meeting these requirements. The interference studies must use procedures consistent with § 22.504 and FCC Report No. R–6404, "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Radio Service," by Roger B. Carey.

* * * * *

5. Section 22.39 is amended by revising paragraph (b)(5)(ii) to read as follows:

§ 22.39 Transfer of control or assignment of station authorization.

* * * * *

(b) * * *

(5) * * *

(ii) By the assignor: On FCC Form 489.

* * * * *

7. Section 22.40 is amended by revising paragraphs (a) and (b) to read as follows:

§ 22.40 Considerations involving transfer or assignment applications.

(a) The Commission will review a proposed transaction to determine if the circumstances indicate "trafficking" in licenses or construction permits whenever applications (except those involving *pro forma* assignment or transfer of control and those for exclusive paging frequencies) for consent to assignment of a common carrier authorization, or for transfer of control of a permittee or licensee, involve facilities that were:

(1) Authorized following a comparative hearing and have been operated less than one year, or;

(2) Involve facilities that have not been constructed.

(i) At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that the proposed assignor or transferor has not acquired an authorization or operated a station for the principal purpose of profitable sale rather than public service. This showing may include, for example, a demonstration that the proposed assignment or transfer is due to changed circumstances (described in detail) affecting the licensee subsequent to the grant of the authorization, or that the proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests.

(b) *Cellular systems:* The sale of a cellular construction permit will only be permitted after a showing that the transferor is not speculating in cellular licenses. The burden of proof is on the transferor. See also § 22.920.

8. Section 22.43 is amended by adding new paragraphs (b)(1) (i) and (ii) and by revising paragraphs (a)(3) and (c) to read as follows:

§ 22.43 Period of construction.

(a) * * *

(3) If construction is not completed within the time period set forth in this rule the authorization will automatically expire. Before the period for construction expires an application for an extension of time to complete construction (FCC Form 489) may be filed. *See* subsection (b) of this section. Within 30 days after the authorization expires an application for reinstatement may be filed on FCC Form 489. An application for reinstatement will only be considered if the application demonstrates that the failure to file a timely application for extension or notification of completion of construction was due to causes beyond the applicant's control.

(b)(1) * * *

(i) An application for modification of an authorization (under construction) at the existing location, does not extend the initial construction period. If additional time to construct is required, an FCC Form 489 must be submitted in conjunction with the FCC Form 401 requesting modification.

(ii) If an FCC Form 401 construction permit modification application is filed to relocate a base station, prior to the expiration date of the construction permit, because of a loss of a site or other involuntary reasons due to causes beyond the applicant's control, the underlying construction permit will automatically be extended pending disposition of the modification application.

(c) *Cellular base stations.* (1) Cellular base stations, which will provide coverage over 75% of the cellular geographic service area, as defined in § 22.903 of these rules, shall be completed and the station ready for operation within 36 months from the date the radio station authorization is granted.

(2) For systems beyond the top-90 markets, construction of an initial phase of the system, which may consist of one or more cells, must be completed, and a notification on Form 489 that the system is ready to commence service to the public must be filed, within 18 months from the date the radio station authorization is granted.

(3) Subsequent modifications to any initial authorizations in a market (partially constructed or unconstructed facilities) are granted for a period of one year or if more than one year remains in the initial authorization the remaining construction period of the original authorization will be assigned to the modification.

(4) Failure to begin service in a timely manner in accordance with this rule will result in the termination of the authorization; unless a station is constructed and the failure to commence service is for reasons of inability to obtain state certification in a state that permits construction before certification is obtained. The licensee is required to show proof of state law requirements.

(5) If a licensee fails to provide 75% coverage of the CGSA within 36 months of the initial license grant; the licensee will be required to reduce the CGSA to meet the 75% coverage.

9. Section 22.44 is amended by revising paragraph (a)(1) and (a)(2) to read as follows:

§ 22.44 Termination of authorization.

(a)(1) All authorizations shall terminate on the date specified on the authorization or on the date specified by these rules, unless a timely application for renewal has been filed.

(2) If no application for renewal has been made before the authorization's expiration date, a late application for renewal will only be considered if it is filed within 30 days of the expiration date and shows that the failure to file a timely application was due to causes beyond the applicant's control. During this 30 day period reinstatement applications must be filed on FCC Form 489. Service to subscribers need not be suspended while a late filed renewal application is pending, but such service shall be without prejudice to Commission action on the renewal application and any related sanctions.

* * * * *

10. Section 22.104 is amended by revising paragraph (a)(1) to read as follows:

§ 22.104 Emission types.

(a)(1) *General.* Stations in the public land mobile, rural radio, and offshore radio services are automatically authorized the following emission designators: 15K0F2D, 16K0F3E, 16K0F3C, 16K0F1D, and 16K0F1E. Stations in the Domestic Public Cellular Radio Telecommunications Service are automatically authorized 40K0F3E and 40K0F1D emission designators. Equipment must be type-accepted for the specific emission-designators utilized. Requests for emissions other than those listed in this section require prior Commission authorization.

* * * * *

11. Section 22.106 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 22.106 Emission limitations.

* * * * *

(b) * * *

(1) * * *

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in KHz) of more than 10 KHz up to and including 250 percent of the authorized bandwidth: At least 29 Log10 fd2/11 decibels or 50 decibels, whichever is the lesser attenuation;

* * * * *

12. Section 22.110 is amended by adding paragraphs (a)(5) and (e) to read as follows:

§ 22.110 Antenna polarization.

(a) * * *

(5) Control and repeater stations in the 900 MHz Band.

* * * * *

(e) Control frequencies listed in § 22.501(g) (1) and (2) may use either horizontal or vertical polarization.

13. Section 22.117 is amended by revising paragraph (b) introductory text and (b)(1) to read as follows:

§ 22.117 Transmitters.

* * * * *

(b) *Additional transmitters.* Licensees may construct and operate additional transmitter locations on the same frequency without obtaining prior Commission approval, except licensees operating on one way paging frequencies in the 900 MHz band, provided:

(1) The Commission is notified of the new transmitter(s), through the filing of a Form 489 along with a completed Schedule B from Form 401. The Form 489 shall include a certification that the reliable service area contour and predicted interference contour of the proposed station are totally encompassed within the reliable service area contour and predicted interference contour of the existing station(s). The currently authorized reliable service area contour and predicted interference contour of the station or other commonly owned stations are not enlarged in any direction. Cellular licensees certify that the 39 dBu contours of each cell remain within the CGSA.

(i) "Additional transmitters" in the 43 MHz band will be permitted only on a developmental basis, subject to the conditions set forth in Public Notice, *Developmental Common Carrier Paging Base Station Authorizations Assigned in the 43 MHz Spectrum*, Mimeo 4591, released May 16, 1985. Licensees must file a Form 489 along with a schedule B from Form 401 to notify the Commission of any additional 43 MHz transmitters. To request authority to operate on a permanent basis licensees must file a Form 489 for the original base facility and include all subsequent fill-in transmitters, with the same time frame testing period.

(ii) Licensees must retain a copy of a completed table MOB III found in FCC Form 401 as part of the licensees' records and this shall be made available to the Commission's staff upon request.

* * * * *

14. Section 22.501 is amended by revising paragraphs (a)(5) (ii), (iii), and (iv), and paragraphs (d) and (f)(1)(ii) to read as follows:

§ 22.501 Frequencies.

(a) * * *

(5) * * *

(ii) Due to interference potential the frequencies listed in (a)(4) will only be granted on a developmental basis for two years subject to the provisions of § 22.404 (a) and (c). The provisions of § 22.404(d) are waived to permit licensees to offer service for hire. Licensees shall inform customers that service on these channels is developmental and therefore subject to cancellation at any time. When construction is completed a Form 489 shall be filed. Prior to the expiration of the developmental authorization a Form 489 shall be filed to request permanent authorization.

(iii) In accordance with § 22.406 semi-annual surveys of possible interference with television and video recorder reception in the geographic area within a two-mile radius of the base station(s) authorized herein shall be made during the first year of operation. For each survey, a different sample of at least 25 television viewers distributed approximately evenly throughout the geographic area described above shall be contacted to determine whether they have experienced TV or video recorder interference. The data should not be distorted by surveying few or no viewers within the geographic area proximate to the antenna. Therefore, for each report, the 25 television viewers geographically nearest the base station who have not previously been surveyed, shall be surveyed. In the event that all viewers within two miles have been surveyed, TV viewers shall be surveyed again, starting with those nearest the base station. If interference complaints are received either as a result of the interviews or in the normal course of business, the licensee shall determine the source and extent of such interference. The licensee shall promptly report all interference complaints and act to correct any problems, or follow official instructions.

(iv) The licensee shall submit a written report soon after the completion of each reporting period, fully evaluating the continued existence of interference. Quarterly reports shall include but shall not be limited to the following information:

(*1*) Call sign.

(*2*) Authorization file number.

(*3*) Site location number.

(*4*) No. of report (1 to 4).

(*5*) Survey date(s).

(*6*) Method (telephone/on-site/other).

(*7*) Names, addresses and telephone numbers of persons contacted.

(*8*) Time of day survey conducted (morning/ afternoon/night).

(*9*) Technical solutions tested and results

(*10*) Names and telephone numbers of technical representatives consulted and/or employed.

* * * * *

(d) For assignment to base stations of communication common carriers for use exclusively in providing a one-way paging service.

MHz	
35.20	43.20
35.22	43.22
35.24	43.24
35.56	43.56
35.58	43.58
35.60	43.60

Whenever feasible, the frequencies 35.22 MHz, 35.24 MHz, 35.56 MHz, 35.58 MHz and 35.60 MHz shall be assigned for use in any area prior to assignment of the frequencies 35.20 MHz, 43.20 MHz, 43.22 MHz, 43.24 MHz, 43.56 MHz, 43.58 MHz and 43.60 MHz. The frequencies 43.20, 43.22, 43.24, 43.56, 43.58 and 43.60 shall be granted on a developmental basis and subject to the same interference reporting conditions specified in 22.501(a)(5)(ii) to 22.501(a)(5)(iv).

* * * * *

(f) * * *

(1) * * *

(ii) Less than 10 miles. Applications for use of 72–76 MHz band frequencies less than 10 miles from Channel 4 or 5 television stations will be granted developmental authority pursuant to § 22.400 *et seq.* After successful developmental testing an application for a radio station authorization must follow the requirements of Section 22.501(f)(1)(i). Where the proposed transmitter is co-located with the television transmitter the application will be processed according to the 10–80 mile standard. Applicants must identify by call sign, all channel 4 and 5 stations within 10 miles of the proposed transmitter sites.

* * * * *

15. Section 22.502 is revised to read as follows:

§ 22.502 Classification of base stations.

(a) Base stations in the public land mobile service shall be classified according to antenna height above average terrain and effective radiated power in the relevant direction. This classification is not applicable to base stations in the frequency bands 454.6625—455.000 MHz, 459.6625—460.000 MHz, 470–512 MHz and 929–932 MHz.

[Antenna height above average terrain (feet)]

	Class of station				
400 to 500	C	B	B	A	A
300 to 400	C	C	B	B	A

[Antenna height above average terrain (feet)]

200 to 300	D	C	C	B	B
100 to 200	D	D	C	C	B
0 to 100	E	D	D	C	C
	Effective radiated power (watts)				
[1]	30	60	120	250	500

[1] ERP's falling anywhere between those listed above will use the next higher figure.

(b) Any station with antenna height more than 500 feet above average terrain, but with an effective radiated power within the limits prescribed in Rules § 22.505 shall be considered to be a Class A station.

16. Section 22.516 is amended by revising paragraph (b)(2) to read as follows:

§ 22.516 Usage showing for additional channels.

* * * * *

(b) * * *

(2) The survey shall state (i) the channel occupancy reported separately for the busiest hour on each of three days, for all frequencies, both VHF and UHF; (ii) the number of two-way mobile stations, tone-only pagers, tone-plus-voice pagers, and tone digital readout pagers; (iii) the specific assignment of each channel to specific trunk groups, if any; (iv) the date and time of the survey.

* * * * *

17. Section 22.913 is amended by removing paragraph (a)(10) and revising and redesignating existing paragraph (a)(11) as paragraph (a)(10).

§ 22.913 Content and form of applications.

(a) * * *

(10) An exhibit setting forth the information required by § 22.13(a)(1). In addition, all applicants other than publicly-traded corporations must disclose those parties with any ownership interest in the applicant who also hold any ownership interest in another cellular application for the same market.

* * * * *

18. Section 22.917 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 22.917 Demonstration of financial qualifications.

* * * * *

(b) * * *

(1) * * *

(ii) An applicant relying on internal financing must submit the information required by § 22.917(a)(3), current within 90 days of the submission date of the financial information, in conformance with generally accepted accounting principles, to demonstrate its financial ability.

19. Section 22.920 is amended by revising paragraph (a) to read as follows:

§ 22.920 Considerations involving transfer or assignment applications for cellular authorizations.

(a) The provisions of § 22.40 of this part shall apply to transfers or assignments of cellular authorizations except as provided in § 22.920(b).

* * * * *

[FR Doc. 87-7145 Filed 4-1-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. RSOR-6, Notice No. 17]

Technical Amendments; Control of Alcohol and Drug Use in Railroad Operations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA is making technical amendments to its rules on alcohol and drug use in railroad operations. The amendments designate a new laboratory for analysis of samples under the program of post-accident toxicological testing.

DATE: The amendments are effective on April 2, 1987.

FOR FURTHER INFORMATION CONTACT: Walter C. Rockey, Jr., Executive Assistant to the Associate Administrator for Safety, FRA (Telephone: 202-366-0897) or Renee M. Marler, Attorney, Office of Chief Counsel (Telephone: 202-366-0628).

SUPPLEMENTARY INFORMATION:

In order to facilitate the prompt and complete analysis of samples provided in connection with mandatory post-accident testing under Subpart C, Part 219, title 49 of the Code of Federal Regulations, FRA has designated a new laboratory to be responsible for this analysis. Accordingly, in the future samples collected under this program are *not* to be submitted to the Federal Aviation Administration's Civil Aeromedical Institute laboratory in Oklahoma City, but instead are required to be submitted to the following:

Center for Human Toxicology, University of Utah, Room No. 38, Skaggs Hall, Salt Lake City, Utah 84112

The Center operates a reference-quality forensic toxicology laboratory that will analyze samples for identified controlled substances and alcohol.

Other details of the mandatory post-accident testing program, and other elements of the FRA rule on control of alcohol and drug use in railroad operations (49 CFR Part 219) remain unchanged. (FRA is reviewing the implementation of the alcohol/drug rule in a pending safety inquiry (52 FR 2118; Jan. 20, 1987), for which the comment deadline has been extended to April 6, 1987 (52 FR 7185).)

Regulatory Procedures

The Administrator finds that notice and opportunity for comment are not required because the subject amendments involve rules of agency organization, procedure and practice. The Administrator further finds that there is good cause for making the rule effective in less than 30 days from the date of publication, since designation of a laboratory is a matter within the administrative judgment of the agency and since prompt designation of a new laboratory is important to the efficient conduct of the post-accident testing program.

This amendment to the final rule has been evaluated in accordance with existing regulatory policies. It is neither a "major" rule under Executive Order 12291 nor a "significant" rule as defined under DOT policies and procedures. The amendment does not have any paperwork or economic impact. It is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Therefore, in consideration of the foregoing, Part 219, title 49, Code of Federal Regulations is amended as follows:

PART 219—[AMENDED]

1. The authority for Part 219 continues to read as follows:

Authority: Secs. 202 and 209, Pub. L. No. 91-458, 84 Stat. 971 and 975, as amended (45 U.S.C. 431, 438), and 49 CFR 1.49. Subpart C also issued under sec. 208, Pub. L. 91-458, 84 Stat. 974, as amended (45 U.S.C. 437).

§ 219.5 [Amended]

2. Section 219.5 is amended by removing the text of paragraph (b) and inserting in lieu thereof "[Reserved]"

3. Section 219.205 is amended by revising paragraphs (c) and (d) to read as follows:

§ 219.205 Sample collection and handling.

* * * * *

(c) *Shipping kit.* (1) FRA and the laboratory designated in Appendix B to this part make available for purchase a limited number of standard shipping kits for the purpose of routine handling of toxicological samples under this subpart. Whenever possible, samples shall be placed in the shipping kit prepared for shipment according to the instructions provided in the kit and the Field Manual. Specifications for kits are contained in the Field Manual.

(2) Kits may be ordered directly from the laboratory designated in Appendix B to this part.

(3) FRA maintains a limited number of kits at its field offices. A Class III railroad may utilize kits in FRA possession, rather than maintaining such kits on its property.

(d) *Shipment.* Samples shall be shipped by pre-paid air freight (or other means adequate to ensure delivery within twenty-four (24) hours) to the laboratory designated in Appendix B to this part. If courier pickup is not available at the medical facility where the samples are collected, the railroad shall promptly transport the shipping kit holding the samples to the nearest point of shipment via air freight or equivalent means.

4. Section 219.11 is amended by revising paragraph (a)(1) to read as follows:

§ 219.211 Analysis and follow-up.

(a) (1) The laboratory designated in Appendix B to this Part undertakes prompt analysis of samples provided under this subpart, consistent with the need to develop all relevant information and produce a complete report.

* * * * *

5. Part 219 is further amended by adding a new Appendix B to read as follows:

Appendix B—Designation of Laboratory for Post-Accident Toxicological Testing

The following laboratory is currently designated to conduct post-accident toxicological analysis under Subpart C of this Part:

Center for Human Toxicology, University of Utah, Room No. 38, Skaggs Hall, Salt Lake City, Utah 84112, Telephone No. (801) 581-5117

Issued in Washington, DC, and March 30, 1987.

John H. Riley,

Federal Railroad Administrator.

[FR Doc. 87-7360 Filed 4-1-87; 8:45 am]

BILLING CODE 4910-06-M

Proposed Rules

Federal Register
Vol. 52, No. 63
Thursday, April 2, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1955 and 1965

Property Management and Security Servicing

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: FmHA proposes to amend its regulations on disposal of inventory property and security servicing to (1) increase the amount and shorten the intervals for administrative price reductions on inventory property (2) reduce downpayment requirements on ineligible terms financing (3) extend the time period suitable inventory property is retained exclusively for purchase by program applicants (4) modify 'Decent, Safe and Sanitary' (DSS) clauses to include only those items that render the property not to meet DSS standards (5) expand the Agency's ability to assign its security instruments as a loan servicing action (6) authorize payment of a real estate broker's commission on inventory property sales in additional instances and (7) clarify Agency policy on auctions of suitable inventory property. This action is being taken to expand the Agency's regulations on disposal of inventory property and security servicing. The intended effect is to provide the Agency with more responsive terms to accomplish these objectives.

DATE: Comments must be submitted on or before June 1, 1987.

ADDRESSES: Submit written comments in duplicate to the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Villano, Senior Realty Specialist, Single Family Housing, Servicing and Property Management Division, FmHA, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, Telephone (202) 382–1452.

SUPPLEMENTARY INFORMATION: This proposed rulemaking has been reviewed under USD4 procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291 and has been classified as "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The SFH program is listed in the Catalog of Federal Domestic Assistance under No. 10.410—Low Income Housing Loans and No. 10.417—Very Low Income Housing Repair Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

During the period of June 1, 1986, through August 29, 1986, FmHA conducted a "Summer Sale" on unsuitable inventory property (see 51 FR pages 18435 and 18436 dated May 20, 1986.) During this timeframe, FmHA reduced sales prices and downpayment requirements on unsuitable inventory property. FmHA took this action to reduce the consistently increasing number of properties which could not feasibly be used for program purposes in FmHA inventory and relieve the Government of tremendous financial and administrative costs of retaining these properties in inventory. The "Summer Sale" was highly successful with FmHA not only experiencing its first net reduction in inventory in 5 years but gaining valuable insight into the effective use of more aggressive marketing tools to assist the Agency in inventory reduction.

Almost 60 percent of the unsuitable inventory property that was offered under the "Summer Sale" program was sold. FmHA estimates, even after considering the authorized price reductions, that the "Summer Sale" saved the Government in excess of § 500,000. Savings resulted in reduced time in inventory with related personnel and administrative expenses, reduced maintenance costs and recovery of the Government's original investment in the property.

As previously mentioned, the "Summer Sale" was held from June 1, 1986, through August 29, 1986. Time-limiting revisions were made to the appropriate portions of Subpart C of Part 1955 of the 7 CFR series. FmHA now proposes to make permanent changes to its regulations adopting successful aspects of the "Summer Sale."

1. Section 1955.113(a) is revised to increase the amount and shorten the time intervals for administrative price reductions. Current FmHA regulations provide for a five percent administrative price reduction every 120 days. The "Summer Sale" authorized unsuitable inventory property to be offered for sale at 70 percent of market value or other percentage authorized by the State Director. FmHA now proposes to increase the administrative price reduction to 10 percent and shorten the time interval between reductions to 45 days for unsuitable property and 75 days for suitable property, with a maximum of two reductions.

This decision is based upon feedback from field personnel, field visits and results of the "Summer Sale." FmHA recognizes that a larger administrative price reduction and shorter time interval between same is essential to ensure timely sales of inventory property and reduce the Government's costs of retaining these houses in inventory. Since FmHA, unlike a typical seller,

does not negotiate sales prices under regular sales, nor will FmHA accept an offer for less than the listed sales price, we believe this method provides a viable alternative for selling inventory property in an orderly and timely manner.

2. Section 1955.118(b) is revised to reduce the downpayment requirement for ineligible terms financing on credit sales of inventory property. Current FmHA regulations require a 10 percent downpayment from both nonoccupant/investor and owner/occupant applicants requesting financing on ineligible terms. The "Summer Sale" reduced the downpayment required from nonoccupant/investors to 5 percent and waived the downpayment for owner/occupants. FmHA now proposes to reduce the downpayment required from nonocccupant/investors to 5 percent and 2 percent from owner/occupants. This decision is similarly based upon feedback from field personnel, field visits and results of the "Summer Sale." FmHA has recognized that the 10 percent downpayment requirement has hampered sales of inventory property on ineligible terms, especially to owner/occupant applicants. The 1983 Amendment to the Housing Act of 1949 removed authority to extend program assistance to persons with incomes above the moderate income level. These persons were formerly considered program-eligible with "above-moderate income" and were able to purchase inventory property with no downpayment. Currently, these same persons must have a 10 percent downpayment. FmHA desires to give these persons who do not own adequate housing and are unable to secure other credit the opportunity to become a homeowner. FmHA believes that reducing the downpayment requirements will enhance the Agency's ability to sell inventory property without significantly diminishing the value of the Government's security interest in the property.

3. Section 1965.126(d) is similarly revised to reduce the paydown on the loan balance required when an existing FmHA loan is assumed on ineligible terms. Current FmHA regulations require a 10 percent paydown on existing loans assumed on ineligible terms. The "Summer Sale" did not affect this regulation. FmHA proposes to reduce the required paydown to 2 percent for owner/occupants and 5 percent for nonoccupant/investors. These requirements are parallel with the downpayment requirements proposed for credit sales of inventory property on ineligible terms.

This decision is based upon feedback from field staffs that the 10 percent lump-sum payment is a deterrent to assumptions on ineligible terms and will ensure consistency in the required paydown/downpayment on ineligible terms financing. There are two categories of purchasers on ineligible terms who generally become owner/occupants: (1) Those who purchase a program—suitable house and have an adjusted income above the moderate-income limit for the area. These were formerly "eligible with above-moderate income" until the 1983 Amendment to the Housing Act of 1949 removed authority to extend program assistance to this category. (2) Those who purchase a house determined to be unsuitable for retention in FmHA's housing program and which is, therefore, no longer appropriate to be financed on eligible terms. It is much more difficult for a borrower to find a buyer when FmHA is not willing to provide financing on reasonable terms and in many of these situations the borrower conveys the property to FmHA in lieu of being able to consummate a sale. FmHA believes reducing the lump-sum payment amount will enhance a borrowers' ability to sell and, thereby save FmHA many costs associated with acquiring and selling inventory property.

In addition, the following areas which are not a direct offshoot of the "Summer Sale" are proposed:

4. Section 1955.114(a) is revised to extend the time period for which suitable property is retained exclusively for purchase by applicants requesting assistance on eligible terms. Current FmHA regulations authorize a 30-day retention period. FmHA proposes to increase the retention period to 45 days. This decision is based upon the Agency's desire to sell suitable property to program applicants and suggestions from the public that this time period be extended.

5. Section 1955.116 is revised to more prudently inform purchasers of unsuitable property which do not meet the Agency's definition of "Decent, Safe and Sanitary" (DSS) housing of the items which cause the property not to meet DSS standards. Current FmHA regulations require that all listing notices, advertisements, sales agreements and quitclaim deeds contain standard all-encompassing language which states that FmHA has determined the property to be inadequate for residential purposes until the property is ". . . structurally sound and habitable, has a potable water supply, has functionally adequate, safe and operable heating, plumbing, electrical and sewage disposal systems, and meets the Thermal Performance Standards . . ." In many instances, inventory properties which do not meet DSS standards may only be lacking one or two of the aforementioned items. This standard all-encompassing language unnecessarily creates a stigma against the property making it difficult to sell and often times adversely affecting the market value of the property. FmHA proposes to include in listing notices, advertisements, sales agreements and quitclaim deeds only those items which render the property to not meet DSS standards. This decision is based upon feedback from field personnel and field visits that the standard all-encompassing language hampers sales ability, especially as previously noted, as it will be in the deed to the property. This action would clearly identify those items which must be repaired/replaced/renovated to make the property meet DSS standards and remove the negative stigma which detracts from sales and market values of these houses. As well as assist FmHA personnel in determining at a later date whether or not the restrictive covenant can be removed.

6. Sections 1955.147(b) and 1955.148 are expanded to clarify the Agency's policy on the sale of suitable inventory property by sealed bid or auction. Current FmHA regulations provide the Assistant Administrator for Housing the authority to authorize the sale of suitable inventory property by sealed bid or auction. This authority has been granted on an extremely limited basis when documentaton exists that all reasonable efforts to sell the property have been exhausted. As previously mentioned in Item Number 4, it is Agency policy to sell suitable property to program applicants (those requesting credit on eligible terms). A retention period is provided for program applicants in which they have the exclusive right to purchase suitable property before it is offered to the general public. Even when offered to others, program applicants are always given preference over nonprogram applicants or cash offers. With the proposed administrative price reduction schedule outlined in Item Number 1 of this proposed rule, program applicants will have approximately 8 months with exclusive or preferential rights. A problem arises in an auction or sealed bid setting on how to handle bids from program applicants versus other bidders. Since FmHA has made all reasonable efforts to sell the property to program applicants including the aforementioned 8 month priority period, no preference will be given to program

applicants in an auction setting. Such preference would preclude the effectiveness of an auction since program applicants would only have to match the highest bid of another bidder to be the successful bidder. There would be no incentive for potential bidders other than program applicants to participate in an auction. Since the Agency has already provided an extensive time period for program applicants to purchase the property, it would be impractical to provide further preference. In a sealed bid setting since all bidders have a fair and equal chance of being the successful bidder, preference will only be given to program applicants when two equal high bids have been received. We believe this policy provides the program applicant with every reasonable opportunity to purchase suitable property while setting forth equitable rules on handling auctions and sealed bids.

7. Section 1965.128 represents a substantial change in Agency policy from the longstanding regulation previously found in § 1872.22 of Subpart A of Part 1872, which was superseded with the issuance of Subpart A of Part 1965 of this chapter last year. Section 1965.128 is more restrictive as to instances in which assignment of notes and security instruments is authorized than was provided for in Part 1872, which provided that the State Director could assign loan instruments when it was determined to be to the financial advantage of the Government or when the borrower had failed to refinance after an appropriate request (graduate to other credit). The language presently in § 1965.128 makes this section useless to the Government unless the borrower is willing to request an assignment. It has, for instance, made it impossible in loss situations for FmHA to accept payment in full from an insurance company in exchange for assignment of the loan instruments. Therefore, it has been administratively determined to institute a policy which allows assignment to benefit the Government's financial interest and yet gives specific guidance on situations where such assignment is authorized so there is no danger of indiscriminate use of the authority.

8. Section 1955.130(f) is revised to authorize payment of a real estate broker's commission on inventory property sales where the sale is to a broker, the broker's salesperson(s), to persons living in their immediate household or to legal entities in which they have an interest provided the sale is not contingent upon receiving FmHA credit. Current FmHA regulations do not permit payment of a real estate commission in these instances. This policy is inconsistent with the private sector and the Department of Housing and Urban Development (HUD) and Veterans Administration (VA). FmHA has received many complaints regarding this issue from real estate brokers and field personnel and believes it may hamper the sales of inventory property.

Our goal in property management is to sell inventory property as prudently and expeditiously as possible. This relieves the Agency of the tremendous costs of retaining property in inventory and rightfully returns the property to the public. We recognize, like any other seller of property, that real estate agents are professionals in this area and that payment of a real estate commission is a necessary cost of achieving our goal. Therefore, FmHA proposes to permit payment of a commission in these instances, except where FmHA financing is being extended. A commission would not be paid where financing is requested since the payment of a commission would offset any required downpayment thus defeating the purpose of the downpayment. We feel this change would bring the Agency in line with other private and public sector sellers of property and increase our ability to sell inventory property.

List of Subjects

7 CFR Part 1955

Government acquired property, Sale of government property, Surplus government property.

7 CFR Part 1965

Administrative practice and procedure, Loan programs, Housing and community development, Low and moderate income housing—Rental, Rural areas.

Therefore, as proposed, Chapter XVII of Title 7, Code of Federal Regulations, is amended as follows:

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart C—Disposal of Inventory Property

2. Section 1955.113(a) is revised to read as follows:

§ 1955.113 Price (housing).

* * * * *

(a) *SFH price reduction.* SFH inventory will be reappraised at any time additional market data indicates this action is warranted. If SFH inventory has not sold after being actively marketed, the price will be administratively reduced. An administrative price reduction will be made without changing the SFH appraisal. The following schedule of administrative price reductions will be followed:

(1) *Suitable property.* If suitable property has not sold after being actively marketed at the current appraised value for 45 days to applicants requesting credit on eligible terms, plus an additional 30 days to any offeror, the price will be administratively reduced by 10 percent of the appraised value. If the property remains unsold after active marketing to applicants requesting credit on eligible terms for an additional 45 days plus an additional 30 days to any offeror, one further price reduction of 10 percent of the appraised value will be made.

(2) *Unsuitable property.* If unsuitable property has not sold after being actively marketed for 45 days, the price will be administratively reduced by 10 percent of the current appraised value. If the property remains unsold after an additional 45 day period of active marketing, one further price reduction of 10 percent of the appraised value will be made.

* * * * *

§ 1955.114 [Amended]

3. Section 1955.114(a) is amended to change all references to "30-day" and "30 days" located in the fifth, sixth, and seventh sentences to "45-day" or "45 days" as appropriate.

4. Section 1955.116 is revised to read as follows:

§ 1955.116 Requirements for sale of property not meeting decent, safe, and sanitary (DSS) standards (housing).

(a) *Notices and advertising.* If the inventory housing property has a single-family dwelling or a MFH unit which does not meet DSS standards as defined in § 1955.103(f) of this subpart, but which could meet such standards through the repair or renovation activities of the future owner(s), any "Notice of Real Property for Sale," "Notice of Sale," or any other advertisement used in conjunction with advertising the sale must contain the following notice:

This property contains a dwelling unit or units which FmHA has deemed to be inadequate for residential occupancy. The Quitclaim Deed by which the property will be conveyed will contain a covenant restricting the residential unit(s) on the property from being used for residential occupancy until the dwelling unit is repaired or renovated. This

restriction is imposed pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480(e). The property must be repaired and/or renovated as follows: *

*Insert those items which are necessary to make the dwelling unit(s) meet DSS standards. Examples are:

—Replace flooring and floor joists in kitchen and bath.
—Drill new well to provide for an adequate and potable water supply.
—Hook-up to community water and sewage system now being installed.
—Have a functionally adequate, safe and operable ** system.

**Insert heating, plumbing, electrical and/or sewage disposal, etc., as appropriate.

—Install ***.

***Insert new roof, foundation, sump pump, bathroom fixtures, etc., as appropriate.

—Install **** insulation in basement walls or ceiling, **** insulation in attic, and storm windows and doors throughout.

****Insert appropriate R values to meet Thermal Performance Standards.

(b) *Sales Agreements.* If a housing structure in inventory does not meet DSS standards, Forms FmHA 1955–45 or 1955–46 used in conjunction with the sale must include the same language contained in § 1955.116(a).

(c) *Quitclaim Deed.* The following or similar restrictive clause adopted for use in an individual State pursuant to a State supplement approved by OGC must be added to the quitclaim deed for properties which do not meet DSS standards at the time of sale but which could through the repair or renovation activities of the future owner(s):

Pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. § 1480(e), the purchaser ("Grantee" herein) of the above-described real property (the "subject property" herein) covenants and agrees with the United States acting by and through Farmers Home Administration (the "Grantor" herein) that the dwelling unit(s) located on the subject property as of the date of this Quitclaim Deed will not be occupied or used for residential purposes until the item(s) listed at the end of this paragraph have been accomplished. This covenant shall be binding on Grantee and Grantee's heirs, assigns and successors and will be construed as both a covenant running with the subject property and as an equitable servitude. This covenant will be enforceable by the United States in any court of competent jurisdiction. When the property complies with the following standards of the Farmers Home Administration or the unit(s) has been completely razed, upon application to Farmers Home Administration in accordance with its regulations, the subject property may be released from the effect of this covenant and this covenant will thereafter be of no further force or effect. The property must be repaired and/or renovated to: *. * Insert the same items referenced in the listing notices and sales agreement which are necessary to make the dwelling unit(s) meet DSS standards.

(d) *Release of restrictive covenant.* A State Supplement outlining the procedure for releasing the DSS covenant will be issued with the advice and approval of OGC.

5. Section 1955.118(b) is revised to read as follows:

§ 1955.118 Processing cash sales or credit sales on ineligible terms (housing).

* * * * *

(b) *Downpayment.* For credit sales, a downpayment will be collected at closing and remitted by the servicing official in accordance with FmHA Instruction 1951–B (available in any FmHA office). For purchasers who fall into the category specified in § 1955.118(d)(i)(A) of this subpart (owner/occupants), a downpayment of not less than 2 percent is required. For purchasers who fall into the category specified in § 1955.118(d)(i)(B) of this subpart (nonoccupant/investors), a downpayment of not less than 5 percent is required. For MFH property, a downpayment of not less than 10 percent is required.

* * * * *

§ 1955.130 [Amended]

6. Section 1955.130(f) is amended by removing the period at the end of the second sentence and adding the following "* * * if the sale is contingent upon receiving FmHA credit. If credit is not being extended in these instances (a cash sale) a commission will be paid."

7. Section 1955.147(b) is revised to read as follows:

§ 1955.147 Sealed bid sales.

* * * * *

(b) *Successful bids.* The highest complying bid meeting the minimum established price will be accepted by the approval official; however, it will be subject to loan approval by the appropriate official when a credit sale is involved. For suitable SFH inventory property, no preference will be given to bids from applicants requesting credit on eligible terms unless two identical high bids are received in which case the bid from the applicant requesting credit on eligible terms will take preference. Preference will be given to a cash offer which is at least ____* percent of the highest offer requiring credit on ineligible terms [*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage]. Otherwise equal bids will be selected by public lot drawing. The successful bid will be accepted by signing Form FmHA 1955–46. The approval official will give a copy of the form to the successful bidder or his/her representative. If the bidder or his/her representative is not present at the bid opening, the form will be sent by certified mail, return receipt requested, to the bidder. The bid deposit of the successful bidder will be used at closing to be applied first to the purchaser's closing costs with any balance then applied to the downpayment or in the case of a cash sale to be deducted from the funds required from the successful bidder at closing.

§ 1955.148 [Amended]

8. Section 1955.148 is amended by adding the following sentence after the seventh sentence: "* * * For auctions of suitable SFH inventory property, no preference will be given to bidders who will be requesting credit on eligible terms."

PART 1965—REAL PROPERTY

9. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989, 41 U.S.C. 2942, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70, 29 FR 14764, 33 FR 9850.

Subpart C—Security Servicing for Single Family Rural Housing Loans

10. Section 1965.126(d) is revised to read as follows:

§ 1965.126 Transfer of property with assumption of indebtedness.

* * * * *

(d) *Assumption on ineligible terms.* When a borrower sells or proposes to sell security property and the purchaser does not meet the eligibility requirements for an RH loan, or the property is not suitable for retention in the housing program, the debt may be assumed on ineligible terms if the assuming party has repayment ability, is creditworthy, and it is advantageous to the Government to allow the assumption. If the purchaser does not assume the debt, the loan must be liquidated. After assumption on ineligible terms, the loan will be classified as an NP loan. The assumption agreement will bear interest at the SFH-Ineligible. rate in effect on the date the assumption is approved. The term of the assumption may not exceed the period for which the property will serve as adequate security for the debt. Other terms are as follows:

(1) When the purchaser does not own an adequate home, intends to occupy the house, and cannot obtain other credit for its purchase, the term may be for a period not to exceed 30 years. A payment on the debt of not less than 2 percent of the unpaid balance (including any subsidy recapture due) must be

made at closing to reduce the amount assumed.

(2) When the purchaser does not meet the criteria in paragraph (d)(1) of this section, the amortization period will be not more than 10 years unless the State Director determines more favorable terms are necessary to facilitate the sale, in which case the assumption may be amortized using a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing. A payment on the debt of not less than 5 percent of the unpaid balance (including any subsidy recapture due) must be made at closing to reduce the amount assumed.

* * * * *

11. Section 1965.128 is revised to read as follows:

§ 1965.128 Assignment of promissory notes and security instruments.

With the advice of and instructions from OGC, the note(s) and security instrument(s) may be assigned on a nonrecourse basis as outlined in this section. For loans subject to recapture of subsidy, recapture must be calculated and any recapture due must be considered as a part of the indebtedness at the time of the assignment. The assignment will be made using a form approved by OGC on an individual-case basis or on a State form approved by OGC and prescribed in a State supplement. The State Director is authorized to execute the assignment instrument, and this authority may not be redelegated. Assignment is authorized in following instances:

(a) A borrower has requested it in writing when FmHA is being paid in full.

(b) An insurance company is paying FmHA in full following a property loss.

(c) A junior lienholder has foreclosed its lien and is paying FmHA in full.

Dated: February 18, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87-7172 Filed 4-1-87; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-09-AD]

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Models EMB-110P1 and EMB-110P2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to EMBRAER Models EMB-110P1 and EMB-110P2 airplanes, which would require incorporation of Revision 29 to the Pilot's Operating Handbook (POH). This revision deletes the Configuration Deviation List (CDL) issued by Revision 28 to the POH. The proposed action will preclude operations which are contrary to the FAA approved Airplane Flight Manual/Pilot's Operating Handbook (AFM/POH) "LIMITATIONS" section.

DATE: Comments must be received on or before June 1, 1987.

ADDRESSES: EMBRAER Publication No. T.P.-110P1/176, Revision 29, dated November 3, 1986, applicable to the AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343-CEP, 12.200 Sao Jose dos Campos, Sao Paulo, Brazil. This information may be examined at the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-09-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis A. Jackson, ACE-120A, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Suite 210, 1669 Phoenix Parkway, Atlanta, Georgia 30349; Telephone (404) 991-2910.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-09-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

EMBRAER issued Revision No. 28 to Publication No. T.P.-110P1/176 on September 12, 1986. This revision incorporated Supplement No. 36 to Pilot's Operating Handbook and the Brazilian Civil Airworthiness Authority, the Centro Tecnico Aerospacial (CTA) approved Airplane Flight Manual Supplement for EMBRAER EMB-110P1/P2 airplanes. This Supplement contained limitations for operation of the EMB-110P1 and EMB-110P2 airplanes without certain secondary airframe and engine parts.

The FAA has determined that provisions do not exist in the Federal Aviation Regulations for approving a CDL for small airplanes, since it alters the FAA approved AFM/POH "LIMITATIONS" section on a flight by flight basis. The EMBRAER-issued CDL contains such limitations which differ from those contained in the FAA approved AFM/POH "LIMITATIONS" section. EMBRAER was advised of this and EMBRAER issued Revision No. 29 to Publication No. T.P.-110P1/176 on November 29, 1986. This revision deleted Supplement No. 36 from the POH. Based on the foregoing, the FAA considers that an AD is required to ensure that all operators have removed Supplement No. 36 from their Flight Manuals.

The FAA has determined there are approximately 124 airplanes affected by the proposed AD. The cost of complying with the proposed AD is negligible to all operators and, therefore, 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 the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

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

1. The authority citation for Part 39 continues to read 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); 14 CFR 11.89.

2. By adding the following new AD:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Applies to Models EMB-110P1 and EMB-110P2 (all serial numbers) airplanes certificated in any category.

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

To preclude operations with configurations which are contrary to the FAA approved Airplane Flight Manual/Pilot's Operating Handbook (AFM/POH) "LIMITATIONS" section, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the EMB-110 AFM/POH by incorporating Revision 29, dated November 3, 1986, to EMBRAER Publication No. T.P.-110P1/176, "Pilot's Operating Handbook and CTA Approved Airplane Flight Manual Supplement for EMBRAER EMB-110P1/P2."

(b) The requirement of paragraph (a) of this AD may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations (FAR) on any airplane owned or operated by him. The person accomplishing this action must make the appropriate aircraft maintenance record entry as prescribed by FAR 91.173.

(c) An equivalent method of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; Telephone (404) 991-2910.

All persons affected by this directive may obtain the documents referred to herein upon request to EMBRAER, P.O. Box 343-CE, 12.200 Sao Jose dos Campos, Sao Paulo, Brazil; or may examine the documents referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 18, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 87-7205 Filed 4-1-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWP-10]

Proposed Establishment of a Control Zone and Transition Area at Kapalua, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

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

DATE: Comments must be received on or before April 17, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 87-AWP-10, Air Traffic Division, P.O. Box 90027, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWP-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90260, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a control zone and transition area at Kapalua, Hawaii. This proposed action will provide controlled airspace for IFR departures and arrivals at the new Kapalua Airport. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation

Regulations were republished in Handbook 7400.6B dated January 2, 1986.

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, Control zones, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

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

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Kapalua, Hawaii [NEW]

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

3. Section 71.181 is amended as follows:

Kapalua, Hawaii [NEW]

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

Issued in Los Angeles, California, on March 17, 1987.

Wayne C. Newcomb,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87-7206 Filed 4-1-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 54 and 602

[EE-151-86]

Payment of Excise Tax on Reversion of Qualified Plan Assets to Employer

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: This document provides regulations regarding the payment of the excise tax by employers receiving (directly or indirectly) reversions of qualified plan assets required by the Tax Reform Act of 1986. In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the payment of the excise tax; the text of these temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by June 1, 1987. These amendments are proposed to be aplicable to reversions occurring after December 31, 1985.

ADDRESS: Please mail or deliver comments to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-151-86), 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Suzanne K. Tank of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3938, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 54 of the Code of Federal Regulations. New § 54.6011-1T and new § 54.6071-1T are added to Part 54 of Title 26 of the Code of Federal Regulations. When § 54.601-1T is promulgated as final regulations, § 54.6011-1 will be revised to reflect the new provision. For the text of the temporary regulations, see FR Doc. 87-7306 (TD 8133) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains this addition to the Pension Excise Tax Regulations.

Nonapplicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

The Secretary of the Treasury has certified that this rule will not have a significant impact on a substantial number of small entities. First, most small businesses maintain defined contribution plans. The regulations do not generally affect defined contribution plans. Hence, small businesses would not generally be affected by the regulation. Second, very few businesses with defined benefit plans will be terminating their plans and receiving a reversion in any calendar quarter or year. A Regulatory Flexibility Analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on these requirements should be sent of the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on the requirements to OMB also send copies of these comments to the Service.

Drafting Information

The principal author of these proposed regulations is Suzanne K. Tank of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, on matters of both substance and style.

Comments and Requests for a Public Hearing

Before adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-7307 Filed 4-1-87; 8:45 am]

BILLING CODE 4830-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

Employee Benefit Plans

AGENCY: Equal Employment Opportunity Commission (EEOC, Commission).

ACTION: Notice of proposed rulemaking.

SUMMARY: This action replaces the interpretations of the Age Discrimination in Employment Act of 1967, as amended (ADEA, Act), 29 U.S.C. 621 *et seq.*, at 29 CFR 860.120(f)(1)(iv)(B), rescinded by Court Order on March 18, 1987, 52 FR 8448, which provided that section 4(f)(2) of the ADEA permits employers to cease contributions and accruals to pension and retirement plans for employees who continue to work beyond normal retirement age, with substantive rules to be codified at 29 CFR 1625.21 requiring employers to continue contributions and accruals for such workers.

This rulemaking is done pursuant to an Order entered on February 26, 1987 by Judge Harold Greene in *American Association of Retired Persons, et al.* v. *Equal Employment Opportunity Commission*, Civil Action No. 86-1740, United States District Court for the District of Columbia. Final rules must be published by May 18, 1987. The Order is now under appeal.

DATE: Written comments must be received by May 2, 1987, and must be submitted in quadruplicate.

ADDRESS: Comments may be mailed to: Executive Secretariat, Equal Employment Opportunity Commission, Room 507, 2401 E Street NW., Washington, DC 20507.

FOR FURTHER INFORMATION CONTACT: Paul E. Boymel or Joseph N. Cleary, Office of Legal Counsel, Room 214, EEOC, 2401 E Street NW., Washington, DC 20507, (202) 634-6423.

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

Because of the economic impact of the rules, the Commission has prepared a Preliminary Regulatory Impact Analysis of this rule. The Preliminary Regulatory Impact Analysis examines the various alternatives that the Commission considered in preparing this rule and considers the cost and program implications of certain alternatives. A copy of the Preliminary Regulatory Impact Analysis has been placed in the docket of this rulemaking and is available for public inspection.

Regulatory Flexibility Act Certification

The Chairman, Equal Employment Opportunity Commission, hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on findings developed in the Commission's Regulatory Impact Analysis (RIA) that indicate as follows:

(1) Increased annual costs to employers will be in the range of 1.2 to 2.4% of pension costs (and therefore less than 1% of salary costs);

(2) Any increased costs will be directly proportional to the number of older employees participating in a pension plan;

(3) The percentage of older employees employed by small entities is assumed to be approximately the same as the percentage employed by large entities;

(4) Small entities will incur the same percentage cost increases as large entities;

(5) The rules do not establish significant overhead costs; any overhead costs will be directly proportional to the number of employees;

(6) Employers with fewer than twenty employees are exempt from the rules.

Accordingly, the Commission is not required to prepare an initial or final regulatory flexibility analysis of the proposed rule.

Background

This rulemaking is done pursuant to an Order entered on February 26, 1987 by Judge Harold Greene in *American Association of Retired Persons, et al.*, v. *Equal Employment Opportunity Commission*, Civil Action No. 86-1740, United States District Court for the District of Columbia. Final rules must be published by May 18, 1987. The Order is now under appeal.

By way of background, the Commission voted on March 5, 1985 to circulate draft rules to other affected agencies under Executive Order 12067. As the result of technical comments received from the Internal Revenue Service, the draft rules were restructured in 1986. The Commission was prepared to vote at its November 10, 1986 meeting regarding the publication of the proposed rules in the **Federal Register** for public comment.

On October 17, 1986, however, Congress passed the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99-509. In sections 9201-9204 of that statute, Congress amended the ADEA to require continuing contributions and accruals in a pension plan regardless of an employee's age. In section 9204, Congress set forth the effective date of such rules. The amendments will be effective "only with respect to plan years beginning on or after January 1, 1988 . . ." with special rules for collectively bargained plans.

As the result of the passage of Pub. L. 99-509, the Commission decided, at its meeting of November 10, 1986, that it would not be appropriate to continue the rulemaking begun in 1985 since: (1) Congress, in setting a 1988 effective date, had set forth its clear desire to grant a grace period to allow employees time to implement a complex change to their pension programs; (2) the draft rules of March 1985, as modified in 1986, imposed an "equal cost" requirement (see discussion, below), while the new statute imposed an "equal benefit" rule, a significant difference that would require employers to amend their plans twice within a one- or two-year period; (3) reviewing two sets of amendments within such a short period of time would prove to be an intolerable burden for the Internal Revenue Service, which has the responsibility for approving the tax aspects of such changes; and (4) since the Commission was required under Pub. L. 99-509 to issue final regulations under that statute prior to February 1, 1988, the Commission's resources would best be spent in preparing the Pub. L. 99-509 rules rather than the rules developed in 1985-1986, which would be rescinded in 1988.

Discussion

The ADEA was amended in 1978 (*see* Pub. L. 95-256, 92 Stat. 198, April 6, 1978) to preclude mandatory retirement of covered employees and to raise the upper age limit for coverage under the Act from 65 to 70. Because these amendments potentially affected pension plans covered by the Employee Retirement Income Security Act

(ERISA), Pub. L. 93–406, 29 U.S.C. 1001 *et seq.*, and at the urging of Congress, in 1979 the Department of Labor (DOL) published the "Employee Benefit Plans; Amendment to Interpretative Bulletin," 29 CFR 860.120, 44 FR 30648 (May 25, 1979), which provided comprehensive guidance on employee benefit plans covered under the ADEA. The Interpretative Bulletin contains "Special Rules" that allow employers to cease contributions and accruals to pension and retirement plans for employees who continue to work beyond normal retirement age.

Congress, in section 4(a) of the Act, 29 U.S.C. 623(a), described the employer conduct that is prohibited. However, Congress also recognized that the cost to employers of providing certain benefits to older workers is greater than the cost of providing those same benefits to younger workers. Congress feared that requiring equal benefits for employees regardless of age would discourage the employment of older workers contrary to the purposes expressed in section 2(b) of the Act, 29 U.S.C. 621(b). *See* S. Rep. No. 723, 90th Cong., 1st Sess. 13–14 (1967) (views of Sen. Javits); 113 Cong. Rec. 31254–55 (1967). To avoid this result, Congress fashioned an exception to the general prohibitions in section 4(a) of the Act. That exception in section 4(f)(2), 29 U.S.C. 623(f)(2), reads:

It shall not be unlawful for an employer, employment agency, or labor organization—

* * * * *

(2) to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a) of this Act because of the age of such individual.

In recognition of the purposes of the Act and the legislative concern that increased benefit costs might lead to decreased employment opportunities for older workers, section 4(f)(2) was interpreted in 1969 as follows:

[A]n employer is not required to provide older workers who are otherwise protected by the law with the same pension, retirement or insurance benefits as he provides to younger workers, so long as any differential between them is in accordance with the terms of a bona fide benefit plan. For example, an employer may provide lesser amounts of insurance coverage under a group insurance plan to older workers, where the plan is not a subterfuge to evade the purposes of the Act. A *retirement, pension, or insurance plan will be considered in compliance with the statute where the actual amount of payment made, or cost incurred in behalf of an older worker is equal to that made or incurred in behalf of a younger worker,* even though the older worker may thereby receive a lesser amount of pension or retirement benefits, or insurance coverage. Further, an employer may provide varying benefits under a bona fide plan to employees within the age group protected by the Act, when such benefits are determined by a formula involving age and length of service requirements.

29 CFR 860.120(a), 34 FR 9709 (June 21, 1969) (emphasis added).

While the 1979 Interpretative Bulletin generally follows this "equal cost principle," the "Special Rules," which were promulgated regarding pension and retirement plans, allowed an employer to cease contributions and accruals for employees who continued in service beyond the normal retirement age specified in their plans, without a cost justification. The "Special Rules" applicable to pension and retirement plans covered by section 4(f)(2) of the ADEA, were rescinded under Judge Greene's Order. The rules under 29 CFR 1625.21 are premised on the principle that a retirement or pension plan will be considered in compliance with the Act where the actual amount of payment made, or cost incurred, on behalf of an older worker is equal to that made or incurred on behalf of a younger worker, even though the older worker may thereby receive a lesser amount of pension or retirement benefits. This "equal cost principle" has been the Commission's position throughout the entire rulemaking process.

Although age is not a significant cost factor in a defined contribution plan, since DOL's "Special Rules" addressed defined contribution plans, these rules make clear that defined contribution plans must provide for contributions regardless of an employee's age.

Section-by-Section Analysis of Proposed Changes

29 CFR 1625.21(a) The Commission solicits public comment regarding the effective date of these rules.

Section 1625.21(b)(1). Subsection 860.120(f)(1)(iv)(B)(1) of the Interpretative Bulletin permitted the cessation of contributions to a defined contribution plan with respect to participants who have attained normal retirement age under the plan. The proposed rule would not permit the cessation or reduction of employer contributions to a defined contribution plan on the basis of the age of the participant, regardless of whether or not the participant has attained normal retirement age. (Target benefit plans are not considered defined contribution plans for purposes of this paragraph).

Section 1625.21(b)(2). Subsection 860.120(f)(1)(iv)(B)(2) of the Interpretative Bulletin required the allocation of investment gains and losses and termination forfeitures in defined contribution plans to the individual account in a nondiscriminatory manner. It is proposed that this requirement be maintained.

Section 1625.21(b)(3). Subsections 860.120(f)(1)(iv)(B) (5) and (7) of the Interpretative Bulletin permitted a defined benefit plan to cease the accrual of benefits and to disregard salary increases and benefit improvements for an employee who continues to work after the plan's normal retirement age. The proposed rule reverses the approach of those subsections and provides that a defined benefit plan or target benefit plan shall provide for such accruals and that such plans shall not require or permit the cessation of benefit accruals or the reduction in the rate of benefit accruals on account of the age of the participant, except to the extent permitted as the result of age-related cost considerations. Further, the proposed rule would require a defined benefit plan or target benefit plan to credit years of service up to the maximum specified in the plan (unless such maximum operates as a subterfuge to evade the purposes of the Act), salary increases, and benefit improvements which occur after a participant attains normal retirement age. The proposed rule does not require actuarial adjustment of such benefits.

In light of the "equal cost" concept (employers must expend equal costs on younger and older workers but need not always provide equal benefits to older workers), the Commission welcomes specific comments on how best to define "equal cost."

Section 1625.21(b)(4). Wherever it has been possible to harmonize these regulations with or to avoid direct conflict with the specific provisions of ERISA, the Commission has sought to do so. Accordingly, this subsection makes clear that a pension plan will not be required to exceed the limits provided in Internal Revenue Code section 415 when complying with the section 1625.21 rules.

The Commission has decided tentatively to issue substantive rules to replace the DOL interpretative rules. The Commission welcomes specific comments on the issue of whether the section 1625.21 rules should be substantive or interpretative.

List of Subjects in 29 CFR Part 1625

Advertising, Aged, Employee benefit plans, Equal employment opportunity, Retirement.

Substantive Rules

PART 1625—[AMENDED]

Therefore, it is proposed that 29 CFR Part 1625 is amended as follows:

1. The authority citation for Part 1625 continues to read as follows:

Authority: 81 Stat. 602; 29 U.S.C. 621, 5 U.S.C. 301, Secretary's Order No. 10–68; Secretary's Order No. 11–68, and sec. 2; Reorg. Plan No. 1 of 1978, 43 FR 19807.

2. Section 1625.21 is added to Subpart B to read as follows:

§ 1625.21 Benefits under retirement and pension plans—Application of section 4(f)(2) of the Act.

(a) *Effective date.* [Reserved]

(b) *Benefits.* (1) A defined contribution plan shall not permit the cessation or reduction of employer contributions on the basis of the age of a participant, whether or not the participant has attained the plan's normal retirement age. For purposes of this subsection, a target benefit plan shall not be treated as a defined contribution plan.

(2) In defined contribution plans and target benefit plans in which investment gains and losses and (where appropriate) forfeitures are allocated to individual accounts, such allocations shall be made no less favorably on the basis of age to older employees, including those who continue to work past normal retirement age, than to younger employees.

(3) A defined benefit plan or target benefit plan shall not cease the accrual of benefits based on the age of a participant, whether or not the participant has attained the plan's normal retirement age. With respect to all employees, the plan must credit:

(i) Years of service (up to the maximum number of years specified in the plan);

(ii) Benefit improvements under the plan; and

(iii) Salary increases.

(4) Nothing contained in this section shall compel the payment or accrual of benefits or the making of contributions in excess of the limitations provided in Internal Revenue Code section 415.

Dated: March 27, 1987.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 87–7210 Filed 4–1–87; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–044]

Health and Safety Standards; Occupational Exposure to 2-Methoxyethanol, 2-Ethoxyethanol and Their Acetates

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Advance Notice of Proposed Rulemaking (ANPR).

SUMMARY: This notice announces the initiation of action by OSHA with respect to reducing occupational exposure to 2-Methoxyethanol, 2-Ethoxyethanol, 2-Methoxyethanol Acetate and 2-Ethoxyethanol Acetate (2-ME, 2-EE, 2-MEA, and 2-EEA, respectively) under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)). This regulatory action follows: (a) OSHA's review of scientific studies indicating that 2-ME, 2-EE and their acetates cause adverse reproductive, developmental and hematologic effects in several animal species, and (b) OSHA's acceptance of the Environmental Protection Agency's (EPA's) referral (50 FR 41393) of these chemicals under the authority of section 9(a) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2608).

This notice summarizes information currently available to OSHA concerning production and use of 2-ME, 2-EE and their acetates, health effects, estimates of employee exposure and risk assessments. This notice invites interested parties to submit comments, recommendations, data, and information on several important issues. Based on the information expected to be gathered as a result of this notice, OSHA will decide upon the appropriate action.

DATE: Comments in response to this Advance Notice should be submitted by July 31, 1987.

ADDRESS: Comments should be submitted in quadruplicate to the Docket Officer, Occupational Safety and Health Administration, Docket No. H–044, Room N–3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Office of Information, Room N–3649, Washington, DC 20210. Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION:

I. Background

1. Chemical Identification and Properties

The chemicals, 2-Methoxyethanol (2-ME), 2-Methoxyethanol acetate (2-MEA), 2-Ethoxyethanol (2-EE), and 2-Ethoxyethanol acetate (2-EEA) are members of a class of chemicals known as ethylene glycol ethers which are, in turn, members of a broader class of chemicals known as glycol ethers. In this document the term ethylene glycol ethers will refer to 2-ME, 2-MEA, 2-EE and 2-EEA. The term glycol ethers will refer to these as well as other glycol ethers. The respective Chemical Abstracts Service (CAS) Registry numbers for the subject ethylene glycol ethers are 109–86–4, 110–49–6, 110–80–5, and 111–15–9. All four compounds are completely miscible with water and many organic solvents. At room temperature and atmospheric pressure, these compounds are colorless liquids that are highly reactive in the presence of strong oxidizers: 2-MEA and 2-EEA are also highly reactive in the presence of nitrates and strong acids. Decomposition products during combustion or fire include toxic gases and vapors such as carbon monoxide.

2-ME, chemical formula $CH_3OCH_2CH_2OH$, has a molecular weight of 76.1, a boiling point at 760mm Hg of 124 °C, a vapor pressure at 20 °C of 6mm Hg, a flash point of 42 °C and possesses a mild non-residual odor with odor threshold warning properties around 60 ppm. 2-MEA, chemical formula $CH_3COOCH_2OCH_3$, has a molecular weight of 118, a boiling point of 145 °C, a vapor pressure of 2mm Hg, a flash point of 44 °C and possesses a mild ether-like odor with an odor threshold at approximately 50 ppm. 2-EE, chemical formula $C_2H_5OCH_2CH_2OH$, has a molecular weight of 90.1, a boiling point of 135 °C, a vapor pressure of 4mm Hg, a flash point of 49 °C and possesses a sweetish odor that is slight at low concentrations and strong at high concentrations. 2-EEA has a chemical formula $C_2H_5OCH_2CH_2OCOCH_3$, a molecular weight of 132, a boiling point of 156 °C, a vapor pressure of 2mm Hg, a flash point of 47 °C and possesses a mild non-residual odor with odor threshold warning properties at approximately 100 ppm.

2. Production and Use

Ethylene glycol ethers are produced by the reaction of ethylene oxide and an alcohol. The type of ethylene glycol ether is determined by the type of alcohol employed. Methyl alcohol produces ethylene glycol monomethyl

ether (2-ME) and ethyl alcohol produces ethylene glycol monoethyl ether (2-EE). The corresponding acetates, 2-MEA and 2-EEA, are produced by reacting 2-ME and 2-EE with acetic acid.

Over 420 million pounds of the four substances were produced in the U.S. in 1981, with domestic consumption accounting for approximately 80%. Approximate 1981 consumption in the United States for each substance was: 90 million pounds of 2-ME, 170 million pounds of 2-EE, three million pounds of 2-MEA, and 100 million pounds of 2-EEA.

Domestic consumption of these chemicals falls into five major categories: chemical intermediates, industrial coatings, industrial solvents, solvents and coatings used in trade industries, and jet fuel additives: The major chemical intermediate use is in the production of the glycol ether acetates, 2-MEA and 2-EEA. Another chemical intermediate application is in the production of plasticizers. Industrial coating use includes finishes for cars, trucks, heavy equipment, appliances, metal furniture, steel sheet and metal cans. Electric circuit board manufacture, semiconductor manufacture, photographic applications, textile dyeing and various industrial cleaning solvents are among the many industrial solvent application. The major trade industry uses are in commercial printing as solvents and as components of inks, and in auto refinishing and maintenance painting. Glycol ethers are used in jet fuels to prevent freezing. Military uses dominate this category. However, small private planes represent a small portion of the total use.

3. History of the Standard

OSHA's current Permissible Exposure Limits (PELs) for 2-ME, 2-MEA, 2-EE and 2-EEA are 25 ppm, 25 ppm, 200 ppm, and 100 ppm, respectively. All are time weighted averages (TWAs) for an 8-hour workshift (29 CFR 1910.1000 Table Z–1). In the Z–1 Table, 2-ME, 2-MEA, 2-EE and 2-EEA are listed under the names Methyl Cellosolve, Methyl Cellosolve Acetate, 2-Ethoxyethanol and 2-Ethoxyethyl Acetate, respectively. The OSHA standards bear a skin notation, indicating the potential contribution to the overall exposure by the cutaneous route, including mucous membranes and eye, either by airborne or more particularly, by direct contact with the substance.

The current standards were adopted in 1971 pursuant to section 6(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655). The source of these standards was the American Conference of Governmental Hygienists (ACGIH) and they are based primarily on blood, kidney, liver and central nervous system toxicity.

Private firms, under section 8(e) of TSCA, submitted the results of animal studies to EPA indicating that inhalation and dermal exposure to low levels of 2-ME and 2-EE may pose a serious risk of fetotoxic affects and a risk of adverse reproductive effects in males. As a result of the testicular effects observed in animal studies, the ACGIH, in its notice of Intended Changes (for 1982), proposed TWAs of 5 ppm for 2-ME, 2-EE and their acetates which were subsequently adopted in 1984. Likewise, NIOSH published, on May 2, 1983, a Current Intelligence Bulletin recommending that 2-ME and 2-EE be regarded in the workplace as having the potential to cause adverse reproductive effects in male and female Workers (Ex. 5–001).

On January 24, 1984, EPA published an Advance Notice of Proposed Rulemaking (ANPR) (49 FR 2921) in which it determined that adverse reproductive and developmental effects are associated with these glycol ethers at concentrations to which humans may be exposed. As a result of information received in response to the ANPR and other information developed by EPA, EPA determined that the risks associated with exposure to 2-ME, 2-EE and their acetates may be reduced to a sufficient extent by action taken under the OSH Act. Following these findings, EPA, in accordance with section 9(a) of TSCA, on May 20, 1986, referred 2-ME, 2-EE, and their acetates to OSHA to give this Agency an opportunity to regulate the chemicals under the OSH Act (51 FR 18488). EPA requested OSHA to determine whether the risks described in the EPA report may be prevented or reduced to a sufficient extent by action taken under the OSH Act. If such a determination was made, then OSHA was requested to issue an order declaring whether the manufacture and use described in the EPA report present the risk therein described. EPA requested OSHA to respond within 180 days.

On December 11, 1986, OSHA published a notice (51 FR 42257) responding to the EPA referral report by making a preliminary determination that a revised OSHA standard limiting occupational exposure to 2-ME, 2-EE and their acetates could prevent or reduce the risks due to exposure to a sufficient extent and that such a risk had been accurately described by EPA in the report.

With this notice, OSHA is initiating action within the meaning of section 9(a) of TSCA.

II. Health Effects

The effects of exposure to the ethylene glycol ethers on the reproductive system and on fetal development have been studied in several animal species. The results uniformly show developmental toxicity, including increases in the incidences of fetal malformations and resorptions, and testicular damage. Studies have also shown adverse hematologic effects and adverse behavioral effects in offspring. Data are limited on mutagenicity and potential carcinogenicity. A summary of OSHA's preliminary review of the experimental studies is presented below.

A. Absorption and Metabolism

Ethylene glycol ethers are readily absorbed following oral, dermal or inhalation exposure. Measurements made on excised human skin show an extremely rapid absorption of 2–ME, 2–EE and 2–EEA (Ex. 4–115). After 2–ME and 2–EE are taken into the body, they are metabolized to methoxyacetic acid and ethoxyacetic acid, respectively, by alcohol and acetaldehyde dehydrogenases. The acetate esters, 2-MEA and 2-EEA, are also metabolized to the same alkoacetic acids as their parent compounds. Current evidence suggests that the acid metabolites of these glycol ethers may be the actual toxicants (Exs. 4–102, 4–133, and 4–192).

B. Reproductive and Developmental Effects

Studies of inhalation exposures to 2–ME and 2–EE have shown that these exposures produce adverse reproductive and developmental effects in several animal species. A reproductive effect refers to alterations in the reproductive or sexual functioning of the adult from sexual maturation through adulthood (e.g., impotence or infertility). Developmental effects refer to adverse effects on the developing organism that may result from toxic exposures to either parent prior to conception, during prenatal development, or postnatally to the time of sexual maturation (e.g., death, structural abnormality, or functional deficiency of the developing organism). The effects observed from exposure to 2–ME and 2–EE include testicular damage, reduced fertility, maternal toxicity and developmental abnormalities of the fetus.

Available data show that 2-ME is developmentally toxic in rabbits and rats exposed by inhalation (Ex. 4–042a). Fetotoxic effects (embryo/fetal death or resorptions) were observed after exposures of 10 ppm in rabbits and 50 ppm in rats. The No Observed Effect

Levels (NOELs) were 3 ppm and 10 ppm, respectively. Other fetal effects such as skeletal and soft tissue abnormalities occurred at higher doses of 50 ppm and above in rats and rabbits. In addition, fetotoxic effects were observed in mice after inhalation exposure to 2-ME at 50 ppm (Ex. 4–106). The NOEL was 10 ppm. In a one-dose behavioral study, neurochemical imbalances and behavioral changes in rat offspring were observed after maternal *or* paternal exposures of 25 ppm 2–ME (Ex. 4–136).

Testicular damage was observed in rats and rabbits after inhalation exposures to 2–ME (Ex. 4–045). At 100 ppm, degenerative changes occurred in the germinal epithelium of rabbit testicles. The NOEL was 30 ppm. In the rat, decreased testicular weight and testicular epithelial degeneration were observed at 300 ppm, and the NOEL was 100 ppm. Testicular damage was also observed in a study in rabbits exposed orally to 100 mg/kg/day (Ex. 4–110). In particular in this study, a one-time exposure of 250 mg/kg resulted in testicular damage. These results are verified by the findings of a cross-sectional study of men engaged in the production of 2–ME, where workers with the highest potential exposures exhibited decreases in testicular size, when compared to unexposed controls (Ex. 5–002).

2–EE has been shown to be developmentally toxic in laboratory animals after inhalation exposure. In rabbits (Ex. 4–039), fetal skeletal abnormalities were observed at 175 ppm. In rats (Ex. 4–038) exposed at 250 ppm, the fetal effects included decreased mean live weight, increased resorptions and increased external and skeletal effects. The NOEL in both species was 50 ppm. In addition, 2–EE has also been shown to be developmentally toxic after dermal exposure in the rat (Ex. 4–121): doses totaling 1 ml/day caused resorptions and visceral and skeletal abnormalities. In behavioral testing of offspring, separate maternal and paternal exposures to 2–EE both resulted in neurotoxic effects, including impaired neuromuscular ability and neurochemical imbalances in the brain (Ex. 4–138).

Testicular damage was observed in rabbits after inhalation of 2–EE (Ex. 4–108) at exposures of 400 ppm; decreases in testicular weight and degeneration of seminiferous tubules were observed. The NOEL was 100 ppm. Rats similarly exposed did not exhibit any adverse reproductive effects (Ex. 4–109). Thus, in rats in this study, the NOEL was measured at 400 ppm. A recent human study has evaluated the semen quality of men exposed to 2–EF during the preparation of ceramic shells in metal casting (Ex. 5–003). Workers exposed by inhalation to 2–EE at airborne levels ranging from non detectable to 33.8 ppm exhibited a decrease in average sperm count compared to the counts of in-plant controls.

2–MEA and 2–EEA are expected to show developmental and reproductive toxicity similar to their parent compounds 2–ME and 2–EE. This is based on the fact that each glycol ether and its acetate are metabolized to the same acid metabolite (methoxyacetic acid and ethoxyacetic acid, respectively) and the fact that the metabolite is believed to be toxic. For example, data suggest that 2–ME, through its metabolite methoxyacetic acid, has an adverse effect on the testis (Ex. 4–133). Intraperitoneal injections of methoxyacetic acid have induced developmental toxicity, lending support to the idea that methoxyacetic acid is the active agent (Ex. 4–102). Because 2–EE is metabolized in a manner similar to which 2–ME is metabolized. 2–EE's metabolite, ethoxyacetic acid, is also believed to be a toxic agent.

C. Hematologic Effects

Data from laboratory animals have demonstrated that exposure to 2–ME may result in a variety of hematologic effects including hemolysis, bone marrow depression, and immunosuppression. (Exs. 4–017, 4–042a and 4–077). The effects observed have resulted from exposures similar to those producing reproductive or developmental effects. Limited data from mouse studies suggest that 2–EE, 2–EEA and 2–MEA may also produce adverse effects on the peripheral blood. (Ex. 4–135).

Adverse hematologic effects including anemia, lowered white blood cell counts and bone marrow depression have also been observed in humans exposed to 2–ME, and possibly 2–EE. After dermal exposure to an undetermined quantity of 2–ME, workers in an electroplating facility exhibired bone marrow injury and pancytopenia as well as encephalopathy (Ex. 4–139). Air concentrations during the use of 2–ME averaged 8 ppm. 2–ME had been substituted temporarily for acetone due to a shortage. Clinical recovery followed cessation of exposure to 2–ME. One death from aplastic anemia, three cases of bone marrow injury, and four cases with non-specific bone marrow changes were observed in lithographers exposed dermally and by inhalation to multiple solvents including 2–EE and dipropylene glycol monomethyl ether (DPME) (Ex. 5–004). However, this study is difficult to interpret because the exposure situations, 2–EE concentrations and concentrations of other chemicals were not well characterized. Exposure measurements were made for DPME only, as the authors considered this the most likely etiologic agent. Thus it is uncertain whether 2–EE could be implicated.

III. Risk Assessment

The EPA has prepared a risk assessment (Ex. 4–004) for 2-ME, 2-MEA, 2-EE and 2-EEA. This assessment estimated human risk on the basis of the most sensitive end point(s) observed in the animal studies. To estimate this risk, EPA calculated the margins of safety. The margin of safety is defined as the No Observed Effect Level (NOEL), in the most sensitive species studied, divided by the estimated human exposure level.

The NOELs for testicular toxicity utilized by the EPA in calculating margins of safety were 30 ppm for 2-ME and 100 ppm for 2-EE. For developmental toxicity, the NOELs were 3 ppm for 2-ME and 50 ppm for 2-EE. Because the acetates are thought to rapidly hydrolyze to acetate and glycol ether in the body, the effects of 2-MEA and 2-EEA were assumed to be the same as those of 2-ME and 2-EE, respectively. Therefore, the NOEL for each acetate was assumed to be the same as that for the respective glycol ether.

Exposure data for various segments of industry where glycol ethers are produced or used were obtained and used to calculate margins of safety for worker exposures in each segment. An exposure level with a 100-fold margin of safety is considered unlikely to produce adverse effects in humans. However, for many uses of these glycol ethers, the occupational exposure levels were so high that only a small or non-existent margin of safety would be provided to workers. The EPA estimated that between 206,000 and 350,000 workers are exposed to these four glycol ethers at air concentrations that provide less than a 100-fold margin of safety, while approximately 46,000 workers are exposed with less than a 10-fold margin of safety. The EPA risk assessment (Ex. 4–004) considered only inhalation exposures; a risk assessment that accounted for absorption through the skin of exposed workers could considerably increase the assessed risks of exposure and the population at risk.

From the testicular effects observed in experimental studies, it was possible to further estimate the risks of human exposure. EPA estimated that a six to seven percent reduction in fertility could

occur among males exposed to 2-ME at levels between 1 and 5 ppm. Furthermore, EPA observed that, because hematologic effects have been found at exposure levels producing developmental effects, controlling the risks of developmental toxicity will also reduce the risks of hematologic effects.

In its risk assessment, EPA has relied primarily on a qualitative method, the use of a margin of safety approach, to estimate the risk of reproductive hazards. Although the use of margins of safety is a generally accepted methodology, OSHA has often relied on a more quantitative approach to risk assessment in order to establish significant risks. To date, only a few attempts have been made to develop methodology to quantitatively assess the risks associated with reproductive and developmental hazards. Therefore, OSHA is currently searching for methods to quantify these risks and the Agency welcomes any information with respect to this issue.

IV. Occupational Control Measures

Currently, the primary source of occupational exposure data is the Pedco Environmental, Inc. (PEI) report prepared for EPA (Ex. 4–007). PEI based estimates of occupational exposure on data from OSHA and NIOSH. The exposure data show that in most large industries (manufacturing, formulation and industrial solvent uses), the majority of exposures are below 0.03 ppm for 2-ME and below 1 ppm for 2-EE. However, the trade industries involved in the application of surface coatings and inks are characterized by higher exposures (exposures above 3 ppm for 2-ME and above 10 ppm for 3-EE).

The exposure data collected by PEI were obtained from published reports, unpublished data maintained by OSHA and NIOSH, and several industry trade groups. Most of these data represent exposures occurring in the late 1970's and early 1980's. In addition, these data sources contained little information on current industry practices with regard to the use of engineering and work practice controls and personal protective equipment. OSHA is currently gathering additional data to broaden and update its data base on airborne exposure levels and current industry practices.

The exposure data in the PEI report are based solely on inhalation exposure to glycol ethers. Dermal absorption can be a major contributor to the total exposure. OSHA is currently gathering additional exposure information, including data on the contribution of dermal exposure, which will permit the Agency to develop a more accurate profile of the current exposure situation.

OSHA's preliminary evaluation of available information indicates that exposures can be controlled by instituting engineering controls, improving work practices or requiring employees to use personal protective equipment wherever engineering controls fail to reduce the exposure to the desired level. The use of engineering controls, such as enclosing the operation and using local exhaust ventilation, would contribute to the reduction of exposure levels in the workplace. Using personal protective equipment such as goggles, gloves, aprons and respirators (where necessary) and substitutinq for the chemical (if feasible) could also further decrease worker exposure.

V. Technological Feasibility and Economic Analysis

Industrial Economics, Incorporated (IEc) prepared a draft regulatory impact analysis for EPA (Ex. 4–008) that has assessed the cost of installing engineering equipment to control glycol ether exposures. They estimate that if all workplaces, industrial and trade, installed engineering controls and used personal protective equipment, the capital costs to attain a 0.1 or 0.5 ppm exposure level, would be $86.6 million and $42.8 million, respectively, and the operating costs would be about $1.25 billion for either exposure level. EPA suggests that many firms, due to high costs, will opt for substitution. Therefore, assuming a move by firms to substitutions, EPA estimated that the annualized cost of revising the current PELs for all workers would be $83 million.

OSHA's preliminary evaluation of the available information suggests that it would be technologically and economically feasible to implement engineering controls and other protective measures which may be necessary in order to reduce the current PEL. OSHA intends to develop a more detailed regulatory assessment on the feasibility of reducing the PELs.

VI. Scope of Regulation

In the past OSHA has typically regulated chemicals under the 6(b) rulemaking process by developing health standards for one substance at a time. However EPA, under section 9(a) of TSCA, has referred, as a group, four ethylene glycol ethers to OSHA. These four substances have been treated as a group by EPA, NIOSH and the ACGIH because of their industrial, significance (volume of production and length of use), their similar chemical properties and uses, and because of the available toxicity data for 2–ME and 2–EE. Thus, in its response to EPA's referral and in this notice, OSHA is considering these four ethylene glycol ethers for a single rulemaking.

However OSHA is considering whether it may be best to treat 2–E. 2–EE and their acetates as a group or to treat each substance separately. There are data which suggest that different PELs would be appropriate. For example toxicity data have established that 2–ME is a more potent reproductive toxin than 2–EE. Thus there is a potential tisk differential between 2–ME and 2–EE and similar differences between their respective acetates.

OSHA is also considering the possibility of expanding the scope of its rulemaking to cover other glycol ethers. The glycol ethers family, of which the ethylene glycol ethers 2–ME. 2–EE and their acetates are a subset, contains hundreds of compounds, many of which have not been tested. It is reasonable to assume that, based on structural similarities and similar metabolic pathways, that the adverse effect of at least some of these compounds may be similar to those already tested. Some preliminary studies being conducted by NIOSH suggest that exposure to some higher order glycol ethers may present reproductive risks similar to those for ethylene glycol ethers. The industrial and trade users who employ substitutes for 2–ME, 2–EE and their acetates to reduce employee risk from exposure to ethylene glycol ethers, may choose other glycol ethers which are potentially as toxic as these four. Therefore, it may be appropriate to include other glycol ethers within the scope of a possible standard.

Adopting a more generic approach to regulating glycol ethers might also lead to more efficient rulemaking. In the past regulating chemicals on a substance by substance basis has involved major commitments of the Agency's time to one substance. Including more than one substance in a single rulemaking, where those substances show many similarities in their chemical properties and uses, would enable OSHA to make a more efficient use of its resources, saving both time and effort which could be utilized on standards for other toxic substances.

OSHA solicits information and comments with respect to this issue. Specifically, is a generic approach feasible or appropriate for glycol ethers, or should OSHA continue to regulate substance by substance? Also if a generic approach is feasible how might such an approach be implemented, given the fact that the observed adverse effects for different substances may occur at different exposure levels?

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5–003 NIOSH. Ratcliffe, J. et al. Health hazard evaluation determination Report no. 84–415–1688, Precision Castparts Corporation, Portland, Oregon (1986). Cincinnati: U.S. Dept. of Health and Human Services.

5–004 Cullen, Mark R. et al."Bone Marrow Injury in Lithographers Exposed to Glycol Ethers and Organic Solvents Used in Multicolor Offset and Ultraviolet Curing Printing Processes." *Arch. Envr. Health* (1983) 38(6):347–54.

5–005 OSHA Analytical Laboratory, Organic Methods Evaluation Branch, Salt Lake City Utah. Analytical Methods for Monitoring 2-Methoxyethanol, 2-Methoxyethyl Acetate, 2-Ethoxyethanol, and 2-Ethoxyethyl Acetate.

Request for Comments

OSHA solicits information and comments relevant to the effects and controls of exposure to 2–ME, 2–EE and their acetates. OSHA is also considering whether to broaden the scope of the rulemaking to include glycol ethers other than those referred by EPA. Thus, OSHA is also interested in information on other glycol ethers. Interested parties are invited to express opinions as to what provisions, including those which set the permissible exposure limit(s), should be included in a revised standard for these ethylene glycol ethers. OSHA is specifically interested in methods, costs, and effectiveness of control strategies that have already been employed to reduce exposure to 2–ME, 2–EE, and 2–MEA and 2–EEA. The questions below will provide specific guidance on OSHA's request for information. Please provide the rationale that supports your submissions.

Information on glycol ethers that has already been submitted to EPA (Docket No. OPTS–62030) is part of the OSHA record (Docket No. H–044) and need not be resubmitted. Comments and data previously submitted to OSHA remain part of this record and likewise need not be resubmitted.

Comments should be sent in quadruplicate to the Docket Officer, at the address noted above, where they will be available for inspection and copying. The data received will be carefully reviewed by OSHA to determine appropriate action.

A. *Health Effects.*

(1) What studies should OSHA consider to assess potential health risks, especially the reproductive and developmental effects, of 2–ME, 2–EE, 2–MEA, and 2–EEA?

(a) What available data, such as medical records or unpublished studies not now in the record, should be included in OSHA's decision making?

(b) In light of the reproductive, developmental, and hematotoxic effects shown by the animal studies, what human data show such effects?

(c) What recent animal toxicity data for glycol ethers other than 2–ME, 2–EE and their acetates exist?

(2) What dermal absorption studies are available and what is the extent of potential adverse health effects resulting from such dermal exposure?

(3) What studies and other evidence are available indicating the combined effects of inhalation and dermal exposures?

(4) How should OSHA estimate the significance of risk at the current exposure levels for the 4 subject glycol ethers?

Specifically:

(a) What mathematical models are most appropriate to quantify the risk of reproductive and developmental effects or other adverse health effects from exposure to glycol ethers?

(b) What approaches, other than quantitative risk assessment, are available for assessing reproductive or developmental risks?

(c) Is EPA's use of margins of safety an appropriate method? Why? What are its advantages and/or disadvantages?

(d) Which studies should be used for a quantitative risk assessment for glycol ethers?

(e) Which health effects in which animal species, by which route(s) of administration and at which dose level(s), should be selected for use?

(f) How should dose levels in experimental animal studies be converted to equivalent doses for occupationally exposed persons? How should the dose levels be expressed?

(g) What exposure duration other than working lifetime, i.e., gestation period, first trimester, etc., should be incorporated into a risk assessment model?

(h) Should corrections be made for species to species extrapolation and for combined routes of exposure (i.e., dermal and inhalation)? How should these extrapolations be done?

(i) Are there data available to indicate a "dose response" effect for glycol ether exposure?

(j) What is the relationship between frequency and duration of exposure to glycol ethers and risk of reproductive developmental effects?

(k) What quantitative methods are available for estimating risks other than reproductive or developmental risks that are associated with glycol ether exposures (e.g., hematological effects, neurological effects)?

(l) What methods are available to measure the health risks from dermal contact with the glycol ethers?

B. *Permissible exposure limits.*

2-ME and 2-MEA have been found to be more toxic than 2-EE and 2-EEA. Therefore, it may be necessary to set four permissible exposure limits within one standard. The development of four separate standards may not be as efficient as one standard for the group because of the similarities in the adverse effects observed, because it may be necessary to consider their combined effects, and because exposure data indicate that in many workplaces more than one of them are in use simultaneously.

(1) Should OSHA set 4 separate PELs within one standard or set one PEL for all 4 substances?

(2) Would compliance with limits for these four chemicals be facilitated by the promulgation of a single limit for all four chemicals, based on the hazards associated with the most toxic chemical (i.e., 2-ME)?

(3) Should the glycol ethers 2-ME, 2-MEA, 2-EE, and 2-EEA be treated separately or as a group in terms of rulemaking?

(4) Should OSHA take a generic approach to the regulation of the family of glycol ethers and include other gylcol ethers in the scope of its rulemaking?

(5) Should a revised standard for 2-ME, 2-EE and their acetates include an 8-hour time weighted average, a short term exposure limit (STEL), a ceiling level, and an action level or some combination of these limits?

(6) What permissible exposure limits should be proposed and what health evidence is available to support these limits?

(7) What are the limits of detection and accuracy of the available methods of monitoring for each of the four glycol ethers under consideration?

(8) What data support the technological feasibility of achieving the permissible limits under consideration for the various job categories?

C. *Production and Control Systems.*

(1) What current production processes and their associated engineering controls are utilized.

(2) What data are there indicating the efficiency of the currently employed control techniques?

(3) Is there any industrial process or trade use for which engineering controls are not adequate to control workers' exposure to levels at or below the current limits?

(4) What are the potential modifications in process or production technologies that are available or can be implemented for reducing workers exposures?

(5) What level of exposure reduction can be expected from employing specific process modifications or installing specific engineering controls?

D. *Substitution Availability.*

(1) What substitutes are there for 2-ME, 2-EE and their acetates and what are their limitations?

(2) For any available substitute are there studies available documenting potential adverse health effects?

(3) Are there unique situations, industrial operations or trade uses where substitutes have been determined to be either unavailable or infeasible to use for controlling worker exposures?

(4) Where are there industrial uses where substitutes can replace only a part of 2-ME, 2-EE, 2-MEA or 2-EEA in a mixture?

(5) What is the extent and the impact of such partial substitution?

(6) How efficient are substitutes as compared to 2-ME, 2-EE and their acetates in specific industrial uses?

(7) What non-chemical substitutes are there for uses that now employ glycol ethers?

(8) What costs are involved in reformulating products or redesigning processes so that substitutes can be used.

(9) Are there improvements in productivity or other economic advantages to be gained from substituting other chemicals for glycol ethers?

E. *Protective Equipment and Respirators.*

(1) What types of respirators are currently being supplied by employers for protection against glycol ethers? In what processes?

(2) What are the costs associated with the use of respiratory protection? In particular, if chemical cartridges are being used, how often are they replaced?

(3) What data are available for the glycol ethers on breakthrough times of organic vapor-cartridges?

(4) What other types of protective equipment, such as gloves and aprons, are currently being supplied by employers?

(5) OSHA is aware that butyl rubber may provide the best 8-hour protection against dermal contact with 2-ME, 2-EE and their acetates and that nitrile rubber is effective in splash (short term) situations.

(a) Have any other materials been tested and been found to be equally protective?

(b) In what processes or job categories is it current practice to use protective gloves? aprons?

(c) How often must these gloves be replaced to ensure that there is no dermal contact with glycol ethers?

(d) Are there processes that have the potential for dermal contact where it is not desirable to wear protective gloves because their use will interfere with productivity or product quality?

(e) What are the costs of these gloves per employee per year?

(6) What is the durability or resistivity of this protective equipment?

(7) Under what conditions (e.g., exposure level, type of operation, duration of exposure) do employers presently provide protective equipment and respirators to their exposed employees?

F. *Exposure and Monitoring.*

(1) What proportion of the workforce in each of the following sectors is exposed to 2-ME, 2-EE and/or their acetates? At what levels?

(a) Chemical production and intermediates?

(b) Industrial coatings and formulation?

(c) Ink formulation?

(d) Electronics manufacture?

(e) Metal fabrication?

(f) Coatings application (e.g. for appliances, automobiles machinery and equipment)?

(g) Commercial printing?

(h) Maintenance painting?

(2) In what other industry sectors are workers exposed to glycol ethers? At what levels?

(3) What are the job categories in each of the affected sectors in which

workers are potentially exposed to glycol ethers? For each job category, please provide a brief description of the operation.

(4) What is the distribution, by age and sex, of the exposed populations in each of the affected sectors?

(5) How many workers are exposed or have the potential for exposure to glycol ethers in each job category?

(6) What are the frequency, duration and levels of exposures to glycol ethers for each job category? Please include the analytical method and type of samples used for determining exposure levels.

(7) What engineering controls and types of protective equipment are available or in use for each job category.

(8) What is the extent to which occupational exposure in formulation or trade uses is "mixed" i.e., involves exposure to more than one glycol ether or acetate, either concurrently or serially? Are employees involved in the following processes exposed to one or more chemicals in the glycol ethers family?

(a) Coatings application.
(b) Automobile refinishing.
(c) Maintenance painting.
(d) Print shops.
(e) Metal fabrication.
(f) Coatings application formulation.
(q) Ink formulation.

(9) OSHA s current method for monitoring glycol ethers and their acetates is based on the use of charcoal tubes and gas chromatographic analysis. The limits of detection for 2-ME, 2-MEA, 2-EE, and 2-EEA are 0.1, 0.01. 0.02. and 0.01 ppm, respectively. Recently, silica gel and passive dosimeters have been tested and found to be adequate for monitoring under some circumstances.

(a) What other methods are available to monitor for 2-ME, 2-EE and their acetates which have lower limits of detection than current analytical methods?

(b) What are the limitations that apply to the use of these methods? Please provide details on the accuracy and precision of the sampling method, the range and limits of detection, and the method of validation of sampling and analyses.

(c) What methods can be used to monitor short-term exposures to 2-ME, 2-EE and their acetates?

(d) Can passive dosimeters or charcoal tubes distinguish among the glycol ethers and their acetates in situation where there is mixed exposure?

(10) OSHA has evidence that suggests that exposure to glycol ethers may not be insignificant among airline and refinery employees.

(a) Under what circumstances might airline employees be exposed to glycol ether vapors.?

(b) What are the points of employee exposure in the blending of glycol ether de-icing additives into jet fuel?

(c) What are the job categories, number of employees, and frequency and duration of exposure among employees involved in the blending process?

G. *Worker Training.*

(1) Describe the training that workers currently receive for the purpose of reducing the risk associated with glycol ethers exposure (e.g. length of course, topics covered, frequency, and availability of audio visual aids, and written operating instructions).

(2) Is there any evidence documenting the effectiveness of the training being received by the employee (e.g. decreased absenteeism, decreased medical/insurance costs, a decrease in accident/illness rates/severity, an increase in productivity?

(3) What are the basic elements which should be considered in developing or revising the training given to workers exposed to glycol ethers in the various industry sectors?

(4) OSHA's Hazard Communication standard requires that manufacturers label their products to provide information on hazardous material contained in these products.

(a) At what volume percent do labels on products containing glycol ethers currently identify glycol ethers as an ingredient.

(b) What products are currently labeled as containing glycol ethers?

H. *Medical Surveillance.*

(1) What illnesses or conditions attributable to glycol ethers have been observed?

(2) What elements are appropriate for inclusion in medical and clinical examinations performed to identify overexposed workers and/or to indicate the status of workers health?

(3) Are semen analyses included in medical surveillance programs for male workers exposed to glycol ethers.

(4) Is it current practice for reproductive history to be given special emphasis in the medical surveillance of glycol ethers exposed employees?

(5) Do employers currently provide specific tests or procedures as part of medical surveillance for glycol ether exposed employees? What is the basis for selecting or choosing these tests or procedures? At what frequency are these tests performed?

(6) What are the exposure levels encountered by workers (including their job categories and/or job classifications) who are covered by medical surveillance programs?

(7) What evidence is available indicating risk reduction due to implementation of medical surveillance programs?

I. *Costs of Control Measures.*

(1) What are the costs of implementing engineering controls or modifications to production and process equipment (either currently in place or planned to be installed for reducing workers' exposures)? How much reduction in employee exposure can be achieved by each particular control measure? What are the service life and maintenance costs for this equipment?

(2) In what sectors is it current practice to remove pregnant workers from jobs involving exposure to glycol ethers?

(3) What is the cost of the personal protective equipment currently in use or projected for future use? Which employees or job descriptions would be required to wear what type of equipment? (Please indicate the type of protective equipment as well as process descriptions).

(4) What is the cost of the currently employed and/or projected medical surveillance program?

(5) What is the cost of the currently instituted and/or projected training program?

(6) What is the cost of the currently employed and/or projected personnel exposure monitoring and sampling analyses?

(7) What values can be determined for benefits of reduced glycol ether exposure, such as projected reductions in medical treatment, insurance premiums, and workers compensation payments, decreased absenteeism and employment turnover, and increased productivity?

J. *Environmental Effects.*

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) regulations (49 CFR part 1500, 43 FR 55978, November 29, 1978), and the Department of Labor (DOL) NEPA Compliance Regulations (29 CFR Part 11); (45 FR 51187 *et seq.*, August 1, 1980) require that Federal agencies give appropriate consideration to environmental issues and impacts of proposed actions significantly affecting the quality of the human environment. OSHA is currently collecting written information and data on possible environmental impacts that may occur outside of the workplace as a direct or indirect result of promulgation of a revised standard for occupational exposure to glycol ethers. Such

information should include any negative or positive environmental effects that could be expected to result from a revised regulation. Specifically, OSHA requests comments and information on the following:

(1) How might a revised regulation for glycol ether exposure affect the environment?

(2) What is the potential direct or indirect impact on water and air pollution, energy usage, solid waste disposal and land use.

(3) How would glycol ether substitutes (if available) alter the ambient air quality, water quality, solid waste disposal and land use?

K. *Impact on Small Business Entities.*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), agencies are required to assess the impact of proposed and final rules on small entities. In that regard, OSHA solicits the following information:

(1) How many and what kind of small businesses or other small entities would be affected by revising the standard for 2-ME, 2-EE and their acetates.

(2) Could difficulties be encountered by small business entities when attempting to comply with specific provisions of a glycol other regulation covering such areas as exposure monitoring, exposure limits, methods of compliance, medical surveillance, respirators, protective clothing, hygiene facilities, recordkeeping, housekeeping information and training and labels and signs?

(3) Could such provisions be modified for small business entities which would assure equivalent protection of the health of their employees?

L. *Duplication/Overlapping/ Conflicting Rules.*

(1) Are there other federal regulations which may duplicate, overlap or conflict with an OSHA regulation concerning glycol ethers?

(2) Are there critical federal programs (defense, energy,) which may be impacted by an OSHA regulation concerning glycol ethers?

M. *Financial and Economic Profile.*

(1) For the producers of glycol ethers, what are the total annual volumes and dollar values (for the last 5 years) of production, shipments, inventories, imports and exports of 2-ME, 2-EE and their acetates? Are these expected to increase or decrease in future years? How much glycol ether is manufactured by companies for their own use as a raw material or product?

(2) For companies engaged in glycol ether production, distribution and/or use, what are the total annual investments categorized as replacement, expansion, modernization and health and safety protection programs.

(3) For the last 5 years. What are total assets, stockholders equity, net worth, depreciation charges, debt-equity ratios and rate of return on assets and equity for companies engaged in glycol ether production, distribution and/or use?

(4) For each glycol ethers production facility, what was the date it began operation and how much longer is it expected to remain in operation?

(5) How would the balance of trade in products produced with glycol ethers be affected by a more stringent U.S. occupational regulation or health atandard for glycol ethers?

(6) What were the annual labor turnover rates over the last five years for each of the affected industry sectors?

(7) Are there any unique characteristics in any of the affected industry sectors (e.g., rental of capital equipment, unique employee skills) that could affect the ability to achieve compliance with a glycol ether standard? What are these unique characteristics?

(8) What is the degree of market concentration (including the role of small business) and the approximate number of firms in each of the affected industry sectors?

(9) What are the availability, price and serviceability of substitutes for products containing 2 ME, 2–EE and their acetates?

(10) Assuming no change in regulation, what are the projected trends in the use of 2–ME, 2–EE and their acetates?

(11) If the market price of 2–ME, 2–EE and their acetates were to increase by 1%, 5%, or 10% as a result of regulation, what would be the magnitude of the impact on the production and consumption of these glycol ethers?

(12) How profitable are the production processes which either produce or consume glycol ethers? What are the most profitable processes in production?

(13) What is the gross annual consumption of 2–ME, 2/EE and their acetates? What is the approximate annual consumption of these glycol ethers per plant?

(14) Do companies in each of the affected industry sectors purchase glycol ethers from one or several suppliers of the product? What is the geographic distribution of the industry and its customers? Where are these suppliers located geographically with respect to the facilities that use or process it?

(15) For products in which glycol ethers are used, what portion of the cost could be accounted for by the use of glycol ethers?

(16) For a firm using glycol ethers, what other chemicals covered by OSHA standards are currently used in the plant? How would engineering controls or process modification for glycol ethers affect exposure to these other chemicals?

Statutory Authority

This Advance Notice of Proposed Rulemaking was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act [84 Stat. 1593; 29 U.S.C. 655].

List of Subjects in 29 CFR Part 1910

Chemicals, 2-Ethoxyethanol, 2-Ethoxyethanol acetate, Glycol ethers, 2-Methoxyethanol, 2-Methoxyethanol acetate, Occupational safety and health, Reproductive and developmental toxicity.

Signed at Washington, DC, this 25th day of March 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 87–7028 Filed 4–1–87; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 87–09]

Regatta; Barnegat Bay Classic, Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is proposing to amend the Special Local Regulations governing the annual Barnegat Bay Classic power boat race. The location of the regulated area and effective period of the regulations are being changed along with correction of the event name. This regulation is needed to provide for the safety of participants and spectators on navigable waters during the event.

DATE: Comments must be received on or before May 4, 1987.

ADDRESSES: Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004–5098. The comments and any other materials referenced in this notice will be available for inspection and copying at the Boating

Safety Office, Building 110, Governors Island, New York, NY. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas A. Dlhopolsky, (212) 668–7974.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD3 87–09) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The comment period for this proposed rulemaking is less than the normal 45 days because of the time constraints involved. Due to the shortened comment period, verbal comments submitted by telephone are acceptable.

Drafting Information

The drafters of this notice are Mr. Lucas A. Dlhopolsky, project officer, Boating Safety Division, and Ms. MaryAnn Arisman, project attorney, Third, Coast Guard District Legal Office.

Discussion of Proposed Regulations

The annual Barnegat Bay Classic power boat race is sponsored by the Barnegat Bay Power Boat Racing Association. Since this event is traditionally held each year on the Fourth Saturday in August the Coast Guard promulgated a permanent, amendment to Part 100 of Title 33, Code of Regulations, § 100.302. This year the event will take place on August 22, 1987 (rain date August 23rd). However, there are a few changes form past years' events. The sponsor now refers to the name of the event simply as the Barnegat Bay Classic, dropping "Air Brook" from the title.

The course on which the high speed power boats will race has been changed in shape and location. Instead of a simple oval shape, the sponsor has designed some navigational aspects into the course by requiring turns at several predetermined locations. While the course is still generally oval in shape it is wider at the southern end. The course relocation and reconfiguration moves the racing activity south of the previously established regulated area by about 0.5 nautical miles on the southern end. At the same time the northern end of the race course is shifted south by about 1.5 nautical miles. In order to have the race course and regulated area coincide, the regulated area is being shifted one nautical mile to the south as redefined by this amendment. The effective period for the regulation is also changing, from the existing 10:00 a.m.–3:00 p.m. to 10:30 a.m.–4:00 p.m. This should allow for set up time and for racers to complete the new course which is expected to cause the participating power boats to operate at more moderate speeds. Despite these changes there is still little or no interference expected with vessel traffic on the Intracoastal Waterway (I.C.W.). Access to or from any section of Toms River or other coastal rivers or creeks and Barnegat Bay will not be restricted. The sponsor is providing approximately 40 patrol vessels in conjunction with Coast Guard and local resources to patrol this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the race course area and will establish spectator anchorages for what is expected to be a large spectator fleet. Mariners are urged to use extreme caution when transiting the area due to the large number of spectators, and should adhere closely to the charted I.C.W.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the race. This should have a favorable impact on commercial facilities providing services to the spectators. This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

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

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

2. Paragraphs (a) and (b) of § 100.302 are revised to read as follows:

§ 100.302 Barnegat Bay Classic, Toms River, NJ.

(a) *Regulated Area.* Barnegat Bay, New Jersey in the areas bounded by 39 degrees 54 minutes north latitude on the north, 39 degrees 49 minutes north latitude on the south, the Intracoastal Waterway (I.C.W.) on the west and Island Beach on the east.

(b) *Effective Period.* These regulations will be effective from 10:30 a.m. to 4:00 p.m. on August 22, 1987, and thereafter annually on the fourth Saturday in August unless otherwise specified in the Coast Guard Local Notice to Mariners covering the involved region and in a **Federal Register** notice. In the case of postponement due to weather, the approved rain date is the following day and this regulation is effective for the same time period.

* * * * *

Dated: March 25, 1987.

G.D. Passmore,

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

[FR Doc. 87-7298 Filed 4-1-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CCGD3 87-08]

Regatta; Children's Liver Foundation Trophy Race, Barnegat Bay, Near Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish Special Local Regulations for the Children's Liver Foundation Trophy Race. This event sponsored by the Barnegat Bay Power Boat Racing Association, involves competition between high speed power boats on Barnegat Bay adjacent to the Intracoastal Waterway. The purpose of

this regulation is to provide for the safety of participants and spectators on navigable waters during the event.

DATE: Comments must be recived on or before May 4, 1987.

ADDRESSES: Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004–5098. The comments and any other materials referenced in this notice will be available for inspection and copying at the Boating Safety Office, Building 110, Governors Island, New York, NY. Normal officer hours are between 8:00 a.m. and 4:30 p.m., Monday through Firday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas A. Dlhopolsky, (202) 668–7974.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD3 87–08) and the specific section of the proposal to which comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The comment period for this proposed rulemaking is less than the normal 45 days because of the time constraints involved. Due to the shortened comment period, verbal comments submitted by telephone are acceptable.

Drafting Information

The drafters of this notice are Mr. Lucas A. Dlhopolsky, project officer, Boating Safety Officer, and Ms. MaryAnn Arisman, project attorney, Third, Coast Guard District Legal Officer.

Discussion of Proposed Regulations

The Children's Liver Foundation Trophy Race will be held for the first time on Barnegat Bay just south of Toms River, New Jersey from about Cedar Creek south to the vicinity of Forked River. This benefit event is being sponsored by the Barnegat Bay Power Boat Racing Association which plans to hold the races on Saturday, June 6, 1987 with the following day as a rain date. While this is the first time for this event it will be closely patterned after the Barnegat Bay Classic which has been conducted by the same sponsor each August in the same location for the past several years. Between 40 and 60 power boats ranging from 20 to 36 feet in length are expected to race in various class heats. The race course is roughly oval in shape with the southern end about three times as wide as the northern end. The course has been laid out so that there should be little or no interference with vessel traffic in the Intracoastal Waterway (I.C.W.). Access to and from any section of Toms River or other coastal rivers and Barnegat Bay will not be restricted. The sponsor is providing at least 40 vessels in conjunction with the Coast Guard and local resources to patrol this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the race course area and will establish spectator anchorages for what is expected to be a large spectator fleet. Mariners are urged to use extreme caution when transiting the area due to the large number of spectators, and should adhere closely to the charted I.C.W.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the race. This should have a favorable impact on commercial facilities providing services to the spectators. This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significnt economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

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

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

2. Temporary § 100.35–333 is added to read as follows:

§ 100.35–333 Children's Liver Foundation Trophy Race, Toms River, NJ.

(a) *Regulated Area.* Barnegat Bay, New Jersey in the areas bounded by 39 degrees 54 minutes north latitude on the north, 39 degrees 49 minutes north latitude on the south, the Intracoastal Waterway (I.C.W.) on the west and Island Beach on the east.

(b) *Effective Period.* These regulations will be effective from 10:30 a.m. to 4:00 p.m. on June 6, 1987. In case of postponement due to weather, these regulations will be in effect on June 7, 1987 during the same time period.

(c) *Special Local Regulations* (1) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(2) No spectator or press boats shall be allowed out onto or across the race course without Coast Guard Escort.

(3) The sponsor shall anchor race committee boats on each turn. Checkpoints shall be positioned so that race participants will pass no closer than 200 feet from the I.C.W. A line of committee boats shall be positioned to separate the race course from the I.C.W.

(4) Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area in such a way that they shall not interfere with mariners transiting the I.C.W. The spectator fleet shall be held behind buoys or committee boats provided by the sponsor in the following areas:

(i) Between the race course and the I.C.W. in the area to the west of the race course.

(ii) Between the race course and Island Beach State Park in the area around Trices Shoal.

(iii) In other locations as directed by the Coast Guard Patrol Commander and the sponsor.

(5) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform

vessel operators of this regulation and other applicable laws.

(6) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: March 24, 1987.

G.D. Passmore,

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

[FR Doc. 87-7299 Filed 4-1-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3179-4]

Approval and Promulgation of Implementation Plans; Indiana

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

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to incorporate revised Indiana Rule 325 IAC 6-5, entitled Fugitive Particulate Matter Emission Limitations, into the Indiana State Implementation Plan (SIP), as it pertains to total suspended particulate (TSP). However, this regulation is not being proposed for approval for the purposes of fulfilling the requirements under Part D of the Clean Air Act (Act). Therefore, USEPA is proposing to disapprove the Part D plan for the areas where this regulation applies. In addition, USEPA is proposing to disapprove the TSP SIP for the nonattainment areas within Dearborn and Marion Counties where the rule does not apply, because the State has failed to submit adequate TSP plans for the nonattainment areas within these counties.

DATE: Comments on this revision and on the proposed USEPA action must be received by May 4, 1987.

ADDRESSES: Copies of the revision request, the technical support document and other materials relating to this rulemaking are available at the following addresses for review: (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, 230 South Dearborn Street, Chicago, Illinois 60604

Indiana Air Management Division, Department of Environmental Management, 1330 West Michigan Street, Indianapolis, Indiana 46206.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

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

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the requirements of Part D of the Act, Indiana submitted a plan for statewide TSP nonattainment areas which was conditionally approved by USEPA on July 16, 1982 (47 FR 30972). Affected areas include portions of Clark, Dearborn, Dubois, Howard, Marion, St. Joseph, Vanderburgh, Vigo and Wayne Counties.[1] USEPA's approval was conditioned on Indiana's submittal in 1982 of an approvable industrial fugitive particulate regulation and on the understanding that nontraditional sources of fugitive particulate (e.g., unpaved roads) would be studied for controls necessary to assure attainment of the National Ambient Air Quality Standards (NAAQS) for TSP. As a partial fulfillment of these requirements, on November 29, 1982, and December 9, 1982, Indiana submitted, as a SIP revision, State Rule 325 IAC 6-5, Fugitive Particulate Matter Emission Limitations. This regulation required fugitive emission controls for existing sources that had the potential to emit 100 tons per year or more of fugitive particulate matter in nonattainment areas (excluding Lake County). Additionally, all new sources throughout Indiana which would require operating permits under State Rule 325 IAC Article 2 (i.e., those sources emitting 25 tons per year or more of at least one pollutant) would require similar controls. This rule was proposed for disapproval by USEPA, as published on October 11, 1984 (49 FR 39869). Proposed disapproval was based on the State's failure to require controls consistent with Reasonably Available Control Technology (RACT), as stipulated in section 172(b) of the Act. Indiana proposed to require RACT only for sources in excess of 100 tons per year of fugitive emission, whereas the Act calls for RACT for all existing sources in nonattainment areas.

In addition, the State regulation: (1) Failed to include sufficient provisions for receipt and adoption of individual source control plans; (2) provided conflicting factors for fugitive emissions determinations; and (3) lacked sufficient detail in stipulated control methods to be considered RACT (e.g., "flushing" to control emissions from paved roads and parking lots).

II. Subsequent Revisions to State Rule 325 IAC 6-5

On November 21, 1984, Indiana submitted a tentative schedule for revising 325 IAC 6-5 and requested no action be taken on USEPA's proposal to disapprove the regulation. Indiana submitted the revision to Rule 325 IAC 6-5 on March 20, 1985. On April 19, 1985, USEPA responded to this revision, stating that the regulation could be incorporated into the SIP, because most enforceability issues were resolved and the regulation did not weaken any current regulations. However, the rule continued to allow broad discretion in State review of individual source control plans, and, thus, it did not ensure the application of RACT level controls; thereby failing to satisfy the RACT requirements of Part D of the Act. USEPA further stated that the existing construction bans would continue to be imposed for all primary TSP nonattainment areas, pursuant to section 110(a)(2)(I) of the Act, until which time USEPA reviewed and approved all site specific source control plans for RACT in that nonattainment area.

On August 6, 1985, USEPA further commented that revised 325 IAC 6-5 excluded portions of two counties which were undergoing separate rulemaking actions on TSP redesignation. At that time, certain Townships within Marion County were being considered for redesignation from primary nonattainment to attainment (see 49 FR 35964, September 13, 1984). Lawrenceburg Township in Dearborn County was also being considered for redesignation from primary nonattainment to attainment (see 50 FR 12044, March 27, 1985). Because the Administrator had not reached a final decision on either of these actions, USEPA stated that 325 IAC 6-5 should apply to all current TSP nonattainment areas (excluding Lake County).

On August 7, 1985, revised State Rule 325 IAC 6-5 was adopted by the State Air Pollution Control Board (Board). On August 15, 1985, Indiana submitted the regulation as adopted by the Board.

[1] Rulemaking on the remaining TSP nonattainment area in Lake County has been in separate actions (see 50 FR 4537, 51 FR 2492).

Enforceability deficiencies of the original regulation were corrected, including:

(1) Replacement of 100 ton per year source applicability with 25 ton per year cutoff;

(2) Required source submittal of either a control plan or a request for exemption to the Board within six (6) months of the regulation promulgation date; and

(3) Incorporation of control practices or measures, used to determine rule applicability or exemption, into source operating permits.

However, certain enforceability deficiencies remained. In a letter of December 6, 1985, the State responded to USEPA's letter of November 20, 1985, which noted deficiencies in State Rule 325 IAC 6–5 as approved by the Board. The State's responses and USEPA's comments and responses may be summarized as follows:

USEPA's comment: The regulation should require the Board to prepare and adopt a control plan which meets the regulatory requirements for any source that fails to submit such a plan. Also, the regulation should require sources to notify the Board or the Indian Air Pollution Control Division of changes that increase potential emissions over the 25 ton per year cutoff.

State's comment: Concerning the first point, the regulation was amended so that applicable sources will contact the Board and control plans will be included in each source's operating permit. The control plans will then be submitted to USEPA for approval. Regarding emissions increases over the 25 ton per year cutoff, the State claimed that section 1(b) of 325 IAC 6–5–1, which is the source applicability section, fulfilled this requirement by including any new fugitive particulate sources in the State which require operating permits under 325 IAC Article 2; i.e., those sources with potential particulate emissions of 25 tons per year or more.

USEPA's Analysis: USEPA believes that section 3 of 325 IAC 6–5–3 sufficiently provides for the submittal of source control plans for applicable existing and new sources through the enforcement of the State's operating permit requirements. USEPA notes that the Part D TSP plan for an area cannot be approved until the State submits and USEPA approves RACT level fugitive dust control requirements for all sources in a given nonattainment area.

USEPA's comment: The regulation msut apply to all currently designated primary and secondary TSP nonattainment areas (excluding Lake County).

State's comment: The State felt that the designations in the source applicability section accurately reflected those counties, and portions thereof, which constituted primary and secondary nonattainment areas. More specifically, the State had submitted redesignation requests for Dearborn and Marion Counties, proceeded as if these requests would be approved by USEPA as submitted, and incorporated these new designations into the regulation's applicability section.

USEPA's analysis: The State's response does not adequately address this deficiency, because it does not recognize the need to submit enforceable RACT level particulate controls for applicable sources in all TSP nonatttainment areas, as required under Part D. Nevertheless, USEPA is proposing to incorporate the regulation into the SIP and approve the regulation for those nonattainment areas where it is applicable under the source applicability section.

On January 7, 1986, Indiana resubmitted revised State Rule 325 IAC 6–5, which by then had been promulgated by the State on November 13, 1985, and was now State enforceable. The regulation did not change from the August 15, 1985, submittal. It still allows broad discretion of the Board in determining approvability of source control plans and does not in and of itself ensure RACT level controls for all sources. In addition, the regulation does not apply to all areas currently designated by USEPA as nonattainment (excluding Lake County).

III. Proposed Actions on Indiana's Part D TSP Plan

USEPA proposes to incorporate State Rule 325 IAC 6–5 into Indiana's SIP, because it provides the framework for an ultimately approvable industrial fugitive particulate RACT plan. However, this proposed approval would not constitute approval of Indiana's TSP SIP under Part D of the Act, because this regulation in and of itself does not meet the RACT requirements; it only provides a framework for applying such requirements. Therefore, USEPA proposes to withdraw its July 16, 1982, conditional approval and disapprove the Part D TSP plan for the areas where this rule applies. In order to ultimately meet Part D requirements, all fugitive particulate sources subject to the Act's RACT requirements in the State's TSP nonattainment areas must have enforceable RACT level particulate controls in effect. The State may satisfy Part D requiremnts through the current version of 325 IAC 6–5 or through a revised rule with RACT level control requirements. If the current version of 325 IAC 6–5 is pursued, then all individual control plans, requests for exmeptions, and requests for alternate emission factors for all applicable sources in areas currently designated as nonattainment by USEPA (excluding Lake County) must be submitted to USEPA for final approval and will be processed as site-specific revisions to the Indiana SIP. Furthermore, in the event that Indiana pursues the current version, only after all source control plans, exemptions, and alternate emission factors are approved can USEPA approve Indiana's TSP SIP under Part D of the Act.

Further, as stated above, USEPA proposes to approve 325 IAC 6–5 as it pertains to those portions of counties which are contained in the applicability section (section 1(a)) of the regulation. Those portions include secondary nonattainment areas within Clark, Dubois, St. Joseph, Vanderburgh and Vigo Counties and a portion of the primary nonattainment area in Marion County. The applicability section of the regulation does not match the proper TSP attainment status of Marion County, as defined at 40 CFR 81.315.[2] In addition, section 1(a) of the regulation excludes Lawrenceburg Township, a secondary nonattainment area in Dearborn County.[3]

Because the State regulation does not include all of the primary nonattainment area in Marion County and excludes the secondary nonattainment area within Dearborn County, USEPA finds that these two areas as well do not have acceptable TSP plans as required under Part D of the Act. Therefore, USEPA proposes to disapprove the TSP SIP for Dearborn County and the remaining area in Marion County. Pursuant to section 110(a)(2)(I) of the Act, the prohibition on the construction or modification of major stationary sources for all of the primary nonattainment area within Marion County will remain in effect; for the nonattainment area where the rule is applicable, because the rule in and of itself is not adequate, and for the nonattainment area where the rule is not applicable, because the State has not submitted an adequate plan.

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[2] USEPA has designated the area of Washington Township east of Fall Creek and the area of Franklin Township south of Thompson Road and east of Five Points Road as attainment. The remainder of Marion County is designated primary nonattainment.

[3] On December 27, 1985 (50 FR 52922), USEPA approved the redesignation of Lawrenceburg Township from primary nonattainment to secondary nonattainment for TSP.

As stated above, USEPA is proposing to withdraw its conditional approval of Indiana's 1979 TSP SIP (see 47 FR 20972), due to the State's failure to submit an adequate TSP SIP for all nonattainment areas (excluding Lake County), as required under Part D of the Act.[1] In order to avoid the final disapproval of Indiana's Part D TSP SIP, the State must submit complete industrial fugitive particulate plans for all nonattainment areas in the State. Further, USEPA recommends that the State extend the applicability of 325 IAC 6–5 to include all current federally designated nonattainment areas in the State (excluding Lake County) within the comment period associated with this rulemaking notice.

Revised State Rule 325 IAC 6–5, supersedes Indiana's former rule 325 IAC 6–5, on which USEPA proposed rulemaking action on October 11, 1984 (49 FR 39869). Because the previous version of 325 IAC 6–5 no longer has any effect in State law, USEPA is discontinuing rulemaking on this version in favor of today's proposed rulemaking on revised 325 IAC 6–5.

Any interested persons are invited to submit written comments on the proposed SIP revision. Written comments received by the date specified above will be considered. After review of all comments submitted, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the revision.

Under 5 U.S.C. 605(b), the Agency must assess the impact of proposed or final rules on small entities. If USEPA takes final action to disapprove the TSP SIP for Indiana, a moratorium on the construction and modification of major stationary sources of TSP will remain in effect in the designated primary nonattainment portions of the area. USEPA does not have sufficient information to determine the impact a moratorium may have on small entities because it is difficult to obtain reliable information of future plans for business growth. However, because USEPA cannot be certain of the potential impact on small entities, the Agency invites comments on this issue. Even if this action, when promulgated, were to have a significant impact on a substantial number of small entities, the Agency could not modify the action. Under the Clean Air Act, the imposition of a construction moratorium is automatic and mandatory whenever the Agency determines that a plan for a nonattainment area fails to meet the requirements of Part D of the Act.

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, Carbon Monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7642.

Dated: June 13, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 87–7264 Filed 4–1–87; 8:45 am]

BILLING CODE 6560–50–M

[1] USEPA is not proposing to withdraw its approval of the emission limits and other requirements in the July 16, 1982, plan, because they contribute towards the ultimate attainment of the NAAQS in these areas.

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 154

[CGD 77–069]

Safety Standards for Existing Self-Propelled Vessels Carrying Bulk Liquefied Gases

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability of the FONSI.

SUMMARY: In the **Federal Register** (50 FR 10264) issue of March 14, 1985, the Coast Guard published proposed safety standards for existing self-propelled vessels carrying bulk liquefied gases in U.S. waters. A Draft Economic Evaluation was placed in the rulemaking docket and made available for public comment during the 90 day comment period provided for the NPRM, but a specific statement giving public notice of the availability of the finding of no significant impact (FONSI) was not included in the preamble to the proposal. To ensure full public participation with respect to the environmental considerations involved in this rulemaking, the Coast Guard is giving specific notice of the FONSI's availability for public comment for an additional 30 day comment period.

DATE: Comments must be received on or before May 4, 1987.

ADDRESSES: Comments should be submitted to the Commandant (G–CMC) (CGD 77–069), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council (G–CMC), Room 2110, U.S. Coast Guard, 2100 Second Street SW., Washington, DC between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Barylski, Office of Marine Safety, Security, and Environmental Protection, (202) 267–1217, normal working hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Draft Environmental Assessment and FONSI may be inspected and copied at the Marine Safety Council (G–CMC) at the address listed above under **ADDRESSES.** Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Interested persons are invited to comment on the FONSI and Draft Environmental Assessment by submitting written views, data, or arguments. Comments should include the names and addresses of persons making them, identify the NPRM (CGD 77–069) and this notice, and give reasons for each comment.

The FONSI and Draft Environmental Assessment will be further evaluated in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal and the evaluations.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

March 23, 1987.

[FR Doc. 87–7300 Filed 4–1–87; 8:45 am]

BILLING CODE 4910–14–M

Notices

Federal Register
Vol. 52, No. 63
Thursday, April 2, 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 COMMERCE

International Trade Administration

[A-588-053]

Birch 3-Ply Doorskins From Japan; Preliminary Results of Antidumping Duty Administrative Review

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

AGENCY: International Trade Administration, Import Administration, Commerce.

SUMMARY: In response to a request by one exporter, the Department of Commerce has conducted an administrative review of the antidumping finding on birch 3-ply doorskins from Japan. The review covers one manufacturer and one exporter of this merchandise and the period February 1, 1982 through January 31, 1986. The review indicates no margins during the period

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 2, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 33026) the final results of its last administrative review of the antidumping finding on birch 3-ply doorskins from Japan (41 FR 7389, February 18, 1976). We began the current review of the finding under our old regulations. After the promulgation of our new regulations, one exporter requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation of the antidumping duty administrative review on March 14, 1986 (59 FR 8862). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of birch 3-ply doorskins, manufactured in a variety of glue types, sizes, and colors. Birch 3-ply doorskins are currently classifiable under items 240.1420, 240.1440, and 240.1460 of the Tariff Schedules of the United States Annotated.

The review covers one manufacturer and one exporter of Japanese birch 3-ply doorskins and the period February 1, 1982 through January 31, 1986.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the f.o.b. price to an unrelated Japanese firm for export to the United States. Where applicable, we made deductions for Japanese inland freight, loading charges, and inspection fees. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used constructed value as defined in section 773 of the Tariff Act, since there were no sales of such or similar merchandise in the home market or to third countries.

Constructed value was calculated as the sum of materials, fabrication costs, general expenses, profit, and U.S. packing. Since we had insufficient information on general expenses and profit, as best information available the Department added the statutory minimum of 10 percent of the sum of materials and fabrication costs for general expenses, and 8 percent of the sum of materials, fabrication costs, and general expenses for profit.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that zero margins exist for Sanmoku Lumber/C. Itoh for the period December 1, 1982 through January 31, 1986.

Interested parties may submit written comments on these preliminary results within 21 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made not later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, no cash deposit of estimated antidumping duties shall be required for these firms. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after January 31, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, no cash deposit shall be required. For any shipments from the remaining known manufacturers and/or exporters not covered by this review the cash deposit will continue to be at the rates published in the final results of the last administrative review for each of those firms (48 FR 33026, July 20, 1983).

These deposit requirements are effective for all shipments of Japanese birch 3-ply doorskins entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: March 26, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-7310 Filed 4-1-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-001]

Sorbitol From France; Preliminary Results of Antidumping Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by Roquette Freres, the Department of Commerce has conducted an administrative review of the antidumping duty order on sorbitol from France. The review covers the one known manufacturer/exporter of this merchandise to the United States and the period April 1, 1985 through March 31, 1986. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences betweeen United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 2, 1987.

FOR FURTHER INFORMATION CONTACT: Maureen Rosch or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/2923.

SUPPLEMENTARY INFORMATION:

Background

On November 26, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 42873) the final results of its last administrative review of the antidumping duty order on sorbitol from France (47 FR 15391, April 9, 1982). The respondent, Roquette Freres, requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on May 20, 1986 (51 FR 18475).

Scope of the Review

Imports covered by the review are shipments of crystalline sorbitol. Crystalline sorbitol is a polyol produced by the catalytic hydrogenation of sugars (glucose). It is used in the production of sugarless gum, candy, groceries and pharmaceuticals. Such merchandise is currently classifiable under item 493.6820 of the *Tariff Schedules of the United States Annotated*. The review covers that one known French exporter of crystalline sorbitol to the United States, Roquette Freres, and the period April 1, 1985 through March 31, 1986.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the packed duty-paid delivered price to unrelated purchasers in the United States. We made deductions, where applicable, for foreign inland freight, ocean freight, marine insurance, freight forwarding, rebates, U.S. Customs duties and brokerage fees. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, quantity rebates, differences in credit costs, commissions, and packing. We disallowed a claimed adjustment for certain home market indirect selling expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that a margin of 12.07 percent exists for the period April 1, 1985 through March 31, 1986.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of that administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 12.07 percent shall be required.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 12.07 percent shall be required. This deposit requirement is effective for all shipments of French sorbitol entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-7311 Filed 4-1-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-041]

Synthetic Methionine Form Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On November 17, 1986, the Department of Commerce published preliminary results of its administrative review of the antidumping finding on synthetic methionine from Japan. The review covers one manufacturer and one exporter of this merchandise and the period July 1, 1982 through June 30, 1983.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed the final results from those presented in our preliminary results of review.

EFFECTIVE DATE: April 2, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On November 17, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 41515) the preliminary results of its administrative review of the antidumping finding on synthetic methionine from Japan (38 FR 18392, July 10, 1973).

The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of synthetic methionine other than synthetic L methionine. Synthetic methionine is an amino acid produced in two grades, DL methionine national formula grade (used for research and pharmaceutical purposes) and L methionine feed grade (used as a food additive). Both grades of synthetic methionine are currently classifiable under item 425.0430 of the Tariff Schedules of the United States Annotated.

The review covers one manufacturer and one exporter of Japanese synthetic methionine and the period July 1, 1983 through June 30, 1983.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the petitioner, Monsanto, and the respondent, Mitsui.

Comment 1: The manufacturer, Nippon Soda, sold to its related customer, Mitsui (Japan) who, in turn, "sold" to Fuji Chemical for export to the United States. Fuji Chemical, who is unrelated to Mitsui (Japan), then "sold" to Mitsui (U.S.A.), a wholly-owned subsidiary of Mitsui (Japan), who subsequently sold to unrelated U.S. customers. Monsanto argues that we should use the price between Nippon Soda and Mitsui (Japan) as purchase price, despite the relationship of the two firms. Alternatively, Monsanto argues that we should use the price between Fuji Chemical and Mitsui (U.S.A.) as pruchase price. Mitsui agrees with the Department's using the price of Mitsui (U.S.A) to its unrelated U.S. customers as exporter's sales price ("ESP").

Department's Position: In accordance with our standard policy and practice we did not use the price between Nippon Soda and Mitsui (Japan) because they are related parties. We consider Fuji Chemical's function in this chain of transactions to be effectively that of an agent, rather than that of an outright buyer and seller. As in previous reviews in this case, we consider the sales by Mitsui (U.S.A.) to be the first sales to the United States to unrelated purchasers by or for the account of the exporter. As a result, we considered these to be ESP sales.

Comment 2: If the Department persists in using ESP, Monsanto argues that we must make further deductions to account for all U.S. selling expenses of Mitsui (Japan), Fuji Chemical, and Mitsui (U.S.A.). Mitsui maintains the only appropriate further adjustment is for Fuji Chemical's "commission" for handling these transactions.

Department's Position: We agree with Monsanto. Since Mitsui (Japan) did not identify what portion, if any, of its price to Fuji Chemical was attributable to its profit, we treated the entire difference between its acquisition cost from Nippon Soda and its "price" to Fuji Chemical, less inland freight, as indirectly-related U.S. selling expenses. Equally, since we have no evidence about what portion, if any, of Fuji Chemical's markup was attributable to its profit, we treated the entire difference between its acquisition cost from Mitsui (Japan) and its "price" to Mitsui (U.S.A.), less ocean freight, marine insurance, and FOB charges, as indirectly-related U.S. selling expenses. As for Mitsui (U.S.A.), in addition to movement expenses such as ocean freight, marine insurance, U.S. inland freight, duty, and FOB charges, we deducted credit expenses (the expenses incurred between the U.S shipment dates and the payment dates), early payment discounts, commissions to unrelated parties, warehouse expenses, and Mitsui (U.S.A.)'s other indirect selling expenses.

Comment 3: Monsanto asserts that in its foreign market value ("FMV") calculations, the Department erred in deducting a related-party commission, the cost of freight from Nippon Soda to Mitsui (Japan)'s warehouse, certain discounts as quantity discounts, and certain claimed credit expenses. In addition to these adjustments, Mitsui claims a deduction for Nippon Soda's SG&A or, alternatively, for Mitsui (Japan)'s SG&A, as part of the ESP offset.

Department's Position: We are satisfied that no "middleman dumping" occurred here. Fugi Chemical's initially-claimed acquisition cost reflected a typographical error; all other evidence indicates Fugi Chemical's "resale price" to Mitsui (U.S.A.) was more than its acquisition cost from Mitsui (Japan). For our treatment of the difference between the two "prices," *see* our position on Comment 2.

Comment 5: Mitsui argues that the Department erred in applying section 615 of the Trade and Tariff Act of 1984 ("the 1984 Act"), which defines the data for calculating FMV as the U.S. date of sale to an unrelated customer, to shipments in 1982. Instead, the Department should calculate FMV as of the date of export, in accordance with the Trade Agreements Act of 1979 ("the 1979 Act"), specifically section 773(a)(1) of the Tariff Act. Monsanto agrees that the FMV portion of the 1984 Act applies only to entries made after the effective date of the 1984 Act (October 30, 1984), but argues additionally that, since the 1979 Act required the Department to verify all information relied upon, and since the Department did not verify any of the home market sales data, the Department must use the best information otherwise available.

Department's Position: We disagree. Sections 615 and 618 of the 1984 Act, the FMV and verification provisions, apply to all investigations and section 751 administrative reviews initiated after October 30, 1984. Thus, since this review was initiated on January 21, 1986, we applied those provisions of the 1984 Act.

Comment 6: Mitsui argues that the Department erred in not deducting from FMV a home market discount given in November 1982.

Department's Position: We agree and have corrected our calculations accordingly.

Comment 7: Mitsui alleges the Department erred in deducting from USP certain early payment discounts that were not actually paid.

Department's Position: Mitsui submitted no evidence to support this claim; therefore, we disallowed it.

Final Results of the Review

Based on our analysis of the comments received, we determine that the following weighted-average margin exists for the period July 1, 1982 through June 30, 1983:

Manufacturer/exporter	Margin (percent)
Nippon Soda/Mitsui	3.35

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required for

Nippon Soda/Mitsui. For any shipments from the remaining 29 known manufacturers, exporters, and third-country resellers not covered by this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms (48 FR 55153, December 9, 1983). For any shipments from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after June 30, 1983 and who is unrelated to either reviewed firm or any previously reviewed firm, a cash deposit of 3.35 percent shall be required. These deposit requirements are effective for all shipments of Japanese synthetic methionine entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: March 26, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-7312 Filed 4-1-87; 8:45 am]

BILLING CODE 3510-DS-M

Articles of Quota Cheese; Quarterly Determination and Listing of Foreign Government Subsidies

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Publication of Quarterly Update of Foreign Government Subsidies on Articles of Quota Cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230 telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for each of the countries for which subsidies were identified in our January 1, 1987 annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: March 26, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy	Net [2] subsidy
Belgium	European Community (EC) Restitution Payments.	9.4¢/lb	9.4¢/lb.
Canada	Export Assistance on Certain Types of Cheese.	25.3¢/lb	25.3¢/lb.
Denmark	EC Restitution Payments	10.3¢/lb	10.3¢/lb.
Finland	Export Subsidy	69.7¢/lb	69.7¢/lb.
	Indirect Subsidies	18.2¢/lb	18.2¢/lb.
		87.9¢/lb	87.9¢/lb.
France	EC Restitution Payments	10.0¢/lb	10.0¢/lb.
Geece	EC Restitution Payments	6.8¢/lb	6.8¢/lb.
Ireland	EC Restitution Payments	9.6¢/lb	9.6¢/lb.
Italy	EC Restitution Payments	41.7¢/lb	41.7¢/lb.
Luxembourg	EC Restitution Payments	9.4¢/lb	9.4¢/lb.
Netherlands	EC Restitution Payments	7.2¢/lb	7.2¢/lb.
Norway	Indirect (Milk) Subsidy	16.6¢/lb	16.6¢/lb.
	Consumer Subsidy	36.8¢/lb	36.8¢/lb.
		53.4¢/lb	53.4¢/lb.
Switzerland	Deficiency Payments	90.7¢/lb	90.7¢/lb.
U.K.	EC Restitution Payments	7.7¢/lb	7.7¢/lb.
W. Germany	EC Restitution Payments	12.9¢/lb	12.9¢/lb.

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 87-7313 Filed 4-1-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket Nos. 6680-1, 6680-02, and 6680-03]

Mildren E. McKee and Mach II Electronics; Decision and Order

In the matter of: Mildred E. KcKee, individually and doing business as M/M Associates and Mach II Electronics, 17 Riviera Circle, Redwood City, California 94065, Respondents.

On September 15, 1986, the Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), initiated an administrative proceeding against Mildred E. McKee, individually and doing business as M/M Associates and Mach II Electronics (hereinafter referred to collectively as McKee), pursuant to section 13(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2401-2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985)) (the Act), and Part 388 of

the Export Administrative Regulations (currently modified at 15 CFR Parts 368–399 (1986)) (the Regulations), alleging that between September 16, 1982 and November 18, 1982, McKee violated §§ 387.5 and 387.6 of the Regulations by exporting five shipments of U.S.-origin computer equipment from the United States to Switzerland and the Federal Republic of Germany without applying for and obtaining from the Department the validated export licenses required by § 372.1(b) of the Regulations and by making false statements on the Shipper's Export Declaration accompanying each shipment.

McKee answered the charging letter on October 20, 1986, admitting the allegations as true and waiving her right to a hearing. The Department and McKee then discussed settlement and eventually entered into a Consent Agreement whereby the parties agreed to resolve this matter by denying McKee all United States export privileges for a period of 20 years.

Pursuant to Section 388.17 of the Regulations, the parties submitted to the administrative law judge a consent proposal, which he approved on February 24, 1987.

Based on the foregoing, I find that McKee, individually and doing business as M/M Associates and Mach II Electronics, violated the Regulations as alleged in the charging letter. Moreover, the administrative law judge has recommended approval of the Consent Agreement and I, too, approve the terms of the Consent agreement.

Therefore, pursuant to § 388.23 of the Regulations, it is hereby ordered:

I. All outstanding validated export licenses in which Mildred E. McKee, individually and doing business as M/M Associates and Mach II Electronics, or any related party appears or participates, in any manner or capacity, are hereby revoked and shall be returned to the Office of Export Licensing for cancellation.

II. For a period of 20 years from the date of this Order, Mildred E. McKee, individually and doing business as M/M Associates and Mach II Electronics, her successors or assignees, officers, partners, representatives, agents, and employees are hereby denied all privileges of participating, directly or indirectly, 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 limiting 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 therewith,

(c) In obtaining or using any validated or general export license of other export control document,

(d) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, 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 financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (1985), and the Regulations.

III. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which the respondents are now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. 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 Licensing, 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 the respondents or any related party, or whereby the respondents or any 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 the respondents or any 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.

V. This Decision and Order shall be served upon respondents and published in the **Federal Register.**

Dated: March 26, 1987.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 87–7314 Filed 4–1–87; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Steel Products; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its reveiw of a request for short supply under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with respect to certain shapes under three inches in cross-sectional dimension.

DATE: Comments must be submitted on or before April 13, 1987.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Deaprtment of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product. . . ."

We have received a request for short supply for certain rolled shapes, under three inches in cross-sectional dimension, for use in manufacturing cable lashing clamps and span clamps.

Any party interested in commenting on this request should send written coments as soon as possible, and no

later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also privide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Record Unit, Room B-099, Import Administration, U.S. Deaprtment of Commerce at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

March 30, 1987.

[FR Doc. 87-7315 Filed 4-1-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[P392]

Marine Mammals; Application for Permit; The Cousteau Society

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C 1361 through 1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
   a. Name: The Cousteau Society.
   b. Address: 8440 Santa Monica Boulevard, Los Angeles, California 90069.
2. Type of Permit: Public Display.
3. Name and Number of Marine Mammals:

Killer whale (Orcinus Orca), 20
Beluga whale (Delphinapterus leucas), 50
Northern fur seal (Callorhinus ursinus), 50
Northern sea lion (Eumetopias jubatus), 50
Harbor seal (Phoca vitulina), 24

4. Type of Take: Harassment while filming for commercial documentary.
5. Location of Activity: Aleutian Islands, Southeastern Bering Sea, Prince William Sound, and Bristol Bay areas.
6. Period of Activity: 1 year.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW. Room 805, Washington, DC. 20235;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington, 98115; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Dated: March 26, 1987.

Richard B. Roe,

Director, Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87-7305 Filed 4-1-87; 8:45 am]

BILLING CODE 3510-22-M

[P261B]

Marine Mammals; Application for Permit; National Aquarium of Baltimore

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
   a. National Aquarium of Baltimore
   b. 501 E Pratt Street, Pier 3, Baltimore, Maryland 21202
2. Type of Permit: Public Display
3. Name and Number of Marine Mammals: Belukha whales (*Delphinapterus leucas*) 2
4. Type of Take: Live import.
5. Location of Activity: In and around the Churchill River and Churchill Manitoba, Canada.
6. Period of Activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930-3799.

Dated: March 25, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87-7207 Filed 4-1-87; 8:45 am]

BILLING CODE 3510-22-M

[P391]

Marine Mammals; Application for Permit; Jolly Roger Amusement Park

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
   a. Jolly Roger Amusement Park
   b. P.O. Box 572, Ocean City, Maryland 21842
2. Type of Permit: Public Display.
3. Name and Number of Marine Mammals:
   Bottlenose dolphins (*Tursiops truncatus*), 2
   California sea lion (*Zalophus californianus*), 1
4. Type of Take: Live import for temporary maintenance.
5. Location of Activity: Mexico: Animals are already in captivity.
6. Period of Activity: 1 year.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily refect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930–3799, and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd. St. Petersburg, Florida 33072.

Dated: March 25, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–7208 Filed 4–1–87; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Diversified Textile Machinery Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Diversified Textile Machinery Corp., having a place of business in Gastonia, North Carolina, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Apparatus to Extract Fine Trash and Dust During High-Velocity Discharging of Cotton From Opener Cleaner," U.S. Patent 4,479,286. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 87–7239 Filed 4–1–87; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; Xoma Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Xoma Corporation having a place of business in Berkeley, CA 94710, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Recombinant Pseudomonas Exotoxins: Construction of an Active Immunotoxin With Low Side Effects" U.S. Patent Application S.N. 6–911,227. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 87–7240 Filed 4–1–87; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Export Visa and Exempt Certification Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore; Correction

In the third column on page 43454, in the letter to the Commissioner of Customs (51 FR 43454) published on December 2, 1986, make the following corrections with regard to the part category designation used in Category 659:

659–I insert TSUSA number 384.9357
659–V delete TSUSA number 384.2113

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–7308 Filed 4–1–87; 8:45 am]

BILLING CODE 3510-DR-M

Reminder of Requirement To Indicate Correct Tariff Classification for Yarn Dyed Shirts and Blouses

March 30, 1987.

The Committee for the Implementation of Textile Agreements (CITA) reminds the importing public that entry documents must cite the correct tariff classification for shirts and blouses made of fabrics in which there are yarns of two or more colors in the warp and/or the filling, in categories 340, 640, 341 and 641.

A number of bilateral textile agreement restraint levels are implemented on a basis which distinguishes between shirts and blouses made of these fabrics (referred to in these agreements as "yarn dyed" fabrics) and those which are not made of these fabrics.

Accordingly, the public is on notice that the correct Tariff Schedules of the United States Annotated (T.S.U.S.A.) classification for shirts and blouses made of "yarn dyed" and "non-yarn dyed" fabrics must be stated on the entry document included in the entry package presented to the U.S. Customs Service. Yarn dyed shirts and blouses are defined by the T.S.U.S.A. as those in which there are "two or more colors in the warp and/or the filling" of the fabric. For the purposes of this definition, white shall be considered a color.

Entry documents containing incorrect T.S.U.S.A. classifications may be rejected by Customs and Customs may detain such merchandise when presented for entry for consumption, or withdrawal from warehouse for consumption in the United States.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-7309 Filed 4-1-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

March 21, 1987.

The meeting of the USAF Scientific Advisory Board Armament Division Advisory Group, announced in 52 FR 7649 (March 12, 1987), has been postponed. The Advisory Group will meet at the Armament Division Headquarters (Building 1), Eglin AFB, Florida, on May 14 and May 15, 1987.

All other information contained in the previously published Meeting Notice remains unchanged.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-7241 Filed 4-1-87; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

March 27, 1987.

The USAF Scientific Advisory Board Committee on Software Expertise and Ada will meet at Carnegie-Mellon University, Pittsburgh, PA on April 27, 1987 from 1:00 p.m. to 5:00 p.m. and at the Software Engineering Institute, Pittsburgh, PA on April 28, 1987 from 8:00 a.m. to 5:00 p.m.

The meetings will be open to the public.

The purpose of these meetings is to review, discuss and evaluate the effectiveness of software expertise being developed by the Air Force and the success of implementing the Ada computer language.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Norita C. Koritko,

Alternate, Federal Register Liaison Officer.

[FR Doc. 87-7193 Filed 4-1-87; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; 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:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 23-24 April 1987.

Time of Meeting: 0815-1600, 23 April 1987; 0815-1600, 24 April 1987.

Place: Pentagon, Washington, DC.

Agenda: A meeting will be held of the Army Science Board U.S. Army Research Institute for the Behavioral and Social Sciences Laboratory Effectiveness Review Panel. The panel will address several subjects to include the quality of staff, facility and technical programs; accomplishment of the institute's mission; the institute's work in relation to important Army problems; and improving assessment methodology and procedures. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Contact the Army Science Board Administrative Officer, Sally Warner, for futher information at (202) 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-7226 Filed 4-1-87; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; 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:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 21 April 1987.

Time of Meeting: 0800-1100 hours, 21 April 1987.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup for the Army Combat Models will meet to present and discuss the final report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-7227 Filed 4-1-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy is forecasting the representative average unit costs of five residential energy sources for the year 1987. The five sources are electricity, natural gas, No. 2 heating oil, propane and kerosene. The representative unit costs of these energy sources are used in the Energy Conservation Program for Consumer Products established by the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act.

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective May 4, 1987 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-132, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: Section 323 of the Energy Policy and Conservation Act (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619), (Act)[1] requires that the Department of Energy (DOE) prescribe test procedures for the determination of the estimated annual operating cost and other measures of energy consumption for certain consumer products specified in the Act. DOE has prescribed test procedures for the types of products listed in section 322(a)(1)–(13) of the Act. These test procedures are found in 10 CFR Part 430, Subpart B.

Section 323(b) of the Act requires that the estimated annual operating cost of a covered product be computed from measurements of energy use in a representative average-use cycle and from representative average unit costs of the energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission labeling program established by section 324 of the Act and in connection with advertisements of appliance energy use and energy costs which are covered by section 323(c) of the Act.

DOE last published representative average unit costs of residential energy for use in the Energy Conservation Program for Consumer Products on February 20, 1986 (51 FR 6165). Effective May 4, 1987, the cost figures published on February 20, 1986, will be superseded by the cost figures set forth in this notice.

DOE's Energy Information Administration (EIA) has developed the 1987 representative average unit costs of electricity, natural gas and No. 2 heating oil found in this notice. These costs were taken from the October 1986 "EIA Short-Term Energy Outlook," DOE/EIA–0202 (86/4Q), which forecasts the retail cost of selected energy products based on changes in world oil prices, wellhead natural gas prices, seasonal patterns in retail prices and established trends in margins and operating expenses. The development of these costs is discussed in detail in the October 1986 issue of "EIA Short-Term Energy Outlook," which is EIA's quarterly publication of historical and forecasted energy consumption and prices. The costs appear in Table 5 of "EIA Short-Term Energy Outlook." Copies of this report are available at the National Energy Information Center, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020.

In the cases of kerosene and propane, the 1987 representative average unit costs found in this notice were developed by other means since EIA's "Short-Term Energy Outlook" does not provide a forecast of the retail costs of these fuels. However, historical refiner and gas plant operator sales prices for kerosene and propane, and residential prices for No. 2 heating oil are available from another EIA publication, "Petroleum Marketing Monthly," DOE/EIA–0380. Referring to Table 10 of the September 1986 issue of "Petroleum Marketing Monthly," and Table 23 of the issues from February 1986 through September 1986, DOE obtained refiner and gas plant operator average sales prices to end users (excluding major refiners) for kerosene and No. 2 heating oil prices to residential consumers for each month of the period January 1986 to the most recent month for which data was available, September 1986. Based on these data, DOE computed the average monthly sales prices for each of these fuels. To forecast a 1987 representative average unit cost for kerosene, DOE made the assumption that the percentage change in 1987 from the January–September 1986 period for No. 2 heating oil prices to residential customers also would be applied to kerosene. Propane prices were assumed to change at the same rate as the residential price of natural gas. Residential natural gas prices from January 1986 through September 1986 appear in Table 4 of EIA's October 1986 issue of "Natural Gas Monthly," DOE/EIA–0130. The price change of propane to the residential customer reflects more closely the residential price change of natural gas rather than that of No. 2 heating oil.

The 1987 representative average unit costs stated in Table 1 are provided pursuant to section 323(b)(2) of the Act and will become effective May 4, 1987. They will remain in effect until further notice.

Issued in Washington, DC, March 19, 1987.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

TABLE 1—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES

[1987]

Type of energy	In common terms	As required by test procedure	Dollars per million Btu[1]
Electricity	7.94¢/kWh [2,3]	$0.0794/kWh	$23.27
Natural Gas	56¢/therm[4] or $5.80/MCF [5,6]	0.00000562/Btu	5.62
No. 2 Heating Oil	$0.80/gallon [7]	0.00000576/Btu	5.76
Propane	70¢/gallon [8]	0.00000769/Btu	7.69
Kerosene	$0.77/gallon [9]	0.00000570/Btu	5.70

[1] Btu stands for British termal units
[2] kWh stands for kilowatt hour
[3] 1 kWh=3,412 Btu
[4] 1 therm=100,000 Btu
[5] MCF stands for 1,000 cubic feet
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,032 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,700 Btu.
[8] For the purpose of this table, one gallon of liquid propane has an energy equivalance of 91,000 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalance of 135,000 Btu.

[1] References to the "Act" refer to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act.

[FR Doc. 87–7188– Filed 4–1–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. ERA-C&E-87-33; OFP Case No. 61040-9203-03-12]

Notice of Acceptance of Petition for Exemption and Availability of Certification by Champion International Corporation

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance.

SUMMARY: On February 27, 1981, Champion International Corporation (Champion or petitioner), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption for the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for a gas-fired boiler at Champion's facility located in Quinnesec, Michigan. Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new major fuel burning installation or powerplant, and prohibits the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found in 10 CFR 503.32.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before May 18, 1987. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-87-33 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-8233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-6947.

SUPPLEMENTARY INFORMATION: The existing Champion Pulp Mill produces bleached hardwood market pulp. Current installed steam generation capacity is 867,000 lb/hr. The installation of a paper machine will require additional steam for the process and seasonal space heating. The petitioner proposes to meet this demand by installing a 300,000 lb/hr gas-fired boiler adjacent to the existing utility facility.

Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to the lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify the petitioner, pursuant to 10 CFR 503.32(a), must certify that:

(1) A good faith effort has been made to obtain an adquate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations; and

(3) Use of mixtures is not feasible, as required under § 503.9 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), the petitioner has included as part of its petition:

1. Exhibits containing the basis for the certifications described above;

2. An enviromental impact analysis, as requried under 10 CFR 503.13; and

3. All data requried by § 503.6 (cost calculation) necessary for computing the cost calculation formula.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 2694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that the petitioner is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on March 25, 1987

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-7223 Filed 4-1-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-14; OFP Case No. 62-23-9335-20,21-24]

Order Granting Exemption; Ensearch Development Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting exemption.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or the "Act"), to Ensearch Development Corporation (Ensearch). The permanent cogeneration exemption permits the use of natural gas as the primary energy source, for the proposed cogeneration facility to be operated by Encogen One Partners, Ltd., and located in Dallas, Texas. The final exemption order and detailed information are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order shall take effect on June 1, 1987.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-093, Washington, DC 20585, Telephone (202)586-9624

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202)586-6749.

SUPPLEMENTARY INFORMATION: The facility for which Ensearch is requesting a permanent cogeneration exemption is a 207 MW combined cycle facility consisting of two gas turbines and two heat recovery steam generators. The facility, which will be owned and operated by Encogen One Partners, Ltd., will be located in Dallas, Texas. The facility will burn natural gas and will be capable of utilizing #2 oil as a back-up fuel.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on January 6, 1987, (52 FR 450), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing.

The comment period closed on February 20, 1987; no comments were received and no hearing was requested.

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Ensearch has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Ensearch to permit the use of natural gas as the primary energy source for its cogeneration facility.

Pursuant to section 702(c) of the Act of 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on March 17, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-7189 Filed 4-1-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87-307-000 et al.]

Electric Rate and Corporate Regulation Filings; Florida Power Corp. et al.

March 27, 1987.

Take notice that the following filings have been made with the Commission:

1. Florida Power Co.

[Docket No. ER87-307-000]

Take notice that on March 16, 1987, Florida Power Corporation (Florida Power) tendered for filing a Contract for Interchange Service dated March 6, 1987 providing for interchange service between Florida Power and the City of Key West, Florida. Florida Power States that Florida Power and the City of Key West did not have a previous contract for interchange service.

Florida Power requests that the Contract for Interchange Service be permitted to become effective April 1, 1987 and therefore, requests waiver of the sixty day notice requirement. Copies of this filling have been served upon the City of Key West, Florida and the Florida Public Service Commission

Comment data: April 10, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Co.

[Docket No. ER87-337-000]

Take notice that Northern States Power Company (Minnesota), on behalf of both Northern States Power Company (Minnesota) and Minnesota Power & Light Company on March 24, 1987, tendered for filing the Interconnection and Interchange Agreement Between Northern States Power Company and Minnesota Power & Light Company.

The Interconnection and Interchange Agreement provides for the sharing of existing electric transmission facilities for the purposes of receiving, delivering, and exchanging power and energy during routine and emergency operation, and for transmitting power and energy from their generating facilities to their respective systems.

The Interconnection and Interchange Agreement represents new arrangements agreed to by the parties, and therefore, replaces all existing agreements.

Northern States Power Company requests this Interconnection and Interchange Agreement become effective on October 9, 1986, and therefore, requests waiver of the Commission's notice requirements.

Comment date: April 10, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Power and Light Co.

[Docket No. ER87-339-000]

Take notice that Puget Sound Power & Light Company (Puget) on March 23, 1987, tendered for filing proposed changes in its FPC Electric Tariff Original Volume No. 3 (Original Volume No. 3). The schedule provides that non-firm energy will be sold at such times and in such amounts as the Company in its sole discretion determines. The impact of the schedule change on transactions or revenues under Original Volume No. 3 cannot reasonably be estimated.

The rate schedule filing reflects additional Service Agreements under Original Volume No. 3 and changes to reflect current actual costs of the

Company's thermal generating resources, including the addition of Colstrip Unit #4.

Copies of the filing were served upon the utilities receiving service under Original Volume No. 3

Comment date: April 10, 1987, in accordance with Standard Paragraph E at the end of this notice.

Bangor Hydro-Electric Co., Bangor, ME

[Docket No. ER87-335-000]

Take notice that the Bangor-Hydro Electric Company ("BHE") on March 20, 1987, tendered for filing as an initial rate schedule, a transmission contract ("Transmission Contract") dated as of August 19, 1985 between BHE and Boston Edison Company ("BECO") as amended by a Letter Agreement Amending Transmission Contract dated as of November 21, 1986, between the same parties (the "Amendment") (the Transmission Contract and the Amendment shall hereinafter be collectively referred to as the "Contract"). Assuming transmission of the full 22,800 kilowatts contracted for, BHE would receive approximately $124,716 for the inital twelve-month period of service under the Contract.

Under the Contract, beginning on or after the commencement date of operation of the generating facility of Down East Peat, L.P. ("DEP") located in Deblois, Maine, BHE will provide transmission service to BECO for a maximum of 22,800 kilowatts on the basis of a cost-of-service charge. Copies of the filing have served on BECO.

Comment date: April 10, 1987, in accordance with Standard Paragraph E at the end of this notice.

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. 87-7277 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP87-32-000]

Natural Gas Policy Act; Oklahoma Corporation Commission; Petition To Reopen Final Well Category Determination

March 27, 1987.

On February 17, 1987, the Oklahoma Corporation Commission (OCC) filed with the Commission, Section 102(C) NGPA Determination Fox No. 1 Well, FERC J.D. No. 8630785, pursuant to § 275.205 of the Commission's regulations[1], a petition to reopen and vacate a negative final well category determination for the Fox No. 1 well located in the NE quarter of Section 10, Township 18 North, Range 26 West, Ellis County, Oklahoma. The OCC requests the Commission to reopen the well category determination proceeding for the Fox No. 1 well, vacate its negative determination, and permit the OCC to reconsider the original application.

On August 11, 1981, John A. Taylor filed a well category determination application before the OCC seeking a determination that the Fox No. 1 well qualified as a new onshore reservoir well under section 102(c) of the Natural Gas Policy Act of 1978 (NGPA). According to the OCC, several requests for additional information were made to both the original applicant and the subsequent purchaser, PRI Producing Inc., but the information was never received. Subsequently on August 6, 1986, the OCC issued an order denying the Fox No. 1 well section 102(c) status. This order became final, pursuant to § 275.202 of the Commission's regulations,[2] forty-five days after the Commission received notice of the OCC's action.

According to the OCC, two working interest owners, Sylvia Golden Investments and Zelda Brown Investments, filed additional geological and engineering data that supports a section 102(c) determination. OCC states that the new data supports a grant of the original request. The OCC further submits that on January 22, 1987, ONA Western Inc., the purchaser of gas from the Fox No. 1 well, filed a protest as to the jurisdiction of the OCC. Therefore, the OCC requests the Commission to reopen the well category proceeding for the Fox No. 1 well, vacate its negative determination, and permit the OCC to reconsider the original application.

Any person desiring to be heard or to make any protest to the requested reopening 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 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed within 30 days from the issuance date of this Notice. All protests filed will be considered, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules.

Lois D. Cashell

Acting Secretary.

[FR Doc. 87-7286 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

[1] 18 CFR 275.205 (1986).

[2] 18 CFR 275.202 (1986).

[Project No. 9495-001]

Surrender of Preliminary Permit; Buckley Associates

March 27, 1987.

Take notice that Buckley Associates, permittee for the proposed Prairie Creek Project, has requested that its preliminary permit be terminated. The permit was issued on February 28, 1986, and would have expired January 31, 1989. The project would have been located on the South Prairie Creek, a tributary to the Puyallup River, in Pierce County, Washington. The permittee cites that the proposed project is not feasible as the basis for the surrender request.

The permittee filed the request on March 11, 1987, and the preliminary permit for Project No. 9495 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell

Acting Secretary.

[FR Doc. 87-7284 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8471-001]

Surrender of Preliminary Permit; New York State Energy Research and Development Authority

March 27, 1987.

Take notice the New York State Energy Research and Development Authority, permittee for the Erie Canal Locks E-10 and E-11 Project No. 8471, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 8471 was issued on September 23, 1985, and would have expired on August 31, 1988. The project would have been located on the Erie Canal, in Montgomery County, New York.

The permittee filed the request on March 9, 1987, and the preliminary permit for Project No. 8471 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell

Acting Secretary.

[FR Doc. 87-7285 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-11-003 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; AES Shady Point, Inc., et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

March 27, 1987.

Take notice that the following filings have been made with the Commission.

1. AES Shady Point, Inc.

[Docket No. QF85-11-003]

On March 19, 1987, AES Shady Point, Inc. (Applicant), of 1925 North Lynn Street, Suite 1200, Arlington, Virginia 22209 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

Recertification of the topping-cycle cogeneration facility is requested due to the increase in the net electric power production capacity from 300 megawatts to 322.34 megawatts, adjustments in the specifications for, and quantity of, process steam and the date of construction from January 1990 to July 1987. All other characteristics of the facility remain unchanged.

2. McCallum Enterprises, Inc.

[Docket No. QF87-296-000]

On March 2, 1987, McCallum Enterprises, Inc. (Applicant), of P.O. Box 1780, 805 Housatonic Avenue, Bridgeport, Connecticut 06601-1780 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 7.1 megawatt hydroelectric facility (FERC Project No. 6066) will be located in the towns of Derby and Shelton, counties of New Haven and Fairfield, Connecticut.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Signal Environmental Systems Inc.

[Docket No. QF87-291-000]

On March 3, 1987, Signal Environmental Systems Inc. (Applicant), of 363 Exeter Road, Hampton, New Hampshire 03842 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the City of San Diego, California, adjacent to the Miramar Sanitary Landfill. The facility will consist of a steam turbine generator and three steam generators. The primary energy source will be biomass in the form of municipal solid waste. The net electric power production capacity of the facility will be 62 MW. Installation of the facility will begin approximately in May 1988.

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. Plum,

Secretary.

[FR Doc. 87-7276 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-30-001]

Alabama-Tennessee Natural Gas Co.; Petition of Alabama-Tennessee Natural Gas Company for Authority To Terminate Direct Billing Mechanism

March 27, 1987.

Take notice that on March 24, 1987, Alabama-Tennessee Natural Gas Company (ATNG) filed a Petition For Authority To Terminate Direct Billing Mechanism. ATNG states that it seeks authorization to terminate the direct billing mechanism which was approved in Docket No. RP86-30-000. According to ATNG, that mechanism permitted it to pass through to its customers Order No. 94 costs that it was charged on a direct billing basis by Tennessee Gas Pipeline Company, its principal supplier. ATNG states that the market distorting effects which originally led to the approval of the direct mechanism are no longer extant on its system. ATNG therefore requests that it be permitted to treat the costs involved in accordance with its normal PGA methodology.

ATNG requests waiver of Commission regulations, rules and orders to the extent necessary to terminate the direct billing mechanism.

ATNG states that it has served a copy of the Petition on its customers, interested state commissions and others. ATNG also requests expeditious consideration of the Petition and a shortened period for the filing of interventions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214

and 211 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before April 3, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-7281 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-100-002 et al.]

Cimarron Transmission Co. et al.; Filing of Pipeline Refund Reports

March 27, 1987.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before April 13, 1987. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

APPENDIX

Filing date	Company	Docket No.
1-5-87	Cimarron Transmission Co	RP85-100-002
1-5-87	Colorado Interstate Gas Co	RP85-95-006
1-5-87	El Paso Natural Gas Co	RP85-92-003
1-5-87	Mountain Fuel Resources, Inc.	RP85-73-003
1-5-87	Northwest Central Pipeline Corp.	RP85-81-003
1-5-87	Texas Gas Transmission Corp.	RP85-84-004
1-9-87	Midwestern Gas Transmission Co.	RP71-16-015

APPENDIX—Continued

Filing date	Company	Docket No.
2-10-78	Algonquin Gas Transmission Co.	RP72-110-043
2-19-87	Sea Robin Pipeline Co	RP85-89-005
2-24-87	Trunkline Gas Co	RP85-77-005

[FR Doc. 87-7279 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC87-6-000]

Mississippi River Transmission Corp.; Proposed Tariff Change

March 27, 1987.

Take notice that on March 13, 1987, Mississippi River Transmission Corporation (Mississippi), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. TC87-6-000 the following revised tariff sheets in its FERC Gas Tariff, Second Revised Volume No. 1, to become effective April 15, 1987:

Eighth Revised Sheet No. 75
Seventh Revised Sheet No. 76
Eighth Revised Sheet No. 78
Seventh Revised Sheet No. 79

Mississippi states that this filing reflects changes in the Index of Protected Essential Agricultural Use (Step 10) Entitlements and in the Index of High Priority (Step 11) Entitlements. This proposed tariff sheets would be effective during the period, April 15, 1987, through October 31, 1987, pursuant to paragraph 8.2(a)(i) of Mississippi's curtailment plan, it is explained.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before April 10, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois, D. Cashell,

Acting Secretary.

[FR Doc. 87-7280 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST85-1116-001 et al.]

Producer's Gas Co. et al.; Extension Reports

March 27, 1987.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue sales of natural gas for an additional term of up to 2 years.[1]

The table below lists the name and addresses of each company selling pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A "D" indicates a sale by an intrastate pipeline extended under § 284.146.

Any person desiring to be heard or to make any protest with reference to said extension reports should on or before April 13, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois, D. Cashell,

Acting Secretary.

[1] Notice of these extension reports does not constitute a determination that a continuation of service will be approved.

EXTENSION LIST

[February 1 through March 15, 1987]

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date	Expiration date [2]
ST85-1116-001 [1].....	Producer's Gas Co., 6688 North Central Expressway, Suite 1600, Dallas, TX 75206.	Michigan Consolidated Gas Co.	02-05-87	D	05-03-87	05-06-87
ST85-1220-001 [1].....	PGC Pipeline, Inc., 6688 North Central Expressway, Suite 1600, Dallas, TX 75206.	New Jersey Natural Gas Co.	03-10--87	D	06-07-87	06-08-87

[1] This extension report was filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

[2] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.

[FR Doc. 87-7287 Filed 4-1-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA87-3-49-000]

Williston Basin Interstate Pipeline Co.; Motion of Williston Basin Interstate Pipeline Company for Waiver of Requirements To Permit a One-Month Extension of Time To File Purchased Gas Adjustment

March 27, 1987.

Take notice that on March 24, 1987, Williston Basin Interstate Pipeline Company (Williston Basin) filed a Motion For Waiver Of Requirements To Permit A One-Month Extension Of Time To File Purchased Gas Adjustment pursuant to Rules 212 and 2008 of the Commission's rules of practice and procedure. Williston Basin requests the waiver to permit it to file its regular semi-annual purchased gas adjustment (PGA) on April 30, 1987, to be effective June 1, 1987.

Williston Basin states that it is currently involved in extensive restructuring/renegotiation of gas purchase contracts with its various suppliers. Therefore, sufficient information is not currently available to make the filing required under section 21.3.3.1 of First Revised Volume No. 1. Williston Basin believes that the additional thirty days provided by the requested extension of time will allow for the development of the information necessary to accurately reflect gas costs in the rates charged its customers. This will serve to mitigate future deferred account adjustments, thus promoting rate stability.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before April 3, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-7282 Filed 4-1-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. SA87-35-000]

Zapata Exploration Co.; Petition for Adjustment

March 27, 1987.

On January 2, 1987, Zapata Exploration Company (Zapata) filed with the Federal Energy Regulatory Commission a petition for waiver pursuant to Commission Order No. 399-A,[1] section 502(c) of the Natural Gas Policy Act of 1978,[2] and Subpart K of the Commission's Rules of Practice and Procedure.[3] Zapata seeks waiver concerning that portion of its Btu refund obligation attributable to certain royalties paid by it (or others on its behalf) to the Minerals Management Service of the U.S. Department of the Interior (MMS). The royalties relate to sales of gas of Zapata from High Island Block H-542, South Addition, Offshore Texas, by Sun Exploration and Production Company, as operator, to Trunkline Gas Company and sales from other producing properties of Zapata in the Federal Outer Continental Shelf.

Under Order No. 399, these refunds were due by November 5, 1986,[4] but this deadline has been postponed.[5] Specifically, Zapata seeks deferral of any obligation it may have to make Btu refunds attributable to these royalty payments until 30 days after resolution of legal matters relating thereto pending in the Department of the Interior or until Zapata receives full payment of the royalties from MMS, whichever occurs first.

Zapata requests waiver on grounds that its operator, Sun, has informed Zapata that the overpaid royalties related to Btu refunds owed on Zapata's gas are uncollectible from MMS, but are subject to legal proceedings with MMS and elsewhere in the Department of the Interior.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days

[1] Refunds Resulting from Btu Measurement Adjustments, 49 FR 46,353 (Nov. 26, 1984); FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,612.

[2] 15 U.S.C. 3412(c) (1982).

[3] 18 CFR § 385.1101-.1117 (1986).

[4] 49 FR 37735 at 37740 (September 26, 1984), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,597 at 31,150. In Order No. 399, the Commission established refund procedures for charges for natural gas that exceeded NGPA ceilings as a result of Btu measurements based on the water vapor content of the gas "as delivered," rather than on a water saturated basis. In so doing, the Commission was implementing the decision in Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984).

[5] In Order No. 399-C, issued November 5, 1986, the Commission postponed the November 5, 1986 deadline for payment of Btu refunds attributable to royalty payments for any first seller that has a petition on file with the Commission seeking waiver of or postponement of the deadline to pay Btu refunds attributable to royalty payments.

after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-7283 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of January 12 Through January 16, 1987

During the week of January 12 through January 16, 1987, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Armada International Corp. and Texas Armada Refining Company, 1/12/87 KRO-0370

The DOE issued a final Remedial Order to Armada International Corporation and Texas Armada Refining Company affirming a Proposed Remedial Order issued to them on September 26, 1986. Neither firm filed a Notice of Objection to the PRO. A Notice of Objection was filed by the State of California, but the state agreed to the dismissal of the Notice. The Remedial Order found that the firms were successors-in-interest to Texas Asphalt and Refining Company, Inc., which in the period March through May 1977 illegally received $1,155,457 in small refiner bias entitlements for crude oil that it did not own. The Remedial Order requires the firms to refund this amount plus interest. The overcharges and interest are to be deposited into a suitable DOE escrow account for ultimate disbursement pursuant to procedures set forth in 10 CFR Part 205, Subpart V.

Requests for Exception

Butler Bros. Oil Co., Inc., 1/12/87, KEE-0068

Butler Bros. Oil Co., Inc filed an Application for Exception from the requirement to submit Form EIA-782B, entitled "Resellers'/Restailers' Monthly Petroleum Product Sales Report." In considering the applicant's request, the DOE found that the firm failed to demonstrate that it was affected in a particularly adverse manner by the filing requirement. Accordingly, the Application was denied.

Sumter Petroleum Co., 1/16/87, KEE-0077

Sumter Petroleum Co. filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not inordinately burdened by the filing requirement. Accordingly, exception relief was denied.

Supplemental Order

Warrior Asphalt Company of Alabama, Inc., Cities Service Company, 1/15/87, BYX-0197, HER-0052

The DOE reviewed the level of exception relief that Warrior Asphalt Company of Alabama, Inc. received under the crude oil entitlements program, 10 CFR 211.67, for the firm's 1980 and 1981 fiscal years. The DOE affirmed its earlier determination that Warrior received excessive exception relief in the amount of $599,618 for those two fiscal years. The firm therefore was determined to have a final net entitlement dispense obligation for that amount. The DOE indicated that pursuant to its policy announcement of January 9, 1985, Warrior's dispense obligation would not be enforced.

Refund Applications

Gulf Oil Corporation/Frankenmuth Oil Company, Hill Oil Company, Inc., 1/16/87, RF40-3073, RF40-2753

The DOE issued a Decision and Order concerning the Applications for Refund filed by Frankenmuth Oil Company and Hill Oil Company, Inc. Both firms were resellers of Gulf product during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), each applicant demonstrated the volume of Gulf product it purchased, for which it will receive principal of $0.00122 per gallon (the Gulf volumetric refund amount), plus $0.00028 per gallon in accrued interest. The total amount of refunds approved in this Decision is $4,279 in principal and $983 in interest.

Gulf Oil Corporation/Gallup-Silkworth Co. et al., 1/12/87, RF40-850 et al.

The DOE issued a Decision and Order concerning the Applications for Refund filed by Gallup-Silkworth Co. and four other firms, each of which was both a purchaser and a consignee of Gulf product during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), each applicant demonstrated the volume of motor gasoline and/or middle distillates purchased from Gulf, for which it will receive principal of $0.00122 per gallon (the Gulf volumetric refund amount), plus $0.00028 per gallon in accrued interest. Each applicant also demonstrated that it had lost potential sales and therefore had been injured in its role as a consignee of Gulf motor gasoline. The total amount of refunds approved in this Decision is $51,754 in principal and $11,877 in interest.

Gulf Oil Corporation/Grogan Oil Co. Inc., 1/15/87, RF40-3622

The DOE issued a Supplemental Order concerning a revised Application for Refund filed on behalf of Grogan Oil Co., Inc., a reseller of Gulf Oil Corporation petroleum products. Grogan was previously granted a refund in the Gulf Oil Corporation special refund proceeding. The DOE was informed by counsel for Grogan that the purchase volumes indicated in the firm's refund application had been overstated. The refund check that had been issued to Grogan was returned, and a revised claim based on 5,962,803 gallons was submitted. On the basis of these submissions and on the record, the DOE decided to rescind Grogan's initial refund and to grant the firm a new refund based upon the revised purchase volume figure. The total refund granted in this Decision was $8,944, representing $7,275 in principal and $1,669 in accrued interest.

Gulf Oil Corporation/Page & Shamburger, Inc., Vickery Oil Company, 1/16/87; RF40-2786, RF40-2787

The DOE issued a Decision and Order concerning the Applications for Refund filed by Page & Shamburger, Inc. and Vickery Oil Company, each of which was both a purchaser and a consignee of Gulf product during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), each applicant demonstrated the volumes of product purchased from Gulf, for which it will receive principal of $0.00122 per gallon (the Gulf volumetric refund amount), plus $0.00028 per gallon in accrued interest. Each applicant also demonstrated that it had lost potential sales and therefore had been injured in its role as a consignee of motor gasoline. The total amount of refunds approved in this Decision is $4,357 in principal and $1,229 in interest.

Gull Industries, Inc./R.B. Seiflein, et al., 1/12/87; RF260-1 et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund from the Gull Industries, Inc. escrow account under the provisions outlined in *Gull Industries, Inc.*, 14 DOE ¶ 85,381 (1986). Each applicant was a reseller who was listed in the Appendix to that Decision as being eligible for a specified refund amount from the Gull consent order fund. Since each applicant's claim was for $5,000 or less, no further proof of injury was required. The refunds approved in the Decision totaled $48,170, including $32,086 in principal and $16,084 in interest.

Gulf Oil Corporation/Reeves Oil Company, 1/16/87; RF40-2097

The DOE issued a Decision and Order concerning the Application for Refund filed by Reeves Oil Company, in connection with the Gulf Oil Corporation refund proceeding. Reeves, a Gulf consignee, demonstrated that it had lost potential sales of motor gasoline and therefore had been injured as a result of Gulf's allegedly illegal pricing practices. Reeves did not demonstrate injury with illegal pricing practices. Reeves did not demonstrate injury with respect to consigned middle distillates. Accordingly, a refund of $1,264 in principal and $290 in interest was approved only for consigned motor gasoline.

MAPCO, Inc./B & C LP Gas Company et al., 1/15/87; RF108-14 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by B & C LP Gas Company, Chumbley's L.P. Gas, Inc., and Moore LP Gas, Inc., requesting funds from the MAPCO, Inc. consent order fund. Since each claimant established that it purchased covered MAPCO product, and since no claim was more than the small claims threshold level of $5,000, no detailed showing of injury was required. The total refund amount granted in this Decision was

$17,517.01 including $11,625 in principal and $5,891.92 in interest.

MAPCO, Inc./Rick's LP Gas, Inc., 1/13/87; RF108–24

The DOE issued a Decision and Order concerning an Application for Refund filed by Rick's LP Gas, Inc., a retailer of MAPCO propane. Since the firm elected to limit its refund claim to the $5,000 small claims refund level, it was not required to submit proof that it was injured as a result of its MAPCO purchases. The DOE therefore concluded that Rick's should receive a refund of $5,000 in principal and $2,520.11 in accrued interest for a total refund of $7,520.11.

Marathon Petroleum Company/American Sunroof Company et al., 1/15/87; RF250–2115 et al.

The DOE issued a Decision and Order concerning 26 Applications for Refund filed by end-users of products covered by a consent order entered into with Marathon Petroleum Company. All the applicants demonstrated the volume of product purchased from Marathon and, since each was an end-user, none was required to submit proof of injury. Accordingly, the Applications were granted. The sum of the refunds approved was $28,321, representing $26,493 in principal and $1,828 in interest.

Marathon Petroleum Company/Chronister Oil Co. et al., 1/14/87; RF250–1275 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by purchasers of products covered by a consent order entered into with Marathon Petrolum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. Accordingly, the Applications were granted. The sum of the refunds approved in this Decision is $9,167 in principal and $634 in interest.

Marathon Petroleum Company/Dallas and Mavis Forwarding Co. Inc. et al., 1/12/87; RF250–2017 et al.

The DOE issued a Decision and Order concerning 17 Applications for Refund filed by end-users of products covered by a consent order entered into with Marathon Petroleum Company. All the applicants demonstrated the volume of product purcahsed from Marathon and, since each was an end-user, none was required to submit proof of injury. Accordingly, the applications were granted. The sum of the refund approved in this Decision is $49,484 representing $46,390 in principal and $3,094 in interest.

Marathon Petroleum Company/J.W. Kelley et al., 1/13/87; RF250–1475 et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed by four indirect purchasers of products covered by a consent order entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its purchases of product, and that the product had originated with Marathon. Since none of the applicants requested a refund greater than the $5,000 small claims refund amount, no injury demonstration was required. The sum of the refunds approved in this Decision is $2,919, representing $2,732 in principal and $187 in interest.

Marathon Petroleum Company/Pride Petroleum Company, 1/14/87; RF250–1879, RF250–1880

The DOE issued a Decision and Order concerning two Applications for Refund filed by Pride Petroleum Company, Inc., a reseller of products covered by a consent order entered into with Marathon Petroleum Company. Pride elected to file its refund applications in accordance with procedures for filing claims based upon the 35 percent presumption of injury outlined in the Decision setting forth procedures for disbursing the Marathon consent order funds. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Pride should receive a refund of $7,036.61 in principal and $400.21 in accrued interest, for a total refund of $7,436.82.

Mobil Oil Corporation/Bothell Bros. et al., 1/12/87; RF225–7683 et al.

The DOE granted 35 Applications for Refund from a fund obtained through a consent order entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable shares based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $9,803, including $8,111 in principal plus $1,692 in interest.

Mobil Oil Corp./Bridge Construction Corp. et al., 1/16/87; RF225–6032 et al.

The DOE issued a Decision and Order granting 41 applications of end-users requesting refunds from the Mobil Oil Corporation consent order fund. Each applicant presented evidence that it purchased refined petroleum products directly from Mobil during the consent order period. According to the methodology set forth in *Mobile Oil Corp.*, 13 DOE ¶ 85,339 (1985), each applicant was found to be eligible for a refund from the Mobil consent order fund based on the volume of its purchases times 100 percent of the volumetric refund amount. The refunds approved in the Decision totaled $11,805, including $9,769 in principal and $2,036 in interest.

Mobil Oil Corporation/Brown Plumbing Co. et al., 1/13/87; RF225–6099 et al.

The DOE granted 38 Applications for Refund from a fund obtained through a consent order entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable shares based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $1,630, including $1,353 in principal plus $277 in interest.

National Helium RM3–45; Webster Oil Co./Missiouri, RM48–46; Vickers Energy Corp./Missouri, RM1–47; Standard Oil Co. (Indiana)/Missouri, RQ251–331; OKC Corp./Missouri, RQ13–332; Vickers Energy Corp./Missouri; 1/12/87; RQ1–349

The State of Missouri filed proposed second-stage refund plans and motions for modification for previously approved second-stage refund monies with the Office of Hearings and Appeals, pursuant to Decisions and Orders establishing procedures for the disbursement of funds obtained under consent orders with National Helium Corp., Webster Oil Co., Vickers Energy Corp., Standard Oil Co. (Indiana) and OKC Corp. Missouri proposed to use the refunds to replace 120 inoperable propane furnaces in low-income residences, implement a Residential Conservation Loan Program which will provide loan subsidies to middle-income, single-family residences and provide weatherization assistance to low-income homeowners. Missouri also proposed to implement an Energy Information Service to provide clients with a computer based energy audit that will enable them to determine cost effective, energy saving strategies to use in weatherizing their homes. The four programs were found to promote energy conservation and, accordingly, were approved.

Dismissals

The following submissions were dismissed:

Name	Case No.
A.R. Fleming Printing Co.	RF225–8529
Allen Basement Water-Proofing	RF225–7928
Alway Central School	RF225–7681
	RF225–7682
Anderson, Greenwood & Co.	RF225–8704
Angio Fabrics Co., Inc.	RF225–7060
	RF225–7061
Beatrice Meats, Inc.	RF225–8485
Boise Cascade Corp.	RF225–8737
Bradford Auto Co.	RF225–9197
Chicago Weaving Corp.	RF225–8539
City of Syracuse	RF225–8442
	RF225–8443
	RF225–8444
Connecticut Pencil Co. Inc.	RF225–8007
Crescent Oil Co.	RF40–3134
Dart Container Corp.	RF225–8505
Deering Ice Cream Corp.	RF225–8568
Douglas Furniture	RF225–7014
	RF225–7015
Earl Buche	RF225–8172
Ferguson Bros. Construction Co.	RF191–9
Gibson Thermogas	RF108–26
Great Bend Industries	RF225–8755
	RF225–8756
	RF225–8757
Herbert H. Lehman College	RF225–8129
Hometown, Inc.	RF250–1281
Hyatt-Sayler, Inc.	RF225–7098
	RF225–7099
Imperial Oil Co.	KEE–0087
J.J. Ferguson Ready Mix-Hot Mix Company	RF191–8
J.J. Ferguson Sand & Gravel Company	RF191–10
J.P. Grimes, Inc.	RF225–7986
	RF225–7987
	RF225–7988
Johnson Mobil	RF225–10329
Joy Manufacturing Co.	RF225–8078
Kane-Scott Corp.	RF225–8738
Kasch Oil Co.	RF225–231
	RF225–10164
Leathers Oil Company	RF260–11
Lock Haven Realty Co.	RF40–2745
Lucas Machine Division	RF225–8158
McCall Oil & Chemican Corp.	RF260–13
Milwaukee Valve Co., Inc.	RF225–8574
Missouri Terminal Oil Company, Inc.	RF40–904
Mitchell Grinding Corp. of California	RF225–8876

Name	Case No.
Montana-Dakota Utilities Co.	RF225-5005
	RF225-5006
Morton Machinery Co., Inc.	RF225-8589
Morton Salt	RF225-8156
New Harbor Fisherman's CO-OP	RF225-1785
North Shore Masons Supply Corp.	RF225-7247
	RF225-7248
Norwest Publishing Co.	RF225-7556
Ohlinger Industries, Inc.	RF225-7569
Pacific Airmotive Corp.	RF225-8114
Patterson Farms Inc.	RF225-8932
Port Arthur Towing Co.	RF225-7992
Poughkeepsie Journal	RF225-1799
Propak-California Corp.	RF225-8732
Public Works Dept.	RF225-8503
	RF225-8504
Quaker Oats Co.	RF225-6656
Rendas Tool & Die, Inc.	RF225-7990
Richard G. Shane	RF258-7
Shebester, Inc.	RF225-7923
Singer Company	RF225-7058
	RF225-7059
Stepan Company	RF225-7663
The Bert-Co Enterprises, Inc.	RF225-7226
	RF225-7227
The Rams-Head Co.	RF225-8140
Thomson Industries, Inc.	RF225-8548
Trane Company	RF225-7051
	RF225-7052
Turbodyne Division	RF225-6877
Unitek Corp.	RF225-8533
	RF225-8534
University of Washington	RF225-8573
Village of Hastings-on-Hudson	RF225-7653
Waukesha Bearing Corp.	RF225-8079
Wells Public Utilities	RF225-7013
Westinghouse Electric Corp.	RF225-5327
Zapata Gulf Marine Corp.	RF225-8154

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

March 24, 1987.

George P. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 87-7218 Filed 4-1-87; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of February 23 Through February 27, 1987

During the week of February 23 through February 27, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Louisiana Crude Oil and Gas Company, Inc., 2/26/87, HEA-0012

The Louisiana Crude Oil and Gas Company, Inc. filed an Appeal with the Office of Hearings and Appeals of the Department of Energy (DOE) in which it challenged the Economic Regulatory Administration's (ERA) election of payment of overcharges to the DOE and proceedings under 10 CFR Part 205, Subpart V for payment of overcharges to unidentified victims in conjunction with the Remedial Order issued to the firm. 8 DOE ¶ 80,184 (1981). Louisiana Crude also challenged the pay-up order issued to the firm by the ERA. In considering the Appeal, the DOE found that the restitutionary and regulatory purposes of the petroleum price regulations justified the immediate payment of overcharges. The DOE also found that the ERA had properly chosen Subpart V proceedings to distribute the overcharges to the unidentified victims of the firm's illegal pricing activities. Finally, the DOE found that Louisiana Crude's remaining objections to immediate payment of the restitutionary amounts had been fully considered and decided in the firm's application for retroactive exception relief. 15 DOE ¶_____, Case No. DEE-2130 (February 20, 1987). Accordingly, Louisiana Crude's Appeal was denied.

Petition for Special Redress

South Dakota, 2/27/87, KEG-0004

The DOE issued a Decision concerning a Petition for Special Redress submitted by the State of South Dakota. The State sought approval to use Stripper Well and Diamond Shamrock funds for two projects deemed by the DOE's Office of State and Local Assistance Planning to be inconsistent with the terms of the Stripper Well Settlement and the Diamond Shamrock Stipulation. After considering South Dakota's Petition, the DOE decided to approve the State's proposal to use $111,027 to replace and relocate the railroad trackage and turnouts at the Marion grain elevator train loading area. This program will help South Dakota farmers save 90,000 gallons of fuel annually by substituting trains for trucks in grain shipment. The DOE will not approve the proposed use of $325,500 for the expansion of the Minnehaha Community Water Corporation project. This program focuses more on health and environmental concerns than on reducing the energy costs incurred by injured consumers. Accordingly, South Dakota's Petition for Special Redress was partially approved.

Requests for Exception

Parish Oil Company, Inc., 2/24/87, KEE-0098

Parish Oil Company, Inc. filed for relief from the requirement to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." Parish requested relief because of computer problems that prevented it from retrieving the data needed to prepare Form EIA-782B. The Office of Hearings and Appeals (OHA) found that requiring Parish to prepare the Form without its computer would impose a substantial hardship on the firm. Therefore, the OHA granted Parish temporary exception relief to allow the firm time to resolve its computer difficulties.

Zink Oil Company, 2/24/87, KEE-0090

Zink Oil Company filed for relief from the requirement to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." Zink argued that the monthly reporting requirement is costly because the firm must pay its accountant to prepare the Form. The Office of Hearings and Appeals (OHA) found, however, that the cost to Zink of filing the Form is no greater than the cost to other reporting firms, since every reporting firm must pay an employee to prepare the Form. Consequently, the OHA denied Zink's request for exception relief.

Motion for Discovery

Phoenix Petroleum Company, Steven B. Wyatt, 2/27/87, KRD-0190

Phoenix Petroleum Company and Steven B. Wyatt filed a Motion for Discovery in connection with their Statement of Objections to a Proposed Remedial Order (PRO) issued to them by the ERA. The PRO alleged that they had violated the layering rule in their resales of crude oil. Alternatively, the ERA alleged that they had violated the general price rule by reselling crude oil at a markup which exceeded their permissible average markup. In their Motion, they sought discovery relating to (i) the ERA's legal contentions, (ii) the administrative records and the DOE's contemporaneous construction of the regulations at issue, and (iii) the Phoenix audit.

The DOE found that the discovery requested should be denied. In this regard, the DOE found that the ERA's legal contentions were clear and that discovery concerning them would not be appropriate. The DOE also found that the Petitioners had failed to show that the regulations at issue were sufficiently ambiguous to warrant contemporaneous construction discovery, or that discovery of materials in addition to the publicly available official administrative records of the rulemakings should be granted. Finally, the DOE found that while there is a dispute concerning whether the ERA correctly computed Phoenix's alleged overcharges, the presence of this dispute does not warrant discovery since the method used by the ERA was set out in workpapers that were provided the firm. Discovery of additional audit materials would impermissibly intrude on the decisionmaking process. Accordingly, the discovery motion was denied.

Refund Applications

Ferrell Companies Inc./ Vanguard Petroleum Corporation, 2/26/87, RF273-5

The DOE issued a Decision and Order concerning an Application for Refund filed by a purchaser of Ferrell Companies, Inc. propane. The applicant filed for a refund based upon the small claims procedures outlined in *Ferrell Companies, Inc.*, 14 DOE ¶ 85,514 (1986). After examining the claim, the DOE concluded that the applicant should receive a refund based on the volumetric refund amount established in *Ferrell*. The total refund granted was $3,558.

Gulf Oil Corporation/ Adkison's Gulf Service et al., 2/27/87, RF40-2315 et al.

The DOE issued a Decision and Order concerning 14 Applications for Refund filed by retailers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corporation*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 Consent Order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the amount of the refund claimed. After examining the applications and supporting documentation submitted by claimants, the DOE concluded that they should receive refunds totaling $54,321, representing $43,886 in principal and $10,435 in accrued interest.

Gulf Oil Corporation/H&W Oil Company et al., 2/25/87, RF40–3628 et al.

The DOE issued a Decision concerning four Applications for Refund filed by retailers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984) governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant has demonstrated that it would not have been required to pass through to customers a cost reduction equal to the amount of the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that each applicant should receive a refund. The total amount of refunds approved in this Decision is $21,378, representing $17,398 in principal and $3,989 in interest.

Gulf Oil Corporation/Newton's Westchester Gulf Inc. et al., 2/26/87, RF40–224 et al.

The DOE issued a Decision granting 32 Applications for Refund from the Gulf Oil Corporation consent order fund filed by retailers and resellers of Gulf refined products. In considering the applications, the DOE found that each of the claimants had demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the refund claimed. Accordingly, the firms were granted refunds totalling $61,393 ($49,931 principal plus $11,462 interest).

The DOE also determined that no further claims should be accepted in the Gulf proceeding after March 1, 1987. Any unclaimed funds remaining in the Gulf escrow account after all pending claims are paid will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA).

Marathon Petroleum Company/Abner Wolf, Inc. et al., 2/25/87, RF250–790 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by end-users of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The Applications were evaluated in accordance with the procedures set forth in *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986). The sum of the refunds approved in this Decision is $11,901, representing $11,060 in principal and $841 in interest.

Marathon Petroleum Company/Gastown, Inc. of Delaware, Consolidated Stations, Inc., Speedway Petroleum Corp., 2/27/87, RF250–2003 through RF250–2008

The DOE issued a Decision and Order denying six Applications for Refund filed by three purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant requested a refund of $50,000 under the medium range presumption of injury. The applications were denied because all three of the applicants have been wholly owned subsidiaries of Marathon Petroleum Company since they began their purchases of covered product.

Marathon Petroleum Company/Swifty Oil Company of Florida, Swifty Oil Company, 2/25/87, RF250–1652, RF250–1653, RF250–1654

The DOE issued a Decision and Order concerning three Applications for Refund filed by Swifty Oil Company of Florida and Swifty Oil Company, purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The two firms are related by common ownership, and the DOE determined that they should be considered together for purposes of analysis. The applicants were granted a refund of $10,500, representing $9,735 in principal and $765 in interest, on the basis of 35 percent of their combined purchases of Marathon product, under the medium-range presumption of injury.

Marathon Petroleum Company/Temko Oil Corporation, 2/24/87, RF250–1883, RF250–1884

The DOE issued a Decision and Order concerning two Applications for Refund filed by Temko Oil Corporation (Temko), a retailer of Marathon covered products. Although the firm's purchase of middle distillates and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, Temko elected to file its refund applications in accordance with procedures for filing claims based upon the 35 percent presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Temko should receive a refund of $7,288.27 in principal and $458.04 in accrued interest for a total refund of $7,746.31.

Marathon Petroleum Company/Tom's Marathon, 2/24/87, RF250–1261

The DOE issued a Decision and Order concerning the Application for Refund filed by Tom's Marathon in connection with the Marathon Petroleum Company refund proceeding. According to the procedures outlined in *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986), Tom's demonstrated that it indirectly purchased 958,960 gallons of covered Marathon motor gasoline from G & S Oil Company, Inc., a direct Marathon customer. Since the agency granted G & S a refund under the small claims presumption in *Marathon Petroleum Co./Arlie's Marathon Service*, 14 DOE ¶ 85,432 (1986), there was no conclusive finding that G & S absorbed all of the alleged overcharges. Therefore, Tom's is eligible to receive a small claims refund in this proceeding. Tom's will receive its full allocable share of $403 plus $32 in accrued interest.

Mobil Oil Corporation/Alvarado Niles Service Station et al., 2/26/87, RF225–484 et al.

The DOE issued a Decision and Order granting 52 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $25,357.

Mobil Oil Corporation/ Cashman Seed and Fertilizer et al., 2/25/87, RF225–6856 et al.

The DOE granted 26 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable shares based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $5,273, representing $4,344 in principal plus $929 in interest.

Owensboro Yellow Cab Co., Inc., 2/27/86, RF270–1167

The Department of Energy (DOE) issued a Decision and Order approving a taxicab operator for a refund from the Surface Transporters Escrow. The company based its refund application on purchases of gasoline, lubricating oils, and liquified petroleum gas (propane). In evaluating the company's LP gas claim, the OHA ruled that a Surface Transporter may receive a refund based on LP gas purchases if it used the LP gas to operate its vehicles. Since Owensboro used propane as a fuel for its cabs, the DOE approved the company's volumes.

Pioneer Corporation/ Vanguard Petroleum Corporation, 2/26/87, RF52–5

The DOE issued a Decision and Order concerning the Application for Refund filed in the Pioneer Corporation Refund proceeding on behalf of Vanguard Petroleum Corporation, a reseller of Pioneer propane. Following the procedures set forth in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), Vanguard demonstrated that it purchased 1,656,128 gallons of propane from Pioneer during the Pioneer consent order period. Because Vanguard elected to limit its claim to the $5,000 threshold amount, however, the firm was not required to submit cost banks or to show that it did not pass through the alleged overcharges. Accordingly, the refund approved in this Decision is $5,000 in principal plus $3,053 in interest.

Sid Richardson and Gasoline Company and Richardson Products Company/ Weick Bros. Oil Co., 2/26/87, RF26–43

The DOE issued a Decision and Order approving an Application for Refund filed by

Weick Bros. Oil Co. (Weick Bros.), a reseller-retailer of Sid Richardson Carbon and Gasoline Company and Richardson Products Company (Richardson) natural gas liquid products, that purchased the product directly from Richardson. In accordance with the procedures set forth in *Sid Richardson Carbon and Gasoline Company*, 10 DOE ¶ 85,056 (1983), Weick Bros. elected to limit its claim to the small claims threshold amount of 720,000 gallons of annual purchases. Therefore, Weick Bros. was eligible for a refund based on total purchases of 1,519,673 gallons. The total refund approved in the decision is $18,455 ($9,560 in principal plus $8,895 in interest).

South Hampton Refining Company/ The Atchison Topeka and Santa Fe Railway Company, Tenneco Oil Company, City Public Service, 2/24/87, RF230–2, RF230–4, RF230–5

The DOE issued a Decision and Order concerning three Applications for Refund filed by purchasers of covered products from South Hampton Refining Company (SHRC). Each firm applied for a refund based on the procedures outlined in *South Hampton Refining Company*, 13 DOE ¶ 85,328 (1985), governing the disbursement of settlement funds received from SHRC pursuant to a June 4, 1980 Consent Order. Since the Atchison, Topeka and Santa Fe Railway Company was an end user of SHRC products, it was found to have been injured by SHRC's alleged overcharges. Accordingly, the firm was granted its full volumetric share of the SHRC consent order amount. Although the other two applicants had been granted refunds in previous Decisions, *see South Hampton Refining Company/City Public Service*, 14 DOE ¶ 85,199 (1986); *South Hampton Refining Company/Tenneco Oil Company*, 14 DOE ¶ 85,360 (1986), we stated in those determinations that if SHRC made further payments to the DOE, the claimants would receive supplemental refunds. This Decision and Order provided for those additional disbursements. The total amount of refunds approved was $40,264, representing $29,028 in principal and $11,236 in accrued interest.

Taranto Bus Corporation, 2/26/87, RF270–1104

The Department of Energy (DOE) issued a Decision and Order approving a bus company for a refund from the Surface Transporters Escrow. However, the DOE found that the company overestimated its gasoline purchases. Since there was enough information in the record of the case for the DOE to arrive at a reasonably supported estimate, the DOE adjusted the company's volumes and approved it for a refund based on a smaller number of gallons.

Dismissals

The following submissions were dismissed:

Name	Case No.
Benjamin A. Franklin	RF40–3653
Christian Gas Co	RF272–3
Clayton Automotive	RF225–6487
Estate Mitchell A. Normand	RF225–9883
Frederick Skillen Oil Co	RF225–9890
Griffin Petroleum, Inc	RF220–483
Grimm's Fuel Co., Inc	RF225–2350
Hometown Oil Co	KEE–0106
Joe's Conoco	RF220–421
Kelley Williamson Co	RF225–9310
Mellon Enterprises, Inc	RF192–20
Murphy Oil Corp	HRO–0244
Murphy Oil Corp	BRO–0984
	HRO–0240
Murphy Oil Corp	HRO–0248
O.K. Oil Company	RF250–1040
Pettyjohn Oil Co	RF225–10427
	RF225–10428

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 24, 1987.

[FR Doc. 87–7219 Filed 4–1–87; 8:45 am]

BILLING CODE 6450–01–M

Case Filed; Week of February 20 Through February 27, 1987

During the Week of February 20 through February 27, 1987, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service or notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 24, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of February 20 through February 27, 1987]

Date	Name and location of applicant	Case No.	Type of submission
5/01/85	Ball Marketing, Inc. Washington, DC	KRZ–0057	Interlocutory. If granted: The Proposed Remedial Order issued to Ball Marketing, Inc. (Case No. HRO–0268) would be dismissed.
2/24/87	Anchor Gasoline Corporation Washington, DC	KRD–0330 & KRH–0330	Motions for Discovery & Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Anchor Gasoline Corporation in response to the August 26, 1986 Proposed Remedial Order issued to Anchor Gasoline Corporation (Case No. KRO–0330).
2/24/87	Appel Oil Corporation Carmel, IN	KEE–0127	Exception To The Reporting Requirements. If granted: Appel Oil Corporation would not be required to file Form EIA–782B, "Reseller/Retailer's Monthly Petroleum Products Sales Report."
2/24/87	Francis Ryan, Inc. Billings, NY	KEE–0128	Exception To The Reporting Requirements. If granted: Francis Ryan, Inc. would not be required to file Form EIA–821 "Annual Fuel Oil & Kerosene Sales Report."
2/25/87	Texaco, Inc. & Stanford Harrell Washington, DC	KEF–0088	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the escrow fund transferred to the DOE by a November 26, 1986 Order issued by the US District Court for the Northern District of Texas.

REFUND APPLICATIONS RECEIVED

[Week of February 20 through February 27, 1987]

Date	Name	Case no.
5/01/86	Farmers Union Central Exchange.	RF225-10690
7/14/86	Miln Oil Company	RF225-10684
7/20/86	Frank Cove, Jr.	RF225-10686
7/20/86	Frank Cove, Jr.	RF225-10687
8/01/86	Cochran Oil Company	RF225-10684
8/01/86	Cochran Oil Company	RF225-10685
8/01/86	Putman Oil Company	RF225-10688
8/01/86	Putman Oil Company	RF225-10689
8/08/86	National Helium/Wisconsin	RQ-3-360
2/12/87	City of Old Town	RF272-369
2/18/87	Broy's Marathorn	RF250-2708
2/19/87	Commonwealth Oil Refining Co.	RF289-2
2/20/87	Matter Incorporated	RF40-3669
2/20/87	Bill's Queen Avenue Husky	RF161-102
2/20/87	Flame Gas	RF225-10672
2/20/87	Tires Plus Auto Service Ctr	RF225-10673
2/20/87	Brucker's Mobil	RF225-10674
2/20/87	Bottingi Fuel Corporation	RF285-16
2/20/87	Blue Flame Gas Company, Inc.	RF40-3660
2/20/87	Vallamont Gulf Service	RF40-3661
2/20/87	Cashion Gulf Service	RF40-3662
2/20/87	Bennett's Gulf	RF40-3663
2/20/87	Archer Bros. Garage	RF40-3664
2/20/87	Arnold Barfield Dist. Co., Inc.	RF40-3665
2/20/87	Gulf Service Station	RF40-3666
2/20/87	Bob Davis Gulf	RF40-3667
2/20/87	Sellergren Propane	RF40-3668
2/20/87	New Way Fuel	RF108-31
2/20/87	Circle S. Dist.	RF259-28
2/20/87	New Way Fuel	RF258-16
2/20/87	Paramount Oil Company	RF259-29
2/20/87	Paramount Oil Company	RF260-19
2/20/87	New Way Fuel	RF260-20
2/20/87 thru 2/27/87	Getty Oil Refund Applications Received.	RF265-498 thru RF265-684
2/24/87	Bueres Mobil	RF225-10675
2/24/87	Bueres Mobil	RF225-10676
2/24/87	E.M. Ellinpson Oil Co.	RF40-3670
2/24/87	A & H Flying Service	RF40-3671
2/24/87	Pennant Aviation, Inc.	RF40-3672
2/24/87	General Aviation, New Orleans.	RF40-3673
2/24/87	Arriba Super Service	RF161-103
2/24/87	Bob & Tom's Conoco	RF220-485
2/24/87	Consolidated Edison Co.	RF255-3
2/24/87	Houston Coca-Cola Bottling	RF272-378
2/24/87	A-One Oil Company	RF285-17
2/24/87	C.F. Bean	RF225-10677
2/24/87	Hodgson Mobil	RF225-10678
2/24/87	Placito's Service Station	RF225-10679
2/24/87	Steenwuk's Mobil	RF225-10680
2/24/87	Mike's Mobil	RF225-10681
2/24/87	Elmer's Mobil	RF225-10682
2/24/87	Asadour Hagopian	RF225-10671
2/24/87	Blu-Gas of S.C. Inc.	RF140-50
2/24/87	Shulman Fuel Co, Inc.	RF286-8
2/25/87	Chene Marathon Service	RF250-2709
2/25/87	Hansen Oil Co.	RF250-2710
2/25/87	Hansen Oil Co	RF250-2711
2/25/87	Mike's Service Center	RF40-3674
2/25/87	Oblerlin Light & Water System.	RF40-3675
2/25/87	Alamo Barge Lines, Inc.	RF40-3676
2/27/87	Henderson Oil and Butane Co.	RF272-379
2/27/87	Kent Oil & Trading	RF189-22
2/27/87	Pollock LP Gas, Inc.	RF139-164

[FR Doc. 87-7220 Filed 4-1-87; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Period of February 23 Through March 6, 1987

During the period of February 23 through March 6, 1987, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 24, 1987.

Jasper Oil Company, Jasper, Texas; KEE-0066, Reporting Requirements

Jasper Oil Company filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." On March 2, 1987, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

[FR Doc. 87-7222 Filed 4-1-87; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Week of March 2 Through March 6, 1987

During the week of March 2 through March 6, 1987, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 24, 1987.

LaJet, Inc., Aurora, CO; Texas Napco, Inc., Abilene, TX; Lajet Petroleum Co., Abilene, TX; Kro-0470, Crude Oil

On March 5, 1987, LaJet, Inc., 14190 E. Evans Avenue, Aurora, Colorado 80014, LaJet Petroleum Company, 3130 Antilley Road, Abilene, Texas 79606, and Texas Napco, Inc., located at the same Abilene address, filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administration (ERA) issued to the firms on January 22, 1987. On March 6, 1987, the Controller of the State of California also filed a Notice of Objection to the PRO.

In the PRO, the ERA found that during the period May 1977 through September 1977, LaJet, Inc. (LaJet) understated its crude oil receipts by erroneously reporting that certain crude oil was processed by LaJet for the account of another refiner. As a result, the PRO found that the firm violated the requirements of the Entitlements Program at 10 CFR 211.66(h) and 211.67 as well as 10 CFR 205.202. The PRO also found that LaJet Petroleum Company, succesor to the LaJet refining business, and Texas Napco, Inc., former parent of LaJet, are jointly and severally liable with LaJet for the violation.

According to the PRO, the violation resulted in $5,558,048 of overcharges.

McAlister Enterprises, Inc., Kyle S. McAlister, Nw Braunfels, TX; Kro-0450, Crude Oil

On March 6, 1987, McAlister Enterprises, Inc., formerly Questor Petroleum Corporation (Questor), and Kyle S. McAlister of 1150 Highway 46 South, New Braunfels, Texas, filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administration (ERA) issued to them on December 2, 1986. On March 6, 1987, the Controller of the State of California also filed a Notice of Objection to the PRO.

In the PRO, the ERA found that during the period July 1979 through November 1980, Questor violated the layering regulation at 10

CFR 212.186 and the provisions of 10 CFR 210.62(c) and 205.202 in its resales of crude oil. The PRO finds Kyle McAlister jointly liable for these violations as Questor's principal owner and the director of the firm's crude oil reselling actvities.

According to the PRO, the violation resulted in $42,539,059.30 of overcharges.

Murphy Oil Corp., El Dorado, AR; Murphy Oil USA, Inc., El Dorado, AR; Ocean Drilling and Exploration Co., New Orleans, LA; CNG Producing, Co., New Orleans, LA; KRO-0460, Crude Oil

On March 6, 1987, Murphy Oil Corp. and Murphy Oil, USA, Inc., both located at 200 Peach Street, El Dorado, Arkansas 71730, and Ocean Drillling and Exploration Co. and ODECO Oil and Gas Co., both at 1600 Canal Street, New Orleans, Louisiana 70112, filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas District Office of Enforcement issued to them on December 15, 1986. On the same date, the Controller for the State of California also filed a Notice of Objection. Finally, on March 9, 1987, CNG Producing Co. and Roosevelt County, Montana, recipients of royalties from the properties in question, filed Notices of Objection. In the PRO, the Dallas District found that during the period September 1, 1973 through December 31, 1979 the respondents violated the provisions of 10 CFR 212.73 and 212.74 by charging prices in excess of their permissible ceiling prices for crude oil.

According to the PRO, the violation resulted in $13,366,664.60 of overcharges.

[FR Doc. 87-7221 Filed 4-1-87; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Final Post-1989 Allocation of Power; Salt Lake City Area Integrated Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final post-1989 power allocations; Salt Lake City area integrated projects.

SUMMARY: This notice contains the final post-1989 allocations of long-term firm energy and capacity from the Salt Lake City Area Integrated Projects (SLCA/IP) to eligible allottees in the Salt Lake City Area Northern and Southern Divisions by the Western Area Power Administration (Western). Also included in this notice is a discussion of the issues raised in public comments received subsequent to the publication of proposed allocations on September 11, 1986 (51 FR 32362), and a summary of the changes reflected in the final allocations.

It is important to note that the final allocations to Southern Division customers contained in this notice may be subject to adjustment upon completion of final allocations from the Parker-Davis Project (PDP). These adjustments may be necessary if the final post-1987 Parker-Davis Project allocations are different from the existing commitments used in formulating these final allocations. For this **Federal Register** notice, Western has used the existing Parker-Davis Project allocations as the basis for considering other Federal resources allocated to Salt Lake City Area Southern Division customers due to the Boulder City Area Office's probable extension of the existing Parker-Davis Project commitments for a period that will provide sufficient time to negotiate and sign new contracts. In all respects other than the adjustment referred to above, the Southern Division allocations set forth herein are final.

DATES: These allocations will become final on April 2, 1987, and become effective on May 4, 1987.

ADDRESS: For further information on these allocations contact: Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, 438 East Second South, Salt Lake City, UT 84147, (801) 524-5493.

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I. Statutory Basis of the Allocations

The allocations published herein by Western's Salt Lake City Area Office (SLCAO) were determined from applications for power using the allocation criteria established by Western's final Post-1989 General Power Marketing and Allocation Criteria, published February 7, 1986, **Federal Register** at 51 FR 4844 (Criteria) with the minor modification outlined above. The allocations and Criteria were developed based on provisions of the Acts of Congress approved June 17, 1902 (ch. 1093, 32 Stat. 388), August 4, 1939 (43 U.S.C. 485h(c)), and August 4, 1977 (42 U.S.C. 7152, 7191), and, more specifically, on the Acts of Congress approved February 25, 1905 (33 Stat. 814), July 3, 1952 (66 Stat. 325), and April 11, 1956 (43 U.S.C. 620-620o), and acts amending or supplementing any of the foregoing legislation.

II. Background of the Allocation Procedures

These final SLCA/IP allocations are issued pursuant to the provisions of Western's post-1989 Criteria. Contained in the Criteria was a call for entities eligible under the terms of the Criteria to submit applications for power. Among other things, the eligibility requirements of the Criteria included a requirement that entities must have submitted applicant profile data (APD) requested in Western's February 4, 1983, **Federal Register** notice (48 FR 5303). Also, as indicated in the February 7, 1986, Criteria, applications for allocations were to have been received by the SLCAO by the close of business on April 8, 1986.

Western published the "Proposed Post-1989 Power Allocations; Salt Lake City Area Integrated Projects (Proposed Allocations)" in the **Federal Register** on September 11, 1986 (51 FR 32362). The notice of Proposed Allocations included a discussion of the regulatory flexibility analysis, the notice of final environmental assessment and FONSI, and the determination under Executive Order 12291 applicable to these final post-1989 allocations. Included with this

publication was a notice that written comments on the Proposed Allocations would be received until November 10, 1986. In addition to accepting written comments, Western sponsored a public comment forum on the Proposed Allocations on October 8, 1986. Western published corrections to the Proposed Allocations in the October 29, 1986, Federal Register (51 FR 39574).

III. Southern Division Allocation Methodology

In the Criteria, Western stated that it would take into account "other Federal resources," including Parker-Davis Project resources, in allocating power and limiting energy allocations in the post-1989 period. Western's Administrator reserved the right to deviate from the final post-1989 allocation criteria when warranted by special conditions. In the Proposed Allocations, Western explained that proposed allocations to Southern Division customers were based on the assumption that existing Parker-Davis Project nonwithdrawable commitments would continue in the post-1987 period. This assumption was necessary because the allocations of capacity and energy from the Parker-Davis Project had not been completed by the date of publication of the Proposed Allocations. The assumption was based on the fact that Western had stated in its December 28, 1984, "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects," that it would reserve allocations of Parker-Davis Project power for the post-1987 period in amounts equal to the current allocations for each Parker-Davis Project contractor (49 FR 50587).

Western now finds that it will be unable to complete the Parker-Davis Project allocation and contracting process by May 31, 1987, the termination date of the existing Parker-Davis Project contracts. Accordingly, Western's Boulder City Area Office will likely extend the existing Parker-Davis Project contracts for a time period that allows for the completion of the Parker-Davis Project allocation and contracting process. It would be inappropriate for Western to delay the publication of the SLCA/IP Final Allocations until completion of the Parker-Davis Project allocation process for several reasons:

1. Further delays would defer contract completion beyond the September 30, 1987, date contemplated in the Criteria and anticipated by Western and many customers;

2. By creating an air of uncertainty, further delay could harm the efforts of new customers to obtain utility responsibility or make arrangements with auxiliary suppliers for the post-1989 period; and

3. Failure to conclude the allocation process in a timely manner creates resource planning uncertainties for both new and existing customers.

Due to this special condition, Western will complete the Southern Division allocations based on the existing Parker-Davis Project commitments. However, the final allocations to Southern Division customers contained in this notice may be subject to some adjustment upon completion of the post-1987 final PDP allocations, if there are differences from existing commitments.

IV. Summary of Comments on the Proposed Allocations

Subsequent to publication of the Proposed Allocations, Western received a number of comments from interested parties. These comments were presented orally at the public comment forum and in written form both during and subsequent to the public comment forum. Many of the comments were generally in support of the proposed allocations and indicated that Western had appropriately applied the allocation methodology contained in the Criteria. Other comments were more specific and require some discussion. Each of these are summarized and discussed below. Western's response to each comment is also summarized.

1. Requests for Clarification

a. Northern Division Reallocations

The Criteria provide that any "long-term firm energy with associated capacity made available for marketing because an allottee has failed to acquire a distribution system within the time period allowed, or because any allottee has failed to accept a contract within the time period allowed, or because a contract has been terminated, or because allocations have been reduced for noncompliance with contract provisions may be administratively reallocated without further public process." However, the Criteria are explicit in providing a first-right-of-refusal to the cities of Enterprise and Hurricane, Utah, for any energy and associated capacity to be reallocated. The amount of this first-right-of-refusal will not exceed 50 percent of the 1975–76 peakloads of these cities.

(1) Comments: Several Northern Division entities expressed an interest in any post-1989 resources available for reallocation.

(2) Discussion: The Criteria provide a first-right-of-refusal for reallocable Northern Division resources to the cities of Enterprise and Hurricane, Utah, up to the amount equal to 50 percent of their 1975–76 peak loads. However, any Northern Division resources remaining after these rights have been exercised will be available for reallocation to interested Northern Division post-1989 customers. Such reallocations will be effected administratively without further public process.

(3) Summary and Conclusion: Any reallocation of Northern Division resources will be in accordance with the Criteria, giving first right-of-refusal to the cities of Enterprise and Hurricane, Utah.

b. Southern Division Reallocations

The Criteria provide that Resource Pools 1 and 2 be allocated in the Southern Division.

(1) Comment: Several Southern Division entities requested clarification of the policy which would govern any reallocation of Southern Division resources. Specifically, they requested that Western clarify its intention to retain reallocable Southern Division resources within the Southern Division.

(2) Discussion: Although the issue of reallocations in the Southern Division is not addressed directly, the Criteria are explicit in stating that Resource Pools 1 and 2 be allocated in the Southern Division only. Western's intention is that any reallocation of Southern Division resources take place within the Southern Division.

(3) Summary and Conclusions: Any reallocation of Southern Division resources will be in accordance with the Criteria and are intended to be within the Southern Division.

c. Publication of Individual Allocations for Entities Receiving Allocations Through Single Purchasing Agent

The Criteria state that "Western may contract with single purchasing agents (SPA) for two or more allottees. . . ." Furthermore, in requesting applications for power, the Criteria call upon interested and qualified entities to specify the kilowatthours per kilowatt (kWh/kW) desired for each season.

(1) Comment: One entity applied both individually and later through an SPA. This entity has since requested that Western reconsider its initial application rather than the application made on its behalf by the SPA and grant it a separate allocation from the SPA.

(2) Discussion: In the Proposed Allocations, allocations to entities which are members of SPAs were shown as a single allocation to the SPA. Although the amounts requested by individual entities in kWh/kW form the

basis for the total SPA allocation, individual allocations to SPA members were not published. The City of St. George, Utah (St. George) requested an individual allocation with a kWh/kW equivalent to an approximate 35 percent load factor. Later, St. George requested that its allocation be made through the SPA known as Utah Associated Municipal Power System (UAMPS). Most recently, St. George has asked Western to reconsider its original application and grant a final allocation on the basis of the original application. St. George contends that this approach is necessary in order for St. George to have the means to confirm that the resources it actually receives through UAMPS are equal to those allocated from Western.

Western has concluded that it will grant St. George's request for an allocation in the amount specified in its original application. An amount equal to this allocation will then be deducted from the total allocation to UAMPS. Western considers this approach to be equitable because, based on the assumption that UAMPS' application on behalf of St. George accurately reflects the allocation St. George originally requested, neither party will suffer reductions in their net allocations.

(3) Summary and Conclusion: St. George will receive an individual allocation equal to the amount it would otherwise receive if the allocation were to remain associated with UAMPS. An amount equal to this allocation will be deducted from the total allocation to UAMPS.

d. Allocation of Resource Pools 7 and 8 (Conservation and Renewable Energy Incentive)

In the Criteria, Western notes the creation of special resource pools (7 and 8) to provide post-1989 contractors with additional incentive to develop outstanding conservation and renewable energy programs. The Criteria direct that these resources will be allocated through a future public process.

(1) Comment: Some commentors requested information about Western's plans for allocating the resources reserved for its Conservation and Renewable Energy Incentive Program (C&RE Incentive Program). Specifically, they asked about the timetable for such allocations.

(2) Discussion: In accordance with the Criteria, it is Western's intention to define procedures for the C&RE Incentive Program in a future public process. Although no definite schedule for this process has been established, Western expects it to begin sometime prior to the end of 1989. All post-1989 customers and interested parties will be informed about the timetable for this process as soon as it is established. In the interim, Western will market the resources reserved for the C&RE Incentive Program on a short-term basis.

(3) Summary and Conclusion: Western will establish procedures for the C&RE Incentive Program in a future public process. Customers will be notified of the timetable for this process once it has been established. Reserved resources will be marketed on a short-term basis in the interim.

e. Adjustments to Allocations to Collbran and Rio Grande Projects Customers

The Proposed Allocations reflect certain adjustments mandated by the Criteria to those existing customers of the Collbran and Rio Grande Projects in order to share the benefits from project integration and distribute them among all Northern Division customers. In addition, the Proposed Allocations state that allocations to the existing customers are contingent upon the continuation of the contracts now in effect for the sale of the Collbran and Rio Grande Projects' resources through September 1989. If power purchases from these projects are discontinued, or if Western is not assured that anticipated revenues will be received during this period, additional adjustments of the Collbran and Rio Grande Projects customers' post-1989 allocations may be necessary.

(1) Comments: One commentor requested clarification of the possible additional adjustments to small project customers' allocations contemplated in the Proposed Allocations. Another commentor expressed the opinion that the project integration related adjustments will have adverse impacts on its post-1989 allocation.

(2) Discussion: The purpose of the possible adjustments to Rio Grande and Collbran Projects customers indicated in the Proposed Allocations is to provide additional incentive to these customers to continue their purchases of the small project resources. These customers will benefit from the integration of the Rio Grande and Collbran Projects with the Colorado River Storage Project (CRSP). Part of this benefit is provided as an inducement to the small project customers to continue to purchase the relatively higher cost resources of the small projects until project integration is achieved. If the Rio Grande and Collbran Projects customers were to discontinue their purchases of these resources prior to project integration, Western could lose revenue and/or incur additional expenses which may jeopardize the timely repayment of these projects. Under such circumstances, Western would reduce the benefits to the small project customers in order to compensate for the difficulties that such circumstances would entail. Any adjustments would be in the form of reductions in the SLCA/IP allocations to the small project customers. In the unlikely event that such adjustments become necessary, it will be accomplished administratively, and the additional resources would be reallocated in the Northern Division in accordance with the Criteria.

With regard to the project integration related adjustments to the small project customers' allocations that have already occurred, all entities were given the opportunity to offer comments on the adjustments prior to publication of the Criteria. All comments were carefully analyzed and addressed in the final publication. Therefore, Western will not reiterate what has already been discussed, but refers commentors on this issue to the Criteria development process and specific **Federal Register** notices previously mentioned in the Background section.

(3) Summary and Conclusion: In the event that the customers of the Rio Grande and Collbran Projects are to discontinue existing contracts for these resources, Western will reserve the prerogative to make adjustments to their allocations of SLCA/IP resources. If such adjustments are necessary, the additional resources available will be reallocated administratively in accordance with the Criteria.

2. Input Data Errors

a. City of Holyoke, Colorado

As noted above, all entities initially wanting a post-1989 allocation were required to provide Western with APD by December 30, 1983. This APD was used in determining the eligibility of interested entities and forming the basis for Northern Division Participating Customers' allocations. In addition, the APD was used to determine 3-year average energy for the energy limitation applied to all customers.

(1) Comment: The City of Holyoke, Colorado (Holyoke), requested that corrections be made to erroneous energy data contained in its APD. It also requested that full consideration be given to the corrected energy and capacity figures for 1982.

(2) Discussion: Western performed an analysis to determine the likely affect that this correction would have on Holyoke's allocation and determined

that this change alone will have no impact on Holyoke or other Northern Division Existing Customers.

In the interest of maintaining correct APD, Western considered the requested changes in Holyoke's file to be appropriate. The new data were used to compute the Proposed Allocations, but did not have any impact on the outcome.

(3) Summary and Conclusion: Holyoke's APD has been changed to reflect accurate data for energy use in 1982. The new data were considered in determining Holyoke's final allocations, but did not have any impact on the outcome.

b. Municipal Subdistrict, Northern Colorado Water Conservancy District

(1) Comment: The Municipal Subdistrict, Northern Colorado Water Conservancy District (Municipal Subdistrict) requested that Western use its correct name in the final allocations.

(2) Discussion: The Municipal Subdistrict explained that it is a separate legal entity from the Northern Colorado Water Conservancy District, and that this correction should be reflected in all references to the Municipal Subdistrict in future publications by Western.

(3) Summary and Conclusion: Western will refer to the Municipal Subdistrict by its correct title in future publications and correspondence, including the final allocations.

3. Allocation Methodology

a. Issues Raised by Utah Power and Light Company

Throughout the formulation of the post-1989 Criteria, the Utah Power and Light Company (UP&L) has consistently opposed fundamental elements of Western's Criteria with particular objection to Western's interpretation of preference laws. Western has addressed each of UP&L's comments carefully throughout the public participation process.

A conditional application for post-1989 allocations to UP&L on its own behalf and on behalf of 143 cities, towns, and counties it serves in Utah and Wyoming was received by Western before the April 8 deadline. However, for reasons discussed in detail in the Criteria and the proposed allocations, UP&L and 141 of the 143 UP&L customer cities, towns, and counties did not receive an allocation. The two entities receiving an allocation are taking steps to attain utility responsibility in accordance with the Criteria, independent from the UP&L application.

On October 31, 1986, UP&L filed a Complaint for Declaratory, Injunctive, and Other Relief (Complaint) against Western and the Department of Energy in the United States District Court for the District of Utah in Salt Lake City seeking, among other things, to nullify the Criteria and Western's interpretation of preference laws.

(1) Comment: UP&L reiterates all comments made during the formulation of the Criteria and incorporates allegations made against Western in its Complaint into the public record.

(2) Discussion: As noted above, Western has carefully and thoroughly addressed all of UP&L's comments on the Criteria. Summaries of these comments and Western's detailed responses can be found in the discussion of comments published with the Criteria in the **Federal Register** on February 7, 1986, at 51 FR 4844 and Western's "Revised Proposed Post-1989 General Power Marketing and Allocation Criteria" published September 4, 1984, at 49 FR 34900. Western will not detail what has already been stated, but reiterates its positions.

As for the issues raised in UP&L's Complaint, Western will respond appropriately in the proper forum.

(3) Summary and Conclusion: Western reiterates its positions on the numerous comments made by UP&L on the Criteria. Western will respond to the issues raised by UP&L's Complaint in the appropriate manner.

b. Equity Issues

The allocation methodologies are described at length in the Criteria. The Proposed Allocations and final allocations were prepared pursuant to these methodologies. Essentially, allocations to existing customers were based on existing contract rates of delivery with Western, and allocations to participating customers are based upon historic load data presented in APD.

(1) Comment: Western's allocation methodology is unfair and fails to achieve its avowed goal of promoting widespread use of Federal resources. A more equitable allocation methodology would base allocations on the number of end users in each entity's jurisdiction.

(2) Discussion: A discussion of issues involving the allocation methodology appeared in the discussion of comments published with the Criteria in the **Federal Register** on February 7, 1986. This comment pertains to the final Criteria, and Western reincorporates by reference the justification for its positions in this notice.

(3) Summary and Conclusion: Western's position on the allocation method is clearly outlined in the Criteria and is reiterated by Western.

c. Southern Division Energy Limitation

The Criteria restrict energy allocations to Southern Division entities on the basis of their other Federal resource allocations, including allocations from the Boulder Canyon Project (BCP) and the Parker-Davis Project. However, the BCP and PDP allocations are based upon a 7-month summer season, whereas the SLCA/IP is allocated on the basis of a 6-month summer season. As a result, Western transferred one-seventh of all Southern Division entities' BCP and PDP summer allocations (March) to the SLCA/IP winter season in order to make an accurate comparison. Several entities were affected by the energy limitation.

(1) Comment: Western erred in its application of the energy limitation and Electrical District Number Seven (ED#7) should not have been subject to an energy limitation. Western's error was in assuming that the March allocations from the BCP and PDP were equal to one-seventh of the summer season when actual percentages varied. The actual allocation to ED#7 should be 3,669,953 kWh and 1,649 kW in the winter season and 10,619,670 kWh and 4,808 kW in the summer season. Other Southern Division entities were also impacted as a result of Western's assumptions.

(2) Discussion: Western reviewed the impacts of the approach used to determine the 6-month seasonal split of post-1987 BCP and existing PDP resources among existing CRSP Southern Division customers. Post-1987 BCP and existing PDP capacity and energy are marketed in a 7-month summer season and a 5-month winter season. Since the SLCA/IP resources will be marketed in two 6-month seasons, it was necessary to adjust Southern Division other Federal resource allocations, such as BCP and PDP, in order to apply the energy limitation test. Proposed allocations were adjusted for Southern Division customers by moving one-seventh (14.3 percent) of each customer's post-1987 summer BCP and existing summer PDP long-term energy commitment to the winter season. The adjusted seasonal total energy amounts were then used in applying the energy limitation test to SLCA/IP energy allocations for each Southern Division customer.

Upon further review of the relationship of the historic deliveries of BCP and PDP energy, particularly in the month of March, as compared to the total 7-month summer season, Western discovered that the existing Southern

Division customers received a range of 5.2 to 16.7 percent of total summer season BCP energy in March. A similar range was discovered for PDP customers. It was, therefore, concluded that application of the one-seventh adjustment had adversely affected a majority of Southern Division customers. The data used to arrive at this determination included 1985–86 actual deliveries of BCP and PDP resources to Southern Division customers with the exception of Arizona Power Authority (APA) members. Data used to determine the distribution of APA's BCP resources were based on projected post-1987 deliveries.

(3) Summary and Conclusion: Western's simplified adjustment of the Southern Division seasonal energy entitlements to resources from the BCP and PDP in the proposed allocations did not result in a reasonable determination of 6-month summer and winter distribution of BCP and PDP energy. Western has therefore prepared a revised estimate of the 6-month seasonal distribution of post-1987 BCP and existing PDP energy based upon recent historical distributions and has used these individualized distributions of seasonal resources in the energy limitation test for each Southern Division customer.

4. Specific Allocation Issues

a. U.S. Fish and Wildlife Service, Regions 2 and 6

The U.S. Fish and Wildlife Service Region 2 (F&WS Region 2) received a proposed post-1989 allocation from Resource Pools 5 and 6 for Dexter National Fish Hatchery (Dexter NFH) in southwestern New Mexico of 32,329 kWh of energy and 14 kW of capacity in the winter season and 19,532 kWh of energy and 6 kW of capacity in the summer season.

(1) Comments: Due to the inability to make feasible wheeling arrangements for Dexter NFH, F&WS Region 2 notified Western of its intent to withdraw from the post-1989 allocation process. U.S. Fish and Wildlife Service Region 6 (F&WS Region 6) later requested that F&WS Region 2's allocation for Dexter NFH be transferred to the Jackson National Fish Hatchery (Jackson NFH) in northwestern Wyoming.

(2) Discussion: F&WS Region 2's withdrawal from the allocation process is undisputed. However, Western cannot allocate the Dexter NFH allocation to F&WS Region 6. Although F&WS Region 6 submitted APD for Jackson NFH, it was found to be ineligible for an allocation based upon the size of its 1980–82 loads.

(3) Summary and Conclusion: Western will withdraw F&WS Region 2's application for an allocation to the Dexter NFH. F&WS Region 6 is not eligible to receive F&WS Region 2's refused allocation. F&WS Region 2's refused allocation was redistributed to all remaining Resource Pools 5 and 6 allottees in the final allocations.

b. U.S. Army Yuma Proving Grounds

U.S. Army Yuma Proving Grounds (YPG) is a Southern Division existing customer. The Proposed Allocations to YPG from Resource Pools 1 and 2 were 1,041,337 kWh of energy and 415 kW of capacity in the winter season and 732,781 kWh of energy and 347 kW of capacity in the summer season. In addition, YPG was given the first-right-of-refusal for unallocated winter season capacity remaining in the Southern Division.

(1) Comment: Western's proposed allocation to YPG is adverse to YPG's interest and deviates from the historic load and CRSP allocation to YPG. The allocation methodology used to determine these allocations is unfair. YPG should be given a first-right-of-refusal for any reallocable Southern Division resources.

(2) Discussion: YPG was subject to the same allocation methodology as all other Southern Division allottees. YPG's allocation is a direct result of its application and the nature of the seasonal division of resources available to the Southern Division. However, because YPG's application requested an allocation at a seasonal energy factor (SEF) higher than the pool SEF, Western offered YPG a first-right-of-refusal for unallocated winter seasonal capacity. YPG refused this offer.

Instead, YPG has requested that it be given a first-right-of-refusal for any reallocable summer season resources. A number of other Southern Division entities have also expressed a desire for equitable treatment in any reallocation procedure. In light of this interest and because YPG has been equitably treated in the allocation process, Western does not consider YPG to be eligible for first-right-of-refusal for reallocable resources and will not commit a special priority for future reallocable resources to YPG.

(3) Summary and Conclusion: Western has no basis for altering YPG's allocation, nor will it commit a special priority to YPG for reallocable resources. YPG will be eligible for a reallocation of resources on the same basis as other Southern Division allottees.

c. U.S. General Services Administration

The U.S. General Services Administration (GSA) submitted all requested APD prior to the deadline and was expected to submit an application for a post-1989 allocation. However, GSA did not submit an application for power and was dropped from the list of eligible entities.

(1) Comment: GSA's failure to submit an application was due to a misunderstanding of the process. Western should still grant GSA an allocation.

(2) Discussion: While Western considers GSA's situation unfortunate, the Criteria are explicit about the consequences of failure to follow the application procedure. One of the essential elements of that procedure was the April 8, 1986, deadline. GSA clearly did not meet this deadline and bears sole responsibility for its failure. In fact, GSA did not submit an application despite being contacted by Western and reminded of the deadline by telephone.

It would not be equitable for Western to grant an exception in this case and not in others.

(3) Summary and Conclusion: Western will not reconsider GSA's eligibility for a final allocation.

5. Other Issues

a. Wheeling Arrangements for the City of Truth or Consequences, New Mexico

Presently, Western pays the wheeling costs associated with transmitting CRSP and Rio Grande Project firm power purchased by the City of Truth or Consequences, New Mexico (TorC), from the West Mesa or Elephant Butte Equivalent Federal points of delivery (EFPOD) to TorC's Hot Springs Substation. This arrangement was made to replace service formerly available over Federal transmission facilities which were sold prior to the expiration of existing commitments to TorC. The arrangement covers only firm purchases and will terminate at the end of the current contract period. TorC is responsible for the wheeling costs associated with CRSP peaking power since its contract for peaking power was executed after the sale of the Federal transmission facilities. The Criteria require that, beginning with the post-1989 contract period, TorC will assume responsibility for all wheeling costs beyond its assigned EFPOD.

(1) Comment: One commentor expressed concern about the impact of Western's decision to terminate its wheeling arrangement with TorC

beginning with the post-1989 contract period.

(2) Discussion: It has always been the intention of the United States to discontinue its special arrangement with TorC to pay wheeling costs beyond the EFPODs. This is illustrated by the fact that it refused to extend the arrangement to cover CRSP peaking power costs. Most recently, Western included a provision in the Criteria which made explicit its intention not to pay the wheeling costs associated with delivery of power beyond its EFPODs, except on a passthrough cost basis.

(3) Summary and Conclusion: Western will abide by the terms of the Criteria which require the contractors to pay for wheeling services beyond the EFPODs.

b. Administrative Procedures

Throughout the process of formulating the post-1989 Criteria and Proposed Allocations, Western has afforded potential applicants and interested parties with numerous opportunities for public participation. Among these opportunities have been four public information forums, two formal public comment forums, and two opportunities for written comments.

(1) Comment: Western did not afford an opportunity for on-the-record public comment on the final Criteria.

(2) Discussion: The final Criteria were the result of an extensive administrative undertaking that included full accommodation of the public participation process. Interested parties were given numerous occasions to participate in the development of the Criteria and such participation was welcomed. Many individuals and entities did participate. In some cases, Western saw merit in the comments it received, and such input was reflected in the final Criteria. In other cases, although they were undoubtedly thoughtful, Western did not consider some suggestions appropriate and those were not incorporated. In every instance, careful analysis of public comments was initiated and reported in the **Federal Register** notice published February 7, 1986. However, Western was not obligated to provide a formal comment period on the final Criteria.

(3) Summary and Conclusion: Western is mindful of public comments and concerns about its marketing activities. With regard to the Criteria, Western afforded potential applicants and interested parties with numerous formal and informal opportunities for public participation.

V. Summary of Revisions

1. Input Data

The following changes to input data were effected:

a. City of Holyoke, Colorado

The APD submitted by Holyoke was subjected to minor modifications to correct erroneous data. These corrections pertained to Holyoke's historic energy and load data. These corrections alone had no impact on Holyoke's final allocation.

b. Municipal Subdistrict, Northern Colorado Water Conservancy District

The title of the Municipal Subdistrict was changed to reflect the words "Municipal Subdistrict."

2. Allocation Methodology

The following changes in allocation methodology were effected:

a. Southern Division Energy Limitation

Western has prepared a revised estimate of the 6-month seasonal distribution of post-1987 BCP and existing PDP energy based on actual 1985–86 deliveries and, in the case of APA members, on projected post-1987 distributions. These individualized distributions of seasonal resources provided the basis for calculating the energy limitation test for each Southern Division Customer.

b. Other Federal Resources

As discussed in Section III., "Southern Division Allocation Methodology," existing rather than post-1987 allocations from the PDP were used in determining the energy limitation for total Federal resources.

3. Specific Allocations

The following changes in allocations were effected:

a. U.S. Fish and Wildlife Service, Region 2

The F&WS Region 2 allocation for Dexter NFH was deleted, and the resources have been redistributed among other Resource Pools 5 and 6 allottees in these final allocations.

b. City of St. George, Utah

Allocations to St. George are separate from the allocation to UAMPS. The allocation to UAMPS is reduced by the amount of St. George's individual allocation.

c. Changes in Final Allocations Due to Limits on Total Federal Resources

In accordance with the requirements of the Criteria, final allocations to Northern Division Existing CRSP Customers in the Loveland Area and Southern Division CRSP Customers reflect adjustments for receipt of other Federal resources from the Loveland Area Integrated Projects (LA/IP) and the BCP and PDP, respectively. Some of these adjustments were not reflected in the Proposed Allocations, as the final allocations from the LA/IP were not completed at the time the proposed allocations were published. Final allocations from the Boulder Canyon Project were unchanged from those assumed in the Proposed Allocations. As noted earlier, PDP existing commitments were used in place of post-1989 commitments. A more complete discussion of this limitation is contained above and in the Criteria and the Proposed Allocations.

VI. Final Allocations

1. Southern Division

Table 1: Final SLCA/IP Post-89 Allocations to Southern Division Existing Customers.

2. Northern Division

Table 2: Final SLCA/IP Post-1989 Allocations to Northern Division Existing Customers.

Table 3: Final SLCA/IP Post-1989 Allocations to Northern Division Participating Customers and Special Allocations.

Issued at Golden, Colorado, March 13, 1987.

William H. Clagett,

Administrator.

TABLE 1.—POST-1989 SLCA/IP ALLOCATIONS SOUTHERN DIVISION EXISTING CUSTOMERS

Customer group	Customer	Resource pool 1—winter season		Resource pool 2—summer season	
		Capacity (MW)	Energy (MWH)	Capacity (MW)	Energy (MWH)
(1)	(2)	(3)	(4)	(5)	(6)
Southern Division Existing Customers	Ak-Chin Indian Community	1.920	4,273.433	4.244	9,373.563
	APPA	13.568	30,197.295	27.275	60,248.025
	Chandler Heights Citrus I.D.D.	0.302	671,748	0.400	881.769
	Colorado River Commission	29.477	65,603.370	22.420	49,521.181
	Colorado River Irr./Power	0.881	1,933.823	0.442	1,011.397
	Electrical District #3	2.880	6,409.748	8.631	19,063.962
	Electrical District #4	3.680	8,189.262	4.897	10,815.570
	Electrical District #5-M	0.233	518.692	1.274	2,813.842
	Electrical District #5-P	2.633	5,859.936	2.948	6,510.552
	Electrical District #6	0.000	0.000	6.245	13,794.786
	Electrical District #7	0.729	1,623.416	4.807	10,618.756
	Maricopa County MWCD No. 1	2.373	5,280.927	5.748	12,697.156
	Ocotillo WCD	0.272	606.459	1.162	2,565.706
	Queen Creek Irr. Dist	0.000	0.000	1.887	4,167.452
	Roosevelt Irr. Dist.	1.761	3,918.404	5.243	11,581.167
	Roosevelt Water Cons. Dist	1.616	3,596.519	2.364	5,221.513
	Safford, AZ	0.560	1,246.991	1.227	2,710.445
	Salt River Project	52.113	115,980.178	103.224	228,005.552
	San Carlos Irr. Project	1.840	4,094.242	1.366	3,018.303
	San Tan Irr. District	0.00	0.000	0.882	1,948.991
	Thatcher, AZ	0.363	806.788	0.556	1,228.656
	Wellton-Mohawk Irr. Dist.	0.448	996.974	0.146	320.783
	Williams AFB	0.912	1,993.462	2.265	5,002.065
	Yuma Proving Grounds	0.415	1,040.333	0.347	732.808
Total, Southern Division Existing		118.976 [1]	264,842.000	210.000	463,854.000

[1] 24-KW unallocated.

TABLE 2.—POST-1989 SLCA/IP ALLOCATIONS NORTHERN DIVISION EXISTING CUSTOMERS LOVELAND AREA

Customer group	Customer	Resource pool 3—winter season		Resource pool 4—summer season	
		Capacity (MW)	Energy (MWH)	Capacity (MW)	Energy (MWH)
(1)	(2)	(3)	(4)	(5)	(6)
Northern Division Existing Customers Loveland Area	Center, CO	1.801	3,945.115	1.082	2,330.498
	Colorado Springs, CO	64.864	141,272.844	16.289	35,559.318
	Fleming, CO	0.068	141.403	0.087	188.137
	Fort Morgan, CO	9.081	19,015.973	8.584	18,495.260
	Frederick, CO	0.045	115.384	0.038	95.511
	Haxtun, CO	0.546	1,103.302	0.575	1,217.513
	Holyoke, CO	2.023	4,214.092	1.598	3,441.244
	Lamar, CO	2.663	5,555.122	2.192	4,715.263
	Platte River	145.955	382,403.019	113.902	273,363.902
	Pueblo Army Depot	2.856	6,253.067	2.641	5,820.433
	Torrington, WY	1.302	2,673.435	1.922	4,127.592
	Tri-State (CO-WY)	226.027	472,836.547	272.938	587,818.883
	Willwood LT & PWR	0.039	86.267	0.050	108.933
	WMPA	6.731	14,727.997	5.036	10,775.528
	Wray, CO	1.059	2,318.709	0.051	1,104.557
	Yuma, CO	1.411	2,950.599	1.223	2,634.474
Subtotal, Loveland Area		446.471	1,059,621.875	428.658	951,797.046
Northern Division Existing Customers Salt Lake City Area	Aztec, NM	2.778	6,082.158	2.039	4,494.653
	Brigham City, UT	12.594	27,577.769	8.932	19,650.298
	Defense Depot Ogden, UT	3.532	7,734.000	3.169	6,984.667
	Delta, CO	1.211	2,650.876	1.061	2,337.584
	Delta-Montrose E.A.	0.916	2,005.620	1.269	2,796.194
	Deseret G&T	110.346	230,865.569	101.616	218,834.447
	Dixie-Escalante E.A.	24.085	50,110.977	19.072	40,956.172
	Doe-Albuq. Oper. Off.	21.127	46,260.616	16.328	35,985.282
	Empire Electric E.A.	0.420	919.907	0.578	1,272.793
	Farmington, NM	17.577	42,676.272	15.968	35,191.494
	Grand Valley Rural Power	0.285	623.970	0.393	867.077

TABLE 2.—POST-1989 SLCA/IP ALLOCATIONS NORTHERN DIVISION EXISTING CUSTOMERS LOVELAND AREA—Continued

Customer group	Customer	Resource pool 3—winter season		Resource pool 4—summer season	
		Capacity (MW)	Energy (MWH)	Capacity (MW)	Energy (MWH)
(1)	(2)	(3)	(4)	(5)	(6)
	Gunnison, CO	7.225	15,821.430	4.812	10,605.277
	Gunnison County E.A.	0.339	742.232	0.391	861.058
	Holy Cross E.A.	1.661	3,635.980	1.931	4,255.434
	Irea	27.172	59,496.928	20.650	45,509.434
	La Plata E.A.	0.806	1,765.250	0.990	2,181.036
	Navajo Tribal UT. Ath	20.817	54,457.724	18.589	48,629.623
	Oak Creek, CO	0.485	1,014.500	0.320	702.204
	Page, AZ	8.040	17,604.906	6.687	14,737.305
	Plains G&T	177.722	372,222.505	142.303	312,070.292
	S. De Cristo E.A.	0.177	387.030	0.240	527.561
	San Isabel E.A.	0.409	896.622	0.538	1,185.391
	San Luis Vly Rea	0.253	554.212	1.798	3,963.504
	San Miguel E.A.	0.436	954.693	0.604	1,330.410
	Southeast Co Pwr Ath	0.346	756.793	0.938	2,066.360
	St. George, UT	35.495	66,005.078	21.882	42,118.273
	Truth or Consequences, NM	6.506	14,234.333	6.025	13,285.367
	UAMPS	156.134	332,700.063	101.509	222,853.999
	UMPA	93.566	204,880.060	79.126	174,385.170
	Weber Basin Cons. Dist.	0.000	0.000	0.415	915.704
	White River E.A.	0.232	508.747	0.338	744.654
	Yampa VLY E.A.	1.341	2,936.304	1.644	3,624.237
Subtotal, Salt Lake City Area		734.033	1.569,083.125	582,155	1.275,922.954
Total, Northern Division Existing		1,200.504	2,628,705.000	1,010.813	2,227,720.000

TABLE 3.—POST-1989 SLCA/IP ALLOCATIONS NORTHERN DIVISION PARTICIPATING CUSTOMERS SPECIAL ALLOCATIONS

	Winter	Summer	Resource pool No. 5 (Winter)	Resource pool No. 6 (Summer)
Energy				
Marketable Firm Energy for Participating Customers			[1] 218,967,000	[1] 220,389,000
Special Allocations:				
DOE/Los Alamos	[1] 0	[1] 0		
Enterprise	1,472,945	1,132,616		
Hurricane	+4,425,674	+1,959,243		
Total	[1] 5,898,619	[1] 3,091,859	−5,898,619	−3,091,859
Resultant Resource Amounts For Distribution by Formula			[1] 213,068,381	[1]217,297,141
Capacity				
Marketable Firm Power for Participating Customers			[2] 100,000	[2] 100,000
Special Allocations:				
DOE/Los Alamos	[2] 15,000	[2] 15,000		
Enterprise	646	496		
Hurricane	+1,941	+858		
Total	[2] 17,587	[2] 16,354	−17,587	−16,354
Resultant Resource Amounts For Distribution by Formula			[2] 82,413	[2] 83,646
Seasonal Energy Factor				
Winter: 213,068,381 / 82,413=2585.373 kWh/kW				
Summer: 217,297,141 / 83,646 = 2597.818 kWh/kW				
Load Factor				
Winter: 2585.373 / 4368=59.19%				
Summer: 2597.181 / 4392=59.15%				

[1] kWh.
[2] kW.

TABLE 3.—NORTHERN DIVISION PARTICIPATING CUSTOMERS PROSPECTIVE CUSTOMERS—CONTINUED

Customer Group	Customer	Resource pool 5—winter season		Resource pool 6—summer season	
		Capacity (MW)	Energy (NWH)	Capacity (MW)	Energy (NWH)
(1)	(2)	(3)	(4)	(5)	(6)
Prospective customers	Aspend, CO	1.677	4,234.809	1.062	2,714.455
	Blanding, UT	0.765	1,926.300	0.500	1,278.588
	Cannon AFB	1.419	3,573.678	1.387	3,545.692
	Cedar City, UT	3.475	8,655.275	2.750	6,987.911
	Central Vly Elec Co-op	3.592	9,048.805	3.555	9,092.366
	County of Los Alamos, NM	1.569	3,951.530	1.056	2,701.693
	Central Utah WCD	0.095	285.651	0.237	607.009
	Farmers Elec Co-op	1.602	6,887.176	1.857	7,983.671
	Gallup, NM	3.592	9,048.805	3.439	8,795.248
	Glenwood Springs, CO	1.689	4,243.525	1.246	3,182.500
	Helper, UT	0.472	1,181.057	0.304	773.637
	Hill, AFB	3.592	9,048.805	3.555	9,092.366
	Holloman AFB	2.065	5,396.666	1.925	4,933.272
	Ivins, UT	0.131	328.168	0.118	300.073
	Kanab, UT	0.611	1,539.732	0.476	1,216.504
	La Verkin, UT	0.246	617.549	0.211	538.062
	Lea County Elec Co-op	3.592	9,048.805	3.555	9,092,366
	Mun. Subdist, No. Col. WCD	0.000	0.000	3.573	9,078.000
	Panguitch, UT	0.686	1,722.833	0.642	1,638.083
	Price, UT	1.702	4,287.107	1.119	2,861.732
	Raton, NM	1.637	4,077.916	1.078	2,737.564
	Roosevelt Co Elec Co-op	3.084	7,769.264	3.436	8,788.350
	Sandia/Kirtland AFB	3.592	9,048.805	3.555	9,092.366
	Santa Clara, UT	0.331	828.047	0.300	764.669
	Springdale, UT	0.029	72.781	0.024	61.049
	Tooele Army Depot	1.307	3,291.706	0.920	2,352.298
	University of Utah	3.461	8,944.220	3.104	8,021.611
	Utah St. University	1.152	3,017.143	1.124	2,881.047
	Washington, UT	0.691	1,728.876	0.556	1,417.587
	West Bountiful, UT	0.469	1,167.983	0.444	1,126,827
Subtotal, prospective customers		48.325	124,963.017	47.107	123,656.596

TABLE 3.—NORTHERN DIVISION PARTICIPATING CUSTOMERS EXISTING CUSTOMERS AND SPECIAL ALLOCATIONS—CONTINUED

Customer Group	Customer	Resource pool 5—winter season		Resource pool 6—summer season	
		Adjusted capacity (MW)	Adjusted energy (NWH)	Adjusted capacity (MW)	Adjusted energy (NWH)
(1)	(2)	(3)	(4)	(5)	(6)
Participating customers—Existing.	Delta, CO	0.510	1,284.641	0.449	1,149.166
	Delta-Montrose E.A.	3.500	9,048.805	3.555	9,092.366
	DOE-Albuq. oper. off.	0.000	0.000	3.655	9,092.366
	Empire E.A	3.500	9,048.805	2.697	6,898.234
	Farmington, NM	1.289	3,254.728	3.555	9,092.366

TABLE 3.—NORTHERN DIVISION PARTICIPATING CUSTOMERS EXISTING CUSTOMERS AND SPECIAL ALLOCATIONS—CONTINUED—Continued

Customer Group	Customer	Resource pool 5—winter season		Resource pool 6—summer season	
		Adjusted capacity (MW)	Adjusted energy (NWH)	Adjusted capacity (MW)	Adjusted energy (NWH)
(1)	(2)	(3)	(4)	(5)	(6)
	Grand Valley Rural Power.	2.810	7,263.719	1.843	4,713.908
	Gunnison County E.A.	3.371	8,716.289	1.843	4,713.908
	Holy Cross E.A.	3.500	9,048.805	3.555	9,092.366
	La Plata E.A.	3.500	9,048.805	3.555	9,092.366
	Navajo Tribal Ut. Ath.	2.860	7,482.443	3.213	8,404.460
	San Miguel Pwr Assn.	3.500	9,048.805	2.832	7,243.146
	Weber Basin WCD.	0.000	0.000	0.758	1,939.439
	White River E.A.	2.248	5,810.714	1.573	4,024.085
	Yampa Valley E.A.	3.500	9,048.805	3.555	9,092.366
Subtotal, existing customers.	.....	34.088	88,105.364	36.539	93,640.542
Subtotal, exist. + prosp. (Excl. spec. alloc).	.....	82.413	213,068.381	83.646	217,297.138
Participating customers—Special allocations.	DOE-Albuq. oper. off.	15.000	0.000	15.000	0.000
	Enterprise	0.646	1,472.945	0.496	1,132.616
	Hurricane	1.941	4,425.674	0.858	1,959.243
Subtotal, special allocations.	.....	17.587	5,898.619	16.354	3,091.859
Total, participating customers.	.....	100.000	218,967.000	100.000	220,389.000

[FR Doc. 87-7187 Filed 4-1-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-6-FRL-3179-7]

Approvals of PSD Permits

Notice is hereby given that Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. *PSD-TX-642M-2—Amoco Chemcials Corporation:* Chocolate Bayou petro-chemical and polymer manufacturing facility located on FM Road 2004, approximately 15 miles south of Alvin, Brazoria County, Texas. PSD-TX-642M-2 modifies PSD-TX-642M-1 to authorize the increase of the allowable carbon monoxide esmission rate from the heat recovery steam generator. This modified permit was issued on October 3, 1986.

2. *PSD-TX-634M-2—Koch Refining Company:* Petroleum refinery located on the Viola Turning Basin in Corpus Christi, Nueces County, Texas. PSD-TX-634M-2 modifies PSD-TX-634M-1 to authorize the use of a continous nitrogen oxide (NO) emissions monitor instead of the continous nitrogen oxides (NO_x) emission monitor orignially required by the PSD permit. This modified permit was issued on October 3, 1986.

3. *PSD-TX-652—American Ref-Fuel Company of Texas:* This permit, issued on October 7, 1986, authorizes the construction of a waste-to-energy facility to be located northwest of the intersection of Highway 225 and Beltline 8 in Pasadena, Harris County, Texas.

4. *PSD-TX-720—Power Resources, Incorporated:* This permit, issued on October 14, 1986, authorizes the construction of a gas turbine congeneration unit at the existing Fina Oil and Chemical Company refinery located on Interstate 20, approximately one mile east of Big Spring, Howard County, Texas.

5. *PSD-TX-482M-2—Liquid Energy Corporation:* Natural gas processing plant located approximately 5.5 miles southwest of Stinnett, Hutchinson County, Texas. PSD-TX-482M-2 modifies PSD-TX-482M-1 to downsize the sulfur recovery unit so that it will be able to operate efficiently at the low sulfur feed rates historically processed at the Canadian River Plant. This modified permit was issued on October 17, 1986.

6. *PSD-TX-673M-1—Farmland Industries, Incorporated:* Natural gas processing plant located approximately seven miles southwest of Mertzon, Irion County, Texas. PSD-TX-673M-1 modifies PSD-TX-673 to authorize the installation of two horsepower Caterpillar 3516 TA compressor engines instead of the two horsepower Ingersoll-Rand engines originally permitted. This modified permit was issued on October 21, 1986.

7. *PSD-TX-665M-1—Mid Plains Pipeline Company, Incorporated:* Natural gas processing plant located on FM Road 669, approximately 2.5 miles south of Post, Garza County, Texas. PSD-TX-665M-1 modifies PSD-TX-665 to authorize the addition of two compressors (360 and 150 bp) at the existing gas plant. This modified permit was issued on October 21, 1986.

8. *PSD-TX-Mobil Producing Texas and New Mexico, Incorporated:* This permit, issued on October 31, 1986, authorizes the installation of additional compressor engines at the existing gas plant located approximately six miles southeast of Coyanosa, Pecos County, Texas.

9. *PSD-TX-687—Sun Exploration and Production Company:* This permit,

issued on November 10, 1986, authorizes the modification of the Jameson Gas Processing Plant located approximately one mile south of Silver, Coke County, Texas.

10. *PSD–TX–731—Exxon Company, U.S.A.:* This permit, issued on November 10, 1986, authorizes the construction of a cogeneration facility at the existing refinery located at 2800 Decker Drive, Baytown, Harris County, Texas.

11. *PSD–TX–76M–4—Standard Oil Chemical Company:* Green Lake Chemical Complex located on FM Road 404, approximately 14 miles southwest of Port Lavaca, Calhoun County, Texas. PSD–TX–76M–4 modifies PSD–TX–76M–3 to authorize the installation of a distillation column in the acrylonitrile manufacturing facility to improve the recovery yields of acrylonitrile and hydrogen cyanide. This modified permit was issued on November 19, 1986.

12. *PSD–TX–708—Structural Metals, Incorporated:* This permit, issued on November 25, 1986, authorizes the modification of the electric arc furnace "C" at the existing steel mill located near the intersection of FM Road 1620 and FM Road 464, approximately 2.5 mile west of Sequin, Guadalupe County, Texas.

13. *PSD–TX–410M–2—Airco Carbon, Division of the BOC Group, Incorporated:* Green Lake graphite electrode manufacturing facility located at the intersection of FM Road 185 and FM Road 35, approximately eight miles northwest of Seadrift, Calhoun-County. PSD–TX–410M–2 modifies PSD–TX–410M–1 to authorize the increase of the maximum allowable emission rates for sulfur dioxide from 60.1 to 194.5 pounds per hour and particulate from 10 to 25 pounds per hour for the coke calciner. This modified permit was issued on December 1, 1986.

14. *PSD–TX–324M–2—Valero Refining Company:* Petroleum refinery located at 6560 Up River Road in Corpus Christi, Nueces County, Texas, PSD–TX–324–M–2 modifies PSD–TX–324M–1 to (1) reflect the "as built" capacity, (2) delete the continous monitoring requirement from the citrate scrubber stack, and (3) incorporate a "sulften unit" as sulfur recovery unit tail gas control. This modified permit was issued on December 8, 1986.

These permits have been issued under EPA's Prevention of Significant Deterioration of Air Quality Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 77202–2722.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for a review in the United States Fifth Circuit Court of Appeals within 60 days of April 2, 1987. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

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

Dated: March 9, 1987.

Frances E. Phillips,

Acting Regional Administrator, Region 6.

[FR Doc. 87–7265 Filed 4–1–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3179–6]

Title III Emergency Planning and Community Right-to-Know Act of 1986; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The EPA has scheduled a public meeting to discuss the section 305 emergency systems review of Title III of the Superfund Amendments and Reauthorization Act of 1986.

DATE: The meeting will be held on Tuesday, April 14, 1987, from 9:00 a.m. to 12:00 noon.

ADDRESS: The meeting will be held in the EPA Auditorium 401 M Street SW. Washington, DC 20460.

FOR FURTHER INFORMATION: Contact the Chemical Emergency Preparedness Program Hotline, Environmental Protection Agency, (WH–562A), 401 M Street SW., Washington, DC 20460; Telephone (800) 535–0202 and in Washington, DC or Alaska, dial 202–479–2449.

SUPPLEMENTARY INFORMATION: EPA has scheduled a public meeting to provide background information on the section 305 emergency systems review study of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) and to elicit public input on the scope and approach of the study.

As part of SARA, section 305(b) of Title III requires EPA to review emergency systems designed to monitor, detect and prevent accidental chemical releases, and to review public alert systems.

An interim report to Congress is due on May 17, 1987 and the final report, April 17, 1988. The final report must include the current technological capabilities to:

—Monitor, detect and prevent releases;
—Determine the magnitude and direction of the hazard posed by a release; and
—Provide data on specific chemical composition of releases and relative concentrations of the constituent chemicals.

The report must also include the status of public alert devices and systems as well as the technical and economic feasibility of perimeter alert systems which detect releases to the air, surface water, or ground water. It must also make recommendations for initiatives to support the development of new or improved technologies or systems to monitor, detect, and prevent releases as well as to improve devices for effectively alerting the public.

EPA has formed an agency-wide technical working group, which also includes representatives from FEMA, that has developed an approach to this systems review. On April 14, 1987, EPA would be interested in hearing your comments and suggestions on the scope and approach for this study, as well as specific areas of knowledge which should be enhanced by this review.

If you are planning to participate in this meeting, please contact the Chemical Emergency Preparedness Program Hotline at the telephone number listed under **"FOR FURTHER INFORMATION"**, in order to receive supplementary information.

Dated: March 25, 1987.

Elaine Davies,

Chief, Chemical Accident Prevention Team.

[FR Doc. 87–7267 Filed 4–1–87; 8:45 am]

BILLING CODE 6560–50–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.: 202–007680–066.
Title: American West African Freight Conference.
Parties:
American-Africa-Europe Line GMBH
Barber West Africa Line
Farrell Lines, Inc.
Maersk Line
Societe Iviorienne De Transport Maritime, Sitram
Torm West Africa Line
Westwing Africa Line

Synopsis: The proposed amendment would reduce the agreement membership fee from $50,000 to $15,000 and would define a "non-vested" member.

Agreement No.: 204–010064–012.
Title: U.S. Gulf/Colombia Equal Access Agreement.
Parties:
Flota Mercante Grancolombiana, S.A.
Lykes Bros. Steamship Co., Inc.
Crowley Caribbean Transport, Inc.
CTMT, Inc.
New York Navigation Company, Inc.
O S & L of Louisiana

Synopsis: The proposed amendment would correct previous typographical errors and would add a provision emphasizing that the agreement shall be implemented in accordance with applicable governmental regulations. The parties have requested a shortened review period.

Agreement No.: 202–010689–021.
Title: Transpacific Westbound Rate Agreement.
Parties:
American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Lines, Ltd.
Sea-Land Service, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would clarify the agreement's authority to implement neutral container rules should the agreement decide to do so.

Agreement No.: 202–010689–022.
Title: Transpacific Westbound Rate Agreement.
Parties:
American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would clarify voting procedures regarding rate initiative matters.

Agreement No.: 202–010689–023.
Title: Transpacific Westbound Rate Agreement.
Parties:
American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would clarify Senior Executive and electronic voting procedures.

Agreement No.: 202–010689–024.
Title: Transpacific Westbound Rate Agreement.
Parties:
American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would prohibit a member from establishing a time/volume rate on a commodity excepted from the Commission's tariff filing requirements by means of independent action.

Agreement No.: 202–011084.
Title: India-Pakistan-Sri Lanka-Bangladesh/North America Stabilization Agreement.
Parties:
American President Lines, A.P. Moller-Maersk Line Sea-Land Service, Inc.

Synopsis: The proposed agreement would permit the parties, among other things, to agree upon rates, conditions of service and related matters in the trade from India, Pakistan, Sri Lanka and Bangladesh to North American ports and points.

Agreement No.: 224–011085.
Title: Kodiak Terminal Agreement.
Parties:
City of Kodiak (City)
Harbor Enterprises, Inc.

Synopsis: The proposed agreement would permit the City to lease a portion of its Pier I and grant an easement to Harbor Enterprise, Inc., d/b/a Petro Marine Services for the location and maintenance of a pipeline and petroleum products delivery system. The agreement would have a term of five years.

Agreement No.: 224–011086.
Title: Baltimore Terminal Agreement.
Parties:
Maryland Port Administration (Port)
Pre Delivery Service Corporation (PDS)

Synopsis: The proposed agreement would permit PDS to lease parcels of land totaling 21.98 acres at the Port's Dundalk Marine Terminal for a period of three years.

Dated: March 30, 1987.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87–7272 Filed 4–1–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

1st American Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 22, 1987.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *1st American Bancorp, Inc.*, Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of 1st American Bank for Savings, Boston, Massachusetts, and 9.8 percent of the voting shares of Plymouth Five Cents Savings Bank, Plymouth, Massachusetts. 1st American Bank for Savings currently engages directly in Massachusetts Savings Bank Life Insurance activities.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Liberty Bancshares, Inc.*, Ada, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Liberty National Bank of Ada, Ada, Ohio.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Northside Bancshares, Inc.*, Roswell, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Northside Bank & Trust Company, Roswell, Georgia, a *de novo* bank. Comments on this application must be received by April 21, 1987.

Board of Governors of the Federal Reserve System, March 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-7215 Filed 4-1-87; 8:45 am]

BILLING CODE 6210-01-M

Hardwick Holding Company 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 section 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 April 22, 1987.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Hardwick Holding Company*, Dalton, Georgia; to engage *de novo* through its subsidiary, Hardwick Services Corporation, Dalton, Georgia, in data processing and transmission services to depository institutions for processing and transmission of financial, banking and economic data, pursuant to § 225.25(b)(7) of the Board's Regulation Y; and management consulting to depository institutions, pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted throughout the State of Georgia.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Learner Financial Corporation*, Orinda, California; to engage *de novo* through its subsidiary, Learner Financial Corporation Information Systems Division, Walnut Creek, California, in providing data processing services to Northwest Creditors Service, Inc., Sacramento, California, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-7217 Filed 4-1-87; 8:45 am]

BILLING CODE 6210-01-M

Westdeutsche Landesbank Girozentrale et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) 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 acquire or control voting securities or assets of a company engaged 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 each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 22, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Westdeutsche Landesbank Girozentrale,* Dusseldorf, Federal Republic of Germany; to acquire Vertex Business Systems, Inc., New York, New York, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation,* Los Angeles, California; to acquire, either directly or through its subsidiary, Security Pacific Business Credit, Inc., all of the assets of Wells Fargo Business Credit, Dallas, Texas, and thereby engage in providing asset-based credit facilities to commercial borrowers, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-7216 Filed 4-1-87; 8:45 am]

BILLING CODE 6210-01-M

R.W. Wilkerson et al.; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 16, 1987.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *R.W. Wilkinson,* Bluefield, West Virginia; to acquire 2.5 percent of the voting shares of Pocahontas Bankshares Corporation, Bluefield, West Virginia, and thereby indirectly acquire The First National Bank of Bluefield, Bluefield, West Virginia.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Daniel K. Conners,* Bloomington, Minnesota; to acquire 100 percent of the voting shares of Otisco Bancshares, Inc., Otisco, Minnesota, and thereby indirectly acquire Otisco State Bank, Otisco, Minnesota.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Gwendolyn M. Tubach,* El Toro, California; to acquire 42.22 percent of the voting shares of Pacific Regency Bancorp, El Toro, California, and thereby indirectly acquire Pacific Regency Bank, El Toro, California.

2. *Larry D. Williams,* Boise, Idaho; to acquire 14.46 percent of the voting shares of American Bank Corporation, Boise, Idaho, and thereby indirectly acquire Ameican Bank of Commerce, Boise, Idaho.

Board of Governors of the Federal Reserve System, March 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-7214 Filed 4-1-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87N-0034]

Drug Export Amendments Act of 1986; Export Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing information on where to submit applications to export unapproved new human drugs, unlicensed human biologicals, and unapproved new animal drugs. Under the recently enacted Drug Export Amendments Act of 1986, FDA may approve the export of such products without their prior approval for marketing in the United States.

ADDRESSES: Send applications (two copies) for export of unapproved new human drugs or unlicensed human biologicals to: Division of Drug Labeling Compliance (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send applications (two copies) for export of unapproved new animal drugs to: Office of New Animal Drug Evaluation (HFV-100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: For questions about the contents of an export application for a human drug or a human biological: Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

For questions about the contents of an export application for an animal drug: Frank Pugliese, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4500.

For questions about this notice: Howard P. Muller, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

SUPPLEMENTARY INFORMATION: On November 14, 1986, President Reagan signed into law the Drug Export Amendments Act of 1986 (Pub. L. 99-660). The new law amends both the Federal Food, Drug, and Cosmetic Act (the act) and the Public Health Service Act to authorize the export from the United States to other countries for commercial marketing of unapproved new human drugs, unlicensed human biologicals, and unapproved new animal drugs. Under previous law, the export of

such products for marketing was confined to those that were approved or licensed by FDA for domestic use.

The Drug Export Amendments Act of 1986 establishes three separate tracks for the export of products. Under each track, an application is required to be submitted to FDA and FDA approval is to be obtained before export is permitted. The tracks vary considerably in terms of drug eligibility criteria, application requirements, and procedures for review and approval of export applications. The first track applies to applications to export unapproved new human drugs, unlicensed human biologicals, and unapproved new animal drugs to any of 21 countries listed in the act. (See sec. 802(b) through (e) of the act (21 U.S.C. 382(b) through (e).) The second track applies to applications to export such unapproved and unlicensed products for use in the prevention or treatment of tropical diseases. (See sec. 802(f) of the act (21 U.S.C. 382(f)).) The third track applies to applications to export partially processed biological products for human use. (See sec. 351(h)(1)(A) of the Public Health Service Act (42 U.S.C. 262(h)(1)(A)).)

Applications to export unapproved new human drugs and unlicensed human biologicals (including partially processed biological products) should be mailed to the Division of Drug Labeling Compliance (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. If such an application is delivered in person, it should be delivered during normal working hours to the Drug Listing Branch, Center for Drugs and Biologics, Rm. 167, 7520 Standish Pl., Rockville, MD 20855. All applications to export unapproved new animal drugs should be sent to the Office of New Animal Drug Evaluation (HFV-100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Applicants should identify under which of the three tracks an application is being made. Two copies of an application should be submitted.

FDA is in the process of developing written guidance on the procedures to be followed in submitting export applications. Pending issuance of this guidance, questions about the content and format of export applications should be directed to the individuals identified above under **"FOR FURTHER INFORMATION CONTACT."**

Dated: March 26, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-7199 Filed 4-1-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87E-0063]

Determination of Regulatory Review Period for Purposes of Patent Extension; Choletec

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Choletec 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 Choletec (mebrofenin), which is indicated as a hepatobiliary imaging agent. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Choletec from E.R. Squibb & Sons, Inc., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated March 6, 1987, FDA advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, mebrofenin, represented the first permitted commercial marketing or use of that active ingredient. This **Federal Register** notice now represents FDA's determination of the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Choletec is 2,100 days. Of this time, 680 days occurred during the testing phase of the regulatory review period, while 1,420 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:* April 24, 1981. The applicant claims that the notice of claimed investigational exemption (IND) for the drug became effective on April 18, 1981. However, FDA did not receive the IND until March 25, 1981, and pursuant to FDA regulations, the IND became effective 30 days after its submission thereby making April 24, 1981, the effective date.

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:* March 4, 1983. FDA has verified the applicant's claim that the new drug application for Choletec (NDA 18-963) was initially submitted on March 4, 1983.

3. *The date the application was approved:* January 21, 1987. FDA has verified the applicant's claim that NDA 18-963 was approved on January 21, 1987.

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 53 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 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 September 29, 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: March 25,1987.

Allen B. Duncan,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 87–7200 Filed 4–2–87; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Consensus Development Conference on Newborn Screening for Sickle Cell Disease and Other Hemoglobinopathies; Meeting

Notice is hereby given of the NIH Consensus Development Conference on "Newborn Screening for Sickle Cell Disease and Other Hemoglobinopathies," sponsored by the National Heart, Lung, and Blood Institute, the National Institute of Child Health and Human Development, the Genetic Diseases Branch of the Health Resources and Services Administration, and the NIH Office of Medical Applications of Research. The conference will be held April 6–8, 1987, in the Masur Auditorium of the Warren G. Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The technology to make a diagnosis of sickle cell disease in the newborn period has been available for the past 10 years. However, institution of neonatal screening has not received widespread acceptance because of doubts that early diagnosis could decrease the morbidity and mortality associated with the disease.

Infants with sickle cell disease are at risk of major infection with *Strepococcus pneumoniae* in the first three years of life. The annual incidence of septicemia is approximately ten percent and the mortality can be as high as 20–30 percent from fulminant infection. Data are now available to show that penicillin prophylaxis and early entry into programs of comprehensive care can reduce morbidity and mortality from infection.

The purpose of the conference is to discuss the need for widespread screening of newborns for sickle cell disease, to facilitate entry into comprehensive care programs and to initiate penicillin prophylaxis to reduce morbidity and mortality from infection.

The key questions to be addressed at the conference include: Are programs for screening the newborn for sickle cell disease effective in decreasing morbidity/mortality? What are the techniques of screening and what is their efficacy? What are the major factors to be considered including benefits and risks in conducting newborn screening programs? What is the optimal followup and management of infants identified with hemoglobinopathies (disease and carriers)? What future research directions are indicated?

This consensus conference will bring together biomedical investigators, clinicians, other health professionals, and representatives of the public. Following two days of presentations by medical experts and discussion by the audience, a consensus panel will weigh the scientific evidence and formulate a draft statement responding to the key conference questions. On the morning of the third day, Consensus Panel Chairman Doris Wethers, M.D., Associate Professor of Clinical Pediatrics, Columbia University of Physicians and Surgeons, New York, will read the preliminary Consensus Statement before the conference audience and invite comments and questions.

Information on the program may be obtained from Nancy Cowan, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 468–6555.

Dated: March 31, 1987.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 87–7422 Filed 4–1–87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–87–1689]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ACTION: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John F. Morrall, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Fair Housing Assistance Program: Type I and Type II Applications Kits.

Office: Fair Housing and Equal Opportunity.

Description of the Need for the Information and Its Proposed Use: The applications are necessary to secure the requested information from the State and local government agencies involved regarding their eligibility and needs for funds so that appropriate Cooperative Agreements can be executed.

Form Number: None
Respondents: State or Local Governments
Frequency of Response: Annually
Estimated Burden Hours: 425
Status: Extension
Contact: Maxine B. Cunningham, HUD, (202) 755–0455, John F. Morrall, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Notice of Submission of Proposed Information Collection to OMB

Proposal: Community Development Block Grant (CDBG) Entitlement Program.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: The need for the submission requested from entitlement grantees is based on statutory requirements. The law specifically requires the submission of the final statement, housing assistance plan, and annual report. The records are necessary for the Secretary of HUD to make his annual statutory review of performance and compliance.

Form Number: SF–424 and Narrative, HUD–4949.1 thru 4949.7, 7091.1, and 7091.2
Respondents: State or Local Governments
Frequency of Response: Annually
Estimated Burden Hours: 334,125
Status: Reinstatement
Contact: James R. Broughman, HUD, (202) 755–5977, John F. Morrall, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 24, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 87–7225 Filed 4–1–87; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alaska State Office; Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48263–AF has been received covering the following lands:

Seward Meridian, Alaska

T. 32 N., R. 9 E.,
Sec. 17 NW¼SW¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from February 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48263–AF as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective February 1, 1986, subject to the terms and conditions cited above.

Dated: March 23, 1987.

Sue A. Faught,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 87–7232 Filed 4–1–87; 8:45 am]

BILLING CODE 4310–JA–M

Alaska State Office; Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48615–DW has been received covering the following lands:

Copper River Meridian, Alaska

T. 13 N., R. 4 W.,
Sec. 20, NE¼SE¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16 ⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from June 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48615–DW as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective June 1, 1986, subject to the terms and conditions cited above.

Dated: March 25, 1987.

Sue A. Faught,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 87–7234 Filed 4–1–87; 8:45 am]

BILLING CODE 4310–JA–M

[MT–070–07–4212–12]

Realty Action: Exchange; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of public lands in Beaverhead and Madison Counties, Montana, for transfer out of federal ownership in exchange for lands owned by the State of Montana.

SUMMARY: BLM proposes to exchange public land with the State of Montana in order to achieve more efficient management of the public land through consolidation of ownership. The following public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management act of October 21, 1976, 43 U.S.C. 1716

Principal Meridian Montana

T. 1 S., R. 3 W.,	Section 28, NE¼ SW¼	40.00
T. 11 S., R. 10 W.,	Section 35, SE¼ SW¼, SW¼ SE¼	80.00
T. 12 S., R. 6 W.,	Section 10, NE¼ NW¼	40.00
	Section 24, NE¼ NE¼	40.00
T. 12 S., R. 10 W.,	Section 2, Lots 2, 3, SE¼ NW¼	121.74
	Section 26, SW¼	160.00
T. 13 S., R. 1 W.,	Section 1, Lots 1, 2, 3, 4, S½ N½ SE¼	483.56
	Section 2, Lots 1, 2, 3, 4, S½ N½	322.28
	Section 3, Lots 1, 2, 3, 4, S½ N½	322.56
	Section 4, Lots 1, 2, 3, S½ NE¼, SE¼ NW¼	241.55
	Section 7, Lots 1, 2, 7, 8, 9, 10, 11, E½ SW¼	351.94
	Section 18, All	627.64
	Section 19, E½	320.00
T. 13 S., R. 2 W.,	Section 12, Lot 9, SE¼¼	199.75
	Section 13, Lots 1, 2, 3, 4, 5, 6, NE¼, E½ NW¼	493.08
T. 13 S., R. 5 W.,	Section 1, Lots 6, 7, W½ SE¼¼	165.27
	Section 5, SE¼ SE¼	40.00
	Section 8, E½ NE¼, SE¼	240.00
	Section 10, SW¼ SW¼, E½ SW¼, SE¼	280.00
	Section 11, S½	320.00
	Section 12, All	649.04
	Section 13, N½	320.00
	Section 14, All	640.00
	Section 15, All	637.60
	Section 21, N½ NE¼	80.00

The lands described above comprise 7216.01 acres, more or less, in Beaverhead and Madison counties. These lands will be segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent to the State of Montana, upon publication in the **Federal Register** of termination of the segregation, or two years from the date of this publication, whichever comes first.

Final determination on disposal will await completion of an environmental analysis.

DATE: For a period of 45 days from date of publication in the **Federal Register** interested parties may submit comments to the Butte District Manager, P.O. Box 3388, Butte, Montana 59702, or to the Dillon Area Manager, P.O. Box 1048, Dillon, Montana 59725.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange is available at the Butte District Office and at the Dillon Resource Area Office, Ibey Building, N. Dillon, Dillon, Montana 59725

James A. Moorhouse,

District Manager.

March 24, 1987.

[FR Doc. 87-7228 Filed 4-1-87; 8:45 am]

BILLING CODE 4310-DN-M

[UT-060-07-4121-16; SL-066490]

Availability of a Draft Environmental Impact Statement; Coal Lease Readjustments in Wilderness Study Areas, UT

March 25, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft environmental Assessment.

SUMMARY: The Bureau of Land Management, Moab District is proposing to adjust coal lease SL-066490. This lease has been evaluated and additional stipulations are proposed for the lease to increase the level of environmental protection and other considerations.

The Wilderness Study Area involved is Turtle Canyon (UT-060-067).

The Draft Environmental Assessment has been prepared for this proposal and is now available for public review and comment. Comments should be submitted by May 9, 1987.

ADDRESS: To obtain a copy of this document or to obtain additional information on the proposal, contact James Dryden, Supervisory Geologist at the Bureau of Land Management, Moab District, Price River Resource Area, P.O. Drawer AB, Price, Utah 84501 or telephone at 801-637-4584.

Gene Nodine,

District Manager.

[FR Doc. 87-7290 Filed 4-1-87; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-050-4322-01:GP7-150]

Oregon; Prineville District Grazing Advisory Board Meeting

March 30, 1987.

Notice is hereby given in accordance with Pub. L. 92-463 of a meeting of the Prineville District Grazing Advisory Board to be held May 11, 1987.

The meeting will begin at 10:00 AM in the conference room of the Bureau of Land Management Office located at 185 East 4th Street, Prineville, Oregon 97754.

The agenda will include the folloiwng items:

1. Status of Oregon/Washington BLM Organization Study.
2. Summary of the District Rangeland Monitoring Program.
3. "Oregon Watershed Improvement Coalition" activities.
4. District land exchange strategy.
5. Explenditures of Range Betterment Funds.
6. Brothers/LaPine Resource Management Plan Grazing Issues update.

The meeting is open to the public. Anyone wishing to attend and/or make written or oral statements to the Board is requested to contact the District Manager at the above address prior to May 5.

Summary minutes of the meeting will be available for review and

reproduction within 30 days following the meeting.

Dated: March 30, 1987.

Donald L. Smith,

Acting District Manager.

[FR Doc. 87-7291 Filed 4-1-87; 8:45 am]

BILLING CODE 4310-33-M

[CA-060-07-4333-08]

Motor Vehicles; California Desert District off-Road Vehicle Route Designation Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Decisions to open, close, or limit use of off-road vehicle routes of travel in the California Desert District.

SUMMARY: Notice is hereby given that final decisions have been reached in the first annual California Desert District off-road vehicle route designation amendment process. These decisions have been made in accordance with the authority and requirements of Executive Orders 11644 and 11989 and 43 CFR 8340. The affected routes are all within the El Centro Resource Area in the McCain Valley, Imperial Valley South, and Midway Well Desert Access Guide areas. Maps showing the open, closed, and limited routes are available from the BLM sources listed at the end of this notice.

Pulbic comments were solicited and evaluated in reaching these decisions. The draft decisions were made available on August 21, 1986 for a 45-day public comment period which ended October 10, 1986. Preliminary final decisions were issued on December 2, 1986 with an additional public comment period extending until January 9, 1987. The preliminary final decisions are now being implemented without further revision.

DATE: These designation amendments are effective upon publication of this notice and will remain in effect until rescinded or modified by the authorized officer. Enforcement of these decisions will be implemented as routes are signed or as maps are printed and made available to the public.

FOR FURTHER INFORMATION CONTACT:

Steve Nelson, Outdoor Recreation Planner, Bureau of Land Management, El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243, (619) 352-5842, Hours: 7:45 a.m. to 4:30 p.m., Monday thru Friday.

Dave Mensing, District Outdoor Recreation Planner, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, California 92507, (714) 351-6402, Hours: 7:45 a.m. to 4:30 p.m., Monday thru Friday.

SUPPLEMENTARY INFORMATION: These vehicles route designations are enforceable under the authority provided in the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.), EO 11644 (Use of Off-Road Vehicles on the Public Lands), and 3 CFR 74.332 as amended by EO 11989, 42 FR 26959 (May 25, 1977). Any person who violates or fails to comply with the vehicle route designations as governed by 43 CFR Part 8341 is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000.00 and/or imprisonment for not longer than twelve months.

Dated: March 23, 1987.

H. W. Riecken,

Acting District Manager.

[FR Doc. 87-7292 Filed 4-1-87; 8:45 am]

BILLING CODE 4310-10-M

Alaska; Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48601-U has been received covering the following lands:

Copper River Meridian, AK

T. 5 S., R. 1 E.,
Sec. 3, SW¼NW¼.
(40 acres)

The proposed reinstatement of the least would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from June 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48601-U as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective June 1, 1986, subject to the terms and conditions cited above.

Dated: March 27, 1987.

Sue A. Faught,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 87-7293 Filed 4-1-87; 8:45 am]

BILLING CODE 4310-DN-M

[(MT-930-07-4220-10; M 32820)]

Opening Order of Public Lands, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This document is notice that the segregation created by the Bureau of Reclamation withdrawal application dated November 6, 1975, is terminated in part and open to operation of the public land laws, including the mining laws, but not from leasing under the mineral leasing laws.

DATE: May 4, 1987.

FOR FURTHER INFORMATION CONTACT: James Binando, Chief, Branch of Land Resources, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6090.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the segregation created by the Notice of Proposed Withdrawal published January 5, 1976, FR Volume 41, Page 784, Document No. 76-15 is hereby terminated as to the following described lands and opened to operation of the public land and mining laws.

Principal Meridian, Montana

T. 7 N., R. 1 E.,
Sec. 26, S½N½SW¼NE¼, S½SW¼NE¼, SE¼NE¼ and S½S½NW¼.

The area described contains 110.00 acres in Broadwater County.

Ray Brubaker,

Acting State Director.

March 26, 1987.

[FR Doc. 87-7294 Filed 4-1-87; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-020-07-4212-13; A-22439]

Realty Action, Public Land Exchange; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange, public land, Mohave County, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

T. 21 N., R. 21 W.,
Sec. 16, all.
Containing 640 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from Roy and Scott Dunton, aka Dunton and Dunton, of Kingman, Arizona:

Gila and Salt River Meridian

T. 15 N., R. 12 W.,
Sec. 13, all;
Sec. 15, all.
T. 14 N., R. 13 W.,
Sec. 5, lots 1–4, S½N½, N½SW¼, SW¼SW¼, E½SE¼SW¼, SE¼.
T. 15 N., R. 13 W.,
Sec. 11, W½, W½SE¼;
Sec. 19, lots 1 and 2, NE¼, E½NW¼;
Sec. 31, lots 1–4, E½, E½W½.
T. 15 N., R. 14 W.,
Sec. 13, W½NE¼, E½W½, SE¼.

Containing 3,614.72 acres, more or less.

The public land to be transferred will be subject to the following terms and conditions:

1. Reservations to the United States: (a) Right-of-way for ditches and canals pursuant to the Act of August 30, 1890; (b) all the oil and gas and with it the right to prospect for, mine and remove same.

2. Subject to: (a) Restrictions that may be imposed by Mohave County Board of Supervisors in accordance with county floodplain regulations established under Resolution No. 84–10 adopted on December 3, 1984.

Private lands to be acquired by the United States will be subject to the following reservations:

1. The rights or claims of title by the State of Arizona to any portion of the property being located in the bed of any river or dry wash.

2. All minerals to the Santa Fe Pacific Railroad Company.

3. The right of the Santa Fe Pacific Railroad Company to appropriate rights-of-way incident to the operation of railroads.

4. An easement to the Mohave Electric Cooperative, Inc., for electric transmission line purposes.

5. An easement to the Cyprus Mines Corporation for water pipeline purposes.

Publication of this Notice will segregate the subject lands from all appropriations under the public land laws, including the mining laws, but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or two years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

Detailed information concerning this exchange can be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become final determination of the Department of the Interior.

Dated: March 26, 1987.

Henri R. Bisson,

Acting District Manager.

[FR Doc. 87–7295 Filed 4–1–87; 8:45 am]

BILLING CODE 4310–32–M

[NM 940–07–4520–12–0807]

Filing of Plat of Survey; New Mexico

March 17, 1987.

The supplemental plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on March 17, 1987.

The supplemental plat showing Lot 23 in its designated location in section 11, Township 14 North, Range 3 West, of the New Mexico Principal Meridian, New Mexico, was approved March 10, 1987, under Group 807.

The survey was requested by the Area Director, Bureau of Indian Affairs, Albuquerque Area Office, Albuquerque, New Mexico.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Kelley R. Williamson, Jr.,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 87–7296 Filed 4–1–87; 8:45 am]

BILLING CODE 4310–FB–M

Minerals Management Service

Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6804, Block 89, Main Pass Area, offshore Losisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Hopedale, Louisiana.

DATE: The subject DOCD was deemed submitted on March 23, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elwood Park Boulevard, Room, 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and prooedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 24, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-7194 Filed 4-1-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Hughes-Denny Offshore Exploration, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Hughes-Denny Offshore Exploration, Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 5054 and 5055, Blocks 253 and 254, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on March 23, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 24, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-7195 Filed 4-1-87; 8:45 am]

BILLING CODE 4310-MK-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than April 10, 1987. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875-1573, IRM/PE, Room 1109, SA-14, Washington, DC 20523.

Date Submitted: March 27, 1986
Submitting Agency: Agency for International Development
OMB Number: 0412-0004
Form Number: AID 11
Type of Submission: Renewal
Title: Application for Approval of Commodity Eligibility
Purpose: A.I.D. provides loans and grants to many developing countries in the form of commodity Import Programs (CIPs). These funds are made available to host countries to be allocated to the public and private sectors for purchasing various commodities from the U.S. or in some cases, form other developing countries. In accordance with section 604(f) of the Foreign Assistance Act of 1961, as amended, A.I.D. can finance only those commodities which are determined eligible and suitable in accordance with various statutory requirements and agency policies. Using the Application for Approval of Commodity Eligibility (Form AID-11), the supplier certifies to A.I.D. information about the commodities being supplied, as required in section 604(f), so that A.I.D. may determine eligibility. The annual reporting burden is twice per respondent and each response requires approximately fifteen minutes.
Reviewer: Francine Picoult (202) 395-7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: March 25, 1987.

Fred D. Allen,

Planning and Evaluation Division.

[FR Doc. 87-7288 Filed 4-1-87; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-175 (Final—Court Remand)]

Cold-Rolled Carbon Steel Plates and Sheets From Argentina

Determination

In response to a remand order of the U.S. Court of International Trade in the case of *USX Corp.* v. *United States* (Court No. 85-03-00325, Slip Op 87-14, CIT February 9, 1987), and on the basis of the record [1] developed in investigation No. 731-TA-175 (Final), the Commission determines [2] that as of the date of the Commission's determination in investigation No. 731-TA-175 (Final), an industry in the United States was not materially injured or threatened with material injury, and the establishment of an industry in the United States was not materially retarded, by reason of imports from Argentina of cold-rolled carbon steel plates and sheets, provided for in item 607.83 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Eckes dissenting.

in the United States at less than fair value (LTFV).

Background

On January 28, 1985, the Commission notified the Secretary of Commerce of its determination that, based on the record developed during the course of investigation No. 731–TA–175 (Final), an industry in the United States was not materially injured or threatened with material injury, and the establishment of an industry in the United States was not materially retarded, by reason of imports from Argentina of cold-rolled carbon steel plates and sheets, provided for in item 607.83 of the Tariff Schedules of the United States, that had been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

The Commission's determination was subsequently challenged in the U.S. Court of International Trade by USX Corp., formerly known as United States Steel Corp. On February 9, 1987, the Court remanded the case to the Commission for further consideration consistent with the Court's opinion. The Court ordered the Commission to file its determination on remand with the Court within 45 days of the order, i.e., by March 26, 1987.

The Commission transmitted its determination in this investigation to the U.S. Court of International Trade on March 26, 1987. The views of the Commission are contained in USITC Publication 1967 (March 1987), entitled "Cold-Rolled Carbon Steel Plates and Sheets from Argentina: Determination of the Commission in Investigation No. 731–TA–175 (Final) (Remand) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: March 27, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–7181 Filed 4–1–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–373 (Preliminary)]

Certain Copier Toner From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of electrically resistive monocomponent toner and "black powder" preparations therefor of a kind used in electrostatic copying machines, provided for in item 408.44 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On February 3, 1987, a petition was filed with the Commission and the Department of Commerce by Aunyx Corp., Hingham, MA, alleging that the establishment of an industry in the United States is materially retarded and that an industry is threatened with material injury by reason of LTFV imports from Japan of electrically resistive monocomponent toner and "black powder" preparations therefor of a kind used in electrostatic copying machines. Accordingly, effective February 3, 1987, the Commission instituted preliminary antidumping investigation No. 731–TA–373 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 13, 1987 (52 FR 4666). The conference was held in Washington, DC, on February 25, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 20, 1987. The views of the Commission are contained in USITC publication 1960 (March 1987), entitled "Certain Copier Toner from Japan: Determination of the Commission in Investigation No. 731–TA–373 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: March 23, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–7183 Filed 4–1–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA.374 (Preliminary)]

Potassium Chloride From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of potassium chloride, provided for in item 480.50 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On February 10, 1987, a petition was filed with the Commission and the Department of Commerce by Lundberg Industries, Ltd., of Dallas, TX, and New Mexico Potash Corp., of Memphis, TN, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of potassium chloride from Canada. Accordingly, effective February 11, 1987, the Commission instituted preliminary antidumping investigation No. 731–TA–374 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 19, 1987 (52 FR 5202). The conference was held in Washington, DC, on March 3, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 27, 1987. The views of the Commission are contained in USITC Publication 1963 (March 1987), entitled "Potassium Chloride from Canada: Determination of the Commission in Investigation No. 731–TA–374 (Preliminary) Under the

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: March 27, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-7182 Filed 4-1-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-247]

Certain Sickle Guards Intended for Use in Mowing Machines; Commission Decision

AGENCY: International Trade Commission.

ACTION: (1) Decision not to review the initial determination (ID) of the presiding administrative law judge (ALJ) finding no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation; and (2) termination of the investigation.

FOR FURTHER INFORMATION CONTACT: Carolyn Galbreath, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0143.

SUPPLEMENTARY INFORMATION: The authority for the Commission's action is contained in 19 U.S.C. 1337 and 19 CFR 210.53-56.

On February 2, 1987 the presiding ALJ issued an ID that there is no violation of section 337 in the above-referenced investigation. On February 24, 1987, a petition for review was filed by complainant National-Standard Co. On March 3, 1987, the respondents and the Commission investigative attorney filed oppositions to the petition for review. No Government agency comments have been received.

On March 26, 1987, the Commission determined not to review the ID. By virtue of the Commission's decision not to review the ID, the ID became the final Commission determination in this section 337 investigation (19 CFR 210.53(h)).

Copies of the public version of the ID and all other nonconfidential documents filed in connection with the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202-724-0002.

Issued: March 27, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-7185 Filed 4-1-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-349 (Final)]

Certain Welded Carbon Steel Pipes and Tubes From Taiwan

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-349 (final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of light-walled rectangular pipes and tubes,[1] provided for in item 610.4928 of the Tariff Schedules of the United States Annotated, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before May 25, 1987, and the Commission will make its final injury determination by July 14, 1987 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: March 17, 1987.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-523-0165), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washigton, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of light-walled rectangular pipes and tubes from Taiwan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on October 2, 1986, by counsel for the Committee on Pipe and Tube Imports. In reponse to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was threatened with material injury by reason of imports of the subject merchandise (51 FR 42945, November 26, 1986).

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later then twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on May 26,

[1] For purposes of this investigation, the term "light-walled rectangular pipes and tubes" covers welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness less than 0.156 inch.

1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on June 10, 1987, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 22, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on May 29, 1987, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is June 5, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 206.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on June 17, 1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 17, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment in desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: March 27, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-7184 Filed 4-1-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31021]

The Great Walton Rail Co.—Acquisition and Operation Exemption; Georgia Eastern Railroad Co.

The Great Walton Rail Company has filed a notice of exemption to acquire and operate the Georgia and Eastern Railroad Company 10.01-mile line between Social Circle, GA (milepost 0.16) and Monroe, GA (milepost 10.17).[1] Any comments must be filed with the Commission and served on: John R. Molm, 1400 Candler Building, 127 Peachtree Street NE., Atlanta, GA 30043.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 26, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-7212 Filed 4-1-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30942]

Southern Railway Co.; Acquisition and Operation Exemption; CSX Transportation, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the Southern Railway Company from the requirements of 49 U.S.C. 11343 for the acquisition and operation of CSX Transportation, Inc.'s Jellico Branch line between Lot, KY, and Jellico, TN, a distance of 2.37 miles, and related joint yard facilities, subject to employee protective conditions.

DATES: This exemption will be effective on May 4, 1987. Petitions to stay must be filed by April 13, 1987, and petitions for reconsideration must be filed by April 22, 1987.

ADDRESSES: Send petitions referring to Finance Docket No. 30942 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Nancy S. Fleischman, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510.

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: March 25, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-7213 Filed 4-1-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Iowa Asbestos Co., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 4, 1987, a proposed partial consent decree in *United States v. Iowa Asbestos Co. et al.*, Civil Action No. 86-038B, was lodged with the United States District Court for the Southern District of Iowa. The complaint filed by the United States alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos. Specifically, the complaint alleged that the defendants failed to comply with the asbestos NESHAP during the removal of asbestos from two Ankeny Community School District-owned buildings in

[1] By decision served April 2, 1987, the effective date of the exemption was set at March 26, 1987.

Ankeny, Iowa. The complaint sought injunctive relief to require the defendants to comply with the Clean Air Act and the NESHAP for asbestos and civil penalties for past violations. The decree requires defendant Ankeny Community School District to comply with the Clean Air Act and the NESHAP for asbestos in the future and requires the school district to pay a $2,000 settlement sum.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Iowa Asbestos Co. et al.*, Department of Justice Reference #90-5-2-1-901.

Copies of the proposed consent decree may be examined at the following locations: Office of the United States Attorney, 115 United States Courthouse, E. 1st and Walnut Streets, Des Moines, Iowa 50309; the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1535, Ninth Street and Pennsylvania, NW., Washington, DC 20530; and, the Region VII Office of the United States Environmental Protection agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. When requesting a copy, please refer to *United States v. Iowa Asbestos Co. et al.*, Department of Justice Reference #90-5-2-1-901.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-7233 Filed 4-1-87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Kleer Kast, Inc. and PMC, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Kleer Kast, Inc. and PMC, Inc.*, Civil Action No. 85-4718(AJL) was lodged in the United States District Court for the District of New Jersey on March 10, 1987.

The proposed consent decree concerns alleged violations of the Clean Water Act 33 U.S.C. 1251, *et seq.*, and Kleer Kast Inc.'s National Pollutant Discharge Elimination System and New Jersey Discharge Elimination System permits. The alleged violations have occurred in connection with the operation of a cellulose acetate sheeting manufacturing facility in Kearny, New Jersey. The proposed decree requires Kleer Kast to comply with its applicable permit and pretreatment regulations. The proposed decree also requires defendants to pay a $100,000 civil penalty for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Kleer Kast, Inc. and PMC, Inc.*, D.O.J. Ref. No. 90-5-1-1-2452.

The proposed consent decree may be examined at the Office of the United States Attorney, 970 Broad Street, Room 502, Newark, New Jersey 07102 and at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or, by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $1.50 (10 cent per page reporduction cost) made payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530.

[FR Doc. 87-7229 Filed 4-1-87; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Sensory Physiology and Perception; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Sensory Physiology and Perception Program.

Date and Time: April 15, 16, and 17, 1987: 9:00 a.m. to 5:00 pm each day.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC. Meeting is to be held in the conference Room 523.

Type of Meeting: Part Open—Open 4/16—1:00 p.m. to 3:00 p.m.; Closed 4/15 9:00 a.m. to 5:00 p.m.; Closed 4/19 9:00 a.m. to 5:00 p.m.

Contact Person: Dr. Steven Price, Program Director, Sensory Physiology and Perception, Room 320, National Science Foundation, Washington, DC. 20550, Telèphone (202) 357-7428.

Sumary Minutes: May be obtained from the Contact Person at the above stated address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in the Sensory Physiology and Perception Program.

Agenda: Open—Discuss future trends in program area. Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-7301 Filed 4-1-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Social and Developmental Psychology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Social and Developmental Psychology.

Date and Time: April 15-17, 1987: 9:00 a.m.-5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Room 1243, Washington, DC 20550.

Type of Meeting: Part Open—Closed 4/15—9:00 a.m. to 5:00—p.m.; Closed 4/16—9:00 a.m. to 5:00 p.m.; Closed 4/17—11:00 a.m. to 5:00 p.m.; Open 4/17—9:00 a.m. to 11:00 a.m.

Contact Person: Dr. Jean B. Intermaggio, Program Director, Room 320, National Science Foundation, Washington, DC 20550 (202-357-9485).

Summary Minutes: May be obtained from the Contact Person at the above stated address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in social and developmental psychology.

Agenda:

Open—General discussion of the research trends in social and developmental psychology.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-7302 Filed 4-1-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Systematic Biology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Biology.

Date and Time: April 20 and 21, 1987—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1243, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. James E. Rodman, Acting Program Director, Systematic Biology, (202) 357-9588, Room 215, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in systematic biology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

March 30, 1987.

[FR Doc. 87-7303 Filed 4-1-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Use of Isotopes; Renewal

The Nuclear Regulatory Commission announces the renewal of the Advisory Committee on the Medical Uses of Isotopes. It has been determined that this advisory committee is in the public interest in connection with the performance of duties imposed upon the Commission by law. This committee provides advice and consultation both on the development of standards and criteria for regulating and licensing the uses of radionuclides on human patients and on individual license applications relating to user qualifications and proposed use of radiation sources.

The charter for the Advisory Committee on the Medical Uses of Isotopes is being extended for the two year period beginning April 4, 1987.

Additional details regarding the duties and functions of the Committee and its members can be obtained by telephoning Patricia C. Vacca, Office of Nuclear Materials Safety and Safeguards, at (301) 427-4112.

Dated: March 30, 1987.

John C. Hoyle,

Advisory, Committee Management Officer.

[FR Doc. 87-7275 Filed 4-1-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-135; License No. SNM-145]

Babcock & Wilcox; Receipt of Petitions

Notice is hereby given that by Petition dated February 24, 1987, the Kiski Valley Coalition To Save Our Children requested that the Director, Office of Nuclear Material Safety and Safeguards, the Director, Nuclear Reactor Regulation, and the Director, Office of Inspection and Enforcement, take immediate action with regard to the Babcock and Wilcox (B&W) Apollo facility. The Petitions request that the license for the facility be suspended unitl corrective actions have been taken, after which the license be terminated and revoked and the facilities and grounds be released for unrestricted use. The Petitions assert as grounds for this request that (1) the licensee has not fulfilled License Condition 37, which provides that at the end of plant life, the licensee shall decontaminate the facility and grounds so that they can be released for unrestricted use; (2) the facility has had a significant adverse effect upon Apollo and the surrounding environment; and (3) there is licensed material that is missing and unaccounted for. The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time.

Copies of the Petitions are available for inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and the Local Public Document Room of the Apollo Memorial Library, Apollo, Pennsylvania.

Dated at Silver Spring, Maryland, this 25th day of March, 1987.

For The Nuclear Regulatory Commission

Hugh L. Thompson, Jr.,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 87-7274 Filed 4-1-87; 8:45 am]

BILLING CODE 7590-01-M

Southern California Edison Co. and San Diego Gas and Electric Co.; Denial of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the licensees for an amendment to Provisional Operating License No. DPR-13, issued to the Southern California Edison Company, et al. (the licensees), for operation of the San Onofre Nuclear Generating Station, Unit 1 (the facility), located in San Diego County, California.

The amendment, as proposed by the licensees, would modify the facility Technical Specifications (TS) for the safety injection system hydraulic valves to establish a long-term surveillance program for these valves which would supplant an interim testing program effective during Fuel Cycle XIII. The licensees' application for amendment was dated November 21, 1985, as supplemented on June 25, 1986. Notice of consideration of issuance of the amendment was published in the Federal Register on February 12, 1986 (51 FR 5277). The staff determined that the proposed long-term program was inadequate to verify the operability of these valves. The licensee was notified of the Commission's denial of this request by letter dated March 30, 1987.

The licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene. Such requests for hearing and leave to intervene must be received by May 4, 1987.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date.

A copy of the petition should also be sent to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to Charles R. Kocher, Assistant General Counsel, James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 21, 1985 as supplemented on June 25, 1986, and (2) the Commission's letter to the licensees dated March 30, 1987, which are

available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Main Library, University of California, P.O. Box 19559, Irvine, California 92713. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC., 20555, Attention: Director, Divison of PWR Licensing–A.

Dated at Bethesda, Maryland, this 30th day of March, 1987.

For the Nuclear Regulatory Commission.

George E. Lear,

Director, PWR Project Directorate #1, Division of PWR Licensing–A.

[FR Doc. 87–7273 Filed 4–1–87; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Proposed Model Conservation Standards Amendments; Public Comment Period

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of proposed amendments and opportunity to comment regarding model conservation standards for new and existing structures, utility, customer, and governmental conservation programs, and other consumer actions for achieving conservation except areas for which model conservation standards already exist.

SUMMARY: On April 23, 1983, the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted, pursuant to the Pacific Northwest Electric Power and Conservation Act, Pub. L. 96–501, 94 Stat. 2697, 16 U.S.C. 839 *et seq.* (the Act), a Northwest Conservation and Electric Power Plan (Power Plan), including model conservation standards (MCS) for new residential and commercial structures, and for buildings converting to electric space conditioning (48 FR 24493, June 1, 1983). The most recent amendments of the MCS were adopted by the Council at its January 14, 1987, meeting. At its March 11, 1987, meeting, the Council voted to enter rulemaking to add to the existing MCS model standards for all sectors and end-uses of electricity not already covered.

SUPPLEMENTARY INFORMATION: The Act states that "Model conservation standards to be included in the [Council's] plan shall include, but not be limited to, standards applicable to (A) new and existing structures, (B) utility, customer, and governmental conservation programs, and (C) other consumer actions for achieving conservation." Section 4(f)(1). Upon consideration of a petition requesting that the Council adopt model standards for the particular conservation activities related to residential weatherization in the region, the Council now proposes to amend the Power Plan by adopting model standards applicable to all areas not covered by the existing MCS, including residential weatherization.

This notice describes the proposed amendments and explains how to participate in the amendment process. In order to allow the Bonneville Power Administration time to complete its hearings on its residential weatherization program, the Council will wait for two months from the publication of this notice to begin hearings on this proposed rule. The Council anticipates that its hearings will be conducted during late May and June and that it will be able to adopt these amendments by mid-October. The schedule of hearings and guidelines for presenting oral comment will be published several weeks before the hearings are to begin.

Guidelines for Submitting Written Comments

1. All written comments must be sent to the Council's central office, Attn: Dulcy Mahar, Director of Public Information and Involvement, 850 S.W. Broadway, Suite 1100, Portland, Oregon 97205.

2. Comments should be clearly marked "Comments on Proposed Model Conservation Standards Amendment."

3. Written comments should be specific and concise and refer to sections or page numbers in the proposed MCS amendments.

4. If appropriate, submit a "marked up" copy of the proposed MCS (or appropriate sections) indicating suggestions and/or revisions. Suggested deletions should be lined out and placed in parentheses. Suggested new language should be underlined.

5. Please type (double-spaced) comments, if possible. Use only one side of the paper.

6. Provide ten (10) copies of all comments and supporting materials if at all possible.

Proposed Amendments

If adopted by the Council, the proposed amendments would add to Volume I, Chapter 9, p. 9–4 at bottom of second column.

Proposed Model Conservation Standards for New and Existing Structures, Utility, Customer, and Governmental Conservation Programs, and Other Consumer Actions for Achieving Conservation Except Areas for Which Model Conservation Standards Already Exist

During this period of electricity surplus, prior to the time when the region needs to acquire new resources to meet increased electricity demand, conservation activities that can be deferred without detrimental consequences should be. However, decisions regarding whether to operate a program may turn on factors other than the need for electricity. If a utility or governmental organization elects to implement a conservation program during the surplus, the program should be operated in a manner that is consistent with the long-term goals of the region's electrical power system.

The proposed model conservation standards (MCS) set forth in this document establish the objectives that should be incorporated into programs for new and existing structures, utility, customer and governmental conservation programs, and other consumer actions for achieving conservation, except for areas already covered by existing model conservation standards. New residential and commercial buildings, and buildings converting to electric space conditioning are already covered by specific model conservation standards. The proposed standards are designed to help move the region toward a least-cost electrical energy future.

As the various conservation resources in the sectors covered by this MCS are needed to meet regional load growth, the Council may revisit these standards to make them more specific for some sectors or end-uses, and to consider recommending that failure to achieve equivalent savings from them be subject to a surcharge.

Proposed MCS Objectives

1. Utility, customer, and governmental conservation programs, and other consumer actions for achieving conservation should not create lost opportunities. A lost opportunity is a conservation measure or program which, because of physical or institutional characteristics, may lose its cost-effectiveness unless actions are taken to develop it or hold it for future use.

2. Conservation programs should require the installation of all measures that are cost-effective to the region in the long-run, and if not done would be

lost to the region. If physical barriers prevent the installation of all cost-effective measures, all measures up to this physical limitaton should be installed. Cost-effective levels are defined in the Northwest Power Plan.

3. The benefits of the conservation program should be equitably distributed throughout the sector or subsector within which the program is operating. If the program is operated on a regional level, its benefits should be equitably distributed throughout the region.

4. Environmental quality should be given strong consideration in program design. Programs should be designed to maintain or improve current levels of environmental quality. Environmental degradation should be avoided.

5. Utility, customer, and governmental conservation programs operated during the current period of surplus should contribute to the region's capability to implement those conservation programs aggressively when the region begins to need new resources. Consequently, such programs should include data gathering and evaluation components structured to gain statistically reliable information the region can use to fashion an aggressive and effective conservation acquisition program when additional power is needed. In addition, such programs should develop the capability to secure conservation in sectors or subsectors that are not generally reached by typical programs, for example, low-income households and renters in the residential weatherization program.

6. Programs should be designed to avoid significant alteration of a consumer's choice of fuel since significant fuel switching will negate the conservation savings and require the development of additional high cost resources.

Surcharge Recommendation

The Council is not recommending at this time that the standard in this rule be subject to a surcharge. The Council already has standards for new residential and new commercial building that are subject to the surcharge and standards for buildings converting to electric space conditioning that are not subject to the surcharge. Specific standards were set for new residential and commercial buildings since they represent lost opportunity resources and they are areas where significant activity is expected to occur, even during the electricity surplus.

Edward Sheets,

Executive Director.

[FR Doc. 87-7191 Filed 4-1-87; 8:45 am]

BILLING CODE 0000-00-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold a public meeting on April 9–10, 1987, in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC. The April 9th meeting will begin at 9:00 A.M. and the April 10th meeting will be at 8:30 A.M. The Commission was established by section 9305 of Pub. L. 99–272.

ADDRESSES: The Commission's office is located in the Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20201 in Suite 7033. Its telephone number is 202/472–1364.

SUPPLEMENTAL INFORMATION: The following is the meeting agenda:

Thursday, April 9, 1987

9:00 AM–9:30 AM—Executive Director's Report

9:30 AM–10:45 AM—Prompt Payment by Carriers

Marilyn Field, Ph.D., Associate Director, Physician Payment Review Commission

11:00 AM–1:00 PM—Recess for Meeting with Secretary Bowen and LUNCH (Executive Session)

1:00 PM–5:30 PM—Development of Relative Value Schedules

Peter Fraser, Executive Director, Ontario Medical Association

Howard Zander, M.D., President, American Society of Anesthesiologists

William Hsiao, Ph.D., Professor, Harvard School of Public Health

Friday, April 10, 1987

8:30 AM–10:30 AM—Proposals for Payment of Radiologists, Anesthesiologists, and Pathologists (RAPs) on a Per Admission (DRG) Basis

James Reuter, Ph.D., Specialist in Social Legislation, Congressional Research Service

Ross Anthony, Ph.D., Associate Administrator for Program Development, Health Care Financing Administration

10:30 AM–11:30 AM—Patterns of Relative Values in Fee Schedules Based on Factors Other than Charges

Terry Hammons, M.D., Deputy Director, Physician Payment Review Commission

11:30 AM–12:00 Noon—Public Comment

12:00 Noon–1:00 PM—LUNCH (Executive Session)

1:00 PM–1:30 PM—Report of Coding Subcommittee

Members: Oliver H. Beahrs, M.D., Chairman, Walter McNerney, Richard W. Wright

1:30 PM–2:30 PM—Initial Plans for Consensus Panels

Lauren LeRoy, Ph.D., Deputy Director, Physician Payment Review Commission

2:30 PM–3:00 PM—Next Steps

Paul B. Ginsburg,

Executive Director.

[FR Doc. 87-7192 Filed 4-1-87; 8:45 am]

BILLING CODE 6820-SE-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Supplemental Doctor's Statement.

(2) Form(s) submitted: SI-7, ID-7h.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 50,050.

(7) Annual reporting hours: 4,171.

(8) Collection description: The RUIA provides for the payment of sickness benefits to qualified railroad employees. The physician's statement will be used for determining whether the applicant meets the requirements for sickness benefits.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy Egan (202–395–6880), Office of Management

and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 87-7196 Filed 4-1-87; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash; (202) 272-2142

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20559

Extension

Rule 7d-1(b)(8)(i), (iii), and (viii)

File No. 270-176

Rule 31a-1

File No. 270-173

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 Rules 7d-1(b)(8) (i), (iii), and (viii) and 31a-1 under the Investment Company Act of 1940.

Rule 7d-1(b)(8) (i), (iii), and (viii) concerns the conditions and arrangements pursuant to which Canadian management investment companies may register under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*). The rule currently affects 2 recordkeepers, who expend a total of 50 burden hours, annually, to comply.

Rule 31a-1 requires investment company registrants to keep certain books and records which are the basis for their financial statements and a record of their operational activities so that these activities can be examined by Commission personnel for compliance with the law. The rule affects all of the 2960 active registered investment companies. These companies spend about 4,161,760 burden hours to comply with the rule.

Comments should be submitted to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

March 26, 1987.

[FR Doc. 87-7246 Filed 4-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24272; File No. SR-NASD-87-5]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Filing of Direct Participation Program Advertising and Sales Literature

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on March 10, 1987, the National Association of Securities Dealers, Inc. 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 adds a new paragraph (c)(3) to Article III, section 35 of the NASD Rules of Fair Practice that requires advertising and sales literature for publicly offered direct participation programs to be filed with the NASD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendment would require members to file advertising and sales literature concerning publicly offered direct participation programs with the NASD's Advertising Department within 10 days of its first use or publication. If the literature has been filed with the NASD by the program's sponsor, general partner, underwriter or another member, a second filing would not be required.

Article III, section 35 of the NASD Rules of Fair Practice regulates members' communications with the public. It requires that all such communications be based on principles of fair dealing and good faith and that the communications provide a sound basis for evaluating the facts regarding the securities offered by members.

The NASD has become aware that certain advertising and sales literature used in connection with public direct participation programs has involved misleading illustrations of past performance, the inclusion of information on projected performance, and the unbalanced presentation of programs by not including a statement of significant risks.

This situation was considered by the NASD Direct Participation Programs/Real Estate Committee which recommended to the NASD Board of Governors that the filing requirement be adopted.

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade among members, and in general to protect investors and the public interest. The proposed rule change is designed to facilitate the NASD's ability to ensure that advertising and sales literature is based upon principles of fair dealing and is consistent with the NASD guidelines. In this matter the rule change will serve to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The NASD solicited comments from members regarding the proposed rule change in Notice to Members 85-69. A total of 48 responses were received. Copies of the Notice to Members and comment letters have been submitted to the Commission as Exhibit 2 to this filing. A majority of the commentators supported adoption of the rule. The most frequent areas of negative comments related to the need to impose a filing requirement in addition to the NASD's

ongoing review of member advertising. The NASD Board of Governors considered all of the comments and modified the proposal based upon such review. The NASD responded to these and other comments in the filing with the Commission.

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, at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 23, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 26, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-7244 Filed 4-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24260; File No. SR-NASD-87-1]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. to Provide a Broadcast Ticker of Last Sale Reports in NASDAQ/NMS Securities.

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 March 17, 1987, the National Association of Securities Dealers, Inc. ("NASD") 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 Propsoed Rule Change

The following is the full text of a rule change being proposed by the National Association of Securities Dealers, Inc. ("NASD") and its subsidiary, NASD Market Service, Inc. ("MSI"). This propsal embodies the NASD's decision to offer a new service consisting of a low speed ticker signal (hereinafter referred to as the "NASDAQ/NMS Ticker" or "Ticker") by which subscribers can obtain a moving display of last sale reports for all NASDAQ/NMS securities from any of a number of vendors.[1] The low speed ticker signal will not be provided to the display devices that are owned by the NASD or its subsidiaries (*i.e.*, Level 2/3 terminals.) The proposal includes the following fee schedule applicable to any subcriber of this service: $50 per wall display unit per month and $5 per interrogation device per month.[2] These fees shall also apply to subscribers of any comparable service that might be developed by vendors from the NASD's NMTS high-speed line.[3] Subsequent to approval by the Securities and Exchange Commission pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 (the "ACT"), MSI will incorporate this fee schedule into a standardized contract for the NASDO/NMS Ticker.

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 proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is twofold: to establish technical specifications for and a description of a low speed ticker broadcast of last sale reports in NASDAQ/NMS securities and a fee schedule application to subscribers receiving such information. The NASDAQ/NMS Ticker will be a low-speed information broadcast directly to independently owned interrogation devices or wall display units suitable for the display of ticker information. This arrangement paralles that provided for listed securities by the New York and American Stock Exchanges ("NYSE" and "AMEX," respectively), *i.e.*, Networks A and B of the Consolidated Tape.

The data source for the NASDAQ/NMS Ticker is the MNTS high-speed line that operates at 4,800 BPS. Vendors currently access this line to provide subscribers with last sale informtion on NASDAQ/NMS securities. Generally, subscribers access such information by entering selective queries through desk-top terminals. In contrast, the proposed Ticker will be a broadcast stream of last sale data at 134.5 BPS (or 1,000 characters per minute) for all NASDAQ/NMS securities. The slower pace of this transmission will enable the continuous display of last sale reports in visually readable form. As a broadcast function, the NASDAQ/NMS Ticker requires the use of specialized wall display units, interrogation or display devices that are available from vendors. The functional description filed with the Commission outlines the equipment interfaces needed to receive the Ticker feeds, as well as the requirements applicable to any authorized ticker display of NASDAQ/NMS last sale reports. This

[1] A functional description of the NASDAQ/NMS Ticker has been filed with the Commission.

[2] These fees are exclusive of any separate communications carrier fees that may be incurred to receive the low speed signal.

[3] The process by which a vendor takes a high-speed feed (from the NMTS high-speed line) of last sale data and converts it for display in a moving ticker is commonly referred to as "retransmission." *See* Securities Exchange Act Rule 11As3-1(d) [17 CFR 240.11Aa3-1(d)].

informtion will be made available to any firm authorized to act as a vendor for the NASDAQ/NMS Ticker.

Establishment of the NASDAQ/NMS Ticker is consistent with Section 11A(a)(1) of the Act in which the Congress articulated various premises and goals respecting a national market system for securities. In particular, the NASD cites the following subparagraphs as statutory bases for the proposed Ticker:

(A) The securities markets are an important national asset which must be preserved and strengthened.

(B) New data processing and communications techniques create the opportunity for more efficient and effective market operations.

(C) It is the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure—

(i) Economically efficient execution of securities transactions;

(ii) Fair competition . . . between exchange markets and markets other than exchange markets; [and]

(iii) The availability to brokers, dealers, and investors of information with respect to . . . transactions in securities. . . .

Moreover, the proposed rule change is fully consistent with section 15A(b)(5) of the Act, which specifies the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using any facility or system that the NASD operates or controls. In setting the proposed fees for the NASDAQ/NMS Ticker, consideration was given to the existing rate applicable to display of last sale information on interrogation devices ($7.50/terminal/month for NASDAQ/NMS securities) as well as the prevailing charges assessed by the AMEX and the NYSE for ticker services.[4]

The NASD has proposed a fee differential between wall units and terminals displaying the NASDAQ/NMS Ticker. In establishing this differential, the NASD seeks to satisfy the "equitable allocation" requirements specified in section 15A(b)(5) of the Act. A higher fee is appropriate for a wall unit because of its greater potential for contemporaneous use by many people. Having a wall display obviates the need for multiple terminals to achieve a similar level of contemporaneous use of the ticker display. Thus, the higher fee for a wall unit reflects its greater capacity for contemporaneous usage of ticker data and a partial offset for terminal fees lost because of that feature. The NASD believes that the fee differential between wall units and terminal displays strikes an equitable balance in recapturing the overall costs of making the information available through the NASDAQ/NMS Ticker. The Association will continue to monitor the revenues produced by this and other services in order to effect fee reductions where appropriate.

In sum, the NASD believes that the proposed fee schedule for the NASDAQ/NMS Ticker establishes an appropriate and justified discount from the present charge for last sale information which recognizes the more limited nature of the information conveyed through a low speed ticker display. The proposed fees are believed to be reasonable in light of the scope of the information provided and the corresponding charges imposed by the AMEX and the NYSE. Further, these fees are structured to achieve an equitable allocation of costs among subscribers of varying sizes. Accordingly, the NASD believes that the proposed fees are fully consistent with section 15A(b)(5) of the Act.

The NASD notes that prompt Commission approval of this rule change will expedite marketing of the NASDAQ/NMS Ticker by vendors and its availability to end users. This result is consistent with section 15A(b)(6) of the Act which requirs, *inter alia*, that the NASD's rules be designed for foster cooperation and coordination with persons engaged in processing information with respect, to and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden Competition

The NASD believes that the establishment of the NASDAQ/NMS Ticker and related fees will impose no burden on competition. The proposed fees are comparable to, and in some instances lower than, fees assessed by the AMEX and NYSE for moving ticker displays of equities transactions. Consequently, the NASD anticipates that several vendors will be interested in marketing this service in a variety of end users. Because the NASDAQ/NMS Ticker will not be available on display devices that are owned by the NASD, the Association will not be in direct competition with vendors in offering this service to subscribers. In effect, the NASD will be expressly limiting its functions to that of a "wholesale" distributor of the NASDAQ/NMS Ticker service.

It should be noted that the proposal permits vendors to develop a comparable ticker service from the NMTS high-speed line (*i.e.*, retransmission) without payment of a surcharge to the NASD for the opportunity to do so. Nonetheless, subscribers to a vendor-developed ticker will still be obliged to pay the NASD the $5/$50 fees based upon the type and number of devices carrying the ticker display.

Vendor retransmission of transaction reports (or last sale data) and related subscriber fees were addressed by the Commission in 1980 when it amended Rule 17a–15 and redesignated it as Rule 11Aa3–1 [17 CFR 240.11Aa3–1] under the Act.[5] In that proceeding the Commission found that it was inappropriate to maintain a prohibition of retransmission in any effective transaction reporting plan. However, the Commission concluded that an exchange or an association may condition retransmission upon undertakings to ensure that the applicable subscriber charges are collected. Such charges should be reasonable and uniform irrespective of geographic location. These findings are embodied in subsections (d) and (e) of Rule 11Aa3–1 under the Act. The NASD cites these provisions and the underlying policy considerations [6] as bases for the imposition of reasonable, uniform subscriber fees in the context of retransmission of NASDAQ/NMS last sale data to moving ticker displays. Commission approval of this aspect of the NASD'S proposal will conform with the treatment of subscribers receiving ticker displays of exchange transactions via vendor retransmission.

Accordingly, the NASD reiterates that no competitive burden will be created by the Commission's approval of this proposal.

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 respecting the proposed specifications and fee schedule.

[4] For example, recent amendments to the CTA and CQ plans to authorize the NYSE to charge professional subscribers a unified monthly rate for Network A last sale, ticker, and quotation information based on the total number of display devices which a professional subscriber has. *E.g.*, one display unit would cost $120, while three would cost $165 (or $55 ea.) and five would cost $225 (or $45 ea.) per month. Where the NYSE provides ticker service directly to a non-professional subscriber, the monthly charge is $30 per unit. *See* Securities Exchange Act Release No. 24130 (February 20, 1987).

[5] *See* Securities Exchange Act Release No. 16589 (February 19, 1980); 45 FR 12377 (February 26, 1980).

[6] *Id.*, at 12382–83.

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 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 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 persons, 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 be submitted by April 23, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 25, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 7247 Filed 4-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24259; File No. SR-ODD-87-1]

Self Regulatory Organization; Options Clearing Corporation; Order Granting Approval to Proposed Supplement to Options Disclosure Document

On March 17, 1987, the Options Clearing Corporation ("OCC") submitted to the Commission copies of a supplment to the Options Disclosure Document ("ODD") pursuant to Rule 9b-1 of the Securities Exchange Act of 1934 ("Act"). The Supplement explains that, pursuant to a recent OCC rule change, an options market may provide by rule how the settlement value of an option on an index of securities will be determined, and that such settlement values may be determined by reference to the prices of the constituent stocks of the index at times other than the close of trading. Such rules, which would supercede any contrary provisions in the rules of the OCC, might apply generally, or only on particular days, such a the last business day before expiration.

The Supplement also notes that certain options markets have adopted or are considering rules that would calculate the settlement value of expiring index options on the last business day before expiration based on the opening prices of the constituent stocks on that day. Consequently, options to which such rules apply may not be traded, or may be traded only to a limited extend, on the last business day before expiration. Rules changing the method for determining index option settlement values may be adopted by some options markets, but not others, and an individual options market may adopt such rules with respect to some but not all of the index options traded in that market. A market that adopts such rules subsequently may repeal them.

Further, the Supplement to the ODD emphasizes that rules changing the method the determining index option settlement values may be made applicable to options outstanding at the time when the rules becomes effective, provided that such options are of a series opended for trading after the date of this Supplment. Such rules would not apply to any series of options outstanding on the date of this Supplement. After adopting such rules, however, an options market might open new series of options which are identical to series outstanding on the date of this Supplement in all respects other than settlement procedrues.

Finally, the Supplement reminds investors that the settlement value for options on a particular index will not necessarily be calculated in the same manner as the settlement values for futures or commodity options that may be traded on that index.

Paragraph (2)(1) of Rule 9b-1 provides that an options market must file five copies of an amendment to the options disclosure document with the Commission at leat 30 days prior to the date definitive copies are furnished to customers unless the Commission determines otherwise having due regard to the adequacy of the information disclosed and the protection of investors. This provisions is intended to permit the Commission either to accelerate or extend the time period before definitive copies of a disclosure document may be distributed to the public. The OCC has requested a waiver of the 30 day requirement so that the document can be distributed to the public as promptly as possible in light of a proposed rule change by the New York Stock Exchange ("NYSE") to permit the NYSE to settle its options on the NYSE Composite Index and the Beta Index on the basis of the opening prices of the constituent stocks on Expiration Friday.[1] As filed, the proposed rule change only would apply to the June contracts. These contracts will be listed for trading after the March expiration. In view of NYSE's proposal, the Commission has determined that it is in the public interest to waive the 30 day requirement and, thus, to allow the Supplement to be furnished to investors.

The Commission has reviewed the Supplement to the ODD and finds that it is consistent with the protection of investors and it the public interest to allow the distribution of the Supplement to the disclosure document as of the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 25, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-7243 Filed 4-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24271; File No. SR-OCCC-87-02]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the"Act"), 15 U.S.C. 78(b)(1), notice is hereby given that on February 27, 1987 the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. The Commission is publishing notice to solicit comment on the rule change.

The proposal revises OCC's fee schedule concerning settlements of exercises and assignments of options on foreign currencies. The proposal establishes the following fees with

[1] File No. SR-NYSE-87-06.

respect to settlements of exercises and assignments of options on foreign currencies:

Regular Way Deliveries: $130/settlement

Delivery vs. Payment Deliveries: $90/settlement

When OCC commenced clearing and settling foreign currency options in 1982, it utilized only one bank and established a pass-through fee structure. OCC now has expanded the number of settlement banks and those banks have disparate price structures for the services they provide. Because of disparate pricing structures among the settlement banks, continuation of the direct pass-through system would result in different prices for each currency transaction. The proposed fees standardize delivery cost regardless of the currency delivered.

OCC believes the proposed rule change is consistent with Section 17A of the Act in that it provides for the equitable allocation of fees among OCC's foreign currency clearing members. OCC also believes that standardized pricing regardless of the currency delivered is preferable to a cumbersome pass-through fee structure with differing prices for each currency.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4. The Commision may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comment within 21 days after notice is published in the **Federal Register**. Please file six copies of your comment with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, will be available at the Commission's Public Reference Room 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–87–02 and should be submitted by April 23, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 26, 1987.

Jonathan G. Katz

Secretary.

[FR Doc. 87–1242 Filed 4–1–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–15643; 812–6574]

Application for Exemption Under the Investment Company Act of 1940

March 26, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

Applicants: Aetna Life Insurance and Annuity Company ("Aetna") and Variable Annuity Account C of Aetna Life Insurance and Annuity Company ("Account C").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) of the Act.

Summary of Application: Applicants seek an order to permit payment to Aetna from the assets of Account C of the mortality and expense risk charges and an asset-based sales charge under certain variable annuity contracts (the "Contracts"). A notice was previously published on March 10, 1987 (Rel. No. IC–15593) (the "Previous Notice") concerning the order sought with respect to the mortality and expense risk charges under the Contracts. Thereafter, Applicants filed an amendment to the Application concerning the asset-based sales charge, which amendment is summarized herein (the "Amendment"). Interested persons are referred to the Previous Notice for additional information regarding the application.

Filing Date: The application was filed on December 23, 1986 and amendments thereto on March 10, 1987 and March 20, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption 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 April 20, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personnally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Aetna and Account C, 151 Farmington Avenue, Hartford, Connecticut 06156.

FOR FURTHER INFORMATION CONTACT: Joseph R. Fleming, Staff Attorney (202) 272–3017 or Lewis B. Reich, Special Counsel (202) 272–2061 (Office of Insurance products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the Amendment; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicants' Representations

1. A contract may provide for the deduction from Contract value of an amount equal to a maximum of 0.50% of Contract values as a sales charge ("Asset Based Sales Charge"). In no event will the sum of any Asset Based Sales Charge and any other sales charge assessed under a Contract exceed 9% of the total purchase payments (without taking into account the time value of money). In a post-effective amendment to the registration statement on Form N–4 filed in connection with these Contracts (File No. 2–52449) incorporated by reference into this application, Aetna has stated that it will monitor these deductions to ensure compliance with the 9% limitation for each individual or plan account under the Contracts.

2. Applicants submit that imposition of a sales charge in the form of an asset based charge is more favorable to a Contract Holder than the deduction of this charge from premiums paid—the conventional way of imposing such charges. The amount of the Contract Holder's investment in Account C is not reduced as it would be if these charges were taken in full from premiums paid. Second, the total amount charged to any Contract Holder is no greater than it would be if these charges were taken from premiums paid. Finally, the fact that the entire amount of the charge has not been deducted will favorably affect the amount of the death benefit until the 9% limitation is reached since Contract values will be greater. The death benefit under the Contract during the accumulation period is generally equal to the Contract value attributable to the individual account or the appropriate portion of the value of the plan account. As a result, Applicants submit that Contract Holders will obtain the

advantages described above, which arise from the deferred nature of the charge, without incurring any additional cost.

Applicants' Conditions

Applicants agree that if the requested order is granted such order will be expressly conditioned on Applicants' compliance with the undertakings set forth above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-7248 Filed 4-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15640; 812-6601]

E.F. Hutton Mortgage Capital Inc. et al.; Notice of Application.

March 25, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: E.F. Hutton Mortgage Capital Inc. ("Depositor") and certain trusts ("Trusts") created by the Depositor (collectively as "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 the Depositor and certain Trusts that it may form from time to time from all provisions of the 1940 Act, for the limited purposes of both the Depositor and the Trusts issuing collateralized mortgage obligations, investing in certain mortgage certificates and selling beneficial interests in such Trusts and the Depositor.

Filing Date: The Application was filed on January 16, 1987 and amended on March 11, and March 20, 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 April 17, 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.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 6230 Texas Commerce Tower, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Richard Pfordte at (202) 272-2811 or Special Counsel Karen L. Skidmore at (202) 272-2323, 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) 258-4300).

Applicant's Representations:

1. The Depositor is a direct, wholly-owned limited purpose financing subsidiary of The E.F. Hutton Group Inc., and was organized to issue one or more series of collateralized mortgage or mortgage pass-through obligations ("Bonds"), serve as the depositor of one or more Trusts, and to sell the beneficial interests in the Depositor and such Trusts. Notwithstanding the sale of its residual interests, all of the stock in the Depositor will continue to be owned by the E.F. Hutton Group Inc.

2. The Depositor may issue one or more series ("Series") of Bonds directly or may form one or more Trusts to issue one or more Series of Bonds. The Applicant will invest in certain Mortgage Certificates [1] which will be used to collateralize the Bonds.

3. Trusts will be established under separate deposit trust agreements ("Deposit Trust Agreement") between the Depositor, acting as depositor, and a bank or trust company or other fiduciary acting as owner-trustee ("Owner Trustee").

4. Applicant will issue one or more Series of Bonds under the terms of a trust indenture ("Indenture") between the Applicant, or the Owner Trustee in the case of a Trust, 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.

5. In the case of each Series of Bonds: (a) The Applicant 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 to the Trustee and will be subject to the lien of the related Indenture.

6. In addition to the issue and sale of the Bonds, Applicant intends to sell the residual interests representing excess cash flows to a limited number, in no event more than 100, of sophisticated institutional investors in transactions exempt from the registration requirements 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 residual interests for investment purposes. In addition, the Deposit Trust Agreement relating to any Trust, and the Indenture with respect to the Depositor, will further prohibit the transfer of any certificates for such residual interests if there would be more than 100 owners of such certificates at any time.

7. Neither the holders of the residual interests of the Applicant (including any Trusts), the Owner Trustee, if any, 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 residual interests in the Applicant, the Owner Trustee, if any, nor the Trustee will be able to: (1) Change the stated maturity on any

[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 debt service basis ("GPM GNMA Certificates"). In addition to the Mortgage Certrificates 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.

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.

8. The sale of the residual interests 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.

9. No holder of a controlling interest in the Applicant (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 residual interests will be affiliated with the Trustee.

10. The interests of the Bondholders will not be compromised or impaired by the ability of the Applicant to sell residual interests and there will not be a conflict of interest between the Bondholders and the holders of the residual interests for several reasons: (a) The collateral which initially will be pledged to secure the Bonds issued by the Applicant 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 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 Applicant 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 the residual interests will be entitled to receive current distributions representing the residual payments on the collateral in accordance with the terms of sale of such interests (with respect to a Trust, the applicable Deposit Trust Agreement) which distributions are analogous to dividends payable to a shareholder of a corporate issuer of collateralized mortgage obligations. Furthermore, unless a Trust elects to be treated as a "real estate mortgage investment conduit" ("REMIC") under the Internal Revenue Code of 1986, the residual 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 residual interests in such issuer, however, will not alter in any way the payments made to the holders of the Bonds, which are payments governed by an Indenture which will meet the requirements of the Trust Indenture Act of 1939.

11. The aggregate interests of the owners of the residual 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 pledge as security for any Series, Mortgage Certificates with a collateral value which exceeds 110% of the aggregate principal amount of the related Bonds.

12. 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 pledged to secure a Series, 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 pledged to secure a Series 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 residual 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 residual 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 residual interests in a Trust 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.

13. For additional representations and conditions concerning classes of Bonds, certain optional and mandatory redemption features and the application of "excess cash flow," see the application.

14. The requested order is necessary and appropriate in the public interest because: (a) The Applicant should not be deemed to be an entity to which the provisions of the 1940 Act were intended to be applied; (b) the Applicant may be unable to proceed with its proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) the Applicant'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 residual interests in the Applicant will be held entirely by the Applicant or offered only to a limited number of sophisticated institutional investors through private placements.

15. Each Class of variable rate Bonds will have a set maximum interest rate (an interest rate cap).

16. At the time of the deposit of the Collateral with the Trustee, as well as during the life of the Bonds, the scheduled payments of principal and interest to be received by the Trustee on all Mortgage Certificates pledged to

[2] The Indenture further specifically provides that no amounts may be released from the lien of the Indenture to be remitted to the issuing Applicant (and any owner of the residual 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. With respect to any Trust, once amounts have been released from the lien of the Indenture, the Trust Agreement for the Trust will provide that the Owner Trustee under the Deposit Trust Agreement will have a lien superior to that of the owners of the beneficial interests of the Trust to the remaining cash flow.

secure the Bonds, absent a default, 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 variable 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.

17. The election by the Applicant to be treated as a REMIC will have no effect on the level of the expenses that would be incurred by the Applicant. Any Applicant that elects to be treated as a REMIC will provide that all administrative fees and expenses in connection with the administration of the Applicant will be paid or provided for in a manner satisfactory to the agency or agencies rating the Bonds. If the Applicant 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 Applicant 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. Thereafter, the Trustee will look solely to such reserve funds for the payment of certain fees and expenses. 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 of the Trustee; (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, and (d) the owners of the residual interests in any Trust will be personally liable, pursuant to the Deposit Trust Agreement, for the fees and expenses of the Trust not otherwise payable from one of the sources described above. Applicant 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 above (which methods may be used in combination) are selected by the Applicant to provide for the payment of such fees and expenses.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following conditions:

A. Conditions relating to the Bond Collateral

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 mortgage collateral will: (i) Be of equal or better quality than the mortgage collateral replaced; (ii) have similar payment terms and cash flow as the mortgage collateral replaced; (iii) be insured or guaranteed to the same extent as the mortgage collateral replaced; and (iv) meet the conditions set forth in paragraphs (2) and (4). In addition, new Mortgage Certificates 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. Neither the Trustee nor the custodian may be an affiliate (as the term "affiliate" 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 annualy, an independent public accountant will audit the books and records of the Applicant and, in addition, will report on whether the anticipated payments of principal and interest on the Mortgage Certificates continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Trustee.

B. Conditions relating to variable rate Bonds

7. Each Class of various rate Bonds will have a set maximum interest rate (an interest rate cap).

8. At the time of the deposit of the collateral with the Trustee, as well as during the life of the Bonds, the scheduled payments of 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 for the Order) 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 variable 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.

C. Condition relating to REMIC election

9. The election by the Applicant to be treated as a REMIC will have no effect on the level of the expenses that would be incurred by an Applicant. Any Applicant that elects to be treated as a REMIC will provide that all administrative fees and expenses in connection with the administration of the Applicant will be paid or provided for in a manner satisfactory to the agencyor agencies rating the Bonds. If the Applicant 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 Applicant 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. Thereafter, the Trustee will look solely to such reserve funds for the payment of certain fees and expenses. 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 of the Trustee; (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, and (d) the owners of the residual interests in any Trust will be personally liable, pursuant to the Deposit Trust Agreement, for the fees and expenses of the Trust not otherwise payable from one of the sources described above. Applicant 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 above (which methods may be used in combination) are selected by the Applicant to provide for the payment of such fees and expenses.

D. Conditions relating to the sale of residual interests

10. Notwithstanding the sale of residual interests, all of the outstanding stock of the Depositor will continue to be owned by the E. F. Hutton Group Inc.

11. In addition, Applicant agrees that the above representations regarding the residual 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. 87-7249 Filed 4-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15644; 812-6606]

First Variable Life Insurance Co., et al.; Application

March 26, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: First Variable Life Insurance Company and First Variable Annuity Fund E.

Relevant 1940 Act Sections: Exemption requested *under* section 6(c) *from* sections 26(a)(2) and 27(c)(2).

Summary of Application: Applicants seek an order to permit them to issue variable annuity contracts that provide for the deduction of mortality and expense risk charges from net asset value.

Filing Date: The application was filed on January 27, 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 April 20, 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(s) 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. First Variable Life Insurance Company and First Variable Annuity Fund E, Plaza West Building, Little Rock, Arkansas, 782205.

FOR FURTHER INFORMATION CONTACT: Clifford E. Kirsch, Staff Attorney at (202) 272-3032 or Lewis B. Reich, Special Counsel at (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representations:

1. First Variable Life Insurance Company ("First Variable") is a stock life insurance company organized under the laws of the State of Arkansas and is a wholly-owned subsidiary of Monarch Life Insurance Company which is a wholly-owned subsidiary of Monarch Capital Corporation. On August 20, 1984, First Variable Annuity Fund E ("Separate Account") registered as a unit investment trust under the Act. The Separate Account was established by First Variable to fund two types of contracts: (1) Flexible purchase payment deferred annuity contracts and (2) single purchase payment immediate annuity contracts. (Both types of contracts are hereinafter referred to collectively as "Contracts").

2. It is intended that the underlying investment medium for the Contracts will be the Variable Investors Series Trust (the "Trust"). The Trust is an open-end, diversified, series management investment company currently seeking registration under the Act. Monarch Investment Management Corporation, a wholly-owned subsidiary of Monarch Financial Services Corporation, a wholly-owned subsidiary of Monarch Capital Corporation, is the investment adviser for the Trust.

3. On August 20, 1984, the Separate Account and First Variable filed an application for an order pursuant to section 6(c) of the Act for exemption from sections 26(a) and 27(c)(2) of the Act. The purpose of the application was to: (i) Permit daily deductions by First Variable of a percentage charge for its assumption of mortality risks, expense risks, and distribution risks from the Separate Account at a rate of 1.15% annually; and (ii) to permit the deduction by First Variable of a Contract issuance fee from the initial purchase payment. By Order dated December 3, 1984, the SEC granted the exemptive relief requested by the Applicants.

4. The purpose of this Application is to request an order of the SEC to provide an exemption from sections 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit the deduction of a daily mortality and administrative expenses risk charge ("Risk Charge") equivalent to an annual rate of 1.25% of the average daily net asset value of the Separate Account attributable to the Contracts.

5. The Risk Charge is assessed daily against the Separate Account at an annualized rate of 1.25% (approximately 0.75% for mortality expense risks and approximately 0.50% for administrative expense risks). The Risk Charge is guaranteed and may not be increased by First Variable.

6. Applicants state that the mortality component (approximately 0.75%) of the Risk Charge is intended to compensate

First Variable for assuming the risk that its actuarial estimate of mortality rates may prove erroneous (i.e., the risk that a participant may receive annuity benefits for a period longer than those reflected in the Contract's annuity rates or may die at a time when the death benefit guaranteed by the Contract is higher than the accumulation value of the participant's Contract); and that the expense component (approximately 0.50%) of the Risk Charge is intended to compensate First Variable for assuming the risk that administrative charges, which are guaranteed not to increase, may prove insufficient to cover expenses actually incurred.

7. No deduction for distribution or sales expense will be imposed upon purchase payments when received by First Variable. Rather, First Variable seeks to recoup some or all of such distribution expenses from a withdrawal charge ("Withdrawal Charge"). The Contracts allow each owner to withdraw his or her interest in a Contract in whole or in part prior to the date annuity payments commence. The withdrawal value will be determined on the basis of the accumulation unit values as of the valuation date coincident with or next following the date that the signed written request to surrender is received by First Variable. However, should a withdrawal exceed 10% of all Contract purchase payments made prior to a withdrawal, a Withdrawal Charge will be impose in accordance with the following schedule:

Policy anniversary since purchase payments made	Applicable withdrawal charge percentage
0	5
1	4
2	3
3	2
4	1
5+	0

8. The cumulative total of all Withdrawal Charges is quaranteed never to exceed five percent of the owner's aggregate purchase payments.

9. Applicants represent that the level of Risk Charge is reasonable in relation to the risks assumed by the Applicants under the Contracts and within the range of industry practice for comparable annuity contracts. This representation is based upon First Variable's analysis of publicly available information about such Contracts, taking into consideration the particular annuity features of comparable Contracts, including such factors as current charge levels, charge level guarantees or annuity rate guarantees, the manner in which the charges are impose and the markets in which the Contracts are offered. Applicants state that First Variable has incorporated the identity of the products analyzed and its analysis, including its methodology and results, into a memorandum which it will maintain and make available to the Commission or its staff upon request.

10. Applicants represent that the Withdrawal Charge assessed in connection with certain partial or total withdrawals or at annuitization may be insufficient to cover all costs of distributing the Contracts. Applicants state that if the actual amounts derived from the Withdrawal Charge proves insufficient to cover actual expenses, the deficiency wil be met from First Variable's general corporate funds, which could include amounts derived from the Risk Charge that exceed the expenses the Risk Charge was designed to cover. Applicants represent that First Variable has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Separate Account and the owners of the Contracts. Applicants further state that the basis for this conclusion has been incorporated in a memorandum which First Variable will maintain and make available to the Commission or its staff upon request.

11. Applicants represent that the assets of the Separate Account will be invested only in a management investment company which undertakes, in the event it should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 promulgated by the Commission under the Act, to have such plan formulated and approved by the board of directors, the majority of whom are not "interested persons" of the management investment company within the meaning of section 2(a)(19) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–7250 Filed 4–1–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24354]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 26, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 20, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amendedc, may be granted and/or permitted to become effective.

The Columbia Gas System, Inc. (70–7199)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed a post-effective amendment to its declaration pursuant to section 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

By order dated August 13, 1986 (HCAR No. 24167), Columbia was authorized to issue up to $450 million principal amount of debentures ("Debentures") and 3 million shares of its common stock ("Common Stock"), or some combination thereof aggregating no more than $450 million in gross offering proceeds. Columbia now seeks to increase the gross offering proceeds to allow the issuance of the Debentures and the 3 million shares of Common Stock over the two-year period ending December 31, 1987, for a gross offering proceeds of approximately $600 million.

During 1986, Columbia issued $250 million aggregate principal amount of debentures and 1.250 million shares of common stock at a price to the public of $41.375. Long-term financing requirements for 1987 are currently projected to be approximately $250 million, of which approximately $105 million is designated for the retirement of previously issued debentures.

National Fuel Gas Company (70–7367)

National Fuel Gas Company ("National Fuel"), 30 Rockefeller Plaza,

New York, New York 10012, a registered holding company, has filed an application-declaration pursuant to sections 9, 10 and 12(b) of the Act and Rule 45 promulgated thereunder.

National Fuel proposes to enter into agreements whereby it will acquire all of the issued and outstanding capital stock and other assets of Utility Constructors, Inc. ("New UCI"), a Pennslyvania corporation with chief executive offices in Linesville, Pennsylvania, and will obtain noncompetition and management agreements from certain principals of the corporation. New UCI has obtained assets necessary to carry on business as a construction company at part of a corporate reorganization and spinoff from its predecessor corporation, Utility Constructors, Inc., now know as Summers Enterprise, Inc. It is intended that New UCI will provide construction and replacement, and drilling and well maintenance services and related and auxiliary services to other subsidiary companies of National Fuel and to nonassociate companies. The total cash consideration in connection with these transactions will be approximately $5.5 million. National Fuel also proposes to contribute $.5 million to New UCI for working capital.

National Fuel Gas Company (70–7369)

National Fuel Gas Company ("National"), 10 Lafayette Square, Buffalo, New York 14203, a registered holding company, has filed a dclaration pursuant to sections 6(a) and 7 of the Act and Rules 50(a)(5) promulgated thereunder.

National is authorized to issue 100 million shares of common stock, no par values, ("Common Stock"), of which 11,928,871 shares are currently outstanding. On March 9, 1987, National's Board of Directors declared a two-for-one split of National's Common Stock for the purpose of reducing the price of the Common Stock from the recent high $30 to low $40 per share range to the $18 to $25 range. The record date for the stock split and the date of mailing of certificates of additional Common Stock to be issued as a result of the stock split have been established as May 29, 1987 and June 19, 1987, respectively.

Upon consummation of the stock split, National also proposes to double the aggregate number of shares of Common Stock Plan to 1.1 million shares. The individual limits with respect to both plans will be doubled to 110,000 shares. Consequently, National further proposes to double the number of such shares subject to outstanding options, stock appreciation rights and restricted stock granted pursuant to such plans, to halve the exercise price of outstanding options and stock appreciation base prices, and to halve the price for purposes of calculating the value of stock appreciation rights. Finally, National seeks an exception from the competitive bidding requirements of Rule 50, under subsection (a)(5) thereunder for the issuance of the Common Stock pursuant to the stock split.

Eastern Utilities Associates (70–7370)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed an application-declaration pursuant to sections 6(a) 7, 9(a) and 10 of the Act and Rule 50(a) (5) promulgated thereunder.

EUA has previously requested authority to submit to its shareholders for their approval at the April 21, 1987 annual meeting a proposal to increase the number of outstanding shares of authorized common stock from 16,000,000 to 36,000,000, and to establish the authority of the trustees in EUA's declaration of trust to issue common shares for the purpose of carrying out stock splits and similar transactions without further authorization by the shareholders. A declaration with respect to this proposal and certain other matters to be acted on at the annual meeting was filed with the Commission on February 13, 1987, (File No. 70–7364) and notice of its filing is contained in HCAR No. 24325 (February 26, 1987), which also authorized the related solicitation of proxies.

EUA presently proposes, pending stockholder approval of the declaration of trust amendments, to issue up to 15,000,000 of additional common shares, par value $5.00, as a special dividend for the purpose of effecting a stock split. The ratio of the stock split, though not determined, will not be more than one share for each share held. In the event that a stock split would result in fractional shares, EUA may repurchase such fractional shares from its shareholdes or on the open market for cash.

Monongahela Power Company (70–7377)

Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, an electric utility subsidiary of Allegheny Power System, Inc., a registerd holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), and 10 of the Act and Rule 50(a) (5) thereunder.

By orders dated November 26, 1975 and December 17, 1975 (HCAR Nos. 19268 and 19304), Monongahela was authorized to enter into purchase agreements to finance the installation of pollution control equipment and facilities ("Facilities") at Monongahela's Rivesville, Albright and Willow Island Generating Stations in West Virginia. These Facilities are now complete. That initial phase involved the respective issuance of $3,355,000, $6,500,000 and $11,145,000 principal amounts of pollution control revenue bonds ("Series A Bonds") by the Marion, Preston and Pleasant Counties, West Virginia ("Counties"). The Series A Bonds bear interest at the rate of 8–½% per annum, mature of December 1, 1995, and are now subject to optional redemption at 102–½% of the principal amount thereof plus accured interest to the redemption date.

Monongahela now seeks authority to amend its purchase agreements and arrange for the issuance and sale of a new series of bonds in the same principal amounts, prior to the maturity of the Series A Bonds for the purpose of redeeming the Series A Bonds.

Connecticut Yankee Atomic Power Company (70–7378)

Connecticut Yankee Atomic Power Company ("Company"), Selden Street, Berlin, Connecticut 06037, a subsidiary of Northeast Utilities and of New England Electric System, both registered holding companies, has filed a declaration pursuant to sections 6(a), 7 and 12(c) of the Act and Rules 42 and 50(a) (5) thereunder.

The Company proposes to issue and sell up to $100 million of long-term debt securities ("Securities") in one or more series, (i) in order to repay short-term borrowings or to decrease the need for future short-term borrowings, (ii) to fund the Company's accrual of spent fuel liabilities, and (iii) to finance the repurchase of, or the exchange for, all or part of the Company's outstanding 17% Sinking Fund Debentures, due 1996, Series A and B. The Company may amend the declaration to provide for a parental quarantee of the Securities.

The Company has requested an exception from the competitive bidding requirements of Rule 50 so that it can negotiate the terms and conditions of the Securities, and arrange for their sale. The request is granted.

Ohio Power Company (70–7379)

Ohio Power Company ("OPCo"), 301 Cleveland Avenue, SW., Canton Ohio 44702, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to section 12(c) of the Act and Rule 42 thereunder.

OPCo proposes to redeem three series of its cumulative preferred stock outstanding in amounts of 90,040 (14% Cumulative Preferred Stock), 177,760 (14% Cumulative Preferred Stock, Series A), and 1,200,000 ($3.75 Cumulative Preferred Stock) shares as of December 31, 1986 (HCAR Nos. 18693, December 6, 1974; 19000, May 22, 1975; 22406, March 1, 1982). The dividend rate for each is 14%, 14% and 15%. Each series is redeemable at prices of $107, $107, and $27.81 per share, respectively.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Janathan G. Katz,

Secretary.

[FR Doc. 87-7251 Filed 4-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15639; 812-6434]

Residential Resources, Inc.; Application for Exemption

March 25, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Residential Resources, Inc. ("Residential"), and James C. Marshall on behalf of certain Affiliates (as hereinafter defined).

Relevant 1940 Act Section: Order requested under section 6(c).

Summary of Application: Applicants seek a conditional order of exemption from all provisions of the 1940 Act in connection with the issuance and sale of mortgage-backed securities and Equity Interests (as hereinafter defined).

Filing Date: The application was filed on July 15, 1986, and amended on December 8, 1986, February 2, 1987, and March 20, 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 no later than 5:30 p.m., on April 17, 1987. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues contested. Serve Applicants with the request, either personally, or by mail, and also send it to the Secretary, 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, SEC.

ADDRESS: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, One East Camelback Road, Suite 700A, Phoenix, AZ 85012.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Meryl Dewey (202) 272-3038 or Special Counsel H.R. Hallock, Jr. (202) 272-3030 (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) 231-3202 (in Maryland (301) 258-4300).

Applicants' Statements and Representations

1. Residential, an Arizona corporation formed in 1986, is a limited purpose finance corporation organized to facilitate the financing of residential mortgages through the issuance of bonds collateralized by mortgage-backed securities or funding agreements secured by mortgage-backed securities. Residential is wholly-owned by James C. Marshall, Steven B. Chotin and James M. Corrigan. Mr. Marshall is an Arizona resident and managing partner of a public accounting firm. Mr. Chotin is a Colorado resident and president of a business and financial consulting firm. Mr. Corrigan is an Arizona resident and president of a financial consulting firm. Each is also a director and officer of Residential.

2. Applicants seek relief on behalf of Residential and any future affiliates ("Affiliates") originally sponsored and wholly-owned by one or more of the above-named individuals. All Affiliates will engage in activities substantially similar to those engaged in by Residential.

3. Residential and the Affiliates (together, "Issuers") will issue and sell bonds ("Bonds") in series ("Series") secured primarily by Mortgage Certificates.[1] Each Series of Bonds will be issued pursuant to an indenture ("Indenture") between an Issuer and an independent trustee ("Bond Trustee"), as supplemented by one or more supplemental indentures. Each Series of Bonds will be sold to institutional or retail investors through one or more investment banking firms. Indentures for public offerings will be qualified under the provisions of the Trust Indenture Act of 1939. Each Series will consist of one or more classes ("Classes") which will have fixed (established at the time of issuance) or variable (adjusted periodically according to a fixed index set forth in the Indenture) interest rates.

4. The Mortgage Certificates securing each Series of Bonds will be owned either (i) by an Issuer or (ii) by limited purpose financing entities affiliated with homebuilders, thrifts, commercial banks, mortgage bankers and other entities engaged in mortgage finance and pledged to secure such Series of Bonds pursuant to funding agreements ("Funding Agreements").[2] Each Series of Bonds may also be secured by certain funds and accounts including proceeds accounts, debt service funds, reserve funds, servicing agreements and insurance policies and by other credit enhancement devices described in the Prospectus Supplement for such Series (any or all of the foregoing together with Mortgage Certificates, "Bond Collateral"). Each Issuer will assign to the Bond Trustee as security for the relevant Series of Bonds its entire right, title and interest in the Bond Collateral.

5. The Mortgage Certificates securing each Series of Bonds, together with cash available to be withdrawn from any debt service funds, reserve funds, or other funds, will have scheduled cash flow sufficient, when taken together with reinvestment income thereon at assumed reinvestment rates acceptable to each rating agency rating the Bonds, to make timely payments of principal of and interest on the Bonds in accordance with their terms. The outstanding bond value of the Bond Collateral securing a Series will be at least equal to the initial principal amount of such Series on the issue date.

6. An Issuer may sell some or all of its equity interest ("Equity Interest") to one or more banks, savings and loan associations, pension funds, insurance companies or other investors which customarily engage in the purchase of mortgages or mortgage collateral ("Owners") in transactions not constituting a public offering under section 4(2) of the Securities Act of 1933 ("1933 Act").

7. There will not be a conflict of interest between the holders of the Bonds ("Bondholders") and Owners as: (a) The Bond Collateral will not be speculative in nature; (b) the Bonds will be issued only if an independent

[1] The "Mortgage Certificates" collateralizing the Bonds will be limited to fully-modified pass-through mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), guaranteed mortgage pass-through securities issued by the Federal National Mortgage Association ("FNMA Certificates"), and mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates").

[2] Mortgage Certificates pledged pursuant to Funding Agreements will also be limited to GNMA, FNMA and FHLMC Certificates.

nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories; and (c) the relevant Indenture subjects the Bond Collateral, 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 Bond Trustee on behalf of the Bondholders. Further, neither the Owners nor the Bond Trustee will be able to impair the security afforded by the Mortgage Certificates because, without the consent of each affected Bondholder, neither the Owners nor the Bond Trustee will be able to: (a) Change the stated maturity on any Bond; (b) reduce the principal or rate of interest on any Bond; (c) change the priority of repayment on any Class of any Series; (d) impair or adversely affect the Mortgage Certificates; or (e) permit the creation of a lien ranking prior to or on parity with the lien of the related Indenture with respect to the Mortgage Certificates or otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

8. The sale of Equity Interests will not alter the payment of cash flow under any Indenture, including the amounts to be deposited in the collection account or any reserve fund. Pricing efficiencies mandate that the Bond Collateral does not substantially exceed the amount of collateral required to be pledged in order to satisfy the standards of the rating agency. Thus, the excess cash flow from the Bond Collateral which is available to Owners always will be far less than the cash flow from the Bond Collateral that is used to make principal and interest payments to Bondholders. Further, except for the limited right to substitute Mortgage Certificates, it will not be possible for Owners to alter the Bond Collateral, and, in no event will such right of substitution result in a diminution in the value or quality of the Bond Collateral. Although substitution may result in a different prepayment experience, the Bondholders' interests will not be impaired because: (a) The prepayment experience of any collateral will be determined by market conditions beyond the Owners' control which market conditions are likely to affect similar mortgage certificates in similar fashion; (b) the Owners' interests are likely to be different from those of Bondholders with respect to prepayment experience; and (c) to the extent that the Owners may cause substitution 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.

9. An election by an Issuer to be treated as a real estate mortgage investment conduit ("REMIC") will have no effect on the level of expenses that would be incurred by such Issuer. Administrative fees and expenses will be paid or provided for in a manner satisfactory to the agency rating the Series and subject to Condition D below.

10. The proceeds from the sale of the Bonds will be used to facilitate the long-term financing of residential mortgage loans through the reinvestment of the proceeds in housing or housing-related assets. The relief requested is necessary and appropriate in the public interest because neither Residential nor any Affiliate is the type of entity to which the provisions of the 1940 Act were intended to be applied, the safeguards afforded to Bondholders fully protect investors, prospective purchasers of Equity Interests will be sophisticated in the area of mortgages and mortgage-backed assets and limited in number, and the proposed activities will promote the public interest by facilitating the financing of housing by supplying capital for reinvestment in the real estate and mortgage markets.

Conditions To Order

Applicants agree that the requested order may be expressly conditioned upon the following:

A. Conditions Relating to the Bond Collateral

(1) Each Series 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. The Mortgage Certificates will be limited to GNMA, FNMA, and FHLMC Certificates.

(3) If new Mortgage Certificates are substituted as security for a Series, the substitute collateral must: (i) Be of equal or better quality than the Mortgage Certificates replaced; (ii) have similar payment terms and cash flow as the Mortgage Certificates replaced; (iii) be insured or guaranteed at least to the same extent as the Mortgage Certificates replaced; and (iv) meet the criteria set forth in Conditions A (2) and (4). New Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates. New Funding Agreements may be substituted for the initial Funding Agreements only if the substitution of the Mortgage Certificates securing such Funding Agreements would be permitted under this Condition.

(4) All Bond Collateral will be held by the Bond Trustee or on behalf of the Bond Trustee by an independent custodian. Neither the Bond Trustee nor custodian may be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405 ("Rule 405") of any Issuer. The Bond Trustee for each Series will be granted a first priority perfected security or lien interest in and to all Bond Collateral securing such Series.

(5) Each Series will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with any Issuer. The Bonds will not be "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(6) At least annually, an independent public accountant will audit the books and records of the Issuer and will report on whether the anticipated payments of principal and interest on the Bond Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Bond Trustee.

B. Conditions Relating to Variable-rate Bonds

(1) Each Series of adjustable or floating interest rate Bonds will have a set maximum interest rate.

(2) At the time of deposit of the Bond Collateral and during the life of the Bonds, the scheduled payments of principal and interest to be received by the Bond Trustee on all Mortgage Certificates 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 Series of adjustable or floating interest rate Bonds. Such Bond 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.

C. Conditions Relating to the Sale of Equity Interests

(1) Any Equity Interest in an Issuer will be offered and sold only to (i) institutions or (ii) non-institutions which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Institutional investors will have such knowledge and experience in financial and business matters as to be capable to evaluate the risks of purchasing Equity Interests and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, will purchase at least $200,000 of such Equity Interest and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Further, non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing an Equity Interest in such Issuer and will have direct, personal and significant experience in making investments in mortgage-related securities and because of such knowledge and experience, understand the volatility of interest rate fluctuations as they affect the value of mortgage-related securities and residual interests therein. Owners will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts or other institutional or non-institutional investors as described above which customarily engage in the purchase of mortgages and mortgage-related securities.

(2) Each sale of an Equity Interest will qualify as a transaction not involving any public offering within the meaning of section 4(2) of the 1933 Act.

(3) Each sale of an Equity Interest will prohibit the transfer of such Equity Interest if there would be more than 100 beneficial Owners of Equity Interests in an Issuer at any time.

(4) Each sale of an Equity Interest will require each purchaser thereof to represent that it is purchasing for investment and not for distribution and that it will hold such Equity Interest in its own name and not as nominee for undisclosed investors.

(5) Each sale of an Equity Interest will provide that (i) no Owner of such Equity Interest may be affiliated with the Bond Trustee for the relevant Issuer and (ii) no holders of a controlling (as that term is defined in Rule 405) Equity Interest in any Issuer may be affiliated with either the custodian of the Bond Collateral or the agency rating the Bonds of the relevant Series.

(6) If the sale of the Equity Interests results in the transfer of control (as the term "control" is defined in Rule 405) of any Issuer from the original owners of Residential or any Affiliate, the relief afforded by any Commission order granted on the application would not apply to subsequent Bond offerings by that Issuer.

D. Condition Relating to REMICs

The election by an Issuer to be treated as a REMIC will have no effect on the level of the expenses that would be incurred by any such Issuer. Any Issuer which elects to be treated as a REMIC will provide for the payments of administrative fees and expenses as set forth in the application. Each Issuer will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of the method selected.

E. Special Condition

Residential undertakes to secure each Affiliate's consent to comply with all of the applicable representations and conditions set forth above and more specifically described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-7252 Filed 4-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15642; File No. 812-6618]

RXR U.S. Government Fund, Inc.; Application for Exemption

Date: March 26, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

Applicant: RXR U.S. Government Fund, Inc.

Relevant Sections of Act: Exemption requested, pursuant to section 6(c) of the Act, from the provisions of section 19(b) of the Act and Rule 19b-1 thereunder.

Summary of Application: Applicant seeks an order to permit it to make monthly distributions of long-term capital gains realized on certain options transactions.

Filing Date: February 6, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, an order disposing of the application will be issued. 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 no later than 5:30 p.m., on April 20, 1987. Requests must be in writing, setting forth the nature of your interest, the reasons for the request, and the issues contested. Applicant should be served with a copy of the request, either personally or by mail, and the request should also be sent to the Secretary of the SEC, along with proof of service (by affidavit or, the case of an attorney-at-law, by certificate). Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. James R. McCannon, RXR U.S. Government Fund, Inc., 30 Buxton Farm Road, Stamford, Connecticut 06905; Perez C. Ehrich, Townley & Updike, 405 Lexington Avenue, New York, New York 10174.

FOR FURTHER INFORMATION CONTACT: George Martinez, Staff Attorney, (202) 272-3024, or H. R. Hallock, Jr., Special Counsel, (202) 272-3030, 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 at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is an open-end, diversified, management investment company which is advised by RXR Capital Management. The primary investment objective of Applicant is to seek the highest level of current income that is consistent with the safety of principal. To achieve its investment objective, Applicant will be investing in debt obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities. In addition, Applicant plans to use options and futures to enhance return and protect principal. Applicant may also engage in the purchase and writing of put and call options on debt securities, and the purchase and sale of interest rate futures contracts and options on such futures contracts.

2. The Tax Reform Act of 1984 ("1984 Amendments") significantly altered the

tax treatment of capital gains from listed options on U.S. Government securities, all of which have become section 1256 contracts under the Internal Revenue Code. Prior to the 1984 Amendments, gain or loss recognized with respect to options on U.S. Government securities was treated as short-term capital gain or loss. As a result of the 1984 Amendments, 60% of the gain or loss recognized with respect to listed options is now treated as long-term capital gain or loss and 40% is treated as short-term capital gain or loss. The characterization of 60% of the gain from certain options transactions as long-term capital gain would cause the restrictions contained in section 19(b) of the Act and Rule 19b–1 thereunder to apply to such transactions.

3. The purposes of section 19(b) and Rule 19b–1 thereunder would not be served by the strict application of these provisions to 60% of the capital gains generated by certain options transactions. The characterization of the gains as long-term capital gains will not cause shareholders to confuse such gains with dividends out of net interest income, since Applicant declares dividends of substantially all of its interest income, after expenses, on each day the New York Stock Exchange is open for business, and distributions of long-term capital gains on options transactions would be made monthly, along with distributions of short-term capital gains. Applicant will distinguish distributions of capital gains from distributions of net interest income in an accompanying notice as required by section 19(a) of the Act and Rule 19a–1 thereunder. In addition, neither the investment decisions nor distribution practices of Applicant will be affected thereby. Finally, the monthly distribution of the long-term capital gains will not materially increase adminstrative expenses.

4. For the reasons stated, an order granting an exemption from section 19(b) of the Act and Rule 19b–1 thereunder would be appropriate as in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–7253 Filed 4–1–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–7986]

Issuer Delisting; Application to Withdraw From Listing and Registration; Texas American Energy Corp. (Common Stock, $0.10 Par Value Per Share, and $2.575 Cumulative Convertible Exchangeable Preferred Stock, No Par Value Per Share, $20.00 Liquidating Value)

March 27, 1987.

Texas America Energy Corporation of America ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The Company has approved a distribution to its common stockholders of nontransferable rights ("Rights") to purchase 8% Convertible Senior Subordinated Debentures ("Debentures") of Company. The Debentures, Rights and shares of common stock issuable upon conversion of the Debentures are the subject of a Registration Statement on Form S–1 of the Company which has not yet been declared effective by the Securities and Exchange Commission. The Company was advised by the Amex that the issuance of nontransferable rights was in violation of Company's listing agreement with the Amex. The Company was also advised by counsel that the risk of adverse tax consequences is increased if the Rights are transferable, and therefore the Company determined that the listing and registration of Company's Common Stock and Preferred Stock with the Amex be withdrawn. Trading in the Company's common stock and preferred stock on the Amex was suspended March 20, 1987.

The Company's common stock and preferred stock have been accepted for inclusion in the National Association of Securities Dealers Automated Quotation System (NASDAQ).

Any interested person may, on or before April 17, 1987 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–7254 Filed 4–1–87; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. Chapter 35):

SSS–1

Title: The Selective Service System Registration Form.

Need and/or use: Is used to establish a data base for use in supplying manpower to the military services during a military emergency.

Respondents: All 18 years old males who are United States citizens and those male aliens residing in the United States at the time of their 18th birthday are required to register with the Selective Service System.

Frequency: Registration with the Selective Service System is a one-time occurrence.

Burden: A burden of 2 minutes or less on the individual respondent.

SSS–2, 3B, 3V, 3C

Title: The Selective Service System Change of Information Correction/Change, Registration Status Forms and Vertification Letters.

Purpose: To insure the accuracy and completeness of the Selective Service System registration data.

Respondents: Registrants are required to report changes or corrections in dates submitted on SSS Form 1.

Frequency: When changes in a registrant's name or address occur.

Burden: The reporting burden is 2 minutes or less per report.

Copies of the above identified forms can be obtained upon written request to: Selective Service System, Reports Clearance Offices, Washington, DC 20435.

Written comments and recommendations for the proposed extension of clearance of the forms should be sent within 30 days of publication of this notice, to: Selective Service System, Reports Clearance Officer, Washington, DC 20435.

A copy of the comments should be sent to: Office of Information and Regulatory Affairs Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: March 30, 1987.

Wilfred L. Ebel,

Acting Director.

[FR Doc. 87-7297 Filed 4-1-87; 8:45 am]

BILLING CODE 8015-01-M

SMALL BUSINESS ADMINISTRATION

Region V Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Indianapolis Indiana, will hold a public meeting at 9:30 a.m. EST, Thursday, April 23, 1987, in the School of Business, Room 4095 at Indiana, University-Purdue University at Indianapolis, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert D. General, District Director, U.S. Small Business Administration, Minton-Capehart Federal Building, Room 578, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1584—(317) 269-7275.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 27, 1987.

[FR Doc. 87-7269 Filed 4-1-87; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Columbus, Ohio, will hold a public meeting at 9:30 a.m., on Wednesday, April 22, 1987, at the Envoy Inn, 35 West Spring Street, Columbus, Ohio 43215, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Frank D. Ray, District Director, U.S. Small Business Administration, 85 Marconi Boulevard, Fifth Floor, Columbus, Ohio 43215, (614) 469-7310.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 27, 1987.

[FR Doc. 87-7270 Filed 4-1-87; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Columbia, South Carolina, will hold a public meeting at 10:00 a.m., on Tuesday, May 5, 1987, at The Town House, 1615 Gervais St., Columbia, South Carolina, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John C. Patrick Jr., District Director, U.S. Small Business Administration, P.O. Box 2786, Columbia, South Carolina—(803) 765-5339.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 27, 1987.

[FR Doc. 87-7271 Filed 4-1-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1062]

Study Group CMTT of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group CMTT of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on April 22, 1987 in Conference Room 1K-221, Bell Communications Research, 435 South Street, Morristown, New Jersey. The meeting will begin at 9:30 a.m.

Study Group CMTT deals with the specifications to be satisfied by telecommunication systems for transmission of radio and television programs over long distances. The purpose of the meeting is to discuss preparations for the Interim Meeting of international Study Group CMTT in the Fall of 1987.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520; telephone (202) 647-2592.

Dated: March 19, 1987.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 87-7230 Filed 4-1-87; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1061]

Study Group B of the U.S. Organization for the International Telegraph & Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on April 21, 1987 at 10:00 a.m. in Room 856 (Commission Meeting Room) of the Federal Communications Commission, 1919 M Street NW., Washington, DC.

The purpose of the meeting is to review and/or approve the work of the Study Group B Drafting Group of the proposed revisions to the International Telecommunication Regulations; to discuss contributions submitted to Study Group B since the last meeting; to discuss and develop positions on other nations' contributions and to prepare and finalize United States contributions for the Preparatory Committee of the World Administrative Telegraph and Telephone Conference (PC/WATTC) to be held in Geneva from 27 April through 1 May 1987.

Members of the general public may attend the meeting and join in the discussion, subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plane to attend should so advise the office of Mr. Glenn E. deChabert, International Conference Staff, F.C.C., (202) 632-3214.

Dated: March 18, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 87-7231 Filed 4-1-87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[OMCS Notice No. 87-03]

Driver's Record of Duty Status

AGENCY: Federal Highway Administration (FHWA), DOT.

AGENCY: Notice of request for exemption.

SUMMARY: In accordance with section 206(f) of the Motor Carrier Safety Act of 1984, 49 U.S.C. App. 2505(f), the FHWA hereby provides notice that it has received several requests for an exemption from the requirements of 49 CFR 395.8 that drivers of commercial motor vehicles in interstate or foreign commerce record their hours of service in their own handwriting on a "record of duty status." In each case the motor carrier has requested that it be permitted to use an onboard computer which, among other things, will automatically record the driver's duty status.

These requests were made by ABT, INC., Maxwell, California; ANCHOR MOTOR FREIGHT, INC., and LEASEWAY MOTOR CAR TRANSPORT CO., Birmingham, Michigan; GOLDEN STATE FOODS CORPORATION, Greensboro, North Carolina; MARTIN-BROWER COMPANY, Des Plaines, Illinois; MARATHON PETROLEUM COMPANY, Robinson, Illinois; and GULF PRODUCTS DIVISION, BP OIL, INC., Jacksonville, Florida.

Copies of the petitions for exemption have been placed in the notice number file identified above. Interested parties may comment on these requests.

DATE: Comments must be received on or before April 17, 1987.

ADDRESS: All comments should refer to the notice number at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Office of Motor Carrier Standards, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202) 366–2999, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366–1355, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(49 U.S.C. App. 2505 and 3102; 49 CFR 1.48)

Issued on: March 27, 1987.

Robert E. Farris,

Deputy Administrator.

[FR Doc. 87–7209 Filed 4–1–87; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket No. S–802]

United States Lines, Inc.; Application for Permission To Operate in the Domestic Trade

Notice is hereby given that United States Lines, Inc. by application dated March 25, 1987, has applied for written permission under sections 805(a) and 506 of the Merchant Marine Act, 1936, as amended (Act), for the temporary transfer of four of the six vessels which USL currently deploys in its West Coast-Hawaii-Guam-Far East service to a purely domestic West Coast-Hawaii-Guam service under authority of section 506 of the Act. The two vessels not transferred would be removed entirely from the service. Section 506 permits the temporary transfer for up to six months of construction-differential subsidy (CDS) built vessels "whenever the Secretary determines that such transfer is necessary or appropriate to carry out the purposes of the Act." Consent by MARAD is to be conditioned upon payment to MARAD, upon such terms as MARAD may prescribe, of "an amount which bears the same proportion to the CDS paid by the Secretary as such temporary period bears to the entire economic life of the vessel."

USL believes that the facts surrounding this request clearly demonstrate that the temporary transfer of four vessels to domestic service is necessary and appropriate to carry out the purposes of the Act. Most importantly, USL believes that the transfer would help to preserve those vessels as an active element of the U.S.-flag merchant marine. USL is currently operating under Chapter 11 of the U.S. bankruptcy laws. USL has very recently entered into a letter of intent to transfer the six vessels currently deployed in its Far East Trans-Pacific service, plus three Lancer class vessels, to Sea-Land Service, Inc. In addition, USL has also entered into an agreement to transfer four vessels deployed in its South American Service to American Transport Lines, a subsidiary of Crowley Maritime . USL is working with these two operators to complete these transactions as soon as possible and obtain required approvals.

USL states that this request should not be viewed as anything other than very short-term. USL believes that it would operate these vessels domestically for between six and eight weeks, until the sale to Sea-Land can be completed. Due to the uncertainties inherent, however, USL requests authority for the full six months. USL claims that it would not be carrying any more cargo under this proposal than it already does.

The vessels were built with construction-differential subsidy and are operating under a long-term operating-differential subsidy contract. Written permission pursuant to section 805(a) of the Act is required. Payback of construction-differential subsidy will be required pursuant to section 506 of the Act.

It will also be necessary to extend the section 805(a) written permission granted to USL to its related company, United States Lines (S.A.) Inc., which is a holder of long-term operating-differential subsidy contracts.

Although publication of a Notice with respect to USL's request for permission under section 506 is not required, the Maritime Administration believes that it is appropriate to provide an opportunity for interested parties to comment on USL's application.

Any person, firm, or corporation having any interest in the application for sections 805(a) and 506 permission and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, by the close of business on Friday, April 3, 1987. If such comments deal with section 805(a) issues, they should be accompanied by a petition for leave to intervene. The petition should state clearly and concisely the grounds of interest and the alleged facts relied on for relief.

If no petitions for leave to intervene on section 805(a) issues are received within the specified time, or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of

the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program Nos. 20.804 Operating-Differential Subsidies (ODS) and 20.800 Construction-Differential Subsidies (CDS))

By Order of the Maritime Administrator.

Dated: March 27, 1987.

James E. Saari,

Secretary.

[FR Doc. 87-7238 Filed 4-1-87; 8:45 am]

BILLING CODE 4910-81-M

Maritime Administration; Meeting

AGENCY: Maritime Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: The Maritime Administration (MARAD) is issuing this notice to announce that the seminar on the "Potential for General Cargo in Offshore Barges and River/Ocean Vessels" will be held in Washington, DC in May 1987. The seminar will focus on potential for movements of general cargo by offshore barges and river/ocean vessels.

DATE: The seminar will be May 6–8, 1987 at the Capitol Holiday Inn, 550 C Street, Southwest, in Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Bristor, Project Manager, U.S. Department of Transportation, Maritime Administration, Office of Port and Intermodal Development, MAR-830, Room 7201, Washington, DC 20590, Tel. (202) 366-5468.

SUPPLEMENTARY INFORMATION: The Maritime Administration, the National Waterways Conference, Inc., and the Louisiana State University Ports and Waterways Institute are jointly sponsoring the seminar on the "Potential for General Cargo in Offshore Barges and River/Ocean Vessels."

The seminar is being held to address two water transportation concepts to achieve better port/fleet utilization and market expansion for general cargo. The movement of cargo by ocean going barges will be assessed to evaluate the potential for expansion, limitations and possible areas of application. Use of "river/ocean" vessels will also be evaluated. Use of this type of vessel, while successful in many areas of the world, is not common in the United States. The seminar will consist of a plenary session and two concurrent workshops with participants attending the alternate workshop on the second day. The discussions will be led by professionals who have first hand experience in either ocean barge and river/ocean vessel operations. The seminar is formulated to encourage audience participation and open communications. Seminar results will be incorporated into a study report to be prepared by the Louisiana State University Ports and Waterways Institute. Attendees will receive both the seminar proceedings and the study report from Louisiana State University.

Advanced registration for the seminar is required. The fee for the seminar is $215 for registration by April 24, 1987 and $150 after the date. A block of hotel rooms has been set aside until April 10, 1987 at a special seminar rate.

Dated: March 30, 1987.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 87-7237 Filed 4-1-87; 8:45 am]

BILLING CODE 4910-81-M

[Docket No. S-803]

Margate Shipping Co. and Chestnut Shipping Co; Application for Review and Readjustment

On February 4, 1987, Margate Shipping Company and Chestnut Shipping Company filed an application with the Maritime Subsidy Board for review and readjustment of the amounts of future payments of operating-differential subsidy ("ODS") under their ODS contracts by establishing, for each applicant for each year since the commencement of subsidized operation of its subsidized vessels, a fuel subsidy rate reflecting the difference between the costs incurred for fuel by applicants' vessels and the costs incurred for fuel by similar vessels operating under the registry of a foreign country.

The applicants state that they are at a competitive disadvantage with foreign flag vessels whose main engines are slow-speed diesel engines due to their vessels consuming more fuel than does the engines of their foreign flag competitors. They further state that their operating costs have greatly exceeded the operating costs of their foreign flag competitors and that they are at a competitive disadvantage without a fuel subsidy.

On February 5, 1987, the applicants petitioned the Maritime Subsidy Board to consolidate their application with similar applications by Aeron Marine Shipping Company, *et al.*, which were referred for hearing and docketed as S-797. On March 27, 1987, the Maritime Subsidy Board granted the applications.

In light of the fact that a fuel subsidy is of general interest to the industry, all interested parties wishing to comment in favor or against such applications or take other appropriate action with regard to such applications.

Any person wishing to comment on pending applications or to petition for other relief in Docket S-797, as it was consolidated, should do so by 5:00 p.m. on April 30, 1987. Any petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

Any comments or petitions should be filed with Administrative Law Judge John M. Vittone, Room 9400-A, 400 Seventh Street, SW., Washington, DC 20590.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating Differential Subsidies))

By order of the Maritime Subsidy Board.

Dated: March 30, 1987.

James A. Saari,

Secretary.

[FR Doc. 87-7236 Filed 4-1-87; 8:45 am]

BILLING CODE 4910-81-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Allison Herron, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: March 27, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Medicine and Surgery.
2. Application for Voluntary Service.
3. VA Form 10–7055.
4. This information is used in the selection, screening and placement of volunteers in the nationwide VA voluntary service program.
5. One time.
6. Individuals or households.
7. 36,000 responses.
8. 9,000 hours.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Nonsupervised Lender's Nomination and Recommendation of Credit Underwriter.
3. VA Form 26–8736a.
4. Nonsupervised lender's nomination of credit underwriter to evaluate loans proposed for guaranteed financing and used to determine the underwriter's qualifications.
5. On occasion.
6. Businesses or other for-profit; Small businesses or organizations.
7. 100 responses.
8. 33 hours.
9. Not applicable.

[FR Doc. 87–7190 Filed 4–1–87; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 63
Thursday, April 2, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., April 15, 1987.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Proposed rule amendments submitted by the Chicago Board of Trade authorizing an evening trading session.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–7345 Filed 3–31–87; 11:20 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., April 15, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–7346 Filed 3–31–87; 11:20 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., April 22, 1987.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the Philadelphia Board of Trade for designation as a contract market in Australian Dollar Futures

Application of the New York Cotton Exchange for designation as a contract market in the Five-Year U.S. Treasury Index

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–7347 Filed 3–31–87; 11:20 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., April 22, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–7348 Filed 3–31–87; 11:20 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., April 24, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Sales Practice Reviews.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–7349 Filed 3–31–87; 11:20 am]

BILLING CODE 6351–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 87–6701.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, April 2, 1987, 10:00 a.m.

The following item has been withdrawn from the Agenda: Proposed Financial Control and Compliance Manual for Presidential primary canidates receiving public financing.

* * * * *

DATE AND TIME: Tuesday, April 7, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATES AND TIME: Thursday, April 9, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUES: This meeting will be open to the public.

MATTERS TO BE CONSIDERED

Setting of Dates for Future Meetings.

Correction and Approval of Minutes.

Public Financing of Presidential Candidates—Revised draft of Proposed Rules.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 87–7396 Filed 3–31–87; 2:24 pm]

BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 52, No. 63
Thursday, April 2, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, and 529

Animal Drugs, Feeds, and Related Products; Change of Sponsor; Labeler Code Correction

Correction

In rule document 87-5378 beginning on page 7831 in the issue of Friday, March 13, 1987, make the following correction:

On page 7831, in the table, in the second column, in the tenth entry, "(intment" should read "Ointment".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 968

[Docket No. R-87-1308; FR-2262]

Indian Housing Program and Comprehensive Improvement Assistance Program--Cost Containment

Correction

In proposed rule document 87-2854 beginning on page 4349 in the issue of Wednesday, February 11, 1987, make the following correction:

On page 4349, in the third column, in **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the last line, the FR citation should read "51 FR 33898)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-07-4212-12; A-20347-B]

Exchange of Public and State Lands in Arizona

Correction

In notice document 87-3427 beginning on page 5193 in the issue of Thursday, February 19, 1987, make the following corrections:

1. On page 5193, in the second column, in the 26th line from the bottom of the page, "SW½" should read "SW¼".

2. On the same page, in the third column, in the 28th line, the first "SE¼" should read "SW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

[T.D. 87-40]

Customs Regulations Amendments Relating to Copyrights

Correction

In rule document 87-6486 beginning on page 9471 in the issue of Wednesday, March 25, 1987, make the following correction:

§ 133.42 [Corrected]

On page 9475, in the third column, in § 133.42(c), in the 10th line, "§ 133.42(a)" should read "§ 133.43(a)".

BILLING CODE 1505-01-D

federal register

Thursday
April 2, 1987

Part II

Department of the Interior

National Park Service

36 CFR Parts 1, 2, 4, 7, and 34
Vehicles and Traffic Safety; Final Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1, 2, 4, 7, and 34

Vehicles and Traffic Safety

AGENCY: National Park Service, Interior.
ACTION: Final rule.

SUMMARY: This rulemaking revises the National Park Service's (NPS) regulations pertaining to vehicles and traffic safety. The existing regulations have not been revised significantly since 1966 and are outdated in many respects. The final rule reflects the fact that the NPS generally considers the respective States to be the appropriate authorities to regulate traffic, and relies heavily on the adoption of State vehicle codes. The other objectives of this rulemaking are: (1) To delete unnecessary general and special regulations; (2) to eliminate the remaining references to the management categories formerly used to classify park areas; and (3), to make use of and expand the discretionary authority provided park superintendents in other NPS general regulations to protect resources and provide for public safety. These revised traffic regulations are limited to those that address problems or situations that are not addressed by individual State vehicle codes in a manner consistent with NPS agency missions and program objectives and to those that reflect a need to apply a consistent Servicewide regulatory approach. The results of this revision will provide a consistent, yet flexible approach to the management of traffic in park areas in the interests of public safety and the protection of park resources and public and private property.

EFFECTIVE DATE: June 1, 1987.

FOR FURTHER INFORMATION CONTACT: Andy Ringgold, National Park Service, Branch of Ranger Activities, P.O. Box 37127, Washington, DC 20013–7127, Telephone: 202–343–1360.

SUPPLEMENTARY INFORMATION:

Background

The NPS administers 337 park areas throughout the country under the broad statutory mandates to promote and regulate their use; to conserve the scenery, the natural and cultural objects and the wildlife therein; and to provide for their enjoyment in such manner as will leave them unimpaired for the enjoyment of future generations. Facilities developed by the NPS in park areas, including roads, are limited to those necessary to carry out these legislative mandates and to support the purposes of the individual park areas as defined by Congress.

Although visitors to the National Park System use a variety of access methods, the vast majority continue to rely on motor vehicles and roadways to reach park areas and to circulate within them. Consequently, the NPS has major program responsibilities in the areas of road construction and maintenance, traffic safety and traffic law enforcement.

The NPS currently administers almost 8,000 miles of roads within the National Park System that are open to the public. There is great variety in the nature and extent of park roads, ranging from very short lengths of unpaved secondary roadways, to well-developed road systems complete with spur roads, parking areas and overlooks, to parkways running for hundreds of miles through several states, to parkways used primarily as commuter routes in the Washington, DC area. Although the types of roadways vary, their designs are generally consistent with the policy of providing the public safe, but low profile, low impact and low speed road access that blends into its natural surroundings. NPS roads are intended to facilitate and enhance a visitor's leisurely enjoyment of a park area, not to detract from it. As a result, park roads generally relate simply and harmoniously with the topography and environment and are often more narrow and winding than roads outside parks that are designed to facilitate the movement of vehicles in the most direct and expeditious manner.

NPS general regulations pertaining to vehicles and traffic safety are codified in Title 36 of the Code of Federal Regulations (36 CFR) Part 4. These regulations apply to all units of the National Park System. Special regulations pertaining to traffic that apply only to individual park areas are codified in 36 CFR Part 7 and supplement provisions of the general regulations. The general regulations in Part 4 were last revised significantly in 1966. The evolution of the National Park System, new statutory authorities and directions, changes in vehicle technology and designs, modifications in recreation and visitation patterns and the general strengthening of State vehicle codes since then have all contributed to rendering many of the existing NPS regulations unnecessary, ineffective and/or otherwise outdated. This rulemaking represents an effort on the part of the NPS to strengthen its overall traffic safety program and, in the process, to update and clarify certain of its traffic regulations and delete others that are unnecessary.

Unnecessary regulations are those whose provisions are duplicated by the respective State vehicle codes or those that contain provisions that can be imposed by park superintendents without a rulemaking, using discretionary authority provided by general regulations promulgated in 1984 and codified elsewhere in 36 CFR. The existing regulations in Part 4 that are being deleted or restructured as part of this rulemaking are listed in the Organizational Summary found later in this document. The NPS is also deleting from Part 7 a number of special regulations that have been rendered unnecessary by other provisions of this rulemaking and is making minor revisions to provisions in Part 34 that cross-reference regulations in Part 4. Further discussion on these matters is found in the Section-by-Section Analysis portion of this document.

The NPS intends that the foundation of its vehicle and traffic safety regulations be the nonconflicting provisions of the respective State vehicle codes, which are adopted in § 4.2. NPS regulations supplementing those codes are limited to ones that are necessary to resolve visitor safety and/or resource protection concerns that cannot be satisfied on a Servicewide basis by applying and enforcing State vehicle code provisions.

Summary of Public Comments

The NPS published a proposed rule in the **Federal Register** on June 16, 1986 (51 FR 21840), with a sixty-day period provided for public review and comment. That rulemaking was based largely on suggestions submitted by NPS field managers and their staffs and their suggested changes to a draft of the rule that was circulated for Servicewide internal review in the fall of 1985. This final rule reflects further refinements and changes made as a result of public and internal NPS comments received during the comment period.

The NPS received a total of 148 timely written comments in response to publication of the proposed rule. Comments were received from 11 individuals, 7 organizations, 14 representatives of the legal/judicial communities and 116 offices or individuals within the NPS. No comments were received from State agencies.

Analysis of Comments

The following section of this rulemaking contains details of the comments received, the NPS response to the issues raised by commenters and general descriptions of any revisions

made to the regulatory text as a result. A detailed discussion of the text and the regulatory intent of the final regulations, including revisions made to the proposed rule, appears in the Section-by-Section Analysis of this rulemaking. Unless otherwise noted, section numbers used in these discussions refer to the section numbers used in the final rule.

Miscellaneous/General Comments

The NPS received a number of comments of an editorial nature, most of which were adopted. One comment was received objecting in general to the deletion of references to administrative categories from NPS regulations because of the commenter's feeling that such action has resulted in a more restrictive approach to the management of recreation areas. The last remaining references to the categories of natural, historical and recreation areas, formerly used to classify park areas for purposes of guiding management, protection and visitor use activities, were found in the former NPS regulation pertaining to bicycles (36 CFR 4.3). As explained in the proposed rule, the NPS ceased using these categories in 1978 and subsequently removed all references to them from its Management Policies (1978) and general regulations (1983–84). The question whether or not to reinstitute the use of these administrative categories for purposes of managing park areas is an issue outside the scope of this rulemaking. The references to these categories have been deleted from the bicycle regulation in the final rule (§ 4.30).

Several comments were received that pertained to regulations in 36 CFR Parts 2, 3 and 5 that were not reviewed as part of the proposed rule. The NPS did not consider these comments since they addressed issues that were clearly outside the scope of this rulemaking. Another comment suggested that the NPS seek legislation to revise the penalty provisions that apply to NPS regulations. The NPS has attempted to do so on several occasions, without success.

A comment that suggested developing a regulation pertaining to mopeds was also not adopted. At this time there is no demonstrated need for a general regulation addressing the use of such vehicles. Superintendents who are faced with problems involving these vehicles may apply State law and/or establish conditions for their use under the authority of 36 CFR 1.5.

Finally, one commenter pointed out that the proposed rule did not include a consideration of whether the regulations in Part 4 would apply on non-federal lands within park areas. The commenter suggested that, in order to provide necessary public safety services on non-federal roads where the NPS is the only reasonable source available for such services, all of the regulations in Part 4 should be made applicable to such lands. The NPS gave this suggestion serious consideration and has adopted it in the final rule as section 4.1. The regulations in Part 4 have been made applicable on all roadways and parking areas within park areas that are under the legislative jurisdiction of the United States and that are open to public traffic, i.e. those that are located on lands within a park area that are not owned or administered by the NPS but over which the State has ceded to the NPS either concurrent or exclusive jurisdiction. However, the NPS intends that the enforcement of these regulations on nonfederal lands be limited to actions necessary to provide essential public safety services to the public and the landowner. The inclusion of this new section has resulted in the renumbering of §§ 4.1, 4.2 and 4.3 of the proposed rule to 4.2, 4.3 and 4.4, respectively, in the final rule.

Part 1—General Provisions

Section 1.2(e) Applicability and scope.

This paragraph was proposed as § 1.2(f), but a rulemaking that has been completed in the interim has removed another paragraph in this section and resulted in a redesignation of this paragraph. The NPS received numerous comments pertaining to this paragraph, all of which supported the proposal, but many of which urged that the terms "standard non-motorized or motorized wheelchair" be defined. Another person suggested that the term "physically handicapped" was too broad when applied to persons that require a wheelchair for locomotion and that the term "mobility-impaired" was more appropriate. The NPS has adopted these suggestions in the final rule, using the terms "mobility-impaired", "manual wheelchair" and "motorized wheelchair" in this paragraph and defining the last two terms in § 1.4.

Section 1.4 Definitions.

Two comments were received addressing definitions other than wheelchairs. One commenter suggested defining the term "alcoholic beverage", another the term "motor vehicle accident". The NPS considers these common terms easily and consistently understood and, as used in the final rule, not necessary to define.

Section 1.8 Information collection.

One commenter indicated that § 4.4 had been omitted from the list of information collection references in this section. It has been included in the final rule.

Part 2—Resource Protection, Public Use and Recreation

Section 2.18 Snowmobiles.

Only one comment was received pertaining to this section, a suggestion that § 4.21 be included in the list of regulations in Part 4 that apply to the operation of a snowmobile. The NPS agrees with this suggestion as a means of improving public safety programs in winter recreation areas and has revised this section accordingly.

Section 2.33 Report of injury or damage.

The comments that pertained to this section addressed two issues: that the relationship between this section, § 3.4, and § 4.4 was confusing and that the $100 damage threshold for reporting an incident was too low. In the final rule the NPS has attempted to clarify the fact that § 2.33 applies to the reporting of incidents other than motor vehicle accidents and boating accidents by revising the text of § 2.33 and revising the heading of § 4.4. The threshold for reporting incidents resulting in property damage was raised to $300 to encourage the reporting of significant incidents but to alleviate the existing burden on park visitors to report minor ones.

Section 2.35 Alcoholic beverages and controlled substances.

One commenter suggested that the NPS take steps to phase out the sale of alcoholic beverages in all park areas. Such action was viewed as being much more restrictive than necessary in order for the NPS to manage public safety problems that occur as a result of alcohol consumption in park areas.

Several comments were received suggesting additions to the list of specific public use areas within a park area that can be closed by the superintendent to the consumption of alcoholic beverages. After reviewing the existing list and the suggested additions, the NPS has reworded this section using the phrase "all or a portion of a public use area or public facility" to replace the detailed listing of specific locations and types of public use sites within a park area that can be closed by a superintendent after meeting the prerequisite conditions of this regulation. However, the scope of this

particular closure authority remains less than parkwide.

Another commenter pointed out the difficulty of enforcing a closure pertaining solely to the *consumption* of alcoholic beverages and described the fine line that can be drawn between a person actually consuming an alcoholic beverage and one merely carrying an open container of an alcoholic beverage but not observed in the act of drinking. This commenter suggested that, if incidents of aberrant behavior related to alcohol consumption in an area have reached the proportions required to justify a closure under this section, the superintendent should also have the discretion to prohibit carrying an open container of an alcoholic beverage as well. The NPS agrees with this suggestion in that there would be no additional burden imposed on the public if, in an area already closed to the consumption of alcoholic beverages because of incidents related to alcohol abuse, the area is also closed to the possession of an open container of an alcholic beverage. Such additional closure authority would benefit public safety programs, contribute to greater enjoyment of park facilities by visitors and facilitate NPS enforcement efforts. This section has been revised to add this closure authority and to cross-reference the conditions in section 4.14 under which an open container may legally be stored in a motor vehicle in an area closed to the possession of an open container pursuant to this section.

Part 4—Vehicles and Traffic Safety

Section 4.2 State law applicable.

One commenter expressed concern that the regulations, with their heavy reliance on adopting State law, would increase the workload of attorneys prosecuting cases in Federal court because of their general unfamiliarity with State law. Since both the existing regulations and this revision contain provisions adopting State law, the NPS does not anticipate a significant increase in attorney workload. The number and the relative complexity of existing NPS regulations in Part 4 that are being deleted in this rulemaking in favor of adopting corresponding sections of State law are not significant.

Another commenter suggested that adopting State law alone did not provide regulations that were broad enough in scope, but that local laws should be adopted as well. The term "State law" as defined in § 1.4 includes regulations of State political subdivisions.

One commenter suggested that the NPS adopt applicable tribal law within park areas that are located within the exterior boundaries of Indian reservations. The NPS considers State law and NPS regulations adequate to govern traffic safety programs in those areas and intends that they apply to all persons and vehicles within those parks.

Several commenters requested clarification of the NPS authority used to adopt State law and questioned applying NPS penalty provisions to violations of State laws that might have different penalty provisions attached. Discussions of these issues are found in the Section-by-Section Analysis of this rulemaking.

Section 4.3 Authorized emergency vehicles.

Several comments were received that suggested requiring that authorized emergency vehicles be operated and equipped in compliance with NPS policies and standards. This section was developed to establish basic requirements for the operation of authorized emergency vehicles (as defined in section 1.4) and to provide their operators a limited number of qualified exemptions from traffic regulations that are considered essential in order for them to carry out their public safety responsibilities. Beyond these provisions, the operators of NPS emergency vehicles must comply with NPS policy, the operators of emergency vehicles owned by other Federal agencies must comply with their respective agency policies and the operators of emergency vehicles owned by State agencies and private organizations must comply with State law and their respective agency/organization policies. Vehicles must also be equipped in accordance with respective agency policies and for non-federal vehicles, in accordance with State law. A requirement that all operators and vehicles be bound by NPS policies was considered unnecessary and inappropriate.

Several other commenters expressed concern that this section did not adequately stress the operator's responsibility to consider individual and public safety. The NPS feels that the provision requiring the operator to give due regard for the safety of persons and property is a reasonable condition to impose on operators of emergency vehicles and provides appropriate levels of protection for the public, the operator and property. This section is published unchanged.

Section 4.4 Report of motor vehicle accident.

The heading of this section was revised in response to requests to clarify the difference between the accident reporting requirements of this section and those of § 2.33. Several commenters suggested revising the text of this section to focus on the moving of a vehicle involved in an accident, not just its towing, and to clarify reporting responsibilities in cases when the operator is incapacitated. Other commenters pointed out that there are certain conditions under which it is appropriate and/or necessary for an operator to move a vehicle that has been involved in an accident and that the regulation did not provide such flexibility. The NPS has adopted these suggestions and has revised this section to reflect these concerns.

Three comments were received suggesting that various damage threshholds be established for the reporting of motor vehicle accidents. The NPS agrees that a requirement to report all motor vehicle accidents regardless of the amount of property damage involved may sometimes cause inconvenience for vehicle operators involved in minor accidents. However, this inconvenience is outweighed by the benefits to the operators involved of assuring that appropriate identification and insurance information is exchanged and to park visitors in general that all information that could be useful in identifying and correcting traffic engineering and safety problems in a park area is made available to the superintendent. Requiring an operator to report a minor vehicle accident does not carry a corresponding requirement that a detailed accident investigation be conducted by NPS personnel; basic information pertaining to such accidents can be recorded very easily. The final rule was not revised in this respect.

A suggestion that this section be revised to address operators' leaving the scene of an accident and operator responsibilities following a collision with an unoccupied vehicle was not adopted because such provisions are addressed by State law.

Section 4.10 Travel on park roads and designated routes.

Two commenters opposed the provision in this section that restricts the designation of routes for off-road vehicle (ORV) use to national recreation areas, national seashores, national lakeshores and national preserves, stating that this provision unreasonably restricts opportunities for visitors to enjoy some park areas and is inconsistent with the earlier NPS decision to eliminate the use of administrative categories to manage park areas. The references to these

types of park areas are found in the former regulation pertaining to ORV use (§ 4.19) and were originally included in a 1974 rulemaking when the NPS revised its regulations to comply with the provisions of Executive Order 11644, which still governs ORV use on public lands. At that time the NPS used the administrative categories of park areas (natural, historical and recreational) to guide the management of park areas. The NPS determined that in order to comply with the provision of the Executive Order limiting the designation of ORV routes in units of the National Park System to areas where such use would not adversely affect their natural, aesthetic or scenic values, the designation of ORV routes could take place only in recreation areas. When the NPS decided no longer to use the administrative categories as management tools, this had no effect on the original determination made concerning the areas where ORV use could take place without adversely affecting park values. ORV use is an appropriate use of park areas that were established to provide recreational opportunities for the public, when that recreational activity is managed to provide for the protection of park resources and visitors. National recreation areas, seashores, lakeshores and preserves are park areas that have been established by Congress not only to conserve their natural, historic and scenic values, but also to provide outdoor recreational opportunities for visitors. ORV use may be appropriate in those areas, but not in park areas whose primary purposes, as established by Congress, do not include outdoor recreation. This provision remains in the final rule but results in no greater restriction on ORV use than has existed since 1974.

A suggestion was received to address vehicles that are parked outside of designated areas. This proposal was not adopted since a vehicle first must be operated outside of a designated area in order to be parked there.

One commenter objected to the word "unreasonable" as used in paragraph 4.10(c)(2) as being vague. The NPS intends this term, when used to describe damage to a park road or route, to mean damage to a degree beyond that which would ordinarily be expected under conditions existing at the time.

Concerns were also expressed that this regulation does not address licensing or registration requirements for off-road vehicles and their operators nor the operation on park roads of vehicles that are not street-legal. The NPS intends that such issues be resolved by applying State law or, if State law does not adequately address the local situations faced by individual park managers, that the discretionary authority provided superintendents in 36 CFR 1.5 to impose closures, conditions or restrictions on a use or activity be used to manage these activities.

Finally, one commenter pointed out that Executive Order 11644 authorizes the designation of areas for ORV use, not just routes. The NPS agrees and has added this term to the text of the final rule to assist individual park managers in describing in special regulations specific locations that are open to ORV use but that do not lend themselves to designation in terms of well-defined routes. However, this change is a clarification of terms only and does not reflect a relaxation of NPS policies pertaining to the management of ORV use.

Section 4.11 Load, weight and size limits.

No comments were received concerning this section; its text is published unchanged.

Section 4.12 Traffic control devices.

No comments were received concerning this section; its text is published unchanged.

Section 4.13 Obstructing traffic.

Two comments were received from persons who felt that the proposed rule was more restrictive than the existing regulation in that it prohibits stopping a vehicle on a park road except where authorized rather than allowing stopping except where prohibited. However, that is not the case. Both versions are similar, but the proposed rule provides greater discretion to superintendents (as defined in § 1.4) to allow a vehicle to stop on a park road. The superintendent's authorization need not take the form of a sign; a ranger's decision to allow a vehicle operator to stop on a park road to take a photograph also constitutes authorization by the superintendent. But if the same action by the operator creates a hazard or interferes with traffic flow, the ranger may use this section as the basis for action to resolve the situation.

Another commenter felt that the phrase "interfere with the normal flow of traffic" was too general and should include a qualifying provision addressing a specific number of vehicles being backed up or delayed. The NPS feels that such a provision would be too rigid, would not allow for the variety of types of roads and road conditions found within the National Park System and would conflict unnecessarily with provisions of State vehicle codes. The regulation as written provides an appropriate degree of flexibility that is necessary to manage traffic effectively within park areas. This section is published unchanged.

Section 4.14 Open container of alcoholic beverage.

This section has been changed in response to suggested improvements submitted by several persons. The first suggestion implemented was to address the carrying or storing of an open container within a motor vehicle anywhere in a park area rather than limit the scope of this section to a vehicle upon a park road, parking area or designated off-road vehicle route. Another revision clarifies the fact that the NPS intends the prohibitions of this section to apply to an open container carried in the living quarters of a motor home or camper but not to an open container that is stored in such areas.

A new paragraph was also added stressing that although each occupant of a motor vehicle is responsible for complying with the provisions of this section that pertain to carrying an open container, the motor vehicle operator is the person responsible for complying with the open container storage provisions of this section. This provision was added to assign responsibility for an unlawful open container in a motor vehicle that is not being carried by any of the vehicle occupants.

An exemption was discussed in the preamble of the proposed rule but was not included in the original regulatory text of this section, authorizing a person to carry an open container in a motor vehicle when the vehicle is parked at a campsite. This provision has been clarified and also included as a new paragraph in the final rule as a result of a comment submitted.

Finally, the phrase "readily accessible to" was added in response to a suggestion to describe more clearly the areas within a motor vehicle that are near the vehicle's occupants and that are considered unsuitable for storage of an open container.

One commenter pointed out that prohibiting the carrying of an open container but not an empty container of an alcoholic beverage might encourage a person to consume the entire contents of a container to avoid the possibility of violating this section. Although this situation might occur occasionally, the NPS does not feel that a detailed NPS regulation describing the conditions under which empty containers may be carried or stored in a motor vehicle is necessary or appropriate. The NPS

intends to leave the issue of carrying and storing empty containers of alcoholic beverages to be addressed by State law.

The final version of this section has been reorganized significantly to accommodate the revised text.

Section 4.15 of the proposed rule: Safety belts.

The NPS received numerous comments pertaining to this section, the vast majority of which opposed promulgation of this regulation. Reasons given for opposition included individual philosophical grounds, inappropriate federal role, conflicts created with State law, the absence of a demonstrated NPS need, and deviation from the basic NPS objective as stated in the proposed rule to use State law as the basis for NPS traffic regulations.

Since publication of the proposed rule a number of additional states have enacted mandatory safety belt legislation; over half of the states have now enacted legislation that is either in effect or that will go in effect in 1987. All states have mandatory child restraint laws in effect. These provisions of State law apply within park areas located in those states and can be adopted by the NPS under § 4.2. As additional states enact safety belt laws, they too can be adopted by the NPS.

The NPS has reevaluated this section of the proposed rule, concentrating particularly on the need for it, the creation of conflicts with State law and the effects of those conflicts on visitors and NPS enforcement staffs. The NPS supports the use of appropriate restraint systems by vehicle occupants but agrees that there is no greater need for the use of restraints within park areas than exists outside parks. As proposed, the NPS regulation would have superceded State law pertaining to safety belts in park areas located within states with mandatory safety belt legislation in effect and also would have applied in park areas located within states without safety belt legislation. Significant conflicts would have been created in both types of situations. On one hand, park visitors would have been faced with a federal regulation that differed from the State law in effect outside the park, with no apparent need for the discrepancy. NPS staffs would have been faced with the task of informing park visitors of the existence of the different federal regulation and with enforcing its provisions. On the other hand, park visitors would have been subject to a unique federal regulation, with no similar requirement in effect outside the park, and with no apparent need for its existence. Serious conflicts and management problems would result in both types of situations, with many NPS staffs faced with the tasks of providing notice to visitors and enforcing the NPS regulation in park areas with multiple access roads or on access roads that wind in and out of park areas.

Given the stated NPS position that the respective states are generally the appropriate authorities to regulate traffic, the absence of a need for a restraint requirement that is specific to occupants of vehicles within park areas and the conflicts and confusion for both visitors and NPS staffs that a NPS safety belt regulation would create, the NPS has omitted this regulation from the final rule and will rely on the individual states to determine whether mandatory safety belt legislation is needed and appropriate. Where such legislation is enacted, the NPS will enforce its provisions in park areas under 36 CFR 4.2.

Section 4.20 Right of way.

Three comments were received pertaining to this section. The NPS has adopted a suggestion to include dog sleds as a vehicle to which a motor vehicle operator must yield the right of way by including the phrase "vehicles drawn by animals". The NPS did not adopt a suggestion to include authorized emergency vehicles since that issue is adequately addressed by State law.

One commenter pointed out hazards associated with mixing motor vehicle traffic with other traffic and suggested that encouraging such use by providing the right of way to non-motor vehicle traffic was inadvisable. This section does not provide blanket authorization for pedestrian traffic, stock, or vehicles drawn by animals to mix indiscriminately with motor vehicle traffic. The superintendent retains both the authority and the responsibility to regulate these activities in the interest of public safety; however, where they are authorized in the same location, this section establishes who must yield the right of way.

Section 4.21 Speed limits.

Very few comments were received concerning this section. One person suggested including park tour roads in the category of park roads having a 25 mph speed limit. This is not necessary since the superintendent has the authority to establish speed limits other than those specified in paragraphs (a)(1) through (3). Another person suggested prohibiting the use of radar detectors. The NPS has decided that this is an issue that should be addressed by State law.

A commenter also suggested that the basic speed limits described in paragraphs (a) (1) through (3) are policies provided for the guidance of superintendents that should not be codified in the CFR. Although these limits do serve as basic policy, they also provide a Servicewide standard for speed limits on similar types of park roads. The NPS feels that having these standards codified in regulations helps achieve consistency in establishing speed limits throughout the National Park System and provides appropriate notice to vehicle operators and other interested persons concerning basic speed limits in park areas. The text of this section remains unchanged.

Section 4.22 Unsafe operation.

Three comments addressed this section. One opposed the provision allowing persons to ride on the floor of a truck bed equipped with sides as being an unsafe activity that conflicted in principle with the concern for safety reflected in the provision that required all occupants of a motor vehicle to wear a safety belt. Although the NPS recognizes that persons seated in such a manner may be at risk in case of collision, this method of riding in a truck is very common and accepted in many areas of the country. The NPS has retained this provision in the final rule, but conditioned it so as not to conflict with State law.

Another commenter pointed out that there are some conveyances such as trams and other specialized trailers that are designed specifically for carrying passengers while being towed and suggested that the prohibition in paragraph (b)(4)(i) be modified to provide for such vehicles. The NPS agrees and has revised this paragraph accordingly.

Section 4.23 Operating under the influence of alcohol or drugs.

All comments submitted pertaining to this section supported the regulation but many suggested improvements or requested clarifications of certain provisions. Also in response to a comment, the NPS has made minor editorial changes in several paragraphs to eliminate text that provided instructions to the judiciary. That text is appropriate in provisions passed by a legislative body but not in a regulation promulgated by an executive agency. Those provisions now are worded to reflect the NPS regulatory intent instead.

The NPS has slightly revised the definition of the term "operator" in § 1.4 of the final rule in response to suggestions submitted to include

consideration of the person who is in actual physical control of a motor vehicle. Rather than insert this phrase in several paragraphs in § 4.23, the NPS has revised the term "operator" to include the person who is in actual physical control of a motor vehicle. The term "operator" is now applicable whether the vehicle is in motion or not.

One commenter stated that the NPS was imposing an unnecessary burden of proof by requiring in paragraph (a)(1) a showing that the operator is incapable of *safe* operation. The NPS feels that this term is an important element of this paragraph and should be the focus of investigative and prosecution efforts to prove that a motor vehicle operator is operating under the influence. This element can be shown through descriptions of personal and witness observations, physical evidence and the results of field tests and quantitative tests.

A number of commenters expressed concern about potential confusion and administrative complications arising in situations where State law establishes more restrictive alcohol concentration levels than those established in the proposed NPS regulation. In order to prevent such situations from arising, the NPS has revised paragraph (a)(2) of the final rule to adopt alcohol concentrations established by State law *but only if they are more restrictive than the NPS levels established in that paragraph.*

Several commenters also requested clarification of the alcohol concentration levels specified in paragraph (a)(2), suggesting the inclusion of equivalent measures. The NPS recognizes that some State laws establish levels using other measures. However, the NPS has used both the standard concentrations and standard units of measure contained in the Uniform Vehicle Code. Conversion tables are readily available for the use of enforcement personnel, attorneys and U.S. Magistrates who are more familiar with other systems of measure. The applicability of equivalent measures is understood and need not be specified in the regulation

Several commenters addressed paragraph (c) which pertains to testing, questioning whether the NPS intended the provision that prohibits refusing to submit to a test to constitute a separate violation. Others suggested that this provision be expanded to include refusal to submit to field sobriety tests as well. Another commenter suggested that the term "refusal" be replaced with the word "failure". The NPS does intend this provision to describe a prohibited action, violation of which constitutes a criminal violation that is separate from, and in addition to, the prohibitions contained in paragraph (a). In order to clarify and emphasize this fact, the prohibitory clause has been broken out as a separate paragraph in the final rule. However, the NPS did not adopt the suggestions to expand this provision to include refusal to submit to field sobriety tests or to revise the principal element from refusal to submit to a test to failure to submit to a test. The NPS feels that it would not be appropriate or legally supportable to require a motor vehicle operator to submit to field sobriety tests. Such physical agility tests are often conducted prior to the existence of probable cause to arrest an operator for operating under the influence and contribute to establishing that probable cause. Likewise, broadening the prohibition to cover failure to submit to a test would encompass many passive situations where the operator might be unable to submit to a test for reasons beyond his or her control. The NPS intends this provision to encompass only situations where there is an active refusal by the operator to submit to a test.

Several comments concerned quantitative tests, the type of equipment used and the qualifications of the persons administering the tests. The NPS has not adopted any of the suggestions submitted that would serve to lower the standard set in the proposed rule for reliability of testing equipment and certification of equipment operators. Nor has the NPS adopted suggestions to specify exactly who may administer tests that involve drawing blood and relieving those persons of liability in connection with those activities. Those issues are addressed by State law. Liability is determined on the basis of State and Federal statutory law and is not an appropriate subject for these regulations.

Finally, several commenters questioned the usefulness of the presumptions found in paragraph (d). The NPS intends this paragraph to serve as notice to all parties concerned (vehicle operators, enforcement personnel, attorneys, judicial officials) that, although the results of quantitative tests may indicate that the alcohol concentration in the blood or breath of a motor vehicle operator is less than the limits established in paragraph (a)(2), the operator may still be convicted of violating paragraph (a)(1) based on other evidence.

Section 4.30 Bicycles.

Several persons submitted comments indicating that various issues involving the use of bicycles such as speeding, reckless operation, conflicts with pedestrian use, operation against traffic, etc., were not specifically addressed by this section. The NPS intends such problems to be resolved by applying State law or paragraph (c) of this section which makes a bicycle operator subject to most of the other traffic regulations in Part 4.

Other persons suggested that the superintendent, in order to be able to respond to local problems and situations, should be provided the authority to establish special conditions or restrictions governing bicycle use. That authority is already available to the superintendent under 36 CFR 1.5.

Several commenters pointed out that there were other sections in Part 4 other than § 4.10 that did not apply to the operation of a bicycle and that should be added to paragraph (c). In response, the NPS has added several sections to this paragraph in the final rule. Section 4.14 was added to the list of regulations that do not apply to bicycle operation since the methods available for storing an open container of an alcoholic beverage on a bicycle are limited and all constitute carrying an open container. However, paragraph (d)(4) has been added to this section to replace the open container provision, prohibiting the operation of a bicycle while consuming an alcoholic beverage or while carrying in hand an open container of an alcoholic beverage.

Other comments addressed both sides of the issue regarding the provision that prohibits possession of a bicycle in a designated wilderness area. The NPS position remains as discussed in the proposed rule. Bicycles are considered a mechanical form of transport that, in addition to the use of motor vehicles and motorized equipment, is specifically prohibited in designated wilderness areas by the Wilderness Act [16 U.S.C. 1133(C)]. Paragraph (d)(1) was included in this section to reflect that prohibition and to attach a penalty to violations of this statutory provision.

Several persons questioned the need for the rulemaking requirement in paragraph (b) in order for the superintendent to designate a route for bicycle use outside of developed areas and special use zones. Although the NPS recognizes that the rulemaking process is more cumbersome and time-consuming than the local designation process favored by some persons, the NPS continues to support the rulemaking process as the decisionmaking method that provides the greatest opportunity for public review of a proposal. Since a proposal to designate a bicycle route outside of developed areas has the

potential to generate significant public interest, controversy and questions related to visitor use conflicts and environmental impacts, the NPS feels that the public involvement associated with the rulemaking process would be of great benefit to the superintendent in arriving at a decision. A decision made by local designation would not provide the superintendent the same degree of public involvement. This provision remains unchanged in the final rule.

Section 4.31 Hitchhiking.

The comments received in response to this section were mixed. Some persons supported a total prohibition of hitchhiking; others preferred a regulation that allowed hitchhiking except where prohibited. The primary concern of the NPS in developing this regulation is public safety. Hitchhiking can be a very hazardous activity, exposing the hitchhiker to dangers from motor vehicles and motor vehicle occupants and exposing motor vehicle occupants to dangers from other motor vehicles and from hitchhikers. However, a strict prohibition of hitchhiking would not alter the fact that, in many park areas, a certain number of visitors depend on hitchhiking as a means of traveling to, from and within the park and would continue to engage in the activity regardless of the prohibition. Recognizing this fact, the NPS supports a regulation that generally prohibits hitchhiking but that provides the superintendent the discretion to designate areas where and establish conditions under which hitchhiking may take place and be managed to reduce the levels of hazards involved.

This section is published unchanged.

Organizational Summary

The NPS has prepared the following organizational summary to assist in the review and analysis of the revisions to 36 CFR Part 4 that are reflected in this rulemaking.

Old section	New section
4.1 State law applicable	4.2.
4.3 Bicycles	4.30.
4.4 Commercial towing service	4.4.
4.5 Driver's license	Deleted in favor of State law.
4.6 Driving under the influence	4.23.
4.7 Entrances and exits	Deleted.
4.8 Excessive acceleration	4.22.
4.9 False report	Deleted in favor of 36 CFR 2.32.
4.10 Following vehicles	Deleted in favor of State law.
4.11 Load, weight, length and width limitations.	4.11.
4.12 Mufflers	Deleted in favor of State law.
4.13 Obstructing traffic	4.13.
4.14 Reckless or careless driving.	4.22 and State law.
4.15 Report of motor vehicle accident.	4.4.
4.16 Right-of-way	4.20.
4.17 Speed limits	4.21.
4.18 Traffic control and signs	4.12.
4.19 Travel on roads and designated routes.	4.10.
4.20 Vehicle registration	Deleted in favor of State law.
4.21 Brakes	Deleted in favor of State law.
4.22 Hitchhiking	4.31.
NEW REGULATIONS	
4.1 Applicability and scope.	
4.3 Authorized emergency vehicles.	
4.14 Open container of alcoholic beverage.	(Deleted from 36 CFR 2.35 and revised).

Section-by-Section Analysis

The following terms used in the regulatory text of this rulemaking are defined in 36 CFR 1.4 and have specific meanings: authorized person, bicycle, carry, developed area, legislative jurisdiction, motor vehicle, operator, pack animal, park area, park road, permit, person, possession, State, superintendent, traffic, vehicle, and wildlife.

These terms are used throughout the NPS regulations codified in 36 CFR Parts 1, 2, 3, 4, 7, and 13 in order to facilitate consistent interpretation, understanding and enforcement. The definitions of the terms "authorized person", "operator" and "superintendent" are particularly important to a reader's clear understanding of the provisions of this rulemaking. "Authorized person" means "an employee or agent of the National Park Service with delegated authority to enforce the provisions of this chapter", i.e. a NPS law enforcement officer. "Operator", as revised in this rulemaking, means "a person who operates, drives, controls, otherwise has charge of or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment". "Superintendent" means "the official in charge of a park area or an authorized representative thereof".

This rulemaking also incorporates the use of discretionary authority provided park superintendents in 36 CFR 1.5. That section authorizes a superintendent, after having met certain decision criteria, to establish public use limits, impose closures, designate areas for a specific use or activity or impose conditions or restrictions on a use or activity. These management tools provide the flexibility necessary for a superintendent to react to changing situations in the field without having to resort to a lengthy rulemaking process each time closures or restrictions are imposed, changed or relaxed. Whenever the text of a section of this rulemaking contains the terms "designate" or "designated", or authorizes the superintendent to "establish conditions or restrictions", the NPS intends that language to constitute authorization for a superintendent to exercise the discretionary authority provided in § 1.5. When exercising the authority of § 1.5, a superintendent is required to comply with public notice procedures specified in 36 CFR 1.7. The use of this discretionary authority is discussed further under the headings of the individual sections in Part 4 in which it is included.

Although the primary focus of this rulemaking is Part 4, other Parts of 36 CFR are affected as well. The following outlines the purpose and intent of each section of this rulemaking and provides applicable background information.

Part 1

Section 1.2(e) Applicability and scope.

A paragraph has been added to this section, which pertains to the general applicability and scope of all the regulations codified in 36 CFR, clarifying the fact that NPS regulations are not intended to restrict the activities of a mobility-impaired person using a manual or motorized wheelchair, beyond the degree that the activities of pedestrians are restricted by the same regulations. The purposes of this provision are to eliminate potential confusion and to emphasize the NPS intent that a manual wheelchair or motorized wheelchair, as defined in 36 CFR 1.4, not be considered a bicycle or motor vehicle within the context of NPS regulations.

Section 1.4 Definitions.

The list of definitions in section § 1.4 is amended as follows. The definition of "authorized emergency vehicle" is revised to restrict the types of vehicles that qualify for this designation to a vehicle in official use for emergency purposes by a Federal agency or an emergency vehicle as defined by applicable State law. The NPS considers the former definition too broad and not clearly delineating the few types of vehicles that are appropriately classified as emergency vehicles. This defined term is subsequently used in § 4.3 of this rulemaking.

The definitions of "bicycle" and "motor vehicle" have been revised to specifically exclude a manual or motorized wheelchair.

The definition of "operator" has been revised to clarify the NPS intent that this term also include the person in actual physical control of a mechanical mode of

transportation or any other mechanical equipment.

Definitions of the terms "manual wheelchair" and "motorized wheelchair" have been developed to clarify which types of devices used by a mobility-impaired person qualify for exemption from restrictions that otherwise apply to bicycles and motor vehicles. The term "motorized wheelchair" encompasses only devices that are designed solely for and used by a mobility-impaired person for locomotion and that are capable of and suitable for use in indoor pedestrian areas. Accordingly, a small, motorized, three or four-wheel vehicle designed for outdoor recreational purposes would not qualify as a motorized wheelchair, even if used by a mobility-impaired person.

A comprehensive definition of "State law" has been added to clarify the many references made to this term in Part 4 as well as in other parts of 36 CFR. As it applies to the regulations in Part 4, the definition is intended to encompass the full spectrum of State and local provisions that apply to traffic, including provisions of State vehicle codes that have been decriminalized by the respective States. However, in the case of a park area located within the exterior boundaries of an Indian Reservation, this definition does not include Tribal Law.

A definition of "traffic control device" has also been added to this section. This definition is intended to cover the various types and purposes of signs and other markings used for the purpose of regulating traffic. By policy, NPS traffic control devices generally must comply with the Manual on Uniform Traffic Control Devices, the document that establishes national standards for traffic signs and markings, as supplemented by the NPS Sign Manual. The term is used in §§ 4.3, 4.12 and 4.21 of this rulemaking.

Section 1.8 Information collection.

This section has been revised to list the permit requirements contained in § 4.11, but otherwise remains unchanged.

Part 2

Section 2.18 Snowmobiles.

The NPS addresses the use of snowmobiles separately from traffic regulations. However, the close connection between snowmobile activities and certain aspects of traffic control are reflected in the fact that this section lists eight regulations in Part 4 that are made applicable to snowmobile operations. These references have been revised to reflect the deletions and renumbering of the sections in Part 4 resulting from this rulemaking. In addition, in response to requests from affected field area staffs, the NPS has added §§ 4.14 (Open Container) and 4.21 (Speed Limits) to the list of sections that apply to snowmobile operations in order to address public safety problems related to excessive speed and the consumption of alcoholic beverages by individuals while operating oversnow machines.

Section 2.33 Report of injury or damage.

This section has been revised to clarify the relationship of the reporting requirements imposed by this section to those imposed by §§ 3.4 and 4.4 and to raise the threshold for reporting incidents involving property damage unrelated to boating or motor vehicle accidents from $100 to $300. The NPS intends that incidents such as confrontations with wildlife, tree failures, vandalism, etc., resulting in personal injury or significant property damage be reported so that the NPS can provide assistance to visitors and to provide documentation necessary to improve park safety programs. However, the superintendent retains the discretion to investigate and document incidents of lesser severity if requested by visitors or if otherwise determined to be in the interest of public safety.

Section 2.35 Alcoholic beverages and controlled substances.

This general regulation pertains to the use of alcoholic beverages and controlled substances in park areas. However, paragraphs (a)(2) (iii) and (iv) of this section addressed carrying or storing an opened container of an alcoholic beverage within a motor vehicle on a park road or parking area, provisions that are more appropriately codified in Part 4. Section 2.35 has been revised to delete those two paragraphs. Additional discussion is found under the listing for § 4.14.

This rulemaking also revises paragraph (a)(3) of § 2.35, substituting the general terms "public use area or public facility" for the extensive list of specific types of sites within a park area that a park superintendent may close to the consumption of alcoholic beverages. This rulemaking also authorizes the superintendent to close the same types of areas to the possession of an open container of an alcoholic beverage as well, since in an area closed to the consumption of alcoholic beverages there is no legitimate reason to possess an open container. An exception is included that allows for the storage of an open container in a motor vehicle in accordance with the provisions of § 4.14.

However, both of these closure authorities are subject to the prerequisite conditions specified in § 2.35. A closure may only be imposed if based upon one of two determinations: (1) that the consumption of an alcoholic beverage or the possession of an open container of an alcoholic beverage would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or (2) incidents of aberrant behavior related to the consumption of alcoholic beverages are of such magnitude that the diligent application of the authority to establish public use limits and the enforcement of disorderly conduct regulations over a reasonable period of time have failed to alleviate the problem.

These limited closure authorities are site-specific and less than parkwide in scope. Parkwide closures to the consumption of alcoholic beverages or the possession of an open container *may not* be implemented locally under the authority of §§ 2.35 or 1.5. The NPS has determined that such expanded closures require a separate rulemaking to ensure the opportunity for full public notice and comment as required by 36 CFR 1.5(b) and the Administrative Procedures Act.

Part 4

The regulations in 36 CFR Part 4 are codified by general category in order to provide a logical system of organization and to facilitate their use and understanding by NPS employees and interested members of the public. These categories are: administrative provisions (§§ 4.1 through 4.4), general traffic provisions (§§ 4.10 through 4.14), moving violations (§§ 4.20 through 4.23) and non-motor vehicle provisions (§§ 4.30 and 4.31). Numerical gaps exist to allow for future changes and additions to each category.

Section 4.1 Applicability and scope.

This section was added as a result of a comment received in response to the proposed rule; its text differs from that of similar provisions in 36 CFR Parts 1 and 2 to provide a clearer indication of NPS intent. It provides that the regulations in Part 4 apply as specified in 36 CFR 1.2 and also apply on all roadways and parking areas within a park area that are open to the public and that are under the legislative jurisdiction of the United States, regardless of ownership. The NPS has added this provision in the interest of protecting the property rights of private, commercial and State landowners

within park areas and to assure that essential public safety services are available in those areas. However, these regulations do not apply on all non-federal lands, but apply *only* on roadways and parking areas, *only* on those over which the State has ceded either exclusive or concurrent legislative jurisdiction to the NPS and *only* on those that are open to the public.

This section has been added in an effort to provide services to non-federal landowners within park areas and to State agencies having responsibility for public safety on State highways located within park areas. A number of park areas contain private roads over which the State has no jurisdiction and/or State roads that are isolated from the closest State agency representatives responsible for providing law enforcement coverage. However, the NPS emphasizes that responsibility for public safety on State highways remains with the respective State agencies. The NPS intends that the enforcement of these regulations on non-NPS roadways take place only in emergency situations or in cases when State and local authorities are unable to provide the necessary enforcement action or response.

Section 4.2 State law applicable.

This section, which applies regardless of the type of jurisdiction exercised by the NPS, adopts State vehicle codes as the basis for the regulation and control of traffic in park areas. The NPS is adopting, as if they were a part of the regulations in Part 4, all the applicable and nonconflicting vehicle and traffic laws of the State and local political subdivision(s) within whose exterior boundaries a park area or a portion thereof is located. The NPS regulations in Part 4 supercede any State vehicle code provisions that might conflict with or duplicate these sections and must be applied by NPS law enforcement personnel in lieu of State law.

The Secretary of the Interior's primary authority for promulgating regulations that pertain to the National Park System is 16 U.S.C. 3. Section 4.2 and all other regulations in Part 4 are considered necessary for the use and management of park areas and are promulgated under this authority. The same statute also establishes the penalty for violating a regulation promulgated under that authority. Under section 4.2, applicable and nonconflicting elements of State law are adopted and applied to units of the National Park System as if they were regulations promulgated by the Secretary of the Interior, therefore making violations subject to the penalty provision of 16 U.S.C. 3.

The NPS wishes to emphasize the fact that, although substantive provisions of State law are adopted, administrative or penalty provisions of State law are not. A person convicted in Federal court of a violation of State law under § 4.2 would be subject only to the penalty provisions in 36 CFR 1.3, regardless of whether State law provides for a greater or less severe penalty, a mandatory penalty or only a minor administrative penalty such as remedial training. However, imposition of specific penalties remains a matter of judicial discretion.

Furthermore, since drivers license suspensions and revocations are administrative procedures exercised by State agencies, the NPS has no authority or mechanism to apply such procedures to a conviction of a violation of State law under § 4.2 or a violation of any other section of Part 4 except through the cooperation of the appropriate State agency. The penalty provisions codified in 36 CFR 1.3 are established by statute and can be revised only through legislation.

Section 4.3 Authorized emergency vehicles.

This section allows operators of Federal, State, local or private emergency vehicles qualified exemptions from compliance with certain traffic regulations under certain emergency circumstances. These provisions apply only to an operator of a vehicle that meets the definition of "authorized emergency vehicle" as defined in § 1.4. Although this section is intended to facilitate prompt response in emergency situations and to provide operators a certain degree of protection from liability under those circumstances, it does not relieve them from the duty to drive safely. More specific guidance on the operation and equipping of emergency vehicles is found in agency guidelines and State law.

Section 4.4 Report of motor vehicle accident.

This section includes only those motor vehicle accident reporting requirements that pertain directly to the NPS and that are necessary for park area staffs to carry out their public safety responsibilities. These requirements are the only ones retained from the former §§ 4.15 and 4.4.

Paragraph (a) requires the operator of a vehicle that has been involved in an accident resulting in property damage, personal injury or death to report the accident to the superintendent as soon as practicable, but no later than 24 hours after the accident. A new provision has been added to this section that makes a vehicle occupant responsible for reporting an accident if the operator is physically incapable of doing so. Paragraph (b) prohibits moving a vehicle involved in an accident without first notifying the superintendent, unless the vehicle constitutes a hazard or prior notification is not practicable.

The requirements for notification of the superintendent are imposed so that park staffs can provide emergency assistance promptly and initiate and complete accident investigations in a timely manner. However, the requirement to report a minor motor vehicle accident to the superintendent does not automatically translate into the need for a detailed investigation and report of that accident. The requirement to report all motor vehicle accidents, regardless of severity, is made in the interest of identifying and correcting traffic safety hazards and engineering problems and to assure that appropriate information is exchanged between the operators involved.

The reporting requirements that States impose to assure protection of the public interest and State agency notification are reflected in State law and are not affected by this section. A motor vehicle operator and occupants remain responsible for satisfying applicable State reporting requirements; these can also be enforced in park areas under 36 CFR 4.2.

Section 4.10 Travel on park roads and designated routes.

This section retains most of the basic provisions codified in the former § 4.19, edited for clarity. Its purpose is to establish broad and consistent Servicewide standards for the operation of motor vehicles in the interest of protecting park resources and facilities. These particular limitations are not typically found in State vehicle codes. This section prohibits the operation of motor vehicles in park areas except on park roads, in parking areas and on routes and areas designated for off-road vehicle (ORV) use.

Paragraph (c) of this section addresses three issues related to the impacts of motor vehicle use on park visitors, resources and facilities. The first prohibits operation of a motor vehicle not equipped with pneumatic tires, except for limited authorized use of track-laying vehicles. The second prohibits causing unreasonable damage to the surface of roads or routes. The NPS intends the term unreasonable damage to mean damage to a degree beyond that which would ordinarily be expected under conditions existing at the time. The third provision of this paragraph imposes minimum visibility

requirements for motor vehicles used on ORV routes at night.

This rulemaking does not revise the existing conditions under which off-road motor vehicle activities may be conducted in park areas. These activities are governed by Federal statutory law and the provisions of Executive Orders 11644 and 11989 which apply to all Federal agencies. These Executive Orders require that ORV activities on public lands be limited to designated routes or areas and that these designations be based on the protection of resources, the promotion of visitor safety and the minimization of user conflicts. Furthermore, routes and areas may be designated in units of the National Park System only if the agency head determines that ORV use in such locations will not adversely affect their natural, aesthetic or scenic values. This section requires that ORV routes and areas in park areas be designated by special regulation and limits these designations to national recreation areas, national seashores, national lakeshores and national preserves.

The operation of a motor vehicle on park roads is governed by the regulations in 36 CFR Part 4 and by State law. Any vehicle that may be operated legally on a State highway may be operated legally on a park road unless otherwise restricted by the superintendent. The operation of a motor vehicle on a designated ORV route or area is governed by the provisions of this section, special regulations developed by individual superintendents in 36 CFR Part 7, and conditions and restrictions established by superintendents pursuant to 36 CFR 1.5. ORV use in park areas in Alaska is also governed by regulations codified in 36 CFR Part 13.

Section 4.11 Load, weight and size limits.

This section is a revision and clarification of the former section with the same number. Paragraph (a) provides that limits established by State law are used as the standard in each park area, but authorizes the superintendent to designate more restrictive limits and require a permit for a motor vehicle that exceeds an established limit. This discretionary authority is essential in order for a superintendent to impose restrictions, based on local conditions, for public safety purposes or for the protection of park resources or the road surface itself. Paragraph (b) contains the specific prohibitions of this section and paragraph (c) authorizes the superintendent to suspend or revoke the permit of a person who has violated one of its terms or conditions.

This rulemaking also provides for increasing to 10 inches the size of auxiliary side mirrors that are allowed under certain conditions and deletes the provision of the former section that pertained to transportation of explosives.

Section 4.12 Traffic control devices.

This section is a revision of the former section 4.18. The superintendent's authorities to erect signs and control public use are outlined in 36 CFR 1.5 and 1.7. This section serves as a basic requirement for a motor vehicle operator to comply with a traffic control device (as defined in § 1.4), a requirement that is essential to assuring the safety of park visitors and the protection of resources.

Section 4.13 Obstructing traffic.

This section is a revision of the former section of the same number, the text having been clarified and simplified. This section is intended to address the typical situations found in park areas where vehicle operators are often faced with narrow roads, steep grades, slow moving traffic and distractions caused by wildlife, points of interest or scenic vistas. State vehicle codes do not address these situations in a consistent manner.

Paragraph (a) prohibits stopping or parking a vehicle upon a park road (as defined in § 1.4) except as authorized by the superintendent or as a result of a condition beyond the control of the operator. The primary purpose of this provision is to provide for public safety by preventing obstructions and traffic congestion on the main-traveled surface of roadways. The exception provided allows the superintendent the discretion and flexibility, without the need for posting signs, to allow parking or stopping that, under conditions that exist at the time, does not pose a hazard to other traffic.

Paragraph (b) is intended to prevent hazards, mechanical problems, overheating and unsafe actions by vehicle operators that often occur as a result of situations when vehicle operators proceed at a speed well below the posted limit and that which is safe and, in doing so, impede the progress of operators of vehicles to the rear.

Section 4.14 Open container of alcoholic beverage.

This section addresses the carrying and storing of an open container containing an alcoholic beverage within a motor vehicle. These provisions were formerly codified in 36 CFR 2.35 but, since they pertain directly to motor vehicles and traffic safety, have been moved to Part 4. This section prohibits the carrying or storing of an open container of an alcoholic beverage in a motor vehicle within a park area except for specified areas within a motor vehicle that are not immediately accessible to the vehicle's operator or occupants. The NPS intends these provisions to apply to both moving and parked motor vehicles, except as specified in paragraph (c). The primary purpose of this section is to prevent public safety hazards created by individuals drinking and driving by physically separating vehicle operators and occupants from alcoholic beverages located in the vehicle.

Paragraph (a) specifies that each vehicle occupant is responsible for complying with the provisions of this section that pertain to the carrying of an open container and specifically makes the vehicle operator responsible for complying with the open container storage provisions. Paragraph (b) contains a detailed description of what constitutes an open container of an alcoholic beverage and contains the basic prohibitory elements of the regulation.

Paragraph (c) contains three exceptions to the prohibitions listed in paragraph (b). The first allows the *storage* of an open container in the trunk of a motor vehicle or, *if the motor vehicle is not equipped with a trunk*, in some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers. The unoccupied bed of a pickup truck or hatchback area of an automobile are examples of areas that fall under this exception. The second exception applies to an open container *stored* in the living quarters of a motor home or camper. The final exception allows the carrying or storing of an open container in a motor vehicle parked at an authorized campsite *where the motor vehicle's occupants are camped* unless such action is otherwise prohibited (as would be the case in an area closed to the consumption of alcoholic beverages or the possession of an open container under 36 CFR 2.35 or in the case of a minor in possession of alcohol). This provision describes the only situation when carrying an open container within a motor vehicle is considered by the NPS to be appropriate, i.e. when that vehicle is parked at a campsite and being used more as an extension of the campsite than as a means of transportation.

Paragraph (d) clarifies the text used in paragraph (c), emphasizing that a utility or glove compartment is considered an area readily accessible to the operator and passengers of a motor vehicle and therefore not suitable for storage of an open container. The extended cab of a pickup truck is also in that category.

Section 4.20 Right-of-way.

This revision retains the basic provisions of the former § 4.16 that address the protection of pedestrians, saddle and pack animals and vehicles drawn by animals. These elements, which are typical traffic safety concerns in park areas, are not addressed consistently by State law. This section does not limit the superintendent's authority to establish restrictions and closures that serve to limit the use of park roads by pedestrians, stock or vehicles drawn by animals. However, in locations where their use of park roads is allowed in conjunction with motor vehicle traffic, this section specifies that a motor vehicle operator must yield the right of way. The issue of yielding right of way to emergency vehicles is addressed by State law.

Section 4.21 Speed Limits.

This section contains the basic provisions of the former § 4.17. Paragraph (a) lists the basic speed limits that are established for park areas in order to encourage Servicewide consistency and limit confusion on the part of park visitors. Paragraph (b) provides the superintendent discretionary authority to alter those limits in the interest of public safety and requires speed limits to be posted by using standard traffic control devices. Paragraph (c) contains the prohibitory text.

Paragraph (d) contains authorization for the use of radar and specifies that applicable signing is not required. These provisions are included to resolve questions and potential conflicts in some park areas arising from provisions of State law. However, the NPS intends that NPS law enforcement personnel who operate radar as part of traffic safety programs be certified according to applicable Federal, State or industry standards.

Section 4.22 Unsafe Operation.

This section is a significant revision of the former § 4.14 which combined elements related to reckless driving and careless driving. Paragraph (a) emphasizes that reckless driving is not addressed by this regulation; reckless driving is defined by State law and will be enforced by adopting applicable State law under 36 CFR 4.2.

Paragraph (b) prohibits a number of careless driving actions, less severe than reckless driving, that are not addressed consistently by State law but that occur frequently in park areas and are public safety concerns. The first prohibits operating a motor vehicle without due care or at a speed greater than that which is reasonable and prudent considering existing conditions. A motor vehicle operator is responsible for considering all of the listed factors when making decisions related to vehicle operation. The second prohibits the unnecessary squealing or skidding of tires. The third prohibits failure to maintain control of a motor vehicle to the extent necessary to avoid danger to persons, property or wildlife.

The final prohibited actions focus on the vehicle operator but are intended to enhance passenger safety. The first prohibits operating a motor vehicle while allowing a person to ride on or within any vehicle or trailer or other mode of conveyance while being towed, unless the towed vehicle is specifically designed for carrying passengers while being towed. A tram is an example of the type of vehicle that qualifies as an exception. The second provision prohibits allowing a passenger to ride on an exterior portion of a motor vehicle that is not designed or intended for the use of a passenger. The latter restriction does not apply to a person seated on the floor of a truck bed equipped with sides unless that also is prohibited by State law.

Section 4.23 Operating under the influence of alcohol or drugs.

This section represents a major revision of the former § 4.6 and is based on a model regulation developed by the Department of Transportation, tailored to fit NPS needs. This section prohibits operating a motor vehicle while under the influence of alcohol or drugs or a combination of both, includes a specific blood alcohol concentration limit, allows a great deal of flexibility in the use of state or federal training and equipment standards, includes a provision requiring an alleged violator to submit to quantitative blood-alcohol tests and leaves the choice of tests to the officer or ranger rather than the alleged violator. Key terms used in this section that are defined in section 1.4 include "authorized person" and "operator".

Paragraph (a) of this regulation addresses two individual offenses. The first is a standard prohibition against operating or being in actual physical control of a motor vehicle while under the influence of alcohol or drugs to a degree that renders the operator incapable of safe operation. The elements necessary to prove a violation of this provision can be demonstrated through descriptions of observations made by the arresting officer and witnesses, physical evidence and the results of field tests conducted by the officer at the scene. The results of chemical or other quantitative tests conducted may be used to supplement the other items of evidence. The second offense involves operating a vehicle while the alcohol concentration in the operator's blood is 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath. These specific concentrations and units of measure are taken from the Uniform Vehicle Code. Equivalent units of measure are by definition equal and may obviously be substituted. However, in order to eliminate unnecessary conflicts with State law in cases where State law provides for more restrictive alcohol concentrations than the Uniform Vehicle Code, the NPS has included a provision in this paragraph adopting the more restrictive State levels. Therefore, if State law establishes an alcohol concentration of 0.08 grams or more of alcohol per 100 milliliters of blood as the threshold for a determination of operating under the influence, that level applies within park areas located in that State rather than the 0.10 limit specified in this paragraph. But if State law establishes a less restrictive alcohol concentration such as 0.12 grams or more of alcohol per 100 milliliters of blood, then the 0.10 limit specified in this paragraph applies within park areas located in that State.

The elements necessary to prove a violation of paragraph (a)(2) can be shown only through the results of chemical or other quantitative tests; the officer's probable cause for believing that the person is operating a motor vehicle while under the influence must be comprised of other factors. In cases where the specified alcohol concentrations cannot be shown, an operator can only be charged with a violation of paragraph (a)(1).

Paragraph (b) provides that the prohibitions in paragraph (a) also apply to an operator who is legally entitled to use alcohol or another drug. Therefore, the fact that a person charged with a violation of paragraph (a) is legally entitled to use alcohol or another drug for medical reasons does not constitute authorization to operate a motor vehicle while under the influence of those substances.

Paragraph (c) pertains to quantitative testing for the purpose of determining an

operator's blood alcohol or drug content. Regardless of the medium being tested, the results of quantitative tests measure the concentration of the drug in the operator's blood. Paragraph (c)(1) requires an operator, when requested by an authorized person who has probable cause to believe that the operator has violated a provision of paragraph (a), to submit to one or more tests of body fluids or breath to determine blood alcohol or drug content. Paragraph (c)(2) provides that refusal by an operator to submit to a test under the conditions specified in paragraph (c)(1) is prohibited and constitutes a separate violation, subjecting the operator to the penalty provisions of 36 CFR 1.3. Proof of a violation of paragraph (c)(2) is not dependent upon a prior finding of the operator's guilt on a charge of violating a provision of paragraph (a).

Paragraphs (c)(1) and (2) are essential to the success of NPS public safety and alcohol enforcement programs because of the inability of the NPS to adopt State implied consent statutes which provide for the administrative revocation of the operator's drivers license when he or she refuses to take a quantitative test. The NPS wishes to emphasize, however, that a vehicle operator is not required to submit to a qualitative test (field sobriety test) and that there is no penalty attached to a refusal to take such a test.

Paragraph (c)(3) establishes that the choice of quantitative tests to be taken by an operator rests with the authorized person, not with the operator. This provision is necessary because park staffs are often limited in the types of testing equipment and facilities and the number of certified testers available. The isolation of many park areas and the distance to alternative testing equipment or facilities preclude giving the choice of tests to the operator. This provision also favors the operator, the person who benefits most from a situation that provides for prompt access to testing equipment and facilities.

Paragraph (c)(4) limits the conducting of quantitative tests to accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use. The NPS intent is to assure that equipment and methods used for such tests are of a type or nature commonly used by Federal, State and local law enforcement agencies and accepted as reliable for such purposes by Federal, State or local courts. The NPS also intends that tests be conducted by personnel who have been certified in the use of that equipment by the manufacturer or by an appropriate Federal, State or local official or agency.

Paragraph (d) addresses the issue of presumptions. If the results of quantitative tests indicate that the alcohol concentration in the operator's blood is less than the alcohol concentrations specified in paragraph (a)(2), there can be no presumption drawn concerning whether or not the operator is under the influence. However, this absence of presumption is not intended to preclude the introduction of other evidence, such as the elements comprising the officer's probable cause to arrest the operator, that addresses the question of whether the operator was, at the time of the alleged violation, under the influence of alcohol or drugs.

Section 4.30 Bicycles.

This section is a revision of the former section 4.3 and provides that the use of bicycles is allowed in park areas under the same basic conditions as are motor vehicles, i.e. on park roads, in parking areas and on routes designated for their use. These provisions reflect the facts that the NPS generally considers bicycle use a very appropriate, low impact method for visitors to enjoy park areas, but that certain limitations on their use are necessary and appropriate in the interest of public safety, resource protection and the avoidance of visitor conflicts.

Paragraph (a) authorizes the use of bicycles within park areas on roads, in parking areas and on routes designated by the superintendent for bicycle use but reinforces the fact that the superintendent may impose closures pursuant to 36 CFR 1.5. The superintendent may also establish conditions and restrictions on bicycle use under the same authority. The NPS intends that the discretionary authority provided superintendents to designate bicycle routes without a formal rulemaking be a flexible tool used to accommodate the needs of bicyclists for reasonable access to areas away from park roads. This process provides the opportunity for a superintendent, after making the required written determination that such use is consistent with the protection of park values and purposes and safety considerations, to designate routes (trails) for bicycle use only and/or for the common use of bicyclists and other visitors as appropriate, given local conditions. However, this discretionary authority to designate bicycle routes without a formal rulemaking may be exercised only for routes located in developed areas or special use zones of park areas, which are land management and use categories established pursuant to a park area's Statement for Management and General Management Plan.

Developed areas include lands within development and historic zones; these areas are generally impacted to a certain degree by structures, facilities or other improvements which reflect the fact that the primary purpose or management objective for the use of these lands is other than the preservation of their natural resources. Special use zones include non-federal lands within the exterior boundaries of a park area that are used for non-park purposes but over which the NPS exerts some degree of administrative control. Ranch, forest, industrial, or agricultural lands and transportation or utility corridors are all examples of land uses that could occur within special use zones and where recreational activities such as bicycling could be compatible.

Paragraph (b) requires a formal rulemaking in order for a bicycle route to be designated outside of a developed area or special use zone. The NPS has determined that the designation of a bicycle route outside of such developed areas, in areas whose primary purpose and land uses are related more to the preservation of natural resources and values, would have a much greater potential to result in adverse resource impacts or visitor use conflicts. This paragraph therefore provides for a much more stringent decisionmaking process for such a proposal by requiring a formal rulemaking. Such a process will provide for a thorough review of all environmental and visitor use considerations and assure the superintendent of having had the benefit of public review and comment before making a decision on any proposed designation.

Paragraph (c) establishes operator responsibilities by making applicable to a bicycle operator all the provisions of Part 4 that apply to a motor vehicle operator except §§ 4.4, 4.10, 4.11 and 4.14. Bicycle accidents are reported pursuant to the provisions of 36 CFR 2.33; §§ 4.10 and 4.11 do not apply to bicycle use; § 4.14 has very little applicability beyond the primary area of concern addressed in paragraph (d)(4) of this section and discussed below.

Most activities involving the operation of a bicycle are regulated under paragraph (c) by applying other sections of Part 4. However, paragraph (d) addresses four additional areas involving bicycle use. The first prohibits the possession of a bicycle in a designated wilderness area. This provision reflects a statutory prohibition

on forms of mechanical transport in wilderness areas that is contained in the Wilderness Act of 1964 [16 U.S.C. 1133(c)] and that has been in effect since that law was passed. This rulemaking establishes a regulatory provision (and an accompanying penalty) that is consistent with regulations promulgated by the United States Forest Service and the Bureau of Land Management, Federal land management agencies which administer extensive areas of public lands designated as wilderness.

The second provision of paragraph (d) imposes certain minimum visibility requirements on bicycle operators in the interest of their own safety. The third prohibits bicycle operators from riding abreast of one another except where authorized by the superintendent. This provision is also intended to enhance the safety of bicycle operators and to prevent obstruction of traffic.

The last provision of this paragraph prohibits consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage while operating a bicycle. The NPS has determined that, because of the limited storage options available to a bicycle operator, it is unreasonable to expect a bicycle operator to comply with the requirements for carrying and storing an open container of an alcoholic beverage specified in § 4.14. This paragraph allows an operator to carry or store, for later consumption, an open container of an alcoholic beverage in a backpack or in a cooler or storage bag attached to the bicycle, but prohibits the unsafe practice of consuming an alcoholic beverage while operating the bicycle.

Section 4.31 Hitchhiking.

This section is a revision of the former § 4.22 which prohibits hitchhiking altogether. This regulation reflects the NPS concern over the public safety issues involved with hitchhiking but also recognizes that, under certain circumstances and in certain locations, hitchhiking is the only practical method for some pedestrians to circulate within park areas. This section prohibits hitchhiking but provides the superintendent the discretion to allow hitchhiking through designations and under conditions established in the interest of public safety pursuant to the authority of § 1.5. This position recognizes the dangers inherent in hitchhiking and establishes a Servicewide standard that discourages the activity. But it also allows hitchhiking to take place on a limited basis under conditions that can reduce somewhat the types and levels of hazards to which participants are exposed. Based on local circumstances, a superintendent can allow hitchhiking in designated locations and under specific conditions that would reduce the public safety hazards involved in this activity.

Part 7

As a result of the revisions to 36 CFR Parts 1, 2 and 4 contained in this rulemaking, the NPS is deleting 22 regulations (park-specific) in 36 CFR Part 7 that pertain to motor vehicles and traffic safety. These regulations have been rendered unnecessary by the terms of this rulemaking either through duplication or by the fact that the restrictions can be imposed through use of the superintendent's discretionary authority. The subjects addressed by the regulations being deleted include load, weight and size limitations, limitations on vehicle types, speed limits and hitchhiking. A number of special regulations have also been revised to change or delete cross-references to regulations in Part 4.

Part 34

Minor revisions to the regulations in this Part were required to change cross-references to regulations in Parts 1 and 4.

Drafting Information

The workgroup that developed this rulemaking is composed of Paul Anderson (Delaware Water Gap National Recreation Area—Yosemite National Park), Pat Buccello (Sequoia National Park), Jim Fox (Blue Ridge Parkway), Bob Mihan (Yellowstone National Park), Pete Nigh (Grand Canyon National Park), Bob Reid, (U.S. Park Police), Andy Ringgold (Branch of Ranger Activities), Steve Shackelton (Hawaii Volcanoes National Park) and John Sharp (Office of the Solicitor). Numerous other NPS employees also contributed to its development and review.

Paperwork Reduction Act

The information collection requirements contained in § 4.11 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026.

Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document 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.*). These findings are based on the fact that the overall economic effects of this rulemaking are negligible; they impose no additional costs on any group or class of individuals.

The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects

36 CFR Part 1

National parks, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

36 CFR Part 2

Environmental protection, National parks, Reporting and recordkeeping requirements.

36 CFR Part 4

National parks, Traffic regulations.

36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

36 CFR Part 34

National parks, Administrative site, Penalties, Traffic regulations.

In consideration of the foregoing, 36 CFR Chapter 1 is amended as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 16 U.S.C. 1, 3, 9a, 460*l*–6a(e), 462(k); D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. By adding a new paragraph (e) to § 1.2 to read as follows:

§ 1.2 Applicability and scope.

* * * * *

(e) The regulations in this chapter are intended to treat a mobility-impaired person using a manual or motorized wheelchair as a pedestrian, and are not intended to restrict the activities of such a person beyond the degree that the activities of a pedestrian are restricted by the same regulations.

§ 1.4 [Amended]

3. By amending the list of definitions in § 1.4 as follows:

a. By revising the definition of "Authorized emergency vehicle" to read as follows:

"Authorized emergency vehicle" means a vehicle in official use for emergency purposes by a Federal agency or an emergency vehicle as defined by State law.

b. By revising the definition of "Bicycle" to read as follows:

"Bicycle" means every device propelled solely by human power upon which a person or persons may ride on land, having one, two, or more wheels, except a manual wheelchair.

c. By revising the definition of "Motor vehicle" to read as follows:

"Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power, but not operated on rails or upon water, except a snowmobile and a motorized wheelchair.

d. By revising the definition of "Operator" to read as follows:

"Operator" means a person who operates, drives, controls, otherwise has charge of or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment.

e. By adding the following definitions and inserting them in alphabetical order:

"Manual wheelchair" means a device that is propelled by human power, designed for and used by a mobility-impaired person.

"Motorized wheelchair" means a self-propelled wheeled device, designed solely for and used by a mobility-impaired person for locomotion, that is both capable of and suitable for use in indoor pedestrian areas.

"State law" means the applicable and nonconflicting laws, statutes, regulations, ordinances, infractions and codes of the State(s) and political subdivision(s) within whose exterior boundaries a park area or a portion thereof is located.

"Traffic control device" means a sign, signal, marking or other device placed or erected by, or with the concurrence of, the Superintendent for the purpose of regulating, warning, guiding or otherwise controlling traffic or regulating the parking of vehicles.

4. By revising § 1.8 to read as follows:

§ 1.8 Information collection.

The information collection requirements contained in §§ 1.5, 2.4, 2.5, 2.10 2.12, 2.17, 2.33, 2.38, 2.50, 2.51, 2.52, 2.60, 2.61, 2.62, 3.3, 3.4, 4.4 and 4.11 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024–0026. This information is being collected to provide superintendents data necessary to issue permits for special uses of park areas and to obtain notification of accidents that occur within park areas. This information will be used to grant administrative benefits and to facilitate prompt emergency response to accidents. In §§ 2.33, 3.4 and 4.4, the obligation to respond is mandatory; in all other sections the obligation to respond is required in order to obtain a benefit.

PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

5. The authority citation for Part 2 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

6. By revising paragraphs (a) and (d)(4) of § 2.18 to read as follows. The introductory text of paragraph (d) is republished.

§ 2.18 Snowmobiles.

(a) Notwithstanding the definition of vehicle set forth in § 1.4 of this chapter, the provisions of §§ 4.4, 4.12, 4.13, 4.14, 4.20, 4.21, 4.22 and 4.23 of this chapter apply to the operation of a snowmobile.

* * * * *

(d) The following are prohibited: * * *

(4) Racing, or operating a snowmobile in excess of 45 mph, unless restricted in accordance with § 4.22 of this chapter or otherwise designated.

* * * * *

7. By revising paragraph (a) of § 2.33 to read as follows:

§ 2.33 Report of injury or damage.

(a) A person involved in an incident resulting in personal injury or property damage exceeding $300, other than an accident reportable under §§ 3.4 or 4.4 of this chapter, shall report the incident to the superintendent as soon as possible. This notification does not satisfy reporting requirements imposed by applicable State law.

* * * * *

8. By amending § 2.35 as follows:

a. By removing paragraphs (a)(2) (iii) and (iv).

b. By revising paragraph (a)(3) to read as follows:

§ 2.35 Alcoholic beverages and controlled substances.

(a) * * *

(3)(i) The superintendent may close all or a portion of a public use area or public facility within a park area to the consumption of alcoholic beverages and/or to the possession of a bottle, can or other receptacle containing an alcoholic beverage that is open, or that has been opened, or whose seal is broken or the contents of which have been partially removed. *Provided however*, that such a closure may only be implemented following a determination made by the superintendent that:

(A) The consumption of an alcoholic beverage or the possession of an open container of an alcoholic beverage would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or

(B) Incidents of aberrant behavior related to the consumption of alcoholic beverages are of such magnitude that the diligent application of the authorities in this section and §§ 1.5 and 2.34 of this chapter, over a reasonable time period, does not alleviate the problem.

(ii) A closure imposed by the superintendent does not apply to an open container of an alcoholic beverage that is stored in compliance with the provisions of § 4.14 of this chapter.

(iii) Violating a closure imposed pursuant to this section is prohibited.

* * * * *

9. By revising Part 4 to read as follows:

PART 4—VEHICLES AND TRAFFIC SAFETY

Sec.

4.1 Applicability and scope.
4.2 State law applicable.
4.3 Authorized emergency vehicles.
4.4 Report of motor vehicle accident.
4.10 Travel on park roads and designated routes.
4.11 Load, weight and size limits.
4.12 Traffic control devices.
4.13 Obstructing traffic.
4.14 Open container of alcoholic beverage.
4.20 Right of way.
4.21 Speed limits.
4.22 Unsafe operation.
4.23 Operating under the influence of alcohol or drugs.
4.30 Bicycles.
4.31 Hitchhiking.

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

§ 4.1 Applicability and scope.

The applicability of the regulations in this part is described in § 1.2 of this chapter. The regulations in this part also apply, regardless of land ownership, on

all roadways and parking areas within a park area that are open to public traffic and that are under the legislative jurisdiction of the United States.

§ 4.2 State law applicable.

(a) Unless specifically addressed by regulations in this chapter, traffic and the use of vehicles within a park area are governed by State law. State law that is now or may later be in effect is adopted and made a part of the regulations in this part.

(b) Violating a provision of State law is prohibited.

§ 4.3 Authorized emergency vehicles.

(a) The operator of an authorized emergency vehicle, when responding to an emergency or when pursuing or apprehending an actual or suspected violator of the law, may:

(1) Disregard traffic control devices;

(2) Exceed the speed limit; and

(3) Obstruct traffic.

(b) The provisions of paragraph (a) of this section do not relieve the operator from the duty to operate with due regard for the safety of persons and property.

§ 4.4 Report of motor vehicle accident.

(a) The operator of a motor vehicle involved in an accident resulting in property damage, personal injury or death shall report the accident to the superintendent as soon as practicable, but within 24 hours of the accident. If the operator is physically incapable of reporting the accident, an occupant of the vehicle shall report the accident to the superintendent.

(b) A person shall not tow or move a vehicle that has been involved in an accident without first notifying the superintendent unless the position of the vehicle constitutes a hazard or prior notification is not practicable, in which case notification shall be made before the vehicle is removed from the park area.

(c) Failure to comply with a reporting requirement specified in paragraph (a) or (b) of this section is prohibited.

(d) The notification requirements imposed by this section do not relieve the operator and occupants of a motor vehicle involved in an accident of the responsibility to satisfy reporting requirements imposed by State law.

§ 4.10 Travel on park roads and designated routes.

(a) Operating a motor vehicle is prohibited except on park roads, in parking areas and on routes and areas designated for off-road motor vehicle use.

(b) Routes and areas designated for off-road motor vehicle use shall be promulgated as special regulations. The designation of routes and areas shall comply with § 1.5 of this chapter and E.O. 11644 (37 FR 2887). Routes and areas may be designated only in national recreation areas, national seashores, national lakeshores and national preserves.

(c) The following are prohibited:

(1) Operating a motor vehicle not equipped with pneumatic tires, except that a track-laying motor vehicle or a motor vehicle equipped with a similar traction device may be operated on a route designated for these vehicles by the superintendent.

(2) Operating a motor vehicle in a manner that causes unreasonable damage to the surface of a park road or route.

(3) Operating a motor vehicle on a route or area designated for off-road motor vehicle use, from ½ hour after sunset to ½ hour before sunrise, without activated headlights and taillights that meet the requirements of State law for operation on a State highway.

§ 4.11 Load, weight and size limits.

(a) Vehicle load, weight and size limits established by State law apply to a vehicle operated on a park road. However, the superintendent may designate more restrictive limits when appropriate for traffic safety or protection of the road surface. The superintendent may require a permit and establish conditions for the operation of a vehicle exceeding designated limits.

(b) The following are prohibited:

(1) Operating a vehicle that exceeds a load, weight or size limit designated by the superintendent.

(2) Failing to obtain a permit when required.

(3) Violating a term or condition of a permit.

(4) Operating a motor vehicle with an auxiliary detachable side mirror that extends more than 10 inches beyond the side fender line except when the motor vehicle is towing a second vehicle.

(c) Violating a term or condition of a permit may also result in the suspension or revocation of the permit by the superintendent.

§ 4.12 Traffic control devices.

Failure to comply with the directions of a traffic control device is prohibited unless otherwise directed by the superintendent.

§ 4.13 Obstructing traffic.

The following are prohibited:

(a) Stopping or parking a vehicle upon a park road, except as authorized by the superintendent, or in the event of an accident or other condition beyond the control of the operator.

(b) Operating a vehicle so slowly as to interfere with the normal flow of traffic.

§ 4.14 Open container of alcoholic beverage.

(a) Each person within a motor vehicle is responsible for complying with the provisions of this section that pertain to carrying an open container. The operator of a motor vehicle is the person responsible for complying with the provisions of this section that pertain to the storage of an open container.

(b) Carrying or storing a bottle, can or other receptacle containing an alcoholic beverage that is open, or has been opened, or whose seal is broken or the contents of which have been partially removed, within a motor vehicle in a park area is prohibited.

(c) This section does not apply to:

(1) An open container stored in the trunk of a motor vehicle or, if a motor vehicle is not equipped with a trunk, to an open container stored in some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers; or

(2) An open container stored in the living quarters of a motor home or camper; or

(3) Unless otherwise prohibited, an open container carried or stored in a motor vehicle parked at an authorized campsite where the motor vehicle's occupant(s) are camping.

(d) For the purpose of paragraph (c)(1) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a motor vehicle.

§ 4.20 Right of way.

An operator of a motor vehicle shall yield the right of way to pedestrians, saddle and pack animals and vehicles drawn by animals. Failure to yield the right of way is prohibited.

§ 4.21 Speed limits.

(a) Park area speed limits are as follows:

(1) 15 miles per hour: within all school zones, campgrounds, picnic areas, parking areas, utility areas, business or residential areas, other places of public assemblage and at emergency scenes.

(2) 25 miles per hour: upon sections of park road under repair or construction.

(3) 45 miles per hour: upon all other park roads.

(b) The superintendent may designate a different speed limit upon any park road when a speed limit set forth in

paragraph (a) of this section is determined to be unreasonable, unsafe or inconsistent with the purposes for which the park area was established. Speed limits shall be posted by using standard traffic control devices.

(c) Operating a vehicle at a speed in excess of the speed limit is prohibited.

(d) An authorized person may utilize radiomicrowaves or other electrical devices to determine the speed of a vehicle on a park road. Signs indicating that vehicle speed is determined by the use of radiomicrowaves or other electrical devices are not required.

§ 4.22 Unsafe operation.

(a) The elements of this section constitute offenses that are less serious than reckless driving. The offense of reckless driving is defined by State law and violations are prosecuted pursuant to the provisions of section 4.2 of this chapter.

(b) The following are prohibited:

(1) Operating a motor vehicle without due care or at a speed greater than that which is reasonable and prudent considering wildlife, traffic, weather, road and light conditions and road character.

(2) Operating a motor vehicle in a manner which unnecessarily causes its tires to squeal, skid or break free of the road surface.

(3) Failing to maintain that degree of control of a motor vehicle necessary to avoid danger to persons, property or wildlife.

(4) Operating a motor vehicle while allowing a person to ride:

(i) On or within any vehicle, trailer or other mode of conveyance towed behind the motor vehicle unless specifically designed for carrying passengers while being towed; or

(ii) On any exterior portion of the motor vehicle not designed or intended for the use of a passenger. This restriction does not apply to a person seated on the floor of a truck bed equipped with sides, unless prohibited by State law.

§ 4.23 Operating under the influence of alcohol or drugs.

(a) Operating or being in actual physical control of a motor vehicle is prohibited while:

(1) Under the influence of alcohol, or a drug, or drugs, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(2) The alcohol concentration in the operator's blood or breath is 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath. *Provided however,* that if State law that applies to operating a motor vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this paragraph.

(b) The provisions of paragraph (a) of this section also apply to an operator who is or has been legally entitled to use alcohol or another drug.

(c) *Tests.* (1) At the request or direction of an authorized person who has probable cause to believe that an operator of a motor vehicle within a park area has violated a provision of paragraph (a) of this section, the operator shall submit to one or more tests of the blood, breath, saliva or urine for the purpose of determining blood alcohol and drug content.

(2) Refusal by an operator to submit to a test is prohibited and proof of refusal may be admissable in any related judicial proceeding.

(3) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized person.

(4) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(d) *Presumptive levels.* (1) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a)(1) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (a)(2) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(2) The provisions of paragraph (d)(1) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

§ 4.30 Bicycles.

(a) The use of a bicycle is prohibited except on park roads, in parking areas and on routes designated for bicycle use; *provided, however,* the superintendent may close any park road or parking area to bicycle use pursuant to the criteria and procedures of §§ 1.5 and 1.7 of this chapter. Routes may only be designated for bicycle use based on a written determination that such use is consistent with the protection of a park area's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources.

(b) Except for routes designated in developed areas and special use zones, routes designated for bicycle use shall be promulgated as special regulations.

(c) A person operating a bicycle is subject to all sections of this part that apply to an operator of a motor vehicle, except §§ 4.4, 4.10, 4.11 and 4.14.

(d) The following are prohibited:

(1) Possessing a bicycle in a wilderness area established by Federal statute.

(2) Operating a bicycle during periods of low visibility, or while traveling through a tunnel, or between sunset and sunrise, without exhibiting on the operator or bicycle a white light or reflector that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

(3) Operating a bicycle abreast of another bicycle except where authorized by the superintendent.

(4) Operating a bicycle while consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage.

§ 4.31 Hitchhiking.

Hitchhiking or soliciting transportation is prohibited except in designated areas and under conditions established by the superintendent.

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 462(k); section 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

11. The authority citations following all the sections in Part 7 are removed.

§ 7.3 [Amended]

12. In § 7.3, Glacier National Park, by removing paragraph (g) and redesignating paragraph (h) as paragraph (g).

§ 7.4 [Amended]

13. In § 7.4, Grand Canyon National Park, by removing paragraphs (a), (b), (c), (d), (e), and (f) and redesignating paragraph (g) as (a), paragraph (h) as (b) and paragraph (i) as paragraph (c).

§ 7.7 [Amended]

14. In § 7.7, Rocky Mountain National Park, paragraph (h)(3) is amended by revising the cross-reference to "§ 4.14" to read "§ 4.22".

§ 7.12 [Amended]

15. In § 7.12, Gulf Islands National Seashore, paragraph (b)(1)(i) is amended by revising the cross-reference to "§ 4.19(b)" to read "§ 4.10(b)" and paragraph (b)(2)(v)(B) is amended by removing the cross-references to "§§ 4.12, 4.19(e), 4.20 and 4.21" and adding in place thereof a cross-reference to read "§ 4.10(c)(3)".

§ 7.13 [Amended]

16. In § 7.13, Yellowstone National Park, by removing paragraph (a), redesignating paragraph (b)(2) as paragraph (a), removing paragraph (b)(1), and redesignating the introductory text of paragraph (b)(3) and paragraphs (b)(3)(i) and (b)(3)(ii) as the introductory text of paragraph (b) and paragraphs (b)(1) and (b)(2).

§ 7.15 [Amended]

17. In § 7.15, Shenandoah National Park, by removing paragraphs (e) and (f).

§ 7.16 [Amended]

18. In § 7.16, Yosemite National Park, by removing and reserving paragraphs (d), (f) and (g).

§ 7.20 [Amended]

19. In § 7.20, Fire Island National Seashore, by amending paragraph (a)(7)(iv) by removing the cross-references to "§§ 4.12, 4.19(e), 4.20 and 4.21" and adding in place thereof a cross-reference to read "§ 4.10(c)(3)".

§ 7.29 [Amended]

20. In § 7.29, Gateway National Recreation Area, by amending paragraph (a) by revising the cross-reference to "§ 4.19(b)" to read "§ 4.10(b)".

§ 7.34 [Amended]

21. In § 7.34, Blue Ridge Parkway, by removing paragraph (k) and redesignating paragraph (l) as (k).

§ 7.41 [Amended]

22. In § 7.41, Big Bend National Park, by removing paragraph (d).

§ 7.43 [Amended]

23. In § 7.43, Natchez Trace Parkway, by removing paragraphs (c)(5) (iii) and (iv) and redesignating paragraph (c)(5)(v) as paragraph (c)(5)(iii).

§ 7.57 [Amended]

24. In § 7.57, Lake Meredith Recreation Area, by removing paragraph (a)(2), by removing only the paragraph designation (1), not the text, of paragraph (a)(1) and revising paragraph (b) to read as follows:

* * * * *

(b) *Safety Helmets.* The operator and each passenger of a motorcycle shall wear a safety helmet while riding on a motorcycle in an off-road area designated in paragraph (a) of this section.

* * * * *

§ 7.58 [Amended]

25. In § 7.58, Cape Hatteras National Seashore, by removing paragraph (b) and redesignating paragraph (c) as (b).

§ 7.65 [Amended]

26. In § 7.65, Assateague Island National Seashore, by amending paragraph (b)(2)(ii)(C) by removing the cross-references to "§§ 4.12, 4.19 and 4.21" and adding in place thereof a cross-reference to read "§ 4.10".

§ 7.75 [Amended]

27. In § 7.75, Padre Island National Seashore, by removing paragraphs (a)(1)(iii) and (a)(2)(v), by redesignating paragraphs (a)(1) (iv), (v) and (vi) as paragraphs (a)(1) (iii), (iv) and (v), and by amending paragraph (a)(1)(ii) by removing the cross-references to "§§ 4.12, 4.19, and 4.21" and adding in place thereof a cross-reference to § 4.10.

PART 34—EL PORTAL ADMINISTRATIVE SITE REGULATIONS

28. The authority citation for Part 34 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 47–1, 460*l*–6a(e).

29. By revising paragraphs (a)(1) and (d) of § 34.5 to read as follows:

§ 34.5 Applicable regulations.

* * * * *

(a) *General provisions.* (1) 1.2(d) Applicability and scope; exception for administrative activities.

* * * * *

(d) *Vehicles and traffic safety.* (1) 4.2 State law applicable.

(2) 4.4 Report of motor vehicle accident.

(3) 4.10(a), (c)(1) and (c)(2) Travel on park roads and designated routes.

(4) 4.11 Load, weight and size limits.

(5) 4.12 Traffic control devices.

(6) 4.14 Open container of alcoholic beverage.

(7) 4.21 Speed limits.

(8) 4.22 Unsafe operation.

(9) 4.23 Operating under the influence of alcohol or drugs.

* * * * *

Dated: March 5, 1987.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–6391 Filed 4–1–87; 8:45 am]

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Thursday
April 2, 1987

Part III

Environmental Protection Agency

40 CFR Part 761

Polychlorinated Biphenyls Spill Cleanup Policy; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS 62051; FRL 3179-1]

Polychlorinated Biphenyls Spill Cleanup Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: TSCA PCB spill cleanup policy rule.

SUMMARY: This rule presents the Toxic Substances Control Act (TSCA) policy for the cleanup of spilled polychlorinated biphenyls (PCBs). The TSCA policy establishes the measures which EPA considers to be adequate cleanup for the majority of situations where PCB contamination occurs during activities regulated under TSCA. While cleanup in accordance with this policy constitutes adequate cleanup of spills within the scope of this policy and creates a presumption against enforcement for penalties or further cleanup, EPA will not exercise enforcement abeyance for a disposal violation if the spill was the result of gross negligence or knowing violation.

Since this rule is a policy statement, it does not require notice and comment under the provisions of the Administrative Procedures Act. However, the Agency welcomes comment on and additional relevant information about the TSCA policy.

DATE: The TSCA policy shall be effective on May 4, 1987.

ADDRESSES: Information or comments for consideration by the Agency should be submitted in triplicate to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. G004 NE Mall, 401 M St., SW., Washington, DC 20460.

Information and comments should include the docket number OPTS-62051. Information and comments received in connection with this document will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. G004 NE Mall, Environmental Protection Agency, 401 M St., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION:

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E. Issues

I. Background

EPA regulations controlling the disposal of PCBs, promulgated in the **Federal Register** of February 17, 1978 (43 FR 7150) and May 31, 1979 (44 FR 31514), broadly define the term "disposal" to encompass accidental as well as intentional releases of PCBs to the environment. Under these regulations, EPA considers intentional, as well as unintentional, spills, leaks and other uncontrolled discharges of PCBs at concentrations of 50 parts per million (ppm) or greater (defined by the concentration of PCBs in the material which spills) to be improper disposal of PCBs. For purposes of this discussion, and as defined in this policy under Unit III, the term "Spill" means spills, leaks, or other uncontrolled discharges of PCBs where the release results in any quantity of PCBs running off or about to run off the surface of the equipment or other PCB source, as well as the contamination resulting from those releases. When PCBs are improperly disposed of as a result of a spill of material containing 50 ppm or greater PCBs, EPA has the authority under section 17 of TSCA to compel persons to take actions to rectify damage or clean up contamination resulting from the spill.

Policies for the cleanup of PCB spills are currently established separately by each EPA regional office, and owners of spilled PCBs are required to meet these standards or face potential penalties under TSCA section 16 for improper disposal of PCBs. Once cleanup occurs to the standard set by the EPA regional offices, the material which has been cleaned, e.g., soil, metal, or equipment, may be processed, distributed in commerce and used (unless the regional office has placed restrictions on these other activities).

EPA standards for the cleanup of spilled PCBs have been established at the EPA regional office level since 1978. Each region sets PCB cleanup standards in the form of general guidelines and then applies the general guidelines on a case-by-case basis for specific spill situations. The general guidelines and their application to spills have differed among regions. For certain spill situations, regions have required cleanup to 50 ppm PCBs. In other spill situations, regions have required cleanup to preexisting background levels or the limit of detection of PCBs.

For PCB spill cleanup, EPA has already in place certain requirements for timely cleanup. In the final PCB Electrical Equipment Rule, published in the **Federal Register** of August 25, 1982 (47 FR 37342), EPA requires the initiation of PCB Transformer spill cleanup within 48 hours of spill discovery and defines disposal specifically to include leaks, spills, and other unintentional discharges of PCBs. However, the PCB Electrical Equipment Rule did not establish numerical criteria for PCB spill cleanup.

Most recently, the regions have applied the "lowest practicable level" guideline set up in the January 27, 1984, Administrative Law Judge decision on *General Electric* v. *U.S.E.P.A.* The Agency has, however, experienced several areas of difficulty in applying the "lowest practicable level" approach. First, the guideline is subject to, and has resulted in, disparate interpretations. Second, the term "lowest practicable level" cannot be easily applied by the regulated community without guidance from EPA. This can delay cleanup, and delays in cleanup can result in prolonged exposures to humans and more widespread environmental contamination. Finally, the owner of the PCBs may disagree with the EPA regional office's interpretation of the "lowest practicable level" standard. This may occur when the EPA regional office interpretation would require more stringent and costly measures than the owner believes are warranted. This too can delay complete cleanup, as the application of this guideline has, in fact, led to protracted Agency actions in some cases.

Although EPA did not finalize the proposed PCB spill cleanup policy in 1982, EPA has continued to evaluate available information on the risks posed by spilled PCBs and the costs associated with cleanup to various levels. EPA recognized that setting a nationwide TSCA PCB cleanup policy was a desirable goal and in the winter of 1984 EPA produced a draft TSCA Compliance Monitoring Program Policy covering PCB spill cleanup. Although the 1984 draft policy was never officially released, the members of the press and the public acquired and reviewed the draft policy. The Environmental Defense Fund (EDF), Natural Resources Defense Council (NRDC), Edison Electric Institute (EEI), Chemical Manufacturers Association (CMA), and National Electrical Manufacturers Association (NEMA), among others, were principal reviewers of the 1984 draft policy.

On May 17, 1985 EDF, NRDC, EEI, CMA, and NEMA submitted to EPA an alternative PCB spill cleanup policy for consideration by the Agency. EPA viewed the Consensus Agreement as a framework for completing its nationwide TSCA policy and evaluated the Consensus Agreement as a source of information in developing the Agency's own policy. The Agency and the Consensus Group shared two general principles about the appropriate framework for a nationwide PCB spills cleanup policy: That the policy should establish requirements designed to be effective in the large majority of spill situations; and that the risks posed by residual contamination (PCBs remaining after cleanup) vary depending upon the location of the spill and the potential for human exposures.

The requirements and standards in this policy are based upon the Agency's evaluation of the potential routes of exposure and potential risks associated with the more common types of PCB spills, as well as the costs associated with cleanup following these more common types of spills. Typical PCB spills involve the limited release of PCBs during the course of EPA-authorized activities such as: The use of electrical equipment (e.g., transformers and capacitors), the servicing of electrical equipment, and the storage for disposal of PCBs.

In establishing this cleanup policy for typical PCB spills, EPA recognizes that the risks posed by spills of PCBs vary, depending upon spill location and the amount of PCBs spilled. EPA recognized this earlier, in both the August 25, 1982 PCB Electrical Equipment Rule and the July 17, 1985 PCB Transformer Fires Rule. In these rules, EPA placed more stringent requirements on higher concentration PCBs located in areas where their release would pose greatest potential for significant human exposure.

This TSCA policy requires cleanup of PCBs to different levels depending upon spill location, the potential for exposure to residual PCBs remaining after cleanup, the concentration of the PCBs initially spilled (i.e., PCBs spilled from PCB-contaminated equipment versus PCBs spilled from PCB equipment), and the nature and size of the population potentially at risk of exposure. Thus, this policy applies the most stringent requirements for PCB spill cleanup to areas where there is the greater potential for human exposures to spilled PCBs. The policy applies less stringent requirements for cleanup to PCB spills in areas where the type and degree of contact present lower potential exposures. Finally, even less stringent requirements apply to areas where there is little potential for any direct human exposures.

EPA firmly believes that by providing uniform, predictable requirements across the regions for the majority of spill situations, the nationwide policy will reduce the risks posed by spills of PCBs by encouraging rapid and effective cleanup and restoration of the site.

Unit VII of this document discusses available information and the rationale for the policy based upon that information. The policy reflects the Agency's best judgment in light of available information. However, the Agency welcomes comment on, and additional relevant information about, the TSCA policy as the Agency intends to continue to consider comments and evaluate information on the issue of PCB spills cleanup. Should the Agency's evaluation show that new information, or practical considerations associated with the implementation of the policy, warrant changes in, or modifications to, the policy, the policy will be revised accordingly by EPA headquarters. Thus, a public docket has been established to collect comments and information. The Agency believes that much of the data currently lacking can be developed only over a period of time and experience in implementing the policy. Therefore, EPA has not placed a time limit on the submission of comments.

Finally, the Agency intends to re-examine in 12 to 18 months the need to promulgate regulations requiring cleanup in accordance with Agency standards. The Agency's decision on the need to promulgate regulations will be based on two primary considerations. First, EPA will consider whether the issuance of the policy has in fact resulted in the application of consistent nationwide standards to PCB spill cleanup. Second, EPA will consider its experience in enforcing provisions of this policy with particular emphasis on the results of any litigation brought by the Agency for improper PCB disposal from leaks or spills.

II. Scope of the Policy

This policy establishes requirements for the cleanup of spills resulting from the release of materials containing PCBs at concentrations of 50 ppm or greater. The policy applies to spills which occur after the effective date of this policy.

Existing spills (spills which occurred prior to the effective date of this policy) are excluded from the scope of this policy for two reasons: (1) For old spills which have already been discovered, this policy is not intended to require additional cleanup where a party has already cleaned a spill in accordance with requirements imposed by EPA through its regional offices, nor is this policy intended to interfere with ongoing litigation of enforcement actions which bring into issue PCB spills cleanup; and (2) EPA recognizes that old spills which are discovered after the effective date of this policy will require site-by-site evaluation because of the likelihood that the site involves more pervasive PCB contamination than fresh spills and because old spills are generally more difficult to clean up than fresh spills (particularly on porous surfaces such as concrete). Therefore, spills which occurred before the effective date of this policy are to be decontaminated to requirements established at the discretion of EPA, usually through its regional offices.

EPA expects the large majority of PCB spills subject to the TSCA PCB regulations to conform to the typical spill situations considered in developing this policy. However, this policy does exclude from application of the final numerical cleanup standards certain spill situations: Spills directly into surface water, drinking water, sewers, grazing lands, and vegetable gardens. While these spills are subject to the notification requirements and to measures designed to minimize further environmental contamination (see Unit IV.A.), final cleanup standards for these types of spills are to be established at the discretion of the EPA regional offices.

For all other spills, EPA generally expects the final decontamination standards of this policy to apply. Occasionally, some small percentage of spills covered by this policy may

warrant different or more stringent cleanup requirements because of additional routes of exposure or significantly greater exposures than those assumed in developing the final cleanup standards of this policy.

There may also be exceptional spill situations that require less stringent cleanup, or a different approach to cleanup, due to factors associated with the particular spill. These factors may mitigate expected exposures and risks or make cleanup to these requirements impracticable.

A. Excluded Spills

Although the following six spill situations are excluded from the automatic application of final numerical decontamination standards of Units IV.B and C, the general requirements under Unit IV.A do apply to these spills. In addition, all of these excluded situations require practicable, immediate actions to contain the area of contamination. While these situations may not always require more stringent cleanup measures, the Agency is excluding these situations because they will always involve significant factors that may not be adequately addressed by cleanup standards based upon typical spill characteristics.

For the following six spill situations, the responsible party shall decontaminate the spill in accordance with site-specific requirements established by the EPA regional offices:

1. Spills that result in the direct contamination of surface waters (surface waters include, but are not limited to, "waters of the United States" as defined in 40 CFR Part 122, ponds, lagoons, wetlands, and storage reservoirs).
2. Spills that result in the direct contamination of sewers or sewage treatment systems.
3. Spills that result in the direct contamination of any private or public drinking water sources or distribution systems.
4. Spills which migrate to and contaminate surface waters, sewers, or drinking water supplies before cleanup has been completed in accordance with this policy.
5. Spills that contaminate animal grazing lands.
6. Spills that contaminate vegetable gardens.

B. Spill Situations Within the Scope of the Policy That May Warrant More Stringent Cleanup Levels

For spills within the scope of this policy, EPA generally retains the authority to require additional cleanup upon finding that, despite good faith efforts by the responsible party, the numerical decontamination levels in the policy have not been met (see discussion in Unit VI). In addition, EPA foresees the possibility of exceptional spill situations in which site-specific risk factors may warrant additional cleanup to more stringent numerical decontamination levels than are required by the policy. In these situations, the Regional Administrator has the authority to require additional cleanup upon finding, based upon the specific facts of the spill, that further cleanup must occur to prevent unreasonable risk. Before making a final decision on additional cleanup, the Regional Administrator will notify the Director of the Office of Toxic Substances of his finding and the basis for the finding.

For example, site-specific characteristics such as short depth to ground water, type of soil, or the presence of a shallow well may pose exceptionally high potential for ground water contamination by PCBs remaining after cleanup to the standards specified in this policy. Spills that pose such a high degree of potential for ground water contamination have not been excluded from the policy under Unit II.A.1 because the presence of such potential may not be readily apparent. EPA feels that automatically excluding such spills from the scope of the policy could result in the delay of cleanup—a particularly undesirable outcome if potential ground water contamination is in fact a significant concern.

C. EPA Flexibility To Allow Less Stringent or Alternative Requirements

EPA retains the flexibility to allow less stringent or alternative decontamination measures based upon site-specific considerations. EPA will exercise this flexibility if the responsible party demonstrates that cleanup to the numerical decontamination levels is clearly unwarranted because of risk-mitigating factors, that compliance with the procedural requirements or numerical standards in the policy is impracticable at a particular site, or that site-specific characteristics make the costs of cleanup prohibitive.

The Regional Administrator will notify the Director of OTS of any decision (and the basis for that decision) to all less stringent cleanup. The purpose of this notification is to enable the Director of OTS to ensure consistency in standards for spill cleanup under special circumstances across the regions.

D. The Relationship of This Policy to Other Statutes

This policy does not affect cleanup standards or requirements for the reporting of spills imposed, or to be imposed, under other Federal Statutory authorities, including but not limited to, the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA). Where more than one requirement applies, the stricter standard must be met.

The Agency recognizes that the existence of this policy will inevitably result in attempts to apply the standards to situations within the scope of other statutory authorities. However, other statutes require the Agency to consider different or alternative factors in determining appropriate corrective actions. In addition, the types and magnitudes or exposures associated with sites requiring corrective action under other statutes often involve important differences from those expected of the typical, electrical equipment-type spills considered in developing this policy. Thus, cleanups under other statutes, such as RCRA corrective actions or remedial and emergency response actions under SARA, may result in different outcomes.

III. Definitions

For purposes of this policy, certain words and phrases are used to denote specific materials, procedures, or circumstances. The following definitions are provided for purposes of clarity and are not to be taken as exhaustive lists of situations and materials covered by the policy.

1. *PCBs.* The term means polychlorinated biphenyls as defined in 40 CFR 761.3. As specified in 40 CFR 761.1(b), no requirements may be avoided through dilution of the PCB concentration.

2. *Low-concentration PCBs.* The term means PCBs that are tested and found to contain less than 500 ppm PCBs, or those PCB-containing materials which EPA requires to be assumed to be at concentrations below 500 ppm (i.e., untested mineral oil dielectric fluid).

3. *High-concentration PCBs.* The term means PCBs that contain 500 ppm or greater PCBs, or those materials which EPA requires to be assumed to contain 500 ppm or greater PCBs in the absence of testing.

4. *Spill.* The term as used in this policy means both intentional and

unintentional spills, leaks, and other uncontrolled discharges where the release results in any quantity of PCBs running off or about to run off the external surface of the equipment or other PCB source, as well as the contamination resulting from those releases. This policy applies to spills of 50 ppm or greater PCBs. The concentration of PCBs spilled is determined by the PCB concentration in the material spilled as opposed to the concentration of PCBs in the material onto which the PCBs were spilled. Where a spill of untested mineral oil occurs, the oil is presumed to contain greater than 50 ppm, but less than 500 ppm PCBs, and is subject to the relevant requirements of this policy.

5. *Residential/commercial areas.* Residential/commercial areas are those areas where people live or reside, or where people work in other than manufacturing or farming industries. Residential areas include housing and the property on which housing is located, as well as playgrounds, roadways, sidewalks, parks and other similar areas within a residential community. Commercial areas are typically accessible to both members of the general public and employees and include public assembly properties, institutional properties, stores, office buildings, and transportation centers.

6. *Outdoor electrical substations.* Outdoor electrical substations are outdoor, fenced-off, and restricted access areas used in the transmission and/or distribution of electrical power. Outdoor electrical substations restrict public access by being fenced or walled off as defined at 40 CFR 761.30(1)(1)(ii). For purposes of this TSCA Policy, outdoor electrical substations are defined as being located at least 0.1 kilometer (km) from a residential/commercial area. Outdoor fenced-off and restricted access areas used in the transmission and/or distribution of electrical power which are located less than 0.1 km from a residential/commercial area are considered to be residential/commercial areas.

7. *Other restricted access (nonsubstation) locations.* Other restricted access (nonsubstation) locations are areas other than electrical substations that are at least 0.1 km from a residential/commercial area and limited by man-made barriers (e.g., fences and walls) or substantially limited by naturally occurring barriers such as mountains, cliffs, or rough terrain. These areas generally include industrial facilities and extremely remote rural locations. (Areas where access is restricted but are less than 0.1 km from a residential/commercial area are considered to be residential/commercial areas.)

8. *Nonrestricted access areas.* A nonrestricted access area is any area other than restricted access, outdoor electrical substations, and other restricted access locations, as defined in paragraphs 5 and 6 of this unit. In addition to residential/commercial areas, these areas include unrestricted access rural areas (areas of low-density development and population where access is uncontrolled by either man-made barriers or naturally occurring barriers, such as rough terrain, mountains, or cliffs).

9. *High-contact residential/commercial surface.* A high-contact residential/commercial surface is a surface in a residential/commercial area which is repeatedly touched, often for relatively long periods of time. Doors, wall areas below 6 feet in height, uncovered flooring, windowsills, fencing, banisters, stairs, automobiles, and children's play areas, such as outdoor patios and sidewalks, are examples of high-contact residential/commercial surfaces. Examples of low-contact residential/commercial surfaces include interior ceilings, interior wall areas above 6 feet in height, roofs, asphalt roadways, concrete roadways, wooden utility poles, unmanned machinery, concrete pads beneath electrical equipment, curbing, exterior structural building components (e.g., aluminum/vinyl siding, cinder block, asphalt tiles), and pipes.

10. *High-contact industrial surface.* A high-contact industrial surface is a surface in an industrial setting which is repeatedly touched, often for relatively long periods of time. Manned machinery and control panels are examples of high-contact industrial surfaces. High-contact industrial surfaces are generally of impervious solid material. Examples of low-contact industrial surfaces include ceilings, walls, floors, roofs, roadways and sidewalks in the industrial area, utility poles, unmanned machinery, concrete pads beneath electrical equipment, curbing, exterior structural building components, indoor vaults, and pipes.

11. *Soil.* The term means all vegetation, soils and other ground media, including but not limited to sand, grass, gravel, and oyster shells. It does not include concrete and asphalt.

12. *Impervious solid surfaces.* The term means solid surfaces which are nonporous and thus unlikely to absorb spilled PCBs within the short period of time required for cleanup of spills under this policy. Impervious solid surfaces include, but are not limited to, metals, glass, aluminum siding, and enameled or laminated surfaces.

13. *Nonimpervious solid surfaces.* The term means solid surfaces which are porous and are more likely to absorb spilled PCBs prior to completion of the cleanup requirements prescribed in this policy. Nonimpervious solid surfaces include, but are not limited to, wood, concrete, asphalt, and plasterboard.

14. *Double wash/rinse.* The double wash/rinse procedural performance standard applied in this policy means a minimum requirement to cleanse solid surfaces (both impervious and nonimpervious) two times with an appropriate solvent or other material in which PCBs are at least 5 percent soluble (by weight). A volume of PCB-free fluid sufficient to cover the contaminated surface completely must be used in each wash/rinse. The wash/rinse requirement does not mean the mere spreading of solvent or other fluid over the surface, nor does the requirement mean a once-over wipe with a soaked cloth. Precautions must be taken to contain any runoff resulting from the cleansing and to dispose properly of wastes generated during the cleansing.

15. *Standard wipe test.* For spills of high concentration PCBs on solid surfaces, this policy requires cleanup to numerical surface standards and sampling by a standard wipe test to verify that the numerical standards have been met. This definition constitutes the minimum requirements for an appropriate wipe testing protocol. A standard-size template (10 centimeters (cm) X 10 cm) will be used to delineate the area of cleanup; the wiping medium will be a gauze pad or glass wool of known size which has been saturated with hexane. It is important that the wipe be performed very quickly after the hexane is exposed to air. EPA strongly recommends that the gauze (or glass wool) be prepared with hexane in the laboratory and that the wiping medium be stored in sealed glass vials until it is used for the wipe test. Further, EPA requires the collection and testing of field blanks and replicates.

16. *Requirements and standards.* The term "requirements," as used in this policy means both the procedural responses and numerical decontamination levels set forth in this policy as constituting adequate cleanup of PCBs. The term "standards" means the numerical decontamination levels set forth in this policy.

17. *Spill area.* The term means the area of soil on which visible traces of the spill can be observed plus a buffer

zone of 1 foot beyond the visible traces. Any surface or object (e.g., concrete sidewalk or automobile) within the visible traces area, or on which visible traces of the spilled material are observed, is included in the spill area. This area represents the minimum area assumed to be contaminated by PCBs in the absence of precleanup sampling data and is thus the minimum area which must be cleaned.

18. *Spill boundaries.* The term means the actual area of contamination as determined by postcleanup verification sampling, or by precleanup sampling to determine actual spill boundaries. EPA can require additional cleanup when necessary to decontaminate all areas within the spill boundaries to the levels required in this policy (e.g., additional cleanup will be required if postcleanup sampling indicates that the area decontaminated by the responsible party, such as the spill area as defined in paragraph 13 of this unit, did not encompass the actual boundaries of PCB contamination).

IV Requirements for PCB Spill Cleanup

A. General Requirements

Unless expressly limited, the reporting, disposal, and precleanup sampling requirements in this unit apply to all spills of PCBs at concentrations of 50 ppm or greater which are subject to decontamination requirements under TSCA, including those spills listed in Unit II.A.1 through 6 which are excluded from the final cleanup standards in Units IV. B and C.

1. *Reporting requirements.* The following reporting is required in addition to applicable reporting requirements under the CWA or CERCLA. For example, under the National Contingency Plan all spills involving 10 lbs or more of PCB material must currently be reported to the National Response Center (1–800–424–8802). The requirements below are designed to be consistent with existing reporting requirements to the extent possible so as to minimize reporting burdens on the governments as well as the regulated community.

a. Where a spill directly contaminates surface water, sewers, or drinking water supplies (see discussion under Unit II.A), the responsible party shall notify the appropriate EPA regional office (the Office of Pesticides and Toxic Substances Branch) and obtain guidance for appropriate cleanup measures in the shortest possible time after discovery, but in no case later than 24 hours after discovery.

b. Where a spill directly contaminates grazing lands or vegetable gardens (see discussion under Unit II.A), the responsible party shall notify the appropriate EPA regional office (the Office of Pesticides and Toxic Substances Branch) and proceed with the immediate requirements specified in Unit IV.B or C, depending of the source of the spill, in the shortest possible time after discovery, but in no case later than 24 hours after discovery.

c. Where a spill exceeds 10 pounds of PCB material (generally 1 gallon of PCB dielectric fluid) and is not addressed in paragraph 1.a. or b. of this unit, the responsible party will notify the appropriate EPA regional office and proceed to decontaminate the spill area in accordance with this TSCA policy in the shortest possible time after discovery, but in no case later than 24 hours after discovery. For purposes of the notification requirement, the 10 pounds are measured by the weight of the PCB-containing material spilled rather than by the weight of only the PCBs spilled.

d. Spills of 10 pounds of less which are not addressed in paragraphs 1. a. or b. of this unit must cleaned up in accordance with this policy (in order to avoid EPA enforcement liability), but notification of EPA is not required.

2. *Disposal of cleanup debris and materials.* All contaminated soils, solvents, rags, and other materials resulting from the cleanup of PCBs under this policy shall be properly stored, labeled, and disposed of in accordance with the provisions of 40 CFR 761.60.

3. *Determination of spill boundaries in the absence of visible traces.* For spills where there are insufficient visible traces yet there is evidence of a leak or spill, the boundaries of the spill are to be determined by using a statistically based sampling scheme.

B. Requirements for Cleanup of Low-Concentration Spills Which Involve Less Than 1 LB PCBs By Weight (Less Than 270 Gallons of Untested Mineral Oil)

1. *Decontamination requirements.* Spills of low-concentrations PCBs (as defined in Unit III) which involve less than 1 pound of PCBs by weight (i.e., less than 270 gallons of untested mineral oil containing less than 500 ppm PCBs) shall be cleaned in the following manner:

a. Solid surfaces must be double washed/rinsed (as defined in Unit III) except that all indoor, residential surfaces other than vault areas must be cleaned to 10 micrograms per 100 square centimeters (100 $\mu g/cm^2$) by standard commercial wipe tests.

b. All soil within the spill area (i.e., visible traces of soil and a buffer of 1 lateral foot around the visible traces) must be excavated and the ground be restored to its original configuration by back-filling with clean soil (i.e., containing less than 1 ppm PCBs).

c. Requirements in paragraphs 1. a. and b. of this unit must be completed within 48 hours after the owner of the equipment, facility, or other source of PCBs (the responsible party) was notified or became aware of the spill.

2. *Effect of emergency or adverse weather.* Completion of cleanup may be delayed beyond 48 hours in case of circumstances including but not limited to, civil emergency, adverse weather conditions, lack of access to the site, and emergency operating conditions. The occurrence of a spill on a weekend or overtime costs are not acceptable reasons to delay response. Completion of cleanup may be delayed only for the duration of the adverse conditions. If the adverse weather conditions, or time lapse due to other emergency, have left insufficient visible traces, the responsible party must use a statistically based sampling scheme to determine the spill boundaries as required in Unit IV.A.3.

3. *Records and certification.* At the completion of cleanup, the responsible party or appropriate agent shall document the cleanup with records and certification of decontamination. The records and certification must be maintained for a period of 5 years. The records and certifiction shall consist of the following:

a. Indentification of the source of the spill, e.g., type of equipment.

b. Estimated or actual date and time of the spill occurrence.

c. The date and time cleanup was completed or terminated (if cleanup was delayed by emergency or adverse weather: the nature and duration of the delay).

d. A brief description of the spill location.

e. Precleanup sampling data used to establish the spill boundaries if required because of insufficient visible traces, and a brief description of the sampling methodology used to establish the spill boundaries.

f. A brief description of the solid surfaces cleaned and of the double wash/rinse method used.

g. Approximate depth of soil excavation and the amount of soil removed.

h. A certification statement signed by the responsible party or his/her designated agent (e.g., a facility manager or foreman) stating that the cleanup

requirements have been met and that the information contained in the record is true to the best of his/her knowledge.

While not required for compliance with this policy, the following information would be useful if maintained in the records: (1) Additional pre- or postcleanup sampling: and (2) the estimated cost of the cleanup by man-hours, dollars, or both.

C. Requirements for Cleanup of High-Concentration Spills and Low-Concentration Spills Involving 1 LB or More PCBs By Weight (270 Gallons or More of Untested Mineral Oil)

Cleanup of low-concentration spills involving 1 lb or more PCBs by weight, and of all other spills of regulated materials shall be considered complete if all of the immediate requirements, cleanup standards, sampling, and recordkeeping requirements below are met.

1. *Immediate requirements.* The following four actions must be taken as quickly as possible and within no more than 24 hours (or within 48 hours for PCB Transformers) after the owner of the equipment or container from which the spill occurred, or other responsible representative of the owner such as a facility manager, was notified or became aware of the spill, except that actions described in paragraphs 1. b., c., and d. of this unit may be delayed beyond 24 hours if circumstances (e.g., civil emergency, hurricane, tornado, or other similar adverse weather conditions, lack of access due to physical impossibility, or emergency operating conditions) so require for the duration of the adverse conditions. The occurrence of a spill on a weekend or overtime costs are not acceptable reasons to delay response. Owners of spilled PCBs who have delayed cleanup because of these types of circumstances must keep records documenting the fact that circumstances precluded rapid response. The responsible party shall:

a. Notify the EPA regional office and the NRC as required by Unit IV.A.1 or by other applicable statutes.

b. Effectively cordon off or otherwise delineate and restrict an area encompassing any visible traces plus a 3-foot buffer, and place clearly visible signs advising persons to avoid the area, to minimize the spread of contamination as well as the potential for human exposure.

c. Record and document the area of visible contamination, noting the extent of the visible trace areas and the center of the visible trace area. If there are no visible traces, the responsible party shall record this fact and contact the regional office of the EPA for guidance in completing statistical sampling of the spill area to establish spill boundaries.

d. Initiate cleanup of all visible traces of the fluid on hard surfaces and initiate removal of all visible traces of the spill on soil and other media, such as gravel, sand, oyster shells, etc.

If there has been a delay in reaching the site and there are insufficient visible traces of PCBs remaining at the spill site, the owner of the PCBs must estimate (based on the amount of material missing from the equipment or container) the area of the spill and immediately cordon off the area of suspect contamination. The owner must then utilize a statistically based sampling scheme to identify the boundaries of spill area as soon as practicable.

Although this policy requires certain immediate actions, as described above, EPA is not placing a time limit on completion of the cleanup effort since the time required for completion will vary from case to case. However, the Agency expects that decontamination will be achieved promptly in all cases and will consider the promptness of completion in determining whether a responsible party made good faith efforts to clean up in accordance with this policy.

2. *Requirements for decontaminating spills in outdoor electrical substations.* Spills which occur in outdoor electrical substations (as defined in Unit III) shall be decontaminated in accordance with paragraphs a. and b. of this unit. Conformance to the cleanup standards in paragraphs a. and b. of this unit shall be verified by postcleanup sampling as specified in Unit V. At such times as outdoor electrical substations are converted to another use, the spill site shall be cleaned up to the non-restricted access requirements in Unit IV.C.4.

a. Contaminated solid surfaces (both impervious and non-impervious) shall be cleaned to a PCB concentration of 100 $\mu g/100\ cm^2$ (as measured by standard wipe tests).

b. At the option of the responsible party, soil contaminated by the spill will be cleaned: (1) To 25 ppm PCBs by weight, or (2) to 50 ppm PCBs by weight provided that a label or notice is visibly placed in the area. Upon demonstration by the responsible party that cleanup to 25 ppm or 50 ppm will jeopardize the integrity of the electrical equipment at the substation, the EPA regional office may establish an alternative cleanup method or level and place the responsible party on a reasonably timely schedule for completion of cleanup.

3. *Requirements for decontaminating spills in other restricted access areas.* Spills which occur in restricted access locations other than outdoor electrical substations (as defined in Unit III) shall be decontaminated in accordance with paragraphs 3.a through e. of this unit. Conformance to the cleanup standards in paragraphs a. through e. of this unit shall be verified by postcleanup sampling as specified in Unit V. At such times as restricted access areas other than outdoor electrical substations are converted to another use, the spill site shall be cleaned up to the nonrestricted access area requirements under Unit IV.C.4.

a. High-contact solid surfaces (see definition of high-contact industrial surfaces in Unit III) shall be cleaned to 10 $\mu g/100\ cm^2$ (as measured by standard wipe tests).

b. Low-contact, indoor, impervious solid surfaces will be decontaminated to 10 $\mu g/100\ cm^2$.

c. At the option of the responsible party, low-contact, indoor, nonimpervious surfaces will be cleaned either: (1) To 10 $\mu g/100\ cm^2$; or (2) to 100 $\mu g/100\ cm^2$ and encapsulated. The Regional Administrator, however, retains the authority to disallow the encapsulation option for a particular spill situation upon finding that the uncertainties associated with that option pose special concerns at that site. That is, the Regional Administrator would not permit encapsulation if he/she determined that if encapsulation failed at a particular site this failure would create an imminent hazard.

d. Low-contact, outdoor surfaces (both impervious and non-impervious) shall be cleaned to 100 $\mu g/100\ cm^2$.

e. Soil contaminated by the spill will be cleaned to 25 ppm PCBs by weight.

4. *Requirements for decontaminating spills in non-restricted access areas.* Spills which occur in nonrestricted access locations (as defined in Unit III) shall be decontaminated in accordance with paragraphs 4.a. through e. of this unit. Conformance to the cleanup standards in paragraphs 4.a. through e. of this unit shall be verified by postcleanup sampling as specified in Unit V. At such times as outdoor electrical substations and other restricted access areas are converted to another use, the spill site shall be cleaned up to the non-restricted access area requirements.

a. Furnishings, toys, and other easily replaceable household items shall be disposed of in accordance with the provisions of 40 CFR 761.60 and replaced by the responsible party.

b. Indoor solid surfaces and high-contact outdoor solid surfaces (see definition of high contact residential/

commercial surfaces in Unit III) shall be cleaned to 10 $\mu g/100\ cm^2$ (as measured by standard wipe tests).

c. Indoor vault areas, and low-contact, outdoor, impervious solid surfaces shall be decontaminated to 10 $\mu g/100\ cm^2$.

d. At the option of the responsible party, low-contact, outdoor, nonimpervious solid surfaces shall be either: (1) cleaned to 10 $\mu g/100\ cm^2$; or (2) cleaned to 100 $\mu g/100\ cm^2$ and encapsulated. The Regional Administrator, however, retains the authority to disallow the encapsulation option for a particular spill situation upon finding that the uncertainties associated with that option pose special concerns at that site. That is, the Regional Administrator would not permit encapsulation if he/she determined that if the encapsulation failed the failure would create an imminent hazard at the site.

e. Soil contaminated by the spill will be decontaminated to 10 ppm PCBs by weight, provided that soil is excavated to a minimum depth of 10 inches. The excavated soil will be replaced with clean soil (i.e., containing less than 1 ppm PCBs), and the spill site will be restored (e.g., replacement of turf).

5. *Records.* The responsible party or appropriate agent shall document the cleanup with records of decontamination. The records must be maintained for a period of 5 years. The records and certification shall consist of the following:

a. Identification of the source of the spill (e.g., type of equipment.)

b. Estimated or actual date and time of the spill occurrence.

c. The date and time cleanup was completed or terminated (if cleanup was delayed by emergency or adverse weather: the nature and duration of the delay).

d. A brief description of the spill location and the nature of the materials contaminated (this information should include whether the spill occurred in an outdoor electrical substation, other restricted access location, or in a nonrestricted access area).

e. Precleanup sampling data used to establish the spill boundaries if required because of insufficient visible traces, and a brief description of sampling methodology used to establish the spill boundaries.

f. A brief description of the solid surfaces cleaned.

g. Approximate depth of soil excavation and the amount of soil removed.

h. Postcleanup verification sampling data and, if not otherwise apparent from the documentation, a brief description of the sampling methodology and analytical technique used.

While not required for compliance with this policy, information on the estimated cost of cleanup (by man-hours, dollars, or both) would be useful if maintained in the records.

EPA will soon issue for publication in the **Federal Register** a proposed rule to require these recordkeeping measures to facilitate EPA's monitoring of PCB spill cleanups.

V. Sampling Requirements

Postcleanup sampling is required to verify the level of cleanup under Unit IV.C. 2 through 4. The responsible party, or designated agent, may use any statistically valid, reproducible, sampling scheme (either random samples or grid samples), provided that the requirements of paragraphs 1. and 2. of this unit are satisfied.

1. The sampling area is the greater of (1) an area equal to the area cleaned plus an additional 1-foot boundary, or (2) an area 20 percent larger than the original area of contamination.

2. The sampling scheme must ensure 95 percent confidence against false positives.

3. The number of samples must be sufficient to ensure that areas of contamination of a radius of 2 feet or more within the sampling area will be detected, except that the minimum number of samples is 3 and the maximum number of samples is 40.

4. The sampling scheme must include calculation for expected variability due to analytical error.

EPA recommends the use of the sampling scheme developed by the Midwest Research Institute (MRI) for use in EPA enforcement inspections: "Verification of PCB Spill Cleanup by Sampling and Analysis." Guidance for the use of this sampling scheme is available in the MRI report "Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup." Both the MRI sampling scheme and the guidance document are available from the TSCA Assistance Office at the address and telephone number given under "FOR FURTHER INFORMATION CONTACT." The major advantage of this sampling scheme is that it is designed to characterize the degree of contamination within the entire sampling area with a high degree of confidence while using fewer samples than any other grid or random sampling scheme. This sampling scheme also allows some sites to be characterized on the basis of composite samples.

At its discretion, EPA may take samples from any spill site. If EPA's sampling indicates that the remaining concentration level exceeds the required level, EPA will require further cleanup. For this purpose, the numerical level of cleanup required for spills cleaned in accordance with Unit IV.B are deemed to be the equivalent of numerical cleanup requirements required for cleanups under Unit IV.C. 2 through 4. EPA may sample using its best engineering judgment, a statistically valid random or grid sampling technique, or both. When using engineering judgment or random "grab" samples, EPA will take into account that there are limits on the power of a grab sample to dispute statistically based sampling of the type required of the responsible party. EPA headquarters will provide guidance to the EPA regions on the degree of certainty associated with various grab sample results.

VI. EPA Enforcement and the Effect of Compliance With This Policy

Although a spill of material containing 50 ppm or greater PCBs is considered improper PCB disposal, this policy establishes requirements that EPA considers to be adequate cleanup of the spilled PCBs. Cleanup in accordance with this policy means compliance with the procedural as well as the numerical requirements of this policy. Compliance with this policy creates a presumption against both enforcement action for penalties and the need for further cleanup under TSCA. The Agency reserves the right, however, to initiate appropriate action to compel cleanup where, upon review of the records of cleanup, EPA finds that the decontamination levels in the policy have not been achieved. The Agency also reserves the right to seek penalties where the Agency believes that the responsible party has not made a good faith effort to comply with all provisions of this policy, such as prompt notification of EPA of a spill, recordkeeping, etc.

EPA's exercise of enforcement discretion does not preclude enforcement action under other provisions of TSCA or any other Federal statute. This includes, even in cases where the numerical decontamination levels set forth in this policy have been met, civil or criminal action for penalties where EPA believes the spill to have been the result of gross negligence or knowing violation.

The TSCA policy has been reviewed by the Office of Management and Budget.

This concludes EPA's TSCA policy. Unit VII, which follows, contains the rationale for the policy, the data on which the policy was based, and the

areas in which EPA lacks data. EPA solicits information to fill those gaps.

VII. Development of the TSCA Spill Cleanup Policy

As will become apparent in the discussion below, there are gaps in the information which was available to the Agency in developing the TSCA policy. The EPA designed the TSCA policy to enable the Agency and the regulated industry to gather data for filling the gaps. In all cases, through the cleanup levels established in the TSCA policy and by retaining authority to require additional cleanup where warranted, EPA has placed sufficient controls on the party responsible for cleanup to ensure that future PCB spills will be cleaned to levels that do not pose an unreasonable risk of injury to human health or the environment. The TSCA policy reflects the Agency's best judgment in light of available information. However, the Agency welcomes comment on, and additional relevant information about, the TSCA policy.

A. Risks Posed by Leaks and Spills of PCBs

1. *Frequency, amount, and nature of leaks and spills.* The TSCA policy establishes the measures which EPA considers to constitute adequate cleanup of PCB contamination resulting from activities regulated under TSCA. EPA expects that the TSCA policy will be most frequently applied to leaks and spills of PCBs which occur during the use of authorized equipment such as electrical transformers and capacitors. Thus, EPA's evaluation of the risks posed by spills of PCBs and the costs associated with cleanup following these spills focuses primarily on leaks and spills of PCBs from electrical transformers and capacitors.

EPA estimates that there are 121,000 (askarel) PCB Transformers currently in use, over 20 million mineral oil transformers contaminated with PCBs currently in use, and over 2.8 million large PCB Capacitors currently in use. Available data indicate that on an annual basis, about 3.3 percent of (askarel) PCB Transformers in use will leak or spill PCBs. The average PCB leak or spill from a PCB Transformer is 5.3 gallons, or about 66 pounds of PCBs. On an annual basis, EPA expects that about 264,000 pounds of PCBs are leaked or spilled into the environment from PCB Transformers.

EPA expects that about 17,000 of these PCB Transformers are located in electrical substations, where 37,000 pounds of spilled PCBs would be expected to be released each year. EPA expects that about 27,000 PCB Transformers are located in industrial facilities, where an estimated 59,000 pounds of PCBs are spilled each year. Finally, 77,000 PCB Transformers are located in other areas (most likely, in or near commercial buildings), where an estimated 168,000 pounds of PCBs are released each year.

EPA expects that of the over 20 million PCB-containing mineral oil transformers in use, 76 percent are located in residential neighborhoods and public areas (i.e., schools, shopping centers, etc.). The majority of these transformers contain less than 500 parts per million PCBs. Available data indicate that the average leak or spill of PCBs from mineral oil transformers contains less than one-tenth of a tablespoon of PCBs, or 0.08 ounce of PCBs. On an annual basis, EPA expects that 627 pounds of PCBs are spilled from mineral oil transformers in residential and public areas. The remaining mineral oil transformers are located in outdoor electrical substations, industrial facilities, and rural areas. EPA estimates that less than 200 pounds of PCBs are leaked from these transformers each year.

Based on available data, EPA estimates that there are over 2.8 million PCB Capacitors in use. Of these 2.8 million capacitors, EPA estimates that 1.6 million are in use in substations or generating facilities and 1.2 million are inside buildings and on utility poles throughout the distribution system. Of the 1.6 million PCB Capacitors in use in electrical substations, EPA expects that over 12,000 leak each year, releasing about 200,000 pounds of PCBs. Of the 1.2 million PCB Capacitors in use inside buildings and on utility poles, EPA expects that over 9,000 leak each year, releasing about 154,000 pounds of PCBs.

Electrical transformers generally contain 100 times the amount of PCBs contained within PCB Capacitors. PCB Transformers typically contain between 300 and 500 gallons of PCB dielectric fluid, while PCB Capacitors generally contain about 3 gallons of PCB dielectric fluid. Unlike PCB Transformer spills, the majority of PCB Capacitor spills involve the violent rupture of the capacitor and the spraying of PCBs. Thus, PCBs spilled from energized capacitors are generally more widely distributed in the spill area than PCBs spilled from transformers. Available data indicate that for over 80 percent of capacitor spills, PCBs are distributed as far as 11 feet from the center of the spill.

PCBs spilled from transformers are more likely to leak from gaskets and valves, and the area contaminated from these types of spills is more directly related to the amount of spilled material than is the case for explosive ruptures, such as occur from energized capacitors. EPA conducted a crude experiment in order to predict the maximum lateral spread of PCBs from other than explosive ruptures of electrical transformers; the maximum spread of water on low-porosity surfaces was tested and assumed to be equivalent to the maximum lateral spread of PCBs and PCB-contaminated oils on soil. EPA found that for every gallon of material spilled, one could expect a maximum area of contamination of about 3 square meters (m^2). Although with time one would see a slight increase in lateral spread (assuming no runoff), for the most part, a 1 gallon spill of PCB material from a transformer cleaned up within 2 weeks of the spill would not be expected to contaminate greater than a $3m^2$ area. This assumes of course that the material has not been tracked into other areas in the interim and that weather conditions have not caused further lateral spread. Spills of PCBs from deenergized capacitors, other authorized equipment, and containers of PCBs would be expected to behave in a similar manner to leaks and spills of PCBs from non-explosive transformer spills.

To summarize, the total amount of PCBs released from electrical transformers and capacitors each year from leaks and spills of PCBs is estimated at about 620,000 pounds (out of an estimated 163 million pounds of PCBs in use in this equipment). Of these PCBs, 38 percent are spilled in electrical substations and 62 percent of these PCBs are spilled in residential/commercial areas, rural areas, and industrial facilities. The majority of spilled PCBs are spilled from capacitors, and capacitor spills typically result from violent ruptures and lead to the distribution of PCBs at distances as far away as 11 feet from the center of the spill (total average spill area is about 380 square feet).

PCBs spilled from deenergized capacitors, transformers (excluding transformers involved in fires), other authorized equipment, and PCB Containers generally involve nonviolent ruptures and the maximum spread of the spilled material can be estimated by assuming $3m^2$ of contamination per gallon of spilled material.

2. *Toxicity and environmental persistence.* EPA has concluded that PCBs are both toxic and persistent. In earlier rulemakings and Agency PCB health effects review documents, EPA has determined that persons exposed to PCBs can develop chloracne (a

disfiguring skin illness), and that based on laboratory animal data, there is a potential for reproductive effects and developmental toxicity as well as oncogenicity in humans exposed to PCBs. EPA has also concluded that PCBs are resistant to degradation and that they bioaccumulate and bioconcentrate in the fatty tissue of organisms. PCBs are very stable compounds which can persist for years when released into the environment. A more detailed discussion of EPA's findings on the health effects of PCBs can be found in the July 10, 1986 **Federal Register** (51 FR 28172).

Recently, the Office of Health and Environmental Assessment (OHEA) at EPA developed draft health advisories for PCBs in soil for use by EPA's Office of Emergency and Remedial Response (OERR). These health advisory levels are to be used as guidelines for initiating removal action for sites contaminated with PCBs. The draft health advisories developed by OHEA address both the oncogenic risks and other than oncogenic risks posed to humans by exposures to PCBs in soils at various levels.

The cancer potency slope factor for PCBs has been estimated by EPA's Cancer Assessment Group (CAG) and the Office of Toxic Substances (OTS) to be 4.34 $(mg/kg/day)^{-1}$ and 3.57 $(mg/kg/day)^{-1}$, respectively. An average of these values (4.0 $(mg/kg/day)^{-1}$) was used in the OHEA draft health advisories as the PCB cancer potency factor. The OHEA calculation of the human dose associated with a 1×10^{-6} level of oncogenic risk is 0.0175 microgram/day. The Agency's assessment of risks associated with dermal and inhalation exposure to PCBs on solid surfaces was also based upon a cancer potency slope factor of 4.0 $(mg/kg/day)^{-1}$ for PCBs.

3. *Potential for exposure to spilled PCBs.* In evaluating potential routes of exposure to PCBs which are leaked and spilled, EPA looked at the potentional for exposure in nonrestricted access areas, restricted access areas, and restricted access, outdoor electrical substations. Further, since the TSCA policy is designed to apply to the large majority of spill situations, EPA focused on the routes of potential exposure associated with typical spill situations. Unique spill scenarios which present greater potential exposures or additional routes of exposure are excluded from application of the cleanup levels in the TSCA policy.

In developing the cleanup standards for PCB spills into soil and other ground media, EPA relied primarily on the exposure and risk analysis in the OHEA health advisories for PCBs in soil. Exposure estimates used to evaluate the risk associated with various cleanup standards for solid surfaces such as metals, wood, asphalt, and concrete were developed by the EPA's Office of Toxic Substances. Neither the OHEA assessment for PCBs in soil nor the OTS estimates of exposure to PCBs in soil assume PCB contamination of other potential exposure pathways such as surface water, drinking water supplies, sewer systems, vegetable gardens, or grazing lands.

EPA believes that the large majority of spills which occur after the effective date of the TSCA policy will not involve these additional routes of exposure. Those exceptional spill situations which would result in these additional routes of exposure are excluded from the TSCA policy and must be cleaned up to levels determined by the appropriate EPA regional office. EPA excluded these spill situations from the scope of the policy because such spills may have to be cleaned up to lower levels in recognition of the potential for additional human exposures. Whether or not more stringent cleanup standards are necessary for these exceptional spill situations, the additional routes of potential exposure require some degree of evaluation on a case-by-case basis before making a final decision on appropriate cleanup levels in such circumstances.

Further, spills of PCBs into sand, soil, gravel, and other similar materials in special areas within the residential/commercial setting (i.e., areas where people may come into repeated daily contact, such as children's sandboxes, spills which pose particular concerns about future ground water contamination, spills which involve the combustion of PCBs (and the possible formation of toxic combustion byproducts such as polychlorinated dibenzofurans (PCDFs) and polychlorinated dibenzodioxins (PCDDs)), and spills onto farmland may be required to be cleaned up to lower levels, in recognition of the increased potential for exposure. The EPA regional offices should be contacted for guidance on appropriate cleanup for these types of spills.

The OTS dermal exposure assessments for PCBs on solid surfaces such as metal, concrete, and asphalt assume that PCBs are transferred to the skin at a relatively high rate (50 percent or more). This assumption is based on the results of an EPA-sponsored study on the transfer of PCBs from glass and unpainted metal to skin (human skin and pig skin) upon contact. EPA currently lacks data on the rate of transfer of PCBs from rougher, porous surfaces such as concrete, asphalt or wood to human skin. Although EPA expects that the transfer rate may be significantly lower for rough, porous surfaces, in the absence of more extensive data, EPA has assumed that the transfer rate would be the same as for glass and unpainted steel.

a. *Exposures in nonrestricted access areas.* Areas which do not limit public access by man-made or naturally occurring barriers (i.e., residential, commercial, and unrestricted access rural areas) generally present the greatest potential for a high degree of human exposure to spilled PCBs. Spills of PCBs in residential/commercial areas may involve: (1) The contamination of soil, grass, sand, gravel, and other ground materials; (2) the contamination of outdoor solid surfaces such as metal, concrete, asphalt, and wood; (3) the contamination of indoor solid surfaces such as ceilings, walls, and floors; (4) the contamination of indoor vault areas; and (5) the contamination of household items such as clothing, toys, and patio furniture.

Spills of PCBs in unrestricted access rural areas may involve the contamination of materials like those listed under paragraphs (1) and (2) of this unit. Since human exposures to PCBs spilled in unrestricted access rural areas may at times approach levels of exposure in residential/commercial areas, EPA has included unrestricted access rural areas under the standards for residential/commercial spills. Typical exposures would, however, be expected to be lower in rural areas compared to typical exposures in the residential/commercial setting.

i. *Exposures from outdoor spills into soil, sand, gravel, and other similar materials.* The principal routes of exposure to PCBs spilled into soil in residential areas would be through inhalation and ingestion. Dermal exposures may also occur, although EPA expects that the PCBs will adsorb to the soil particles, reducing the rate of dermal absorption. OHEA has calculated the expected levels of human exposure to PCBs through inhalation and ingestion when PCBs are present at different levels in soil.

The OHEA assessment concludes that a PCB level of 1 to 6 ppm PCBs in soil in a residential/commercial area would be associated with a 1×10^{-5} level of oncogenic risk. OHEA assumed that the contaminated area is 0.5 acre (18,225 square feet), that 0.6 gram of soil is ingested per day at ages 0 to 6, and that the population is exposed for 50 percent of their lifetime. The placement of a 10-

inch cap of clean soil on top of soil containing 1 to 6 ppm PCBs reduces the expected level of oncogenic risk by an order of magnitude (to 1×10^{-6}).

ii. *Exposures to spills onto solid surfaces*—a. *Outdoor surfaces.* PCBs spilled onto outdoor solid surfaces such as metal, concrete, asphalt, or utility poles in residential areas would result in some inhalation exposures and infrequent dermal exposure. For solid surfaces to which people would be expected to have frequent contact, higher levels of dermal exposure would be expected.

Examples of low-contact outdoor solid surfaces include asphalt and concrete roadways, roof areas, unmanned machinery, concrete pads beneath electrical equipment, curbing, and external structural building components. The estimated level of oncogenic risk associated with exposures to low-contact outdoor surfaces in residential/commercial settings (using reasonable worst-case assumptions about exposures to surface levels of 10 $\mu g/100$ cm^2) is between 1×10^{-5} and 1×10^{-6}.

Sidewalks and patios where children play, fences, and automobiles are examples of residential/commercial surfaces to which people may come into frequent daily contact. The estimated level of oncogenic risk associated with exposures to such higher contact outdoor surfaces in residential/commercial settings (using reasonable worst-case assumptions about exposures to surfaces levels of 0.5 to 1.0 $\mu g/100$ cm^2) is between 1×10^{-5} and 1×10^{-6}.

b. *Indoor surfaces.* Spill onto indoor hard surfaces may occur when outdoor electrical equipment ruptures catastrophically and sprays PCBs into a room through an open window or door. Spills onto indoor hard surfaces may also occur when electrical equipment inside a building leaks or spills PCBs and the leaked or spilled PCBs are distributed outside the electrical equipment room into other areas of the building through ventilation equipment and ductwork or by tracking. Inhalation exposures and dermal exposures would be expected following a spill of PCBs onto an indoor hard surface. Based on EPA's assessment of the risks posed by spills of PCBs onto indoor hard surfaces, dermal exposures would be expected to be the exposure route of highest concern (inhalation exposures to residual indoor PCB levels of 10 $\mu g/100$ cm^2 are associated with a 1×10^{-6} level of oncogenic risk, while dermal exposures to this same level of PCBs on a low-contact indoor surface are associated with a 1×10^{-5} level of oncogenic risk).

From a perspective of dermal exposure, there are two types of potentially contaminated surfaces: low-contact surfaces and high-contact surfaces. Low-contact surfaces are those which are infrequently touched. In a residential/commercial setting, ceilings and wall areas above 6 feet in height would be considered low-contact surfaces. High-contact surfaces are those which are repeatedly contacted, often for relatively long periods of time. High-contact surfaces in a residential/commercial area include uncovered flooring, wall areas below 6 feet in height, stairways, bannisters, and railings. The estimated level of oncogenic risk associated with dermal exposures to 1 $\mu g/100$ cm^2 of PCBs on low-contact indoor hard surfaces is between 1×10^{-5} and 1×10^{-6}. The National Institute of Occupational Safety and Health (NIOSH) has reported that 0.5 $\mu g/100$ cm^2 is background level of PCBs on indoor hard surfaces, and this level of residual contamination on a high-contact indoor hard surface would be associated with a level of oncogenic risk between 1×10^{-5} and 1×10^{-6}.

c. *Easily replaceable/high-contact items.* PCBs released from electrical transformers or capacitors in indoor residential/commercial areas may result in the contamination of nonstructural, easily replaceable materials to which people have repeated daily contact (i.e., clothing, household furnishings, paper, notepads, office supplies, patio furniture, toys, swingsets, etc.). Since PCBs are expected to be readily absorbed through the skin, dermal contact with PCBs spilled onto these types of high-contact materials could result in significant exposures. Materials such as paper, clothing, and toys would themselves absorb the PCBs and be difficult, if not impossible, to clean completely. These materials would, however, be expected to release the PCBs slowly, resulting in continued dermal exposures to low levels of PCBs over a prolonged period of time. Depending upon the extent of contamination, inhalation exposures from these types of contaminated high-contact materials could also be significant.

iii. *Spills in indoor vault areas*—a. *Transformer vault areas and electrical equipment rooms.* One of the more common areas of PCB contamination from leaks and spills of PCBs from inuse electrical equipment are indoor transformer vault areas and electrical equipment rooms. Exposures to PCBs may occur through both inhalation and dermal routes, although since many transformer vaults and electrical equipment rooms are well ventilated (reducing airborne PCB concentrations in the vaults), the route of exposure of highest concern in an electrical equipment room would be the dermal route. From the perspective of inhalation exposures alone, residual PCB levels of 10 $\mu g/100$ cm^2 would be associated with oncogenic risks below 1×10^{-6}. Dermal exposures to PCBs on floors, ceilings, and walls in vault areas would be expected to be less than dermal exposures to PCBs on low-contact surfaces in residential/commercial areas because of less frequent contact with the contaminated surfaces. Residual PCB levels (on ceilings, floors, and walls) of 10 $\mu g/100$ cm^2 in vault areas would be associated with a 1×10^{-5} to 1×10^{-6} level of oncogenic risk.

b. *Exposures in industrial and other restricted access (nonsubstation) locations.* PCB spills in the industrial setting may result in: (1) Outdoor contamination of soil, sand, gravel, and other similar materials; (2) contamination of both indoor and outdoor hard surfaces; and (3) indoor contamination of vault areas and electrical equipment rooms.

i. *Outdoor contamination of soil, sand, etc.* The principal route of human exposure to PCBs from a spill in soil is through the inhalation route. Soil ingestion and dermal contact with soil would not be expected to be significant routes of exposure at a restricted access site. PCB levels in soil of 25 ppm would present less than a 1×10^{-7} level of oncogenic risk to people on-site who work more than 0.1 km from the actual spill area (assuming that the spill area is less than 0.5 acre).

ii. *Contamination of hard surfaces.* Hard surfaces which may become contaminated in an industrial area include items such as lathes and other types of industrial equipment and machinery, in addition to surfaces such as asphalt, concrete, and wood. In industrial areas, outdoor hard surfaces such as concrete, asphalt, and structural building components would not be expected to result in as frequent exposures as may occur for these surfaces in a residential/commercial area. Thus, residual PCB levels on these outdoor industrial surfaces of 100 $\mu g/100$ cm^2 (following cleanup of an "askarel" spill) would not be expected to result in significant exposures.

Indoor contamination of structural building components in industrial areas (e.g., ceilings, walls, and floors) and contamination of vaults or electrical equipment rooms would result in some inhalation exposures, but the principal route of exposure would be expected to be through dermal contact. Residual

PCB levels of 10 $\mu g/100\ cm^2$ on indoor low-contact surfaces in industrial areas would not be expected to result in significant exposures.

The highest exposure to surface contamination in an industrial setting would be to industrial workers using machinery contaminated with PCBs. Such workers may experience repeated dermal exposures to PCBs, and others may also experience such exposures if this equipment is sold, transported and/or reused. Dermal contact with PCBs may also lead to oral exposures during meals and while smoking. Depending upon the level of contamination, inhalation may also be significant, since workers using machinery are expected to be in close proximity to the equipment during its use. Higher levels of inhalation exposure can be anticipated if the contaminated equipment is operated under conditions of elevated temperature, since this would increase the volatility of any PCBs present on the equipment. Residual PCB levels of 0.5 $\mu g/100\ cm^2$ (reported by NIOSH as the background level for PCBs) on these types of high-contact surfaces would not result in significant exposures.

c. *Exposures in outdoor electrical substations.* PCBs released from transformers or capacitors in fenced-off electrical substations pose little risk of directly exposing members of the general population to PCBs. Electrical substations are typically located at distances greater than 0.1 kilometer from population areas and are generally fenced off to restrict access to authorized maintanance personnel only. Dermal and inhalation exposures by maintenance workers would, however, occur during servicing activities, an oral exposures may result from the transfer of PCBs from the hands to the mouth during meals or while smoking. Populations located at distances of greater than 0.1 kilometer from the site of the spill may incur inhalation exposures. However, the OHEA assessment document indicates that PCB levels in soil between 220 and 1,300 ppm present a 1×10^{-7} level of oncogenic risk to populations located at distances of 1 km or more from spill areas. Thus, PCB levels of 50 ppm in soil in an outdoor electrical substation would not be expected to result in significant exposures to the general population.

PCB spills onto hard surfaces in outdoor electrical substations may result in inhalation exposures and dermal exposures primarily to maintenance workers. The general population would not be expected to incur significant inhalation exposures, and dermal contact would be unlikely given the fact that these areas are fenced off and have restricted access. Residual PCB levels of 100 $\mu g/100\ cm^2$ would not be expected to result in significant exposures to either the occasional maintenance worker or the general population.

4. *Conclusions about PCB leaks and spills.* Leaks and spills of PCBs from PCB Equipment in residential/commercial areas present the greatest potential for human exposure, when compared to other types and locations of PCB spills. The potential for exposure is high. Oral, dermal, and inhalation exposures to PCBs from spills in residential areas are likely, expecially among children. Human exposures to PCBs spilled in unrestricted access rural areas also may at times be comparable to exposures in the residential setting. Available data on leaks and spills of PCBs indicate that the majority of PCBs spilled from PCB Equipment are spilled from PCB Capacitors and that there are many of these capacitors in use in residential areas.

Potential exposure to spilled PCBs or residual PCBs after cleanup of a spill in a restricted-access area is generally limited to industrial workers. Some types of contamination in restricted-access industrial facilities pose worker exposures as great as residential/commercial exposures. For example, contamination of control panels or manually operated machinery can result in frequent, if not continuous, dermal exposure to industrial workers. Other than any high-contact, manned equipment which may be located outdoors, spills outdoors in an industrial setting will result in a lesser degree of inhalation exposure to workers and the general population than similar spills in residential/commercial settings.

Spills in outdoor electrical substations pose the lowest potential exposures. Outdoor electrical substation are generally fenced off to restrict access to authorized personnel only. There is some possibility of dermal and inhalation exposures to maintenance workers. However, exposure to maintenance workers is less likely to be of a continuous or frequent nature than exposures to industrial workers.

B. Costs of Cleanup

1. *Factors influencing the cost of cleanup.* The cleanup of spilled PCBs from transformers and capacitors typically consists of a number of different measures: (1) Securing the spill site, (2) formulating a spill cleanup plan based on the nature of the spill, (3) removing or repairing the leaking equipment, (4) removing contaminated material (e.g., soil), (5) cleaning contaminated surfaces and decontaminating or removing equipment contaminated during cleanup, (6) properly disposing of contaminated materials, (7) ensuring proper cleanup by sampling and chemical analysis, and (8) restoring the site.

The costs associated with phases (1), (2), (3), and (8) above are fairly fixed and will not vary significantly with more, less stringent cleanup requirements. The costs associated with cleanup phases (4), (5), (6), and (7) above are the more variable elements influencing the total cost of cleanup and are affected by several factors, including the concentration of PCBs spilled, the amount of PCB material spilled, the size or boundary of the spill area (often influenced by the time lapse between spill occurrence and cleanup), and the nature and stringency of cleanup requirements.

According to information gathered by OTS staff in telephone surveys and, in a few cases, written comments, the two most significant cost factors associated with various target cleanup levels are: (1) The number of times cleanup crews have to be sent to the site; and (2) whether or not postcleanup sampling is required. The imposition of sampling costs automatically has the effect of requiring that cleanup crews have to make at least two trips to the site (at least once to clean and at least once to restore the site after the sampling results have verified cleanup). The more stringent cleanup requirements are, the more likely that more than one attempt at cleanup will have to be made and that more than one set of samples will have to be taken.

Thus, the effect of stringent cleanup requirements coupled with requirements for postcleanup verification by sampling is to (1) mitigate exposures by ensuring a greater degree of cleanup; (2) exacerbate exposures by leaving the site open for a longer period of time; and (3) increase the costs of complying with the policy. EPA weighed these countervailing considerations in establishing the various cleanup requirements in the TSCA policy. The balance between the benefits associated with potential risk reductions on the one hand, and potential additional risks and costs imposed by more stringent requirements on the other, weigh out differently depending on the potential for exposure and the degree of certainty that less stringent requirements will result in adequate cleanup.

As is discussed below, EPA has limited data on the cost of cleanup, particularly in the area of cleaning solid

surfaces such as metal or concrete to various levels. Further, the data that are available cannot readily be analyzed to determine the impact of variables other than the degree of cleanup and the extent of sampling performed at the site (e.g., amount spilled, types of ground materials or surfaces contaminated, and time lapse between spill occurrence and cleanup). EPA has evaluated available data and estimated the ranges of incremental costs associated with cleanup to various levels.

a. *Cleanup of spills in soil, sand, gravel, etc.* Available information suggests that the cost of cleanup of soil to "background" levels of PCBs can be 3 to 15 times greater than the cost of cleanup to 50 ppm. Further, since PCBs are ubiquitous in the enviroment and are found at low concentrations throughout the world (in areas where PCBs have never been used), target levels for PCBs spill cleanup which are lower than background levels in certain areas can result in very high cleanup costs. Large volumes of soil may have to be excavated for the removal of what may ultimately be only 1 to 2 pounds of PCBs. For example, there are about 2 pounds of PCBs present in four truckloads of soil containing 25 ppm PCBs. After excavation, these 2 pounds of PCBs may, under the PCB disposal regulations, be transferred to a PCB landfill for disposal.

EPA estimated the costs associated with the cleanup of a PCB spill in soil using two sets of available data on the costs of cleanup. One set of data on the costs associated with the cleanup of a 0.5 acre site contaminated with PCBs and PCB Equipment suggests that cleanup to 50 ppm would cost on the order of $105,000; cleanup to 25 ppm would cost on the order of $214,000; and cleanup to "background" levels of PCBs would cost on the order of $279,000. Using these data to estimate cleanup costs for different target levels of soil cleanup for typical PCB Capacitor spills, EPA estimates that the cleanup of a typical PCB Capacitor spill to 50 ppm would cost on the order of $2,100; cleanup to 25 ppm PCBs would cost on the order of $4,280; and cleanup to "background" levels of PCBs would cost on the order of $5,580.

EPA also estimated the costs of cleanup to various target levels using data on the cost of cleanup in actual capacitor spill situations. These data indicate that while the costs of cleanup to level between 50 and 25 ppm do not vary significantly, cleanup to levels lower than 25 and 20 ppm result in dramatically higher costs of cleanup. Based on these actual capacitor spill cleanup data, the cleanup of a typical PCB Capacitor spill to 50 or 25 ppm would cost on the order of $4,000; cleanup to 10 ppm PCBs would cost on the order of $10,000; and cleanup to background levels could cost on the order of $60,000 to $140,000.

EPA estimates that the actual incremental costs of cleaning typical capacitor spills to various levels would fall in the range between the two sets of estimates. Assuming that there are about 20,000 PCB Capacitor spills each year, EPA's estimates of the total annual cost of cleanup of PCB Capacitor spills to 50 ppm, 25 ppm, and "background" levels is $42–80 million, $80–86 million, and $112 million to over $2 billion, respectively.

Alternatively, information indicates that for lower concentration spills (i.e., spills of material containing less than 500 ppm PCBs—generally from oil-filled electrical equipment), cleanup of visible traces plus a 1 foot boundary of spills onto soil and other ground media within a few days of the spills will sufficiently ensure that PCB concentrations in the soil will be cleaned to a few parts per million. Therefore, the additional costs associated with sampling may not be justified by any incremental risk reduction where the spill is of low-concentration spills.

b. *Cleanup of PCBs spilled on surfaces.* EPA lacks data on the practicality, feasibility, and incremental costs associated with the cleanup of PCBs on hard surfaces. Comments from utility representatives as well as EPA regional office personnel suggest that costs of cleaning solid surfaces are significantly influenced by the nature of the contaminated surface (i.e., whether it is a porous surface such as concrete or an inpervious surface such as metal). Thus, cleaning porous, hard surfaces to 1 $\mu g/10cm^2$ may be very difficult, if not impossible, to achieve through generally accepted methods of cleanup (i.e., scrubbing and cleansing of surfaces) because of the penetration of PCBs below the surface.

EPA has evaluated some data on the costs of cleaning PCB-contaminated surfaces to various levels. However, all of the available data are from historical PCB spill sites which are typically more difficult to clean than fresh spills. Further, EPA's experience suggests that the relative difficulty of cleaning porous surfaces versus impervious surfaces increases as the amount of time between spill occurrence and cleanup increases.

Surface cleanup standards which are not achievable would in effect require the breakup and removal of materials such as concrete. Data on the breakup, removal, and replacement of concrete materials at historical spill sites indicate that the costs of such remedial action may range from one to several million dollars. While historical sites generally involve more extensive areas of cleanup, both in terms of PCBs absorbed into the materials and the area of contamination, these data do suggest that there are significant costs associated with a removal requirement for solid surfaces. EPA, however, has no comparative cost data on the differences in cost between cleaning solid surfaces by conventional methods versus removing solid surfaces.

An EPA-sponsored Midwest Research Institute study of the removal of PCBs from surfaces such as painted and unpainted steel, asphalt, concrete block, wood, and poured concrete demonstrates fairly clearly that a time lapse of several days before initiation of cleanup can significantly impede the efficacy of surface cleanup methods. That study also suggests that the washing of rough, porous hard surfaces with solvent is not very effective in removing the spilled askarel PCBs. Cleanup by washing/wiping within a few days following low concentration spills, however, is expected to be effective in reducing surface concentrations of PCBs to levels which will not pose unreasonable risks. This is primarily because of the small amount of PCBs actually present in most mineral oil spills.

In lieu of potentially impracticable surface cleanup standards, or removal standards, EPA also considered the option of requiring cleanup to an achievable surface cleanup standard and encapsulation with an appropriate epoxy resin or other sealant. Anecdotal information suggests that encapsulation is likely to be less costly than removal of solid surfaces by 1 to 3 orders of magnitude. While EPA believes that encapsulation can significantly reduce both dermal and inhalation exposure to residual PCB concentrations on solid surfaces, the Agency is aware of no empirical data which verify the effectiveness of encapsulants in reducing exposures. Ancedotal information provided by EPA regions and members of the regulated community raises doubts as to the long-term effectiveness of encapsulation because of the tendency of many sealants to peel or chip off over time.

In the absence of adequate data on the costs of cleaning fresh PCB spills on solid surfaces, the standards which appear in the TSCA policy for the cleanup of hard surfaces primarily reflect concerns about the potential for

exposure to these levels of residual PCBs which remain after cleanup. The TSCA policy does allow for less stringent cleanup options coupled with EPA-approved encapsulation measures where the spill occurs on porous surfaces outdoors (or on low-contact surfaces indoors in restricted-access facilities) because of concerns about the achievability of more stringent cleanup levels on porous surfaces. The encapsulation option is allowed for certain low-contact solid surfaces in order to allow the development of data on the efficacy of encapsulation in mitigating exposures to residual PCBs on solid surfaces.

2. *Conclusions about costs of cleanup.* The costs associated with the cleanup of spills of PCBs into soils and other similar materials are principally influenced by the area of contamination and the target levels set for cleanup. The lower the target level, the more testing, excavation, and removal, and the higher the cost. The cleanup of spilled PCBs in soil from PCB Transformers and Capacitors to "background" levels of PCBs costs three times as much to an order of magnitude more than cleanup to 50 ppm, and several times as much as cleanup to 25 ppm. On an annual basis, hundreds of millions of dollars are being spent for the cleanup of PCBs from transformer and capacitor spills.

EPA expects that the costs associated with the cleanup of contaminated surfaces will increase as cleanup levels or standards decrease and that at some point, excavation and removal may be the only choice to reduce PCB levels further. Data on the practicality, feasibility, and cost of cleanup to the levels discussed in this TSCA policy and data on the effectiveness and cost of encapsulation are necessary so that EPA can more accurately weigh the cost effectiveness of various surface cleanup requirements.

EPA is seeking data on the incremental costs associated with the cleanup of different types of surfaces to the levels discussed in this TSCA policy. In the absence of data to support a determination that these levels are not practically achievable at a reasonable cost (or data that support a determination that exposures will be significantly lower than those assumed by current Agency assessments), the policy includes the surface cleanup standards discussed in Unit IV.

EPA is also seeking data on the effectiveness (in terms of risk reduction), cost, and long-term durability of the use of sealants and encapsulating materials. If encapsulating materials and sealants can be demonstrated to be more cost effective than removal, EPA will retain the provisions allowing, for low-contact, porous surfaces, the use of such sealants in lieu of cleanup to more stringent standards.

C. Risk/Benefit Discussion of Cleanup Requirements

1. *Scope and general requirements of the policy.* The TSCA policy applies to spills which EPA can require to be cleaned under TSCA enforcement authority (spills of 50 ppm or greater PCBs which generally occur during EPA-regulated use, processing, distribution in commerce, or storage of PCBs) and which occur after the effective date of the policy. The policy is prospective because historical spills tend to involve more extensive areas of contamination and because many of the requirements of the policy are based on the assumption that the spill area will be cleaned or contained within 1 or 2 days of spill occurrence.

PCB is an oily material which leaves stains on soil and surfaces. While EPA recognizes that the visibility of PCBs on soils and surfaces is inversely related to the amount of time elapsed from release to discovery and that weather conditions may also influence spill visibility, EPA expects that for the majority of PCB spills, visible traces of PCBs will remain at the time of spill discovery. The exception to this rule is for spills which are undiscovered for an extended period of time and spills which are followed by adverse/severe weather conditions. In these cases, the TSCA policy requires the use of an appropriate statistical sampling scheme to define the boundaries of the spill area.

EPA believes that one of the principal ways of minimizing human and environmental exposures to spilled PCBs is to prevent the spread of spilled PCBs (e.g., by cordoning off the area) and to initiate cleanup actions as soon as practically possible. This minimizes the likelihood that materials will be spread beyond the spill area through tracking and runoff and reduces the probability of surface water and drinking water contamination. EPA believes that response time in initiating remedial action may be one of the most significant factors influencing the magnitude of risks following PCB spills, especially in residential areas.

2. *Spills of low concentrations PCBs involving less than one lb of PCBs.* Where the spilled material is relatively low in PCB concentration (i.e., containing 50 ppm or greater, but less than 500 ppm PCBs), the TSCA policy allows cleanup in accordance with procedural performance requirements (i.e., double wash/rinse for solid surfaces and removal of visible traces plus a 1-foot lateral boundary for soil and other ground media provided that the minimum depth of excavation is 10 inches) rather than requiring sampling to verify that numerical cleanup standards have been met.

The procedural requirements are based upon data indicating that for low-concentration spills, double washing/rinsing of surfaces and removal of visible traces plus a buffer on soil will successfully reduce the PCB concentration in the spill area to the numerical standards specified for the higher concentration spills. The essential difference is that for spills of low-concentration PCBs, sampling is not required to verify that numerical standards are achieved, provided that the responsible party or designated agent certifies that the cleanup has been performed in accordance with all of the requirements of the policy. The enforcement provisions of the policy specify that should the sampling data indicate that the numerical standards have not been met, or that the area cleaned does not encompass all areas of actual contamination (as determined by sampling or indicated by remaining visible traces), the regional office will require additional cleanup.

3. *Spills of 500 ppm or greater PCBs and spills of low-concentration PCBs of more than 1 lb PCBs by weight*—a. *Spills in nonrestricted access areas.* The most stringent requirements for the cleanup of spilled PCBs apply to PCB spills in residential/commercial/unrestricted access rural areas. The TSCA policy requires that materials such as household furnishings, toys, and swingsets be disposed of rather than decontaminated. Generally, these types of materials pose a high potential for exposure and are very difficult to clean. Indeed, the costs of cleanup of these types of materials to the limit of detection of PCBs (which would be required given the high potential for repeated daily exposures) would in many cases exceed replacement costs.

Soil and other similar materials in residential/commercial areas must be cleaned up to 10 ppm PCBs, and a cap of clean materials containing less than 1 ppm PCBs (the average background level for PCBs in soil) equal to a minimum of 10 inches must be placed on top of the excavated area. The OHEA risk assessment for PCBs in soil indicates that 1 to 6 ppm PCBs in 0.5 acre of residential soil is associated with a 1×10^{-5} level of oncogenic risk and that placing a 10-inch cap of clean soil reduces this level of oncogenic risk by an order of magnitude. PCB Capacitor

spills typically result in the contamination of significantly less than 0.5 acre.

For an average PCB Capacitor spill, the difference in costs associated with cleaning up PCBs to 10 ppm versus to below 1 ppm ("background" levels) in a residential area is estimated to be about $500. Assuming 9,000 PCB Capacitor spills each year in residential areas, the estimated incremental costs associated with cleanup of these spills to less than 1 ppm versus cleanup to 10 ppm is $4.5 million.

Thus, EPA believes that soil containing 10 ppm PCBs (covered by a cap containing PCBs below the practical limits of quantitation) in a residential/commercial area would not present unreasonable risks to public health or the environment.

The surface standards presented in the TSCA policy are based primarily on the potential for exposure to PCBs remaining on surfaces in residential/commercial areas and the estimated level of risk posed by these residual PCBs. EPA lacks data on the incremental costs associated with cleanup to different surface standards and is soliciting these data.

The TSCA policy does allow for less stringent surface cleanup options coupled with EPA-approved encapsulation measures where the spill occurs on porous, low-contact surfaces outdoors because of concerns about the achievability of more stringent cleanup levels on porous surfaces. The encapsulation option is allowed for low-contact solid surfaces outdoors in order to allow the development of data on the efficacy of encapsulation in mitigating exposures to residual PCBs on solid surfaces.

b. *Industrial and other restricted access spills.* Spills of PCBs in industrial areas and other restricted access locations would present lower risks than spills in residential/commercial areas because access to these areas is controlled. Inhalation exposure is considered to be the principal route of exposure to PCBs in soil, sand, or gravel in an industrial area. Dermal exposures would, however, be likely when PCBs are spilled on manned machinery and equipment. EPA believes that the level of risk posed by 25 ppm PCB in soil at a restricted access facility would not present significant risks either to the typical worker or to the general public. EPA also believes that the surface standards of 100 $\mu g/100\ cm^2$ for low-contact outdoor surfaces and 10 $\mu g/100\ cm^2$ for indoor low-contact surfaces (and vaults) and high-contact surfaces in a restricted access industrial facility would not present significant risks to workers or to the general population.

Further, there are significant costs associated with the cleanup of soil, sand, gravel, and other similar materials in an industrial facility to background levels compared to cleanup to 25 ppm PCBs. Thus, EPA believes that cleanup of soil, sand, gravel, and other similar materials in an industrial facility to 25 ppm would not present unreasonable risks to public health or the environment.

The surface standards for industrial facilities and other restricted access locations which are presented in the TSCA policy are based on the expected level of exposure to residual PCBs left on industrial surfaces after cleanup. EPA lacks data on the incremental costs associated with cleanup to different standards and is soliciting these data. The TSCA policy does allow for less stringent cleanup options coupled with EPA-approved encapsulation measures where the spill occurs on porous, low-contact surfaces because of concerns about the achievability of more stringent cleanup levels on porous surfaces. The encapsulation option is allowed for certain low-contact solid surfaces in order to allow the development of data on the efficacy of encapsulation in mitigating exposures to residual PCBs on solid surfaces.

c. *Outdoor electrical substation spills.* The least stringent requirements for the cleanup of spilled PCBs apply to spills in outdoor electrical substations. This reflects the lower potential for exposures and fewer people potentially at risk of exposures to PCBs spilled in these areas. Spills of PCBs from PCB Equipment into solid materials such as soils in electrical substations must be cleaned up to 25 ppm PCBs or to 50 ppm PCBs, provided that a label is placed in the spill area indicating that a PCB spill has occurred. The OHEA risk assessment for PCBs in soil indicates that a PCB level of 50 ppm PCBs in soil located more than 1 kilometer from a population would present less than a 1×10^{-7} level of oncogenic risk. This risk assessment assumes only inhalation exposures at distances of 1.0 kilometer (or approximately 1,093 yards) from the spill site.

The surface standards which appear in the TSCA policy are primarily based on the expected exposures and risks posed by contact with the residual PCBs. EPA lacks data on the incremental costs associated with cleanup to higher or lower levels.

D. Scope of the Policy

EPA expects the large majority of PCB spills subject to decontamination under TSCA to conform to the typical spill scenarios considered in developing the TSCA policy. However, some small percentage of spills will warrant more stringent cleanup requirements because of additional routes of exposure or significantly greater exposures than those associated with typical PCB spills. Further, there may be exceptional spill situations which require less stringent cleanup or a different approach to cleanup because of factors associated with the particular spill which mitigate expected exposures and risks or which make cleanup to these requirements impracticable. Therefore, the policy (1) excludes certain situations from the scope of this policy; (2) discusses other spill situations which may warrant the use of EPA authority to require more stringent requirements and (3) retains EPA flexibility to allow alternative or less stringent decontamination measures when the responsible party demonstrates the presence of risk-mitigating factors or demonstrates the impracticability of applying this policy to a particular spill situation. For those exceptional spill situations which are excluded from the policy or in which EPA may exercise flexibility based on site-specific considerations, the EPA regions have the authority to determine cleanup requirements.

The TSCA policy excludes certain spill situations from the automatic applications of the numerical cleanup requirements in the policy (i.e. spills directly into water, sewers, vegetable gardens, and grazing areas, and spills which directly contaminate surface waters prior to cleanup) because those situations will always present routes of exposure to PCBs which are not associated with the typical spills considered in developing the TSCA policy. These exceptional spill situations may not always require more extensive cleanup. However, they will always require some level of site-specific analysis to determine appropriate cleanup measures.

Although EPA expects the majority of remaining spills to be subject to this policy, occasionally the site-specific characteristics (e.g., depth to ground water, type of soil, and the presence of a shallow well) may pose exceptionally high potential for ground water contamination by residual PCBs (i.e., those PCBs remaining after cleanup to the standards specified in this policy). Spills which pose a high degree of potential for ground water contamination are not automatically excluded from the policy as are spills into surface waters because the presence of such potential may not be

readily apparent. EPA feels that automatically excluding such spills from the scope of the policy could result in the delay of cleanup—a particularly undesirable outcome if potential ground water contamination is a significant concern. The Agency will, however, require cleanup to more stringent decontamination standards upon making a determination that such additional cleanup is necessary because of ground water concerns associated with residual contamination based upon comparison of the site characteristics to ground water modeling and exposure assessments which have been developed by EPA in support of this policy.

Additionally, spill situations involving significantly larger areas of contamination than those assumed in developing this policy (e.g., <0.5 acre in soil and 550 ft^2 on indoor surfaces), spills in areas involving repeated daily contact such that the potential for dermal contact may be significantly higher than assumed in developing this policy (e.g., spills resulting from violent equipment rupture during which PCDFs and/or PCDDs were formed, and spills onto farmland on which root crops are grown) may require more stringent levels of cleanup. In such situations, the Regional Administrator may require cleanup in addition to that required by the policy. In those circumstances, the Regional Administrator must notify the Director, Office of Toxic Substances, of his finding and the basis for the finding.

The TSCA policy also retains EPA's flexibility to allow less stringent, or alternative decontamination measures based upon site-specific considerations. EPA will exercise this flexibility if the responsible party demonstrates that cleanup to the numerical decontamination levels is clearly unwarranted because of risk-mitigating factors, or that compliance with the procedural requirements or numerical standards in the policy is impracticable at a particular site. For example, the responsible party may show that a dirt road need not be decontaminated to the levels in this policy because exposure to residual PCB concentrations on a dirt road will be significantly mitigated when the road is paved with concrete or asphalt in the immediate future. Alternatively, the responsible party may demonstrate that cleanup to the numerical standards in the policy may threaten the structural integrity of major equipment installations or buildings.

For purposes of delineating the scope of the TSCA policy, as well as to provide EPA regional offices and the regulated community with guidance on whether a particular spill may require more stringent standards for cleanup, EPA has performed some preliminary analyses of these potentially higher-risk spill situations. EPA evaluated the exposures and risks associated with these potential higher-risk situations using reasonable worst-case assumptions to identify cases where strict application of the standards in this policy may be inappropriate. In addition, EPA believes that some spill situations may require special action (e.g., additional immediate actions to prevent contamination of sewers where there is a real potential for such contamination).

1. *Spills into sewers.* EPA has not assessed the exposures associated with the release of PCBs into sewers because of the lack of information about the behavior of spilled PCBs in a system of sewer pipes. Being denser than water, PCBs may collect in depressions and irregularities in the sewer pipes, providing a long-term source of release of PCBs into the environment. On the other hand, the PCBs may be carried from place to place in the sewer system. Thus, there is no method for estimating which segments of the system are contaminated, what the concentration of PCBs is, or how long the PCBs will remain in the system. Because of the difficulty of evaluting the behavior of PCBs in sewer systems and because of the practical problems of decontaminating a sewer system, PCB spills into sewage are not covered by this policy. Each regional office will determine the requirements for adequate cleanup of sewer systems, treatment works, and sewage contaminated with PCBs on a case-by-case basis.

2. *Spills which may result in ingestion exposure through drinking water and fish.* To evaluate the potential for exposures through the ingestion of drinking water and/or fish contaminated with PCBs, EPA looked at four spill situations using reasonable worst-case assumptions: (1) PCBs are spilled into a pond and the sediment is cleaned to 10 ppm; (2) PCBs are spilled into a river and the sediment is cleaned to 10 ppm; (3) PCBs are spilled on the bank of a stream and the soil is cleaned to 25 ppm; and (4) PCBs are spilled on soil and cleaned to 25 ppm, assuming that the PCBs will enter ground water.

Preliminary results indicate that where PCBs enter surface water in a pond, the ingestion of fish and/or drinking water from the pond after the sediment has been cleaned to 10 ppm in accordance with the policy may result in significant human exposures. While rivers have higher flow rates than ponds, so that cleanup of river sediment to 10 ppm PCBs may not pose significant human exposures, PCB contamination in surface water poses important considerations in addition to the risks associated with residual PCB concentrations in sediment, in much the same way as sewer contamination. Thus, all spills directly into waterways and spills which contaminate waterways before cleanup are excluded from the TSCA policy.

Where PCBs are spilled near a waterway and the soil is cleaned to 25 ppm PCBs, PCBs can enter surface water through runoff from the contaminated bank. (EPA assumed that runoff into the stream occurs only after the spill area has been cleaned to 25 ppm.) Based on reasonable worst-case assumptions, the consumption of drinking water and/or fish from the stream for 70 years will not pose risks of concern and are therefore included in the scope of the policy. However, should the spill contaminate surface water cleanup, the spill must be cleaned to site-specific requirements. Therefore, the responsible party should take special measures to contain the spill area and prevent the spread of PCBs into the waterway.

In looking at the possible exposures associated with soil cleaned to 25 ppm through the ingestion of drinking water from contaminated ground water, the climate, soil and ground water configuration were assumed to be such as to maximize PCB concentrations in ground water. Significant risks may be posed by the ingestion of drinking water from very shallow wells (i.e., dug wells taking in water at the source of loading) in areas where soil characteristics and depth to aquifer maximize the potential for leaching into ground water. However, the ingestion of drinking water from a well located a horizontal distance of 50 meters from the spill site in these areas does not appear to pose significant risks. Thus, while the majority of spills will not result in unreasonable risks of human exposure due to ground water contamination, some unique spill scenarios will pose potential ingestion exposure through ground water contamination.

The TSCA policy specifically reserves EPA's authority to impose more stringent cleanup requirements in cases where site characteristics present special risks of ingestion of PCBs through ground water contamination. These spills are not automatically excluded from application of the policy because the potential for ground water contamination may not be readily apparent.

3. *Ingestion of milk from dairy cattle grazing on land contaminated with PCBs.* Using reasonable worst-case estimates, the Agency evaluated the potential risks to humans drinking milk from cattle which grazed on farmland where a PCB spill has been cleaned to 25 ppm. In the event of a spill on farmland, grazing dairy cattle can ingest the PCB-contaminated soil by consuming soil while grazing and from eating plants and roots from a PCB-contaminated site. The cattle can then accumulate unmetabolized residues of the PCBs in milk fat and excrete them through milk. Assuming that the contaminated milk is consumed by the farm residents, worst-case risk estimates indicate that reducing the PCB concentration in the soil to 10 or 25 ppm PCBs may not be adequate to prevent aganist unreasonable risks to human health.

4. *Ingestion of vegetables grown on contaminated home gardens and farmland.* EPA performed some preliminary analyses of the risks posed by the consumption of vegetables grown on a spill area cleaned to 25 ppm PCBs in the case of farmland and 10 ppm in the case of residential gardens. Assuming that vegetables grown on that garden or farm are used to provide the entire vegetable component of the diet of the site residents, cleaning soil to the levels in the policy may not be adequate. Vegetables are more likely to become contaminated through contact with contaminated dirt rather than through plant uptake. Thus, EPA believes that the potential for exposure to spilled PCBs through ingestion of crops grown on-site is greatest where the vegetables are root crop (e.g., carrots and potatoes).

5. *Exposure from larger spills.* In the above situations, the Agency focused on routes or ingestion exposure. The Agency has also evaluated situations which may significantly increase dermal or inhalation exposures. A principal factor in determining the magnitude of inhalation exposure is the size of the spill area. In estimating the risks associated with the cleanup levels in the policy for typical spills from electrical equipment, EPA relies on a risk assessment which assumes a contaminated area of 0.5 acre (see discussion in Unit VII.A.3.). Since the area of the typical spill addressed by this policy is expected to be ½₀ of the size assumed in the risk assessment, EPA believes that the cleanup standards in this policy sufficiently protect against unreasonable risks from inhalation exposure to PCBs remaining after the cleanup of a spill from electrical equipment. Cleanup standards for larger spills, that is, greater than 0.5 acre, would be established by the EPA regional office after a consideration of both the level of risk posed by cleanup to different levels and the incremental costs associated with such cleanup.

E. Issues

As is apparent in the discussion under Unit VII.A, there are gaps in the information which was available to the Agency in developing the TSCA policy, particularly in the area of cleanup costs. Given the limited data available to the Agency in developing a PCB Spills Cleanup Policy under the TSCA unreasonable risk standard, EPA has generally taken an environmentally conservative approach by establishing cleanup requirements based on risk and exposure considerations, and by excluding certain potentially higher-risk spill scenarios from the scope of the policy.

In a few areas where available data support the conclusion that less restrictive requirements will not compromise the protection of human health or the environment, the Agency has allowed less restrictive cleanup options (i.e., the exclusion of low-concentration spills from sampling requirements and the encapsulation option for spills on low-contact, porous surfaces). One purpose of allowing such options is to provide an opportunity for the development of additional information on the relative efficacy and costs of such options. EPA expects that the regulated industry will make good faith efforts to submit additional data gathered under the TSCA policy.

1. *Decontamination of surface.* The TSCA policy includes surface standards (in micrograms (μg) per 100 square centimeters (100 cm^2)) for cleanup of PCB spills on hard surfaces such as wood, concrete and asphalt, and impervious surfaces such as metal or glass. For spills of PCBs at concentrations of 50 ppm or greater but less than 500 ppm onto hard or impervious surfaces in other than residential/commercial areas, this policy allows cleanup by double rinsing with an appropriate solvent.

The consensus proposal submitted by EDF, NRDC, EEI, NEMA, and CMA in May 1985 proposed that surfaces in residential areas be cleaned to 100 μg/100 cm^2. The consensus further proposed that surfaces in all other areas be cleaned either to 100 μg/100 cm^2 or triple rinsed at the discretion of the responsible party. A revised consensus proposal submitted in October 1986 modified the proposed surface standards to 10 μg/100 cm^2 for impervious surfaces in areas other than outdoor electrical substations. The revised proposal maintained the 100 μg/100 cm^2 level for all porous surfaces, arguing the infeasibility of cleaning to lower levels on porous surfaces.

After reviewing the consensus proposal, the Agency contemplated requiring that potential high-contact surfaces be cleaned to 10 μg/100 cm^2 and that spills of 500 ppm or greater on low-contact surfaces be cleaned to 100 μg/100 cm^2. The Agency further contemplated allowing the triple-rinse option for spills of 500 ppm or greater in reduced access areas and for all spills onto surfaces in outdoor electrical substations.

Lacking adequate information with which to assess potential exposures to surfaces cleaned to those levels, the Agency initiated some studies to (1) evaluate the risks posed by the 10 μg/100 cm^2 and 100 μg/100 cm^2 and (2) test the efficacy of rinsing/washing as a cleanup measure. The results of these studies indicate (a) that high contact surfaces such as those in residential play areas or manually operated machinery may require surface standards more stringent than the 10 μg to 100 μg/100 cm^2 standards and (b) that while even one wash or rinse of a solid surface would be adequate for mineral oil spills (50 to 499 ppm PCBs), the wash/rinse procedural performance standard is relatively ineffective in removing higher concentration PCBs from porous surfaces such as concrete block, wood, and asphalt. Presented below is additional detail on these preliminary studies and requests for data and information pertaining to the cleanup of surfaces.

2. *Surface wiping as a cleanup method.* EPA began the study with the goal of evaluating the effectiveness of a triple-rinse performance standard for decontamination of various types of surfaces where spills of askarel or mineral oil contaminated with PCBs have occurred. The cleaning agents tested were a water-based industrial cleaner (Penetone Power Cleaner 155) and kerosene, which are both widely used. A set of six rinses were performed on steel, wood, concrete, and asphalt 1 day after spilling a known amount of PCBs on the surfaces. Another set of six rinses was performed on each surface 8 days after spilling a known amount of PCBs on the surface.

The rinses were relatively effective in cleaning askarel spills on steel and in cleaning mineral oil from all surfaces (because of the low initial concentration of PCBs in mineral oil). However, six rinses with the industrial cleaner did not

successfully remove askarel fluid from asphalt, wood, or concrete. Further, the PCBs and the solvent washed through the wood, concrete, and asphalt, and distributed the PCBs into the material. This has caused EPA to question the advisability of setting a surface concentration for nonimpervious materials. Absent information on whether or not the PCBs absorbed into the material later come back to the surface and become available for exposure, EPA must assume that the absorbed PCBs provide a continuing source of exposure until the total amount of PCBs in the material is depleted.

EPA also found that the Penetone Power Cleaner was significantly less effective than the organic solvent in reducing the concentration of PCBs. Anecdotal information, however, suggests that the detergent cleaner may be more effective on soiled surfaces because of the tendency of PCBs to bind to dirt.

These observations have led to some determinations and raised several issues. Any comments or data in these areas are welcome.

a. EPA has determined that a procedural performance specifying one to three washes/rinses on solid surfaces within a few days after the spill occurs will result in adequate decontamination of mineral oil (50 to 499 ppm PCBs) spills on hard surfaces (including wood, asphalt, and concrete).

b. EPA has determined that water-based solvents may not be effective in removing PCBs from hard surfaces. Seven days after the occurrence of a spill, the efficacy of water-based rinses appeared to decrease markedly even on steel (some of the reduced effectiveness of the water-based solvent after 7 days may be due to the loss of PCBs from the surface through volatilization). EPA is currently performing a second phase of the solvent-rinse study with an organic solvent used widely in industry.

c. EPA has determined that when a spill of PCBs occurs on nonimpervious hard surfaces, the PCBs are absorbed into the material and may later become available for exposure. In the absence of adequate information, the Agency must presume that these PCBs do provide a source of exposure. The Agency solicits any available data in this area.

d. Therefore, for PCB spills on nonimpervious surfaces, the Agency considered (1) requiring removal and decontamination to a ppm standard, or (2) some combination of a wipe standard and encapsulation. EPA solicits available information on the costs of removing hard sufaces and the efficacy of encapsulation in preventing future exposures to PCBs which have been absorbed into materials such as concrete, wood, or asphalt. In its spills cleanup policy the Agency has allowed an encapsulation option on low contact surfaces for iterative purposes. EPA may not retain such an option if no information on the relative cost, effectiveness, and durability of encapsulation becomes available.

3. *Cost of cleanup.* The cost estimates for decontamination of soil and other solid materials to various levels (as discussed under Unit VII.B) were derived from limited available information. While the Agency has received information on the costs of actual cleanups, it is difficult to extrapolate information from these data because very little is known about the cleanup methods used, the time lapse between the spill and the cleanup effort, the amount spilled, and the size of the spill area.

In order to develop a more sound data base for comparing the costs of cleanup to various levels in soil, the Agency modeled the vertical and lateral spread of spilled PCBs in soil over time, using assumptions which maximize the spread of PCBs. These data on the distribution of PCB concentrations in the soil are being used to solicit information from cleanup firms on the incremental cost of cleanup to various levels.

Any available data on the incremental costs of decontamination to various levels are welcome. Such data will be most helpful if accompanied by the following information: (1) The amount and concentration of PCBs spilled, (2) the area and depth of the original contamination and the area cleaned, (3) the amount of soil or other material removed or the type of cleanup performed on hard surfaces, (4) postcleanup sampling data, (5) the amount of time between spill occurrence and initiation of cleanup, and (6) some description of the cleanup procedures (e.g., initial efforts to contain the spill or methods used to prevent the spreading of contamination during cleanup efforts). EPA especially needs data on the costs associated with cleanup of hard surfaces (see discussion in previous unit).

4. *Cleanup standards for higher-risk situations.* The discussion under Unit VII.D details the Agency's rationale for limitations on the scope of the policy. The Agency believes that some small percentage of spills will warrant more stringent cleanup requirements than specified in the TSCA policy because of additional routes of exposure or significantly greater exposures than those associated with typical PCB spills.

Therefore, certain spill situations are excluded from the scope of this policy. The spill situations which the TSCA policy excludes from automatic application of the numerical cleanup requirements in the policy (i.e., spills directly into water, sewers, vegetable gardens, and grazing areas and spills which contaminate surface waters prior to cleanup) are those which will always present routes of exposure to PCBs which are not associated with the typical spills considered in developing the TSCA policy. The TSCA policy indicates exceptional spill situations may not always require more extensive cleanup. However, they will always require some level of site-specific analysis to determine appropriate cleanup measures.

In addition, the TSCA policy discusses other spill situations which may warrant the use of EPA authority to require more stringent requirements (e.g., where depth to ground water, type of soil, and the presence of a shallow well may pose exceptionally high potential for ground water contamination by residual PCBs; spill situations involving significantly larger areas of contamination than those assumed in developing this policy; spills resulting from violent equipment rupture during which PCDFs and/or PCDDs were formed; and spills onto farmland on which root crops are grown). The TSCA policy provides that in such situations the Regional Administrator may require cleanup in addition to that required by the TSCA policy.

EPA does not currently have sufficient information on the factors which must be considered in determining the type and degree of cleanup in such situations. Therefore, while EPA headquarters will provide guidance to the EPA regional offices to the extent possible on a case-by-case basis, the TSCA policy does not specify cleanup measures for these spill scenarios. EPA solicits available data on such spill situations in order to provide better guidance to the regions and to develop uniform guidance for such situations where appropriate.

This document was submitted for review to the Office of Management and Budget (OMB).

Other Statutory Requirements

Regulatory Flexibility Act

The TSCA policy will have an insignificant impact on small entities as described in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Paperwork Reduction Act

The TSCA policy reiterates certain recordkeeping requirements for the disposal of PCBs which were approved under OMB control number 2070–0008. Some additional recordkeeping and reporting will be added through the rulemaking process; these requirements will be submitted to OMB for clearance.

List of Subjects in 40 CFR Part 761

Hazardous substances, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

Dated: March 20, 1987.

Lee M. Thomas,

Administrator.

PART 761—[AMENDED]

Therefore, 40 CFR Chapter I Part 761 is amended as follows:

1. The authority citation for Part 761 is revised to read as follows:

Authority: 15 U.S.C. 2605, 2607, and 2611; Subpart G is also issued under 15 U.S.C. 2614 and 2616.

2. Subpart G, consisting at this time of §§ 761.120, 761.123, 761.125, 761.130, and 761.135, is added to read as follows:

Subpart G—PCB Spill Cleanup Policy

Sec.

761.120 Scope.
761.123 Definitions.
761.125 Requirements for PCB spill cleanup.
761.130 Sampling requirements.
761.135 Effect of compliance with this policy and enforcement.

Subpart G—PCB Spill Cleanup Policy

§ 761.120 Scope.

(a) *General.* This policy establishes criteria EPA will use to determine the adequacy of the cleanup of spills resulting from the release of materials containing PCBs at concentrations of 50 ppm or greater. The policy applies to spills which occur after May 4, 1987.

(1) Existing spills (spills which occurred prior to May 4, 1987, are excluded from the scope of this policy for two reasons:

(i) For old spills which have already been discovered, this policy is not intended to require additional cleanup where a party has already cleaned a spill in accordance with requirements imposed by EPA through its regional offices, nor is this policy intended to interfere with ongoing litigation of enforcement actions which bring into issue PCB spills cleanup.

(ii) EPA recognizes that old spills which are discovered after the effective date of this policy will require site-by-site evaluation because of the likelihood that the site involves more pervasive PCB contamination than fresh spills and because old spills are generally more difficult to clean up than fresh spills (particularly on porous surfaces such as concrete). Therefore, spills which occurred before the effective date of this policy are to be decontaminated to requirements established at the discretion of EPA, usually through its regional offices.

(2) EPA expects most PCB spills subject to the TSCA PCB regulations to conform to the typical spill situations considered in developing this policy. This policy does, however, exclude from application of the final numerical cleanup standards certain spill situations from its scope: Spills directly into surface waters, drinking water, sewers, grazing lands, and vegetable gardens. These types of spills are subject to final cleanup standards to be established at the discretion of the regional office. These spills are, however, subject to the immediate notification requirements and measures to minimize further environmental contamination.

(3) For all other spills, EPA generally expects the decontamination standards of this policy to apply. Occasionally, some small percentage of spills covered by this policy may warrant more stringent cleanup requirements because of additional routes of exposure or significantly greater exposures than those assumed in developing the final cleanup standards of this policy. While the EPA regional offices have the authority to require additional cleanup in these circumstances, the Regional Administrator must first make a finding based on the specific facts of a spill that additional cleanup must occur to prevent unreasonable risk. In addition, before a final decision is made to require additional cleanup, the Regional Administrator must notify the Director, Office of Toxic Substances at Headquarters of his/her finding and the basis for the finding.

(4) There may also be exceptional spill situations that requires less stringent cleanup or a different approach to cleanup because of factors associated with the particular spill. These factors may mitigate expected exposures and risks or make cleanup to these requirements impracticable.

(b) *Spills that may require more stringent cleanup levels.* For spills within the scope of this policy, EPA generally retains, under § 761.135, the authority to require additional cleanup upon finding that, despite good faith efforts by the responsible party, the numerical decontamination levels in the policy have not been met. In addition, EPA foresees the possibility of exceptional spill situations in which site-specific risk factors may warrant additional cleanup to more stringent numerical decontamination levels than are required by the policy. In these situations, the Regional Administrator has the authority to require cleanup to levels lower than those included in this policy upon finding that further cleanup must occur to prevent unreasonable risk. The Regional Administrator will consult with the Director, Office of Toxic Substances, prior to making such a finding.

(1) For example, site-specific characteristics, such as short depth to ground water, type of soil, or the presence of a shallow well, may pose exceptionally high potential for ground water contamination by PCBs remaining after cleanup to the standards specified in this policy. Spills that pose such a high degree of potential for ground water contamination have not been excluded from the policy under paragraph (d) of this section because the presence of such potential may not be readily apparent. EPA feels that automatically excluding such spills from the scope of the policy could result in the delay of cleanup—a particularly undesirable outcome if potential ground water contamination is, in fact, a significant concern.

(2) In those situations, the Regional Administrator may require cleanup in addition to that required under § 761.125 (b) and (c). However, the Regional Administrator must first make a finding, based on the specific facts of a spill, that additional cleanup is necessary to prevent unreasonable risk. In addition, before making a final decision on additional cleanup, the Regional Administrator must notify the Director of the Office of Toxic Substances of his finding and the basis for the finding.

(c) *Flexibility to allow less stringent or alternative requirements.* EPA retains the flexibility to allow less stringent or alternative decontamination measures based upon site-specific considerations. EPA will exercise this flexibility if the responsible party demonstrates that cleanup to the numerical decontamination levels is clearly unwarranted because of risk-mitigating factors, that compliance with the procedural requirements or numerical standards in the policy is impracticable at a particular site, or that site-specific characteristics make the costs of cleanup prohibitive. The Regional Administrator will notify the Director of OTS of any decision and the basis for the decision to allow less stringent cleanup. The purpose of this notification

is to enable the Director of OTS to ensure consistency of spill cleanup standards under special circumstances across the regions.

(d) *Excluded spills.* (1) Although the spill situations in paragraphs (d)(2) (i) through (vi) of this section are excluded from the automatic application of final decontamination standards under § 761.125 (b) and (c), the general requirements under § 761.125(a) do apply to these spills. In addition, all of these excluded situations require practicable, immediate actions to contain the area of contamination. While these situations may not always require more stringent cleanup measures, the Agency is excluding these scenarios because they will always involve significant factors that may not be adequately addressed by cleanup standards based upon typical spill characteristics.

(2) For the spill situations in paragraphs (d)(2)(i) through (vi) of this section, the responsible party shall decontaminate the spill in accordance with site-specific requirements established by the EPA regional offices.

(i) Spills that result in the direct contamination of surface waters (surface waters include, but are not limited to, "waters of the United States" as defined in Part 122 of this chapter, ponds, lagoons, wetlands, and storage reservoirs).

(ii) Spills that result in the direct contamination of sewers or sewage treatment systems.

(iii) Spills that result in the direct contamination of any private or public drinking water sources or distribution systems.

(iv) Spills which migrate to and contaminate surface waters, sewers, or drinking water supplies before cleanup has been completed in accordance with this policy.

(v) Spills that contaminate animal grazing lands.

(vi) Spills that contaminate vegetable gradens.

(e) *Relationship of policy to other statutes.* (1) This policy does not affect cleanup standards or requirements for the reporting of spills imposed, or to be imposed, under other Federal statutory authorities, including but not limited to, the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA). Where more than one requirement applies, the stricter standard must be met.

(2) The Agency recognizes that the existence of this policy will inevitably result in attempts to apply the standards to situations within the scope of other statutory authorities. However, other statutes require the Agency to consider different or alternative factors in determining appropriate corrective actions. In addition, the types and magnitudes of exposures associated with sites requiring corrective action under other statutes often involve important differences from those expected of the typical, electrical equipment-type spills considered in developing this policy. Thus, cleanups under other statutes, such as RCRA corrective actions or remedial and response actions under SARA may result in different outcomes.

§ 761.123 Definitions.

For purposes of this policy, certain words and phrases are used to denote specific materials, procedures, or circumstances. The following definitions are provided for purposes of clarity and are not to be taken as exhaustive lists of situations and materials covered by the policy.

"Double wash/rinse" means a minimum requirement to cleanse solid surfaces (both impervious and nonimpervious) two times with an appropriate solvent or other material in which PCBs are at least 5 percent soluble (by weight). A volume of PCB-free fluid sufficient to cover the contaminated surface completely must be used in each wash/rinse. The wash/rinse requirement does not mean the mere spreading of solvent or other fluid over the surface, nor does the requirement mean a once-over wipe with a soaked cloth. Precautions must be taken to contain any runoff resulting from the cleansing and to dispose properly of wastes generated during the cleansing.

"High-concentration PCBs" means PCBs that contain 500 ppm or greater PCBs, or those materials which EPA requires to be assumed to contain 500 ppm or greater PCBs in the absence of testing.

"High-contact industrial surface" means a surface in an industrial setting which is repeatedly touched, often for relatively long periods of time. Manned machinery and control panels are examples of high-contact industrial surfaces. High-contact industrial surfaces are generally of impervious solid material. Examples of low-contact industrial surfaces include ceilings, walls, floors, roofs, roadways and sidewalks in the industrial area, utility poles, unmanned machinery, concrete pads beneath electrical equipment, curbing, exterior structural building components, indoor vaults, and pipes.

"High-contact residential/commercial surface" means a surface in a residential/commercial area which is repeatedly touched, often for relatively long periods of time. Doors, wall areas below 6 feet in height, uncovered flooring, windowsills, fencing, bannisters, stairs, automobiles, and children's play areas such as outdoor patios and sidewalks are examples of high-contact residential/commercial surfaces. Examples of low-contact residential/commercial surfaces include interior ceilings, interior wall areas above 6 feet in height, roofs, asphalt roadways, concrete roadways, wooden utility poles, unmanned machinery, concrete pads beneath electrical equipment, curbing, exterior structural building components (e.g., aluminum/vinyl siding, cinder block, asphalt tiles), and pipes.

"Impervious solid surfaces" means solid surfaces which are nonporous and thus unlikely to absorb spilled PCBs within the short period of time required for cleanup of spills under this policy. Impervious solid surfaces include, but are not limited to, metals, glass, aluminum siding, and enameled or laminated surfaces.

"Low-concentration PCBs" means PCBs that are tested and found to contain less than 500 ppm PCBs, or those PCB-containing materials which EPA requires to be assumed to be at concentrations below 500 ppm (i.e., untested mineral oil dielectric fluid).

"Nonimpervious solid surfaces" means solid surfaces which are porous and are more likely to absorb spilled PCBs prior to completion of the cleanup requirements prescribed in this policy. Nonimpervious solid surfaces include, but are not limited to, wood, concrete, asphalt, and plasterboard.

"Nonrestricted access areas" means any area other than restricted access, outdoor electrical substations, and other restricted access locations, as defined in this section. In addition to residential/commercial areas, these areas include unrestricted access rural areas (areas of low density development and population where access is uncontrolled by either man-made barriers or naturally occurring barriers, such as rough terrain, mountains, or cliffs).

"Other restricted access (nonsubstation) locations" means areas other than electrical substations that are at least 0.1 kilometer (km) from a residential/commercial area and limited by man-made barriers (e.g., fences and walls) to substantially limited by naturally occurring barriers such as mountains, cliffs, or rough terrain. These areas generally include industrial

facilities and extremely remote rural locations. (Areas where access is restricted but are less than 0.1 km from a residential/commercial area are considered to be residential/commercial areas.)

"Outdoor electrical substations" means outdoor, fenced-off, and restricted access areas used in the transmission and/or distribution of electrical power Outdoor electrical substations restrict public access by being fenced or walled off as defined under § 761.30(1)(1)(ii). For purposes of this TSCA policy, outdoor electrical substations are defined as being located at least 0.1 km from a residential/commercial area. Outdoor fenced-off and restricted access areas used in the transmission and/or distribution of electrical power which are located less than 0.1. km from a residential/commercial area are considered to be residential/commercial areas.

"PCBs" means polychlorinated biphenyls as defined under § 761.3. As specified under § 761.1(b), no requirements may be avoided through dilution of the PCB concentration.

"Requirements and standards" means:

(1) "Requirements" as used in this policy refers to both the procedural responses and numerical decontamination levels set forth in this policy as constituting adequate cleanup of PCBs.

(2) "Standards" refers to the numerical decontamination levels set forth in this policy.

"Residential/commercial areas" means those areas where people live or reside, or where people work in other than manufacturing or farming industries. Residential areas include housing and the property on which housing is located, as well as playgrounds, roadways, sidewalks, parks, and other similar areas within a residential community. Commercial areas are typically accessible to both members of the general public and employees and include public assembly properties, institutional properties, stores, office buildings, and transportation centers.

"Responsible party means the owner of the PCB equipment, facility, or other source of PCBs or his/her designated agent (e.g., a facility manager or foreman).

"Soil" means all vegetation, soils and other ground media, including but not limited to, sand, grass , gravel, and oyster shells. It does not include concrete and asphalt.

"Spill" means both intentional and unintentional spills, leaks, and other uncontrolled discharges where the release results in any quantity of PCBs running off or about to run off the external surface of the equipment or other PCB source, as well as the contamination resulting from those releases. This policy applies to spills of 50 ppm or greater PCBs. The concentration of PCBs spilled is determined by the PCB concentration in the material spilled as opposed to the concentration of PCBs in the material onto which the PCBs were spilled. Where a spill of untested mineral oil occurs, the oil is presumed to contain greater than 50 ppm, but less than 500 ppm PCBs and is subject to the relevant requirements of this policy.

"Spill area" means the area of soil on which visible traces of the spill can be observed plus a buffer zone of 1 foot beyond the visible traces. Any surface or object (e.g., concrete sidewalk or automobile) within the visible traces area or on which visible traces of the spilled material are observed is included in the spill area. This area represents the minimum area assumed to be contaminated by PCBs in the absence of precleanup sampling data and is thus the minimum area which must be cleaned.

"Spill boundaries" means the actual area of contamination as determined by postcleanup verification sampling or by precleanup sampling to determine actual spill boundaries. EPA can require additional cleanup when necessary to decontaminate all areas within the spill boundaries to the levels required in this policy (e.g., additional cleanup will be required if postcleanup sampling indicates that the area decontaminated by the responsible party, such as the spill area as defined in this section, did not encompass the actual boundaries of PCB concentration).

"Standard wipe test" means, for spills of high-concentration PCBs on solid surfaces, a cleanup to numerical surface standards and sampling by a standard wipe test to verify that the numerical standards have been met. This definition constitutes the minimum requirements for an appropriate wipe testing protocol. A standard-size template (10 centimeters (cm) x 10 cm) will be used to delineate the area of cleanup; the wiping medium will be a gauze pad or glass wool of known size which has been saturated with hexane. It is important that the wipe be performed very quickly after the hexane is exposed to air. EPA strongly recommends that the gauze (or glass wool) be prepared with hexane in the laboratory and that the wiping medium be stored in sealed glass vials until it is used for the wipe test. Further, EPA requires the collection and testing of field blanks and replicates.

§ 761.125 Requirements for PCB spill cleanup.

(a) *General.* Unless expressly limited, the reporting, disposal, and precleanup sampling requirements in paragraphs (a)(1) through (3) of this section apply to all spills of PCBs at concentrations of 50 ppm or greater which are subject to decontamination requirements under TSCA, including those spills listed under § 761.120(b) which are excluded from the cleanup standards at paragraphs (b) and (c) of this section.

(1) *Reporting requirements.* The reporting in paragraph (a)(1) (i) through (iv) of this section is required in addition to applicable reporting requirements under the Clean Water Act (CWA) or the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA). For example, under the National Contingency Plan all spills involving 10 pounds or more of PCB material must currently be reported to the National Response Center (1–800–424–8802). The requirements in paragraphs (a)(1) (i) through (iv) of this section are designed to be consistent with existing reporting requirements to the extent possible so as to minimize reporting burdens on governments as well as the regulated community.

(i) Where a spill directly contaminates surface water, sewers, or drinking water supplies, as discussed under § 761.120(d), the responsible party shall notify the appropriate EPA regional office (the Office of Pesticides and Toxic Substances Branch) and obtain guidance for appropriate cleanup measures in the shortest possible time after discovery, but in no case later than 24 hours after discovery.

(ii) Where a spill directly contaminates grazing lands or vegetable gardens, as discussed under § 761.120(d), the responsible party shall notify the appropriate EPA regional office (the Office of Pesticides and Toxic Substances Branch) and proceed with the immediate requirements specified under paragraph (b) or (c) of this section, depending on the source of the spill, in the shortest possible time after discovery, but in no case later than 24 hours after discovery.

(iii) Where a spill exceeds 10 pounds of PCB material (generally 1 gallon of PCB dielectric fluid) and is not addressed in paragraph (a)(1) (i) or (ii) of this section, the responsible party will notify the appropriate EPA regional office and proceed to decontaminate the spill area in accordance with this TSCA policy in the shortest possible time after

discovery, but in no case later than 24 hours after discovery. For purposes of the notification requirement, the 10 pounds are measured by the weight of the PCB-containing material spilled rather than by the weight of only the PCBs spilled.

(iv) Spills of 10 pounds or less, which are not addressed in paragraph (a)(1) (i) or (ii) of this section, must be cleaned up in accordance with this policy (in order to avoid EPA enforcement liability), but notification of EPA is not required.

(2) *Disposal of cleanup debris and materials.* All concentrated soils, solvents, rags, and other materials resulting from the cleanup of PCBs under this policy shall be properly stored, labeled, and disposed of in accordance with the provisions of § 761.60.

(3) *Determination of spill boundaries in the absence of visible traces.* For spills where there are insufficient visible traces yet there is evidence of a leak or spill, the boundaries of the spill are to be determined by using a statistically based sampling scheme.

(b) *Requirements for cleanup of low-concentration spills which involve less than 1 pound of PCBs by weight (less than 270 gallons of untested mineral oil)*—(1) *Decontamination requirements.* Spills of less than 270 gallons of untested mineral oil, low-concentration PCBs, as defined under § 761.123, which involve less than 1 pound of PCBs by weight (e.g., less than 270 gallons of untested mineral oil containing less than 500 ppm PCBs) shall be cleaned in the following manner:

(i) Solid surfaces must be double washed/rinsed (as defined under § 761.123); except that all indoor, residential surfaces other than vault areas must be cleaned to 10 micrograms per 100 square centimeters (10 $\mu g/100\ cm^2$) by standard commercial wipe tests.

(ii) All soil within the spill area (i.e., visible traces of soil and a buffer of 1 lateral foot around the visible traces) must be excavated, and the ground be restored to its original configuration by back-filling with clean soil (i.e., containing less than 1 ppm PCBs).

(iii) Requirements of paragraph (b)(1) (i) and (ii) of this section must be completed within 48 hours after the responsible party was notified or became aware of the spill.

(2) *Effect of emergency or adverse weather.* Completion of cleanup may be delayed beyond 48 hours in case of circumstances including but not limited to, civil emergency, adverse weather conditions, lack of access to the site, and emergency operating conditions. The occurrence of a spill on a weekend or overtime costs are not acceptable reasons to delay response. Completion of cleanup may be delayed only for the duration of the adverse conditions. If the adverse weather conditions, or time lapse due to other emergency, has left insufficient visible traces, the responsible party must use a statistically based sampling scheme to determine the spill boundaries as required under paragraph (a)(3) of this section.

(3) *Records and certification.* At the completion of cleanup, the responsible party shall document the cleanup with records and certification of decontamination. The records and certification must be maintained for a period of 5 years. The records and certification shall consist of the following:

(i) Identification of the source of the spill (e.g., type of equipment).

(ii) Estimated or actual date and time of the spill occurrence.

(iii) The date and time cleanup was completed or terminated (if cleanup was delayed by emergency or adverse weather: the nature and duration of the delay).

(iv) A brief description of the spill location.

(v) Precleanup sampling data used to establish the spill boundaries if required because of insufficient visible traces, and a brief description of the sampling methodology used to establish the spill boundaries.

(vi) A brief description of the solid surfaces cleaned and of the double wash/rinse method used.

(vii) Approximate depth of soil excavation and the amount of soil removed.

(viii) A certification statement signed by the responsible party stating that the cleanup requirements have been met and that the information contained in the record is true to the best of his/her knowledge.

(ix) While not required for compliance with this policy, the following information would be useful if maintained in the records:

(A) Additional pre- or post-cleanup sampling.

(B) The estimated cost of the cleanup by man-hours, dollars, or both.

(C) *Requirements for cleanup of high-concentration spills and low-concentration spills involving 1 pound or more PCBs by weight (270 gallons or more of untested mineral oil).* Cleanup of low-concentration spills involving 1 lb or more PCBs by weight and of all spills of materials other than low-concentration materials shall be considered complete if all of the immediate requirements, cleanup standards, sampling, and recordkeeping requirements of paragraphs (c) (1) through (5) of this section are met.

(1) *Immediate requirements.* The four actions in paragraphs (c)(1) (i) through (iv) of this section must be taken as quickly as possible and within no more than 24 hours (or within 48 hours for PCB Transformers) after the responsible party was notified or became aware of the spill, except that actions described in paragraphs (c)(1) (ii) through (iv) of this section can be delayed beyond 24 hours if circumstances (e.g., civil emergency, hurricane, tornado, or other similar adverse weather conditions, lack of access due to physical impossibility, or emergency operating conditions) so require for the duration of the adverse conditions. The occurrence of a spill on a weekend or overtime costs are not acceptable reasons to delay response. Owners of spilled PCBs who have delayed cleanup because of these types of circumstances must keep records documenting the fact that circumstances precluded rapid response.

(i) The responsible party shall notify the EPA regional office and the NRC as required by § 761.125(a)(1) or by other applicable statutes.

(ii) The responsible party shall effectively cordon off or otherwise delineate and restrict an area encompassing any visible traces plus a 3-foot buffer and place clearly visible signs advising persons to avoid the area to minimize the spread of contamination as well as the potential for human exposure.

(iii) The responsible party shall record and document the area of visible contamination, noting the extent of the visible trace areas and the center of the visible trace area. If there are no visible traces, the responsible party shall record this fact and contact the regional office of the EPA for guidance in completing statistical sampling of the spill area to establish spill boundaries.

(iv) The responsible party shall initiate cleanup of all visible traces of the fluid on hard surfaces and initiate removal of all visible traces of the spill on soil and other media, such as gravel, sand, oyster shells, etc.

(v) If there has been a delay in reaching the site and there are insufficient visible traces of PCBs remaining at the spill site, the responsible party must estimate (based on the amount of material missing from the equipment or container) the area of the spill and immediately cordon off the area of suspect contaimination. The responsible party must then utilize a statistically based sampling scheme to identify the boundaries of the spill area as soon as practicable.

(vi) Although this policy requires certain immediate actions, as described in paragraphs (c)(1)(i) through (iv) of this section, EPA is not placing a time limit on completion of the cleanup effort since the time required for completion will vary from case to case. However, EPA expects that decontamination will be achieved promptly in all cases and will consider promptness of completion in determining whether the responsible party made good faith efforts to clean up in accordance with this policy.

(2) *Requirements for decontaminating spills in outdoor electrical substations.* Spills which occur in outdoor electrical substations, as defined under § 761.123, shall be decontaminated in accordance with paragraphs (c)(2)(i) and (ii) of this section. Conformance to the cleanup standards under paragraphs (c)(2)(i) and (ii) of this section shall be verified by post-cleanup sampling as specified under § 761.130. At such times as outdoor electrical substations are converted to another use, the spill site shall be cleaned up to the nonrestricted access requirements under paragraph (c)(4) of this section.

(i) Contaminated solid surfaces (both impervious and non-impervious) shall be cleaned to a PCB concentration of 100 micrograms (μg)/100 square centimeters (cm^2) (as measured by standard wipe tests).

(ii) At the option of the responsible party, soil contaminated by the spill will be cleaned either to 25 ppm PCBs by weight, or to 50 ppm PCBs by weight provided that a label or notice is visibly placed in the area. Upon demonstration by the responsible party that cleanup to 25 ppm or 50 ppm will jeopardize the integrity of the electrical equipment at the substation, the EPA regional office may establish an alternative cleanup method or level and place the responsible party on a reasonably timely schedule for completion of cleanup.

(3) *Requirements for decontaminating spills in other restricted access areas.* Spills which occur in restricted access locations other than outdoor electrical substations, as defined under § 761.123, shall be decontaminated in accordance with paragraph (c)(3)(i) through (v) of this section. Conformance to the cleanup standards in paragraph (c)(3)(i) through (v) of this section shall be verified by postcleanup sampling as specified under § 761.130. At such times as restricted access areas other than outdoor electrical substations are converted to another use, the spill site shall be cleaned up to the nonrestricted access area requirements of paragraph (c)(4) of this section.

(i) High-contact solid surfaces, as defined under § 761.163 shall be cleaned to 10 $\mu g/100\ cm^2$ (as measured by standard wipe tests).

(ii) Low-contact, indoor, impervious solid surfaces will be decontaminated to 10 $\mu g/100\ cm^2$.

(iii) At the option of the responsible party, low-contact, indoor, nonimpervious surfaces will be cleaned either to 10 $\mu g/100\ cm^2$ or to 100 $\mu g/100\ cm^2$ and encapsulated. The Regional Administrator, however, retains the authority to disallow the encapsulation option for a particular spill situation upon finding that the uncertainties associated with that option pose special concerns at that site. That is, the Regional Administrator would not permit encapsulation if he/she determined that if the encapsulation failed the failure would create an imminent hazard at the site.

(iv) Low-contact, outdoor surfaces (both impervious and nonimpervious) shall be cleaned to 100 $\mu g/100\ cm^2$.

(v) Soil contaminated by the spill will be cleaned to 25 ppm PCBs by weight.

(4) *Requirements for decontaminating spills in nonrestricted access areas.* Spills which occur in nonrestricted access locations, as defined under § 761.123, shall be decontaminated in accordance with paragraphs (c)(4)(i) through (v) of this section. Conformance to the cleanup standards at paragraphs (c)(4)(i) through (v) of this section shall be verified by postcleanup sampling as specified under § 761.130.

(i) Furnishings, toys, and other easily replaceable household items shall be disposed of in accordance with the provisions of § 761.60 and replaced by the responsible party.

(ii) Indoor solid surfaces and high-contact outdoor solid surfaces, defined as high contact residential/commercial surfaces under § 761.123, shall be cleaned to 10 $\mu g/100\ cm^2$ (as measured by standard wipe tests).

(iii) Indoor vault areas and low-contact, outdoor, impervious solid surfaces shall be decontaminated to 10 $\mu g/100\ cm^2$.

(iv) At the option of the responsible party, low-contact, outdoor, nonimpervious solid surfaces shall be either cleaned to 10 $\mu g/100\ cm^2$ or cleaned to 100 $\mu g/100\ cm^2$ and encapsulated. The Regional Administrator, however, retains the authority to disallow the encapsulation option for a particular spill situation upon finding that the uncertainties associated with that option pose special concerns at that site. That is, the Regional Administrator would not permit encapsulation if he/she determined that if the encapsulation failed the failure would create an imminent hazard at the site.

(v) Soil contaminated by the spill will be decontaminated to 10 ppm PCBs by weight provided that soil is excavated to a minimum depth of 10 inches. The excavated soil will be replaced with clean soil, i.e., containing less than 1 ppm PCBs, and the spill site will be restored (e.g., replacement of turf).

(5) *Records.* The responsible party shall document the cleanup with records of decontamination. The records must be maintained for a period of 5 years. The records and certification shall consist of the following:

(i) Identification of the source of the spill, e.g., type of equipment.

(ii) Estimated or actual date and time of the spill occurrence.

(iii) The date and time cleanup was completed or terminated (if cleanup was delayed by emergency or adverse weather: the nature and duration of the delay).

(iv) A brief description of the spill location and the nature of the materials contaminated. This information should include whether the spill occurred in an outdoor electrical substation, other restricted access location, or in a nonrestricted access area.

(v) Precleanup sampling data used to establish the spill boundaries if required because of insufficient visible traces and a brief description of the sampling methodology used to establish the spill boundaries.

(vi) A brief description of the solid surfaces cleaned.

(vii) Approximate depth of soil excavation and the amount of soil removed.

(viii) Postcleanup verification sampling data and, if not otherwise apparent from the documentation, a brief description of the sampling methodology and analytical technique used.

(ix) While not required for compliance with this policy, information on the estimated cost of cleanup (by man-hours, dollars, or both) would be useful if maintained in the records.

§ 761.130 Sampling requirements.

Postcleanup sampling is required to verify the level of cleanup under § 761.125(c) (2) through (4). The responsible party may use any statistically valid, reproducible, sampling scheme (either random samples or grid samples) provided that the requirements of paragraphs (a) and (b) of this section are satisfied.

(a) The sampling area is the greater of (1) an area equal to the area cleaned

plus an additional 1-foot boundary, or (2) an area 20 percent larger than the original area of contamination.

(b) The sampling scheme must ensure 95 percent confidence against false positives.

(c) The number of samples must be sufficient to ensure that areas of contamination of a radius of 2 feet or more within the sampling area will be detected, except that the minimum number of samples is 3 and the maximum number of samples is 40.

(d) The sampling scheme must include calculation for expected variability due to analytical error.

(e) EPA recommends the use of a sampling scheme developed by the Midwest Research Institute (MRI) for use in EPA enforcement inspections: "Verification of PCB Spill Cleanup by Sampling and Analysis." Guidance for the use of this sampling scheme is available in the MRI report "Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup." Both the MRI sampling scheme and the guidance document are available from the TSCA Assistance Office, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, DC 20460 (202-554-1404). The major advantage of this sampling scheme is that it is designed to characterize the degree of contamination within the entire sampling area with a high degree of confidence while using fewer samples than any other grid or random sampling scheme. This sampling scheme also allows some sites to be characterized on the basis of composite samples.

(f) EPA may, at its discretion, take samples from any spill site. If EPA's sampling indicates that the remaining concentration level exceeds the required level, EPA will require further cleanup. For this purpose, the numerical level of cleanup required for spills cleaned in accordance with § 761.125(b) is deemed to be the equivalent of numerical cleanup requirements required for cleanups under § 761.125(c)(2) through (4). Using its best engineering judgment, EPA may sample a statistically valid random or grid sampling technique, or both. When using engineering judgment or random "grab" samples, EPA will take into account that there are limits on the power of a grab sample to dispute statistically based sampling of the type required of the responsible party. EPA headquarters will provide guidance to the EPA regions on the degree of certainty associated with various grab sample results.

§ 761.135 Effect of compliance with this policy and enforcement.

(a) Although a spill of material containing 50 ppm or greater PCBs is considered improper PCB disposal, this policy establishes requirements that EPA considers to be adequate cleanup of the spilled PCBs. Cleanup in accordance with this policy means compliance with the procedural as well as the numerical requirements of this policy. Compliance with this policy creates a presumption against both enforcement action for penalties and the need for further cleanup under TSCA. The Agency reserves the right, however, to initiate appropriate action to compel cleanup where, upon review of the records of cleanup or EPA sampling following cleanup, EPA finds that the decontamination levels in the policy have not been achieved. The Agency also reserves the right to seek penalties where the Agency believes that the responsible party has not made a good faith effort to comply with all provisions of this policy, such as prompt notification of EPA of a spill, recordkeeping, etc.

(b) EPA's exercise of enforcement discretion does not preclude enforcement action under other provisions of TSCA or any other Federal statute. This includes, even in cases where the numerical decontamination levels set forth in this policy have been met, civil or criminal action for penalties where EPA believes the spill to have been the result of gross negligence or knowing violation.

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April 2, 1987

Part IV

Environmental Protection Agency

40 CFR Part 110

Water Programs; Discharge of Oil; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 110

[FRL 3119-6]

Water Programs; Discharge of Oil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is amending the discharge of oil regulation (40 CFR Part 110), which implements section 311 of the Clean Water Act (CWA). The original regulation established a trigger for notifying the federal government of oil discharges that are harmful to public health or welfare. The regulation defined a harmful quantity as the amount of oil that violates applicable water quality standards or causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. It has come to be known as the "sheen regulation."

Today's regulation incorporates the 1977, 1978, and 1980 amendments to section 311 of the CWA and implements section 18(m)(3) of the Deepwater Port Act (DWPA) of 1974 by designating a harmful quantity for DWPA purposes. In addition, the Agency is responding to two suggestions by industry for modifications to the requirements of 40 CFR Part 110. The intended effect is to upgrade the oil spill notification requirements.

EFFECTIVE DATE: May 4, 1987.

FOR FURTHER INFORMATION CONTACT: Hubert Watters, Response Standards and Criteria Branch, Emergency Response Division (WH-548/B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2463, or the RCRA/Superfund Hotline, (800) 424-9346 (in Washington, DC, 382-3000).

SUPPLEMENTARY INFORMATION: The proposed rulemaking was published on pages 9776-9783 of the **Federal Register** of March 11, 1985, and invited comments for 60 days ending May 10, 1985. The comment period was subsequently extended to July 1, 1985. Comments were received from over 50 sources, and today's preamble summarizes the comments, suggestions, and actions taken.

The contents of the preamble are listed in the following outline:

I. Introduction
II Changes from Proposed to Final Rule
III. Statutory Provisions Affecting the Oil Discharge Regulation
A. 1977, 1978, and 1980 Statutory Amendments
1. Extension of Geographical Scope
2. Modification of Harmful Quantity
3. Exemption of Discharges Subject to Section 402 of the CWA
4. Exemption of Discharges Permitted Under MARPOL 73/78
B. Deepwater Port Act of 1974
IV. Other Sections of the Oil Discharge Regulation
V. Requests for Changes in the Oil Discharge Regulation
A. Volumetric Alternatives to Sheen Test
B. Special Use Applications of Oil
VI. Summary of Supporting Analyses
A. Classification and Regulatory Impact Analysis
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
VII. List of Subjects in 40 CFR Part 110

I. Introduction

On March 11, 1985, the Environmental Protection Agency (EPA) proposed amendments to the discharge of oil regulation (40 CFR Part 110). The March 11, 1985 preamble discussed in detail the nature and purpose of the proposed amendments.

Today, EPA is promulgating final amendments to the regulation. In preparing the amendments to the regulation, EPA has carefully considered all of the public comments submitted on the proposed amendments and is making some modifications in response to those comments. Major issues raised by commenters are addressed in this preamble. A summary of all comments and EPA's response to each is included in the Responses to Comments Documents, which may be found in the public docket for this rulemaking.

Section II of this preamble summarizes those changes made to the March 11, 1985, proposed rule. Statutory provisions, addressed in Section III of this preamble, include the following:

1. Extension of geographical scope of section 311 of the Clean Water Act (CWA) from the contiguous zone seaward to approximately 200 miles.

2. Modification of the harmful quantity definition from discharges of such quantities of oil that "will be harmful" to the public health or welfare of the United States to such quantities that "may be harmful" to the public health or welfare of the United States.

3. Exemption of oil discharges subject to CWA section 402 National Pollutant Discharge Elimination System (NPDES) from coverage under section 311 provisions.

4. Incorporation of the provisions under the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), Annex I.

5. Definition of harmful quantities of oil for purposes of section 18(m)(3) of the Deepwater Port Act of 1974 (DWPA).

Section IV discusses other sections of 40 CFR Part 110, and Section V addresses two suggested changes requested by the regulated community for which comments were solicited in the preamble to the proposed rule. They are:

1. A request by Chevron to consider a volumetric amount of oil discharge as a trigger for notification to replace the sheen test.

2. A request by Esgard that EPA exempt its vegetable oil product, a corrosion inhibitor in ballast tanks, from the oil discharge notification requirements.

Section VI presents a summary of supporting analyses, and Section VII provides a list of subjects addressed by this rulemaking.

II. Changes From Proposed To Final Rule

This section summarizes the substantive changes that have been made to the proposed rule. Four definitions have been modified slightly and one has been deleted. Modifications have also been made to the sections of the rule concerning applicability, prohibited discharges, demonstration projects, notice, and DWPA discharges. A copy of the final rule indicating all changes from the proposed rule has been placed in the docket for this rulemaking and is available for public inspection. The following summary is organized in the same order as the discharge of oil regulation (40 CFR Part 110) itself.

Section 110.1. The definition of "applicable water quality standards" has been amended to be consistent with the EPA water quality regulation, 40 CFR Part 131. The proposed definition in § 110.1 stated that applicable water quality standards were State standards "adopted by the State and approved by EPA . . . or promulgated by EPA . . ." In contrast, 40 CFR 131.21(c) states that:

A State water quality standard remains in effect, even though disapproved by EPA, until the State revises it or EPA promulgates a rule that supersedes the State water quality standard.

Accordingly, the words "and approved by EPA" have been deleted from the definition of applicable water quality standards in § 110.1 of the final rule.

A reference to section 311 of the CWA has been added to the definition of "discharge" to clarify that a different definition, as provided in § 110.11, applies to the DWPA.

The regulatory explanation of the 1977 amendment language which extended the scope of section 311's coverage beyond 12 miles has been deleted from

40 CFR Part 110 because a number of comments indicated confusion regarding the scope of the specific statutory language and the applicability of discharge reporting requirements within the area covered by the language. Under the pre-1977 statutory language of sections 311 (b)(3) and (b)(5), all prohibited discharges of oil in the territorial seas and contiguous zones must be reported. With the enactment of the 1977 CWA amendments, however, Congress inserted additional language in section 311(b)(3) which provided that prohibited discharges "in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act)" must be reported. Since the jurisdiction of the three statutes referenced in the 1977 amendments extends *within* as well as beyond the contiguous zone,[1] there was some question as to whether discharges within the zone now need only be reported if they are actually "in connection with" one of the three additional statutes. EPA believes that the correct interpretation of section 311(b)(3) is that *all* discharges of oil in the territorial seas and contiguous zone that create a sheen must continue to be reported. Discharges of oil beyond the contiguous zone, however, that create a sheen need only be reported if they are "in connection with activities" under the Outer Continental Shelf Lands Act, the Deepwater Port Act, or may affect natural resources subject to U.S. management authority under the Magnuson Fishery Conservation and Management Act. Today's rulemaking clarifies this issue by simply specifying appropriate reporting requirements in terms of whether the discharge and resulting sheen occurred in the territorial sea, the contiguous zone, or beyond 12 miles.

The definition of "oil" has been expanded to include references to both the CWA and the DWPA definitions of oil. Because oil is defined differently in the DWPA than in the CWA and is used in both contexts in the rule, the Agency believes it is desirable to provide references to both of these definitions of oil in § 110.1.

The reference to the Canal Zone has been deleted from the definition of "United States." The CWA no longer applies to the Canal Zone as a result of the Panama Canal Treaty of 1977 and the Panama Canal Act of 1979 (22 U.S.C. 3601 et seq.).

Section 110.2. A sentence has been added to the end of this section on applicability to indicate that the regulations also define the term "discharge" for purposes of section 18(m)(3) of the DWPA.

Section 110.6 (formerly § 110.7). This section sets forth the provisions of CWA section 311(b)(3), which generally prohibits oil discharges in quantities as may be harmful, except for discharges permitted under MARPOL 73/78. The Agency believes that the MARPOL exemption extends to discharges under the DWPA as well. Section 19(a)(1) of the DWPA provides, in relevant part, that ". . . the treaties of the United States shall apply to a deepwater port . . . and to activities connected, associated, or potentially interfering with the use or operation of any such port . . .". Because MARPOL 73/78 is a "treaty of the United States," EPA interprets section 19(a)(1) as authorizing the application of MARPOL 73/78 provisions to discharges under the DWPA and, therefore, has also provided for an exemption of MARPOL 73/78 permitted discharges from DWPA requirements. This point has been clarified in the final rule, and the section on discharges defined for purposes of the DWPA (§ 110.11 in the final rule) has been modified to except discharges permitted under MARPOL 73/78.

Section 110.9 (formerly § 110.10). In response to a commenter's recommendation to delete the geographic scope language from proposed § 110.10, the language has been replaced with the phrase "under section 311 of the Act." The Agency concurs with commenter's statement that the purpose of § 110.9 is to provide waiver authority to the Administrator, and therefore it is unnecessary to reprint the geographic scope in § 110.9.

Section 110.10 (formerly § 110.11). The Agency has amended § 110.10 to make it consistent with Coast Guard discharge reporting regulations by incorporating the language in 33 CFR 153.203, as amended on May 16, 1986 (51 FR 17962).

Section 110.11 (formerly § 110.6). In the final rule, the section concerning discharges defined for purposes of the DWPA has been moved to the end of the regulation. This section has been modified to except discharges from properly functioning vessel engines (which are not deemed to be harmful for CWA purposes) and discharges permitted by MARPOL 73/78. The proposed rule contained an exception for DWPA discharges subject to section 402 of the CWA, but this exception has been deleted. There is nothing in the language or legislative history of the DWPA to suggest that Congress contemplated such an exception.

III. Statutory Provisions Affecting the Oil Discharge Regulation

This section of the preamble describes the five amendments to the sheen rule that were required by changes to the CWA and by the DWPA. Commenters generally expressed support for these regulatory changes. Major issues raised by commenters concerning each of the changes are discussed below.

A. 1977, 1978, and 1980 Statutory Amendments

1. *Extension of Geographical Scope*

In the 1977 amendments to the CWA (Pub.L. 95–217), Congress expanded the geographical scope of section 311 beyond the contiguous zone, which extends seaward to 12 miles, to include oil discharges in connection with a variety of activities out to approximately 200 miles. Specifically, sections 311 (b) and (c) of the Act were amended to apply not only to discharges of oil into navigable waters and the contiguous zone, but also to such discharges—

in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)" (33 U.S.C. 1321(b) and (c)).

The Agency has amended the jurisdictional provisions of 40 CFR Part 110 to reflect the expanded scope of section 311 in § 110.5.

One commenter acknowledged that the proposed extension of geographical scope is consistent with the CWA amendments, but had reservations about the extension because of "the sheer size of the area to be included." The commenter asserted that the extension "will exacerbate the U.S. Coast Guard's inability to investigate spills." EPA notes that the major purpose of these amendments to the oil discharge rule is to implement statutorily mandated changes. The ability of the Coast Guard to investigate spills in the extended area

[1] Specifically, the Deepwater Port Act of 1974 regulates ports beyond "the territorial limits of the United States," including associated components and equipment, such as pipelines, located seaward of the high water mark. The Outer Continental Shelf Lands Act governs the Outer Continental Shelf, which lies beyond "navigable waters," and the Magnuson Fishery Conservation and Management Act establishes a fishery conservation zone, which lies beyond "the territorial sea of the United States."

depends, of course, on the number of spills in the area at any one time, enforcement discretion, the existence of competing demands for Coast Guard action at any particular time, and the availability of resources. In their comments submitted on this rule, the Coast Guard has not indicated any concern about their ability to carry out necessary investigations.

2. *Modification of Harmful Quantity*

In 1978, Congress modified the harmful quantity criteria of section 311 from discharge of oil that "will be harmful" to discharges that "may be harmful." More specifically, Congress modified the scope of prohibited discharges under section 311(b)(4) from quantities the "discharge of which, at such time, locations, circumstances, and conditions, will be harmful" to such quantities the "discharge of which may be harmful" (Pub. L. 95–576). Section 311(b)(3) was also amended to reflect this change.

The original oil sheen test was promulgated pursuant to the pre-1978 standard of "will be harmful." The Agency views the revised statutory standard "may be harmful" as being, at a minimum, at least as environmentally stringent and protective as the prior "will be harmful" standard, as discussed in more detail below, EPA has reviewed scientific research on the environmental effect of oil spills. It has assessed State and Federal experience in implementing the present "oil sheen" test, and it has carefully considered the alternatives suggested by commenters. On the basis of this review, the Agency has determined that the "oil sheen" is an appropriate, effective, and practical test for harmful quantities of oil under section 311(b)(4) of the CWA. As discussed later in this preamble, the Agency has made the same determination for discharges under section 18(m)(3) of the DWPA.

A number of commenters recognized that the replacement of "determined to be harmful" for "as may be harmful" in the regulations at 40 CFR Part 110 would be consistent with the CWA amendments. Some of these commenters advocated, however, adoption of a quantitative definition of harmful quantity of oil discharge using a volumetric trigger as an alternative to the sheen test. The scientific support for the oil sheen test together with the merits of adopting a volumetric trigger are addressed in detail in the discussion in Section V.A. concerning Chevron's proposal for a volumetric substitute to the sheen test.

3. *Exemption of Discharges Subject to Section 402 of the CWA*

In the 1978 amendments to the CWA, Congress also modified the definition of "discharge" in section 311(a)(2) to exclude from section 311 coverage three types of discharges that are subject to the National Pollutant Discharge Elimination System (NPDES) regulations under section 402 and the enforcement provisions of section 309. Specifically, Congress provided that the following discharges be excluded from section 311 coverage:

> . . . (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant opportunity or treatment systems.

Congress intended this amendment to clarify which section of the CWA governs discharges of oil and hazardous substances from point sources holding NPDES permits. Foreseeable or chronic point source discharges that are permitted under section 402, and that are either due to causes associated with the manufacturing or other commercial activities in which the discharger is engaged or due to the operation of the treatment facilities required by the NPDES permit, are to be regulated under the NPDES program. "Classic spill" situations are subject to the requirements of section 311. Such spills are governed by section 311 even where the discharger holds a valid and effective NPDES permit under section 402.

Several commenters suggested a need for EPA to clarify the three categories of excluded discharges. EPA provided an extensive explanation of these exclusions in the March 11, 1985, preamble to the proposed rule, and the Agency intends at the pesent time to continue this interpretation of the CWA provisions, which was based on the language in 40 CFR 117.12 promulgated in 1979 for reportable quantities of CWA hazardous substances. This interpretation, however, is currently being reevaluated by the Agency in the context of the present NPDES program and the interpretation of "federally permitted releases" under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The Agency intends to address this issue more fully in a forthcoming rulemaking on CERCLA federally permitted releases.

4. *Exemption of Discharges Permitted Under MARPOL 73/78*

Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), entered into force on October 2, 1983 (see 48 FR 45704–45727, October 6, 1983). The purpose of MARPOL 73/78, which supersedes the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, is to eliminate marine pollution from ships. In 1980, the Act to Prevent Pollution from Ships implemented portions of MARPOL, 73/78. Specifically, section 13(b) of Pub. L. 96–478 amended section 311(b)(3)(A) of the CWA to exempt certain discharges into waters seaward of the territorial sea permitted under MARPOL 73/78. Such discharges include the operational discharge of limited quantities of oil-water mixtures from ships. Thus, discharges into those waters from ships made in compliance with the requirements of Regulation 9 of MARPOL 73/78, Annex I (as implemented through 33 CFR Parts 151 and 157), are not subject to notification and liability provisions under the CWA even if they would otherwise be of "a quantity that may be harmful" under the CWA. The MARPOL exemption does not apply, however, to discharges into the internal waters and the territorial seas of the United States. Such discharges must satisfy the CWA harmful quantity discharge standard even if the MARPOL 73/78 discharge standards are met. Section 110.6 of the sheen rule now includes this exemption.

One commenter pointed out that a far greater amount of the oil discharged into the world's oceans comes from tankers rather than from U.S. Outer Continental Shelf production operations and therefore recommended that if an exemption is granted to ships covered under MARPOL 73/78, a volumetric trigger should be set for offshore platforms that operate in the same waters and discharge less oil. In response to this comment, the Agency points out that the principal purpose of this regulatory revision is to incorporate Congress' specific exemption for MARPOL permitted releases. The Agency also notes, however, that the standard under MARPOL is concentration-based rather than volumetric and that Regulation 9 of MARPOL 73/78 applies to all "ships" operating in the marine environment. Such "ships" include all vessels and both fixed and floating platforms. Thus,

the MARPOL 73/78 exemption includes certain operational discharges from offshore platforms as well as from vessels (see Regulation 21 of MARPOL 73/78). Furthermore, some offshore platforms operate under NPDES permits with oil discharge limits, and discharges in compliance with such permits are also excluded from discharge of oil regulation coverage. The Agency has decided to retain the existing reporting trigger for discharges from offshore platforms at this time.

B. Deepwater Port Act of 1974

The Deepwater Port Act (DWPA) of 1974 (33 U.S.C. 150–1524) applies to the construction and operation of deepwater ports in waters beyond the territorial limits of the United States, including associated components and equipment, such as pipelines, located seaward of the high water mark. It contains provisions that prohibit the discharge of oil into the marine environment from a deepwater port, from a vessel that has received oil from another vessel at such a port, and from vessels within a port's safety zone. The DWPA also establishes deepwater port licensee and vessel owner or operator liability for cleanup costs and damages that result from a discharge of oil. Other features of the DWPA include discharge notification requirements, penalty provisions, and the establishment of the Deepwater Port Liability Fund. The fund is liable, without regard to fault, for all cleanup costs and damages in excess of those actually compensated by a liable deepwater port licensee or vessel owner or operator.

Action under each of the key pollution provisions of the DWPA is triggered by a discharge of oil in harmful quantities. Section 18(m)(3) of the DWPA defines "discharge" in terms of those "quantities of oil determined to be harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency" (33 U.S.C. 1517(m)(3)). In the proposed rule, EPA used the sheen test to complete the definition.

Several commenters favored, in one form or another, a volumetric trigger for discharges under the DWPA. After carefully reviewing the comments submitted and considering them in light of the statutory language of section 18(m)(3) of the DWPA and its supporting legislative history, EPA has decided to use the sheen test in the final rule to define "harmful quantities" for purposes of the DWPA. The Coast Guard, which has the responsibility for implementing the requirements of the DWPA, agrees with this position. Both EPA and the Coast Guard believe that Congress intended that the DWPA definition of harmful quantity be the same as the CWA definition in the oil discharge rule. According to the legislative history of the DWPA, Congress expected the Administrator". . . to define harmful quantities of oil as defined in regulations issued under section 311 of the Federal Water Pollution Control Act" (Sen. Rep. No. 93–1217, 93rd Cong. 2nd Sess. (1974)). As noted by commenters, the section 311 CWA harmful quantity determination was promulgated by the Department of the Interior in 1970 and adopted by EPA in 1971. When Congress enacted the DWPA in 1974 it specifically chose in section 18(m)(3) to define the word "discharge" in terms of "regulations issued by the Administrator of the Environmental Protection Agency". As the legislative history noted above makes explicitly clear, the regulations Congress was referring to were those issued under section 311 of the CWA. Those regulations defined harmful quantities in 1974 in precisely the same terms as today's rulemaking. Therefore, EPA and the Coast Guard believe the rule adopted today at 40 CFR 110.11 fulfills Congressional direction in this regard. Moreover, as discussed below, the Agency believes that the sheen test is an appropriate definition of harmful quantities for purposes of the DWPA.

One commenter submitted data from the Louisiana Offshore Oil Port (LOOP) monitoring program to show that there were no measurable short-term or long-term harmful effects that could be attributed to oil spills from the LOOP.[2] A review of the data submitted, however, suggests that the monitoring program was not specifically designed to assess the impacts of spills that have actually occurred at the LOOP. Moreover, the inconclusive indications that these data provide are more than offset in EPA's view by other scientific studies and research in the record that clearly demonstrate a connection between oil spills and adverse environmental effects, both at offshore oil platforms and other open ocean areas, as well as in controlled laboratory conditions. For this reason also, EPA believes that the determination in today's rulemaking that the oil sheen is an appropriate harmful quantity standard is reasonable and fully supportable.

Another commenter argued that the sheen test does not correspond with either actual or potential harm from deepwater port-related releases, which by definition, occur outside territorial waters. According to the commenter, the regulations assume that the same quantity of oil which presents a potential threat to the public health or welfare of the United States when spilled in navigable waters or in the contiguous zone creates a comparable potential for harm when discharged at a remote offshore location. The commenter challenges this assumption, citing a 1974 study by the U.S. Army Corps of Engineers on different areas of marine environmental sensitivity. It should be noted that this study does not state that there is no harm from oil spills offshore, but rather, that there is likely to be less harm from oil spills offshore than from those inshore. Other researchers have related the potential for harm from an oil spill to distance from shore, by noting that the potential for harm increases as water depths decrease from thousands to hundreds of feet. EPA believes that such a potential for harm exists at the LOOP because contrary to the commenter's suggestion that the LOOP represents a "remote offshore location," the depth of the water surrounding the LOOP platform is in fact on the order of one hundred feet. Furthermore, as mentioned previously, the DWPA definition of deepwater port includes pipelines and other components and equipment located seaward of the high water mark. Thus, LOOP discharges may occur within as well as beyond territorial waters.

Another commenter has indicated concern that unlike section 311 of the CWA, the provisions of the DWPA, specifically 33 U.S.C. 1517(c)(1), statutorily mandate a response action in every instance of a reported discharge, regardless of extreme weather conditions and resulting safety hazards that cleanup actions may entail. The Coast Guard, however, declines to adopt this interpretation of the DWPA. As explained in their comment letter of may 9, 1985 (OS–9–43 in the public docket), the Coast Guard interprets the provisions of the DWPA to give the Coast Guard discretionary authority to determine whether or not a response is necessary when a discharge occurs.

IV. Other Sections of the Oil Discharge Regulation

A few commenters recommended changes to other sections of the oil discharge regulation, particularly to §§ 110.1 and 110.8 of the proposed rule. For reasons discussed in the Responses to Comments documents, the Agency has decided not to incorporate these changes into the final rule.

[2] The LOOP is the only operating deepwater port in the United States. It is located approximately 18 miles off the coast of Louisiana in the Gulf of Mexico.

V. Requests For Changes in the Oil Discharge Regulation

A. Volumetric Alternatives to Sheen Test

Chevron U.S.A., Inc., of San Francisco, California, has commented to EPA that the sheen test under section 311 of the CWA is too stringent and that alternative, volumetric limits would provide sufficient water quality protection at a lesser cost to the company. Chevron has suggested that the reportable quantity threshold be changed to 1 barrel (42 gallons), except where water quality standards are more stringent. The company maintains that spills of less than 1 barrel "rarely, if ever, cause environmental damage." Chevron claims, in material submitted to EPA, that approximately 75 percent of the spills it reports are of under 1 barrel and estimates that the cost to the company is $500 to $6,000 per spill report. Some commenters have urged that a volumetric test be adopted for harmful quantity determinations under the DWPA, as well.

A large number of commenters expressed support for the sheen test rather than a volumetric test. Several commenters cited the greater enforceability, administrative ease, and higher level of environmental protection afforded by the sheen test. A few commenters pointed to the success of the sheen test in promoting prompt reporting and preventing larger spills, as well as in encouraging spill prevention and cleanup by industry. The commenters also noted the problems inherent in a volumetric reporting trigger, including the potential for environmental harm from small quantities of oil in the aquatic environment; these commenters asserted that a volumetric trigger would fail to account for differing susceptibility of water to damage from oil. They noted that the receiving waters and type of oil spilled affect the environmental impact more than the quantity of oil spilled.

Commenters opposed to the sheen test raised questions about environmental harm and concerns about the stringency of the requirement. Several commenters favoring a volumetric alternative to the sheen test also addressed administrative and policy issues as outlined below and detailed in the Responses to Comments documents.

1. Environmental Harm Issues

The majority of commenters opposing the sheen test expressed the belief that small oil spills do not have a significant impact on marine ecosystems. A few of the commenters referred to the fact that many scientific studies have been conducted since the Department of the Interior's 1970 determination that a sheen represents a "harmful quantity" of oil. For example, one suggested that many scientific studies have proven small quantities of oil to be harmless, and another asserted that EPA has failed to consider new data in its decision to retain the sheen test. Of all the commenters who expressed these opinions, only three submitted extensive documentation of scientific studies and literature reviews, which they felt illustrated the substantial amount of recent research that could support a volumetric reporting trigger. One of the commenters also recommended that EPA review the 1985 National Academy of Sciences study on the subject of oil pollution.

EPA has carefully reviewed the recent scientific literature on environmental effects of oil pollution, including documents submitted by commenters and other documents referenced in comment letters or compiled in the public docket during the comment period. EPA believes that the literature clearly demonstrates that discharges of small quantities of oil cause environmental harm. A discussion paper outlining the Agency's position and citing specific documents in support of that position has been placed in the public docket.

Many types of adverse effects from oil have been extensively documented, proving harmful effects from oil spills and chronic pollution in inland waters, in coastal environments, and in waters beyond 12 miles from shore. Evidence from reviews of laboratory studies further demonstrates that very small amounts of oil, e.g., less than 1 mg/L (1 ppm), can have lethal and sublethal effects on a wide variety of organisms. The National Academy of Sciences (NAS), in its 1985 comprehensive review, noted that "low concentrations (less than 1 mg/L) of petroleum hydrocarbons can apparently interfere with the normal behavior of marine organisms, especially the more fragile components such as the larval and juvenile forms of the marine food chain." The review articles and reports prepared by industry representatives that argue strongly for the commenters' position are either limited in their citation of scientific literature or highly selective in the conclusions drawn. The limited evidence cited by commenters to show little or no harm from oil discharges generally applies only to certain areas of chronic pollution (e.g., Milford Haven, United Kingdom), certain types of harm (e.g., permanent harm on a broad scale), or certain organisms. As discussed in the NAS report and in EPA's discussion paper, the studies of chronically polluted areas in the Gulf of Mexico that were cited by commenters are controversial and have been criticized by some scientists for their methodology and conclusions. Commenters provided no evidence disputing the widely recognized types of physical harm that may result from floating sheens of oil such as asphyxiation of fish and benthic fauna due to coating by oil, harm to waterfowl because of loss of buoyancy or loss of insulating capacity of feathers, and adverse aesthetic effects of fouled shorelines and beaches.

Moreover, some commenters appear to have defined potential harm as permanent biological harm on a broad scale. There simply is no persuasive indication in the statute that Congress intended this narrow interpretation of the harmful quantity standard. In fact, the Congressional policy expressed in CWA section 311(b)(1) "that there should be *no* discharges of oil" (emphasis added) suggests just the opposite.

Equally important, nothing in the legislative history of the CWA or in judicial interpretations of the Act suggests that a demonstration of permanent harm on a broad scale is required. Congress stated in the 1978 CWA Amendments that a prohibited discharge need only be a quantity that *may* be harmful. In cases such as *U.S.* v. *Atlantic Richfield Company*, 429 F.Supp. 830, 837 (E.D. Pa., 1977), the courts have suggested that Congress believed that even transitory pollution of waters was deleterious to the environment.

Many of the studies submitted by commenters support the fact that small oil spills do cause harm in certain waters (e.g., spawning grounds, estuaries). Many opponents of the sheen test concede that coastal and inland areas and sensitive habitats may be vulnerable to damage from low levels of oil pollution, and many admit that there may be at least temporary harm. Documents compiled in the public docket clearly show that small amounts of oil are harmful in a variety of locations and circumstances, including spawning grounds and sensitive habitats beyond 12 miles from shore. EPA has therefore chosen to retain the sheen test as an environmentally protective reporting trigger for purposes of both the CWA and the DWPA.

Several commenters favored the establishment of different oil discharge reporting triggers for different waters to ensure that the more stringent sheen test would be used for environmentally sensitive areas, while a less stringent

volumetric test would be applied to less environmentally sensitive waters. To the extent that they favor retaining the sheen test for certain waters, EPA agrees with these commenters. EPA further believes that the sheen test must be applied to all waters to ensure certain, consistent and effective implementation of the harmful quantity standard. A single reporting trigger is entirely consistent with Congressional intent as reflected in the 1978 CWA amendments, which eliminated the requirement that a determination of harm must consider the specific "times, locations, circumstances, and conditions" of a given spill. Senator Muskie, in the debates on these amendments, stated that the determinations of harmful quantities under CWA section 311 "are nationally applicable, before-the-fact decisions and are not expected to reflect the myriad of actual circumstances that may occur" (*Congressional Record* at 519653, December 15, 1977). In the case of hazardous substances, which, like oil, are covered by CWA section 311, EPA has previously expressed the view that Congress intended a single reportable quantity to apply to all waters. As stated in the 1978 preamble to regulations establishing reportable quantities for hazardous substances, "Congress was aware that requiring tailoring of such determinations to water body type and other circumstances is administratively unwise and could prevent achievement of the goals of the [Clean Water] Act" (43 FR 10491, March 13, 1978). EPA believes that this same principle should apply to discharges of oil. EPA continues to believe that a single reporting trigger is a practical and environmentally sound requirement. It is true that discharges of the same amount of oil into different bodies of water may result in different degrees of harm. The boundaries and differentiation of various ecologically significant waters, however, are not clearly defined nor readily discernible. Waters seaward of the territorial seas or the contiguous zone, which may contain neustonic communities or productive fisheries, can be sensitive to small spills. As sensitivity of individual aquatic environments to oil is dependent on much more than just distance from shore, EPA believes that it would be impractical to establish varying oil discharge reporting requirements for different waters. The sheen test, identifying a single threshold for all waters, provides a clear and definitive trigger for the reporting requirements of 40 CFR Part 110. A single reporting trigger for all waters is thus practical, effective, and fully reflective of Congressional intent underlying both section 311 of the CWA and section 18(m)(3) of the DWPA.

Several commenters argued that the sheen test will result in over reporting of discharges that may not be harmful. This argument, however, is true of any reporting trigger including the volumetric test. Moreover, any reporting trigger may in addition to requiring the reporting of some discharges that are not harmful, also allow some harmful discharges to go unreported. In comparison to the sheen test, for example, the volumetric triggers advocated by some commenters would allow nonreporting of a large number of spills that may be harmful both on an individual and cumulative basis. EPA believes that a sheen is an appropriate indicator of a discharge of harmful quantities of oil. A sheen is typically associated with discharges containing concentrations of oil in the 10 to 20 ppm range. In this regard, it is worth noting that Regulation 1(16) of MARPOL 73/78 defines clean ballast as either ballast that does not exceed 15 ppm, or ballast that, if discharged into clean, calm water on a clear day, would not produce a visible sheen. Thus, for purposes of this definition, a discharge causing a sheen may be roughly equated to a discharge with a concentration of 15 ppm. As detailed in the Agency's discussion paper in the public docket, adverse biological effects from oil occur at concentrations many times lower than 10–20 ppm. Furthermore, as noted above, the physical properties of floating sheens themselves may cause harm, such as coating birds' feathers and fouling beaches.

2. Administrative and Policy Issues

Some commenters suggested that a volumetric trigger would reduce the number of spill reports. With a reduction in reports, commenters asserted that there will be less of a paperwork burden on both industry and the implementing agencies and less need for administrative follow-up procedures such as inspections. EPA recognizes that in some cases reporting is already required under separate regulatory systems created under the Outer Continental Shelf Lands Act (OCSLA), under MARPOL 73/78, and under section 402 of the CWA. For facilities regulated under the OCSLU, *all* spills or leakage of oil or waste materials must be reported to the Director of the Minerals Management Service under 30 CFR 250.43 and OCS Order Number 7. The additional cost of complying with the reporting requirements under section 311 of the CWA would be minimal for these facilities.

In light of comments from implementing agencies, EPA believes that the cost of reporting under 40 CFR Part 110 are not excessive. For example, a State agency (Ohio EPA) estimated that the actual reporting phone call to the National Response Center's toll-free number normally takes less than 15 minutes. Furthermore, Ohio EPA has found that its data storage and administrative costs have generally been less than $20 per reported spill. The Coast Guard pointed out that the costs of reporting small spills are very small in comparison to spill prevention and corrective action expenditures. In response to EPA's request for information on administrative costs of responding to small spills, the Coast Guard suggested that spill response costs vary with the level of response required. The cost per assessment will not be reduced, according to the Coast Guard, by a change to a volumetric standard because each report would still need to be assessed to determine the actual amount discharged. Furthermore, the volumetric test may not reduce the overall costs of the regulation nor simplify its administration because there are additional implementation considerations associated with a volumetric test that are not associated with current notification requirements. The costs of installing, maintaining, and repairing any required oil monitoring devices could be substantial. Field verification costs of the releaser as well as the State, Coast Guard, or EPA would likely increase for a given spill, if observers were required to determine the quantity spilled rather than simply the existence of a sheen.

Several commenters expressed the belief that the adoption of a volumetric standard would not entail a reduction in their cleanup operations. The commenters asserted that their commitment to cleanup of all spills should continue under the volumetric standard. EPA commends the commenters' desire for the continued cleanup of all spills. EPA believes, however, that the Coast Guard's efforts to ensure cleanup will suffer in cases of spills that do not meet the volumetric threshold and are therefore unreported. Moreover, if, as commenters assert, voluntary cleanup of all spills will take place, EPA does not believe that the requirement of toll-free telephone reporting places an undue additional burden on vessels and facilities handling oil.

A few other commenters expressed the opinion that a volumetric reporting

trigger would be superior to the sheen test because the appearance of a sheen often depends on weather conditions and water turbulence. However, as discussed below, accurate volumetric determinations also can be dependent on weather and water conditions. The Agency believes that any potential shortcoming of the sheen test in particular circumstances are far outweighed by its overall usefulness, simplicity, and enforceability. A sheen provides a clear indication of a reportable discharge, enabling a responsible party to identify easily which discharges must be reported and facilitating third party (e.g., citizen) complaints or reports.

EPA also believes that the difficulty involved in determining the quantity of oil discharged, as evidenced in data from regulatory agencies, is one factor that makes a volumetric reporting trigger less effective than the sheen test. In many cases, the reports of oil spills are extremely inaccurate. In addition, a volumetric trigger may provide an incentive for underestimating the quantity discharged. In cases when an estimate of slick area and thickness must be made, an observer may require special training. Even under optimal viewing conditions, with a reference scale available for comparing dimensions, only rough estimates of volume may be possible. Moreover, in less than optimal viewing conditions (e.g., poor weather, turbulance, darkness), it is not clear that even rough estimates would be possible. Finally, any time-consuming determination of the amount spilled would be contrary to the spill reporting program goal of immediate notification and quick response to possible environmental threats.

Many commenters suggested that a volumetric reporting trigger would be consistent with the present reportable quantity (RQ) criteria for hazardous substances. EPA notes that an important purpose of the RQ program is to provide a readily implementable and easy to understand reporting trigger for a diverse set of hazardous substances. EPA believes that the sheen test satisfies this same regulatory objective for oil. The sheen test has been shown to be a successful notification trigger for oil under a variety of circumstances. The sheen test takes advantage of the physical properties of oil, which cause a film, sheen, or discoloration upon the surface of the water. Because oil generally floats, the sheen test may be used to provide a more simple, easily enforced, and reliable alternative to a volumetric trigger.

B. Special Use Applications of Oil

EPA has authority under the CWA, section 311(b)(3)(B), and Executive Order 11735 (38 FR 21243) to permit the discharge of oil "in quantities and at times and locations or under such circumstances or conditions" as the Agency determines not to be harmful. Thus, EPA may grant exemptions to section 311(b) and the sheen regulation under appropriate circumstances. The Agency has received a request for an exemption for vegetable oil products used to prevent salt water corrosion in the ballast tanks and void spaces of ships and semisubmersible oil rigs. Several comments were received on this issue. There was disagreement among the commenters as to whether vegetable oil products cause harm.

EPA has decided not to exempt the reporting of vegetable oil product discharges under the oil discharge rule. The Agency has reviewed the materials cited by commenters on the impacts of vegetable oils and believes that these materials do not support the conclusion that these oils do not cause environmental harm. Some harmful environmental effects of vegetable oils are similar to those of petroleum oils and include drowning of waterfowl, fishkills due to increased biological oxygen demand, asphyxiation of benthic life, and adverse aesthetic effects. Finally, the Agency believes that the reporting requirement does not pose such a burden that it would deter the application of a useful vegetable oil product.

VI. Summary of Supporting Analyses

A. Classification and Regulatory Impact Analysis

Regulations must be classified as major or nonmajor to satisfy the rulemaking protocol established by Executive Order 12291. E.O. 22291 established the following criteria for a regulation to qualify as a major rule:

1. An annual effect on the economy of $100 million or more;
2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
3. Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The amended regulation is a nonmajor rule because the Agency has concluded that it meets none of the above criteria. An analysis has estimated that the upper bound total of annual economic costs from notification requirements, spill investigations, and increased cleanup liability is $3.8 million, well below the $100 million standard for a major rule classification. Data supporting this conclusion are in the rulemaking docket.

This regulation was submitted to OMB for review under Executive Order 12291.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, Agencies must evaluate the effects of a regulation on "small entities." That Act recognizes three types of such entities:

1. Small businesses (specified by Small Business Administration regulations);
2. Small organizations (independently owned, nondominant in their field, nonprofit); and
3. Small governmental jurisdictions (serving communities with fewer than 5,000 people).

If the rule is likely to have a "significant impact on a substantial number of small entities," the Act requires that a Regulatory Flexibility Analysis be performed. EPA certifies that the amended regulation will not have a significant impact on a substantial number of small entities. There may be some incremental costs of compliance owing the extension of jurisdiction beyond the contiguous zone to approximately 200 miles. These costs will, however, be borne by companies larger than those defined as small entities.

The regulated industry is dominated by a few dozen major corporations. Because regulatory costs will ultimately be borne by these major corporations, the expected compliance costs will not affect any identifiable group of small entities and thus a Regulatory Flexibility Analysis is not required.

C. Paperwork Reduction Act

Information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2050–0046.

List of Subjects in 40 CFR Part 110

Administrative practice and procedure, Coastal zone, Continental shelf, Environmental protection, Fisheries, Hazardous substances, Intergovernmental relations, Liabilities, Marine resouces, Natural resources, Oil pollution, Penalties, Petroleum, Public health, Reporting and recordkeeping requirements, Rivers, Treaties, Vessels,

Water pollution control, Water resources, Waterways.

Dated: March 24, 1987.

Lee M. Thomas,

Administrator.

For reasons set out in the preamble, 40 CFR Part 110 is revised to read as follows:

PART 110—DISCHARGE OF OIL

Sec.

110.1 Definitions.
110.2 Applicability.
110.3 Discharge into navigable waters of such quantities as may be harmful.
110.4 Discharge into contiguous zone of such quantities as may be harmful.
110.5 Discharge beyond contiguous zone of such quantities as may be harmful.
110.6 Discharge prohibited.
110.7 Exception for vessel engines.
110.8 Dispersants.
110.9 Demonstration projects.
110.10 Notice.
110.11 Discharge at Deepwater Ports.

Authority: Secs. 311 (b)(3) and (b)(4) and 501(a), Federal Water Pollution Control Act, as amended (33 U.S.C. 1321 (b)(3) and (b)(4) and 1361(a)); sec. 18(m)(3) of the Deepwater Port Act of 1974 (33 U.S.C. 1517(m)(3)); E.O. 11735, 38 FR 21243, 3 CFR Parts 1971–1975 Comp., p. 793.

§ 110.1 Definitions.

As used in this part, the following terms shall have the meaning indicated below:

"Act" means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., also known as the Clean Water Act;

"Administrator" means the Administrator of the Environmental Protection Agency (EPA);

"Applicable water quality standards" means State water quality standards adopted by the State pursuant to section 303 of the Act or promulgated by EPA pursuant to that section;

"Contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

"Deepwater port" means an offshore facility as defined in section (3)(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502(10));

"Discharge," when used in relation to section 311 of the Act, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping, but excludes (A) discharges in compliance with a permit under section 402 of the Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Act, that are caused by events occurring within the scope of relevant operating or treatment systems;

"MARPOL 73/78" means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, Annex I, which regulates pollution from oil and which entered into force on October 2, 1983;

"Navigable waters" means the waters of the United States, including the territorial seas. The term includes:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(3) That are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as navigable waters under this section;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this section, including adjacent wetlands; and

(f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this section: Provided, That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States;

"NPDES" means National Pollutant Discharge Elimination System;

"Offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind that is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

"Oil", when used in relation to section 311 of the Act, means oil of any kind or in any form, including, but not limted to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. "Oil," when used in relation to section 18(m)(3) of the Deepwater Port Act of 1974, has the meaning provided in section 3(14) of the Deepwater Port Act of 1974;

"Onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States, other than submerged land;

"Person" includes an individual, firm, corporation, association, and a partnership;

"Public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

"Sheen" means an iridescent appearance on the surface of water;

"Sludge" means an aggregate of oil or oil and other matter of any kind in any form other than dredged spoil having a combined specific gravity equivalent to or greater than water;

"United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

"Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel; and

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

§ 110.2 Applicability

The regulations of this part apply to the discharge of oil prohibited by section 311(b)(3) of the Act. This includes certain discharges into or upon the navigable waters of the United States or adjoining shorelines or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources

under the Magnuson Fishery Conservation and Management Act). The regulations of this part also define the term "discharge" for purposes of section 18(m)(3) of the Deepwater Port Act of 1974, as provided under § 110.11 of this part.

§ 110.3 Discharge into navigable waters of such quantities as may be harmful.

For purposes of section 311(b) of the Act, discharges of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.7 of this part, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

§ 110.4 Discharge into contiguous zone of such quantities as may be harmful.

For purposes of section 311(b) of the Act, discharges of oil into or upon the waters of the contiguous zone in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.7, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

§ 110.5 Discharge beyond contiguous zone of such quantities as may be harmful.

For purposes of section 311(b) of the Act, discharges of oil into or upon waters seaward of the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act) in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.7, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

§ 110.6 Discharge prohibited.

As provided in section 311(b)(3) of the Act, no person shall discharge or cause or permit to be discharged into or upon the navigable waters of the United States or adjoining shorelines or into or upon the waters of the contiguous zone or into or upon waters seaward of the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act) any oil in such quantities as may be harmful as determined in §§ 110.3, 110.4, and 110.5, except as the same may be permitted in the contiguous zone and seaward under MARPOL 73/78, Annex I, as provided in 33 CFR 151.09.

§ 110.7 Exception for vessel engines.

For purposes of section 311(b) of the Act, discharges of oil from a properly functioning vessel engine are not deemed to be harmful, but discharges of such oil accumulated in a vessel's bilges shall not be so exempt.

§ 110.8 Dispersants.

Addition of dispersants or emulsifiers to oil to be discharged that would circumvent the provisions of this part is prohibited.

§ 110.9 Demonstration projects.

Notwithstanding any other provisions of this part, the Administrator may permit the discharge of oil, under section 311 of the Act, in connection with research, demonstration projects, or studies relating to the prevention, control, or abatement of oil pollution.

§ 110.10 Notice.

Any person in charge of a vessel or of an onshore or offshore facility shall, as soon as he or she has knowledge of any discharge of oil from such vessel or facility in violation of § 110.6, immediately notify the National Response Center (NRC) (800–424–8802; in the Washington, DC metropolitan area, 426–2675). If direct reporting to the NRC is not practicable, reports may be made to the Coast Guard or EPA predesignated On-Scene Coordinator (OSC) for the geographic area where the discharge occurs. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or the predesignated OCS immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the person in charge of the vessel or onshore or offshore facility notifies the NRC as soon as possible. The reports shall be made in accordance with such procedures as the Secretary of Transportation may prescribe. The procedures for such notice are set forth in U.S. Coast Guard regulations, 33 CFR Part 153, Subpart B and in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300, Subpart E. (Approved by the Office of Management and Budget under the control number 2050–0046)

§ 110.11 Discharge at deepwater ports.

(a) Except as provided in paragraph (b) below, for purposes of section 18(m)(3) of the Deepwater Port Act of 1974, the term "discharge" shall include but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil that:

(1) Violate applicable water quality standards, or

(2) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

(b) For purposes of section 18(m)(3) of the Deepwater Port Act of 1974, the term "discharge" excludes:

(1) Discharges of oil from a properly functioning vessel engine, (including an engine on a public vessel), but not discharges of such oil accumulated in a vessel's bilges (unless in compliance with MARPOL 73/78, Annex I); and

(2) Discharges of oil permitted under MARPOL 73/78, Annex I.

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Thursday
April 2, 1987

Part V

Commission on Education of the Deaf

Educational Programs for the Deaf; Notice of Inquiry

COMMISSION ON EDUCATION OF THE DEAF

Educational Programs; Inquiry

AGENCY: Commission on Education of the Deaf.

ACTION: Notice of inquiry.

SUMMARY: The Commission on Education of the Deaf solicits written responses and recommendations to questions about educational programs for persons who are deaf.

DATE: To be taken for consideration, written response, should be received on or before June 12, 1987.

ADDRESS: Responses should be sent to the Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets, SW., Washington, DC 20407.

FOR FURTHER INFORMATION CONTACT: Pat Johanson, Staff Director or Robert J. Mather, Staff Counsel, (202) 453–4353 (TDD) or (202) 453–4684 (Voice). These are not toll free numbers.

SUPPLEMENTARY INFORMATION: The Commission on Education of the Deaf was established under section 301 of the Education of the Deaf Act of 1986, Pub. L. 99–371, 100 Stat. 781, 786–789 (20 U.S.C. 4341–4344). The Commission is mandated to make a study of the quality of educational programs serving individuals who are deaf. Specifically, the Commission is required to make a study of the quality of infant, early childhood, elementary, secondary, postsecondary, adult, and continuing education programs furnished to individuals who are deaf. This scope of education includes Gallaudet University, the National Technical Institute for the Deaf, the Model Secondary School for the Deaf, and the Kendall Demonstration Elementary School, and the four federally supported regional postsecondary education programs at the California State University at Northridge, Seattle Central Community College, St. Paul Technical Vocational Institute, and the University of Tennessee. The Commission is also to study federally assisted instructional media services and illiteracy among persons who are deaf. The Commission is to submit to Congress and to the President, not later than February 4, 1988, a final report of its study together with recommendations, including specific proposals for legislation, as the Commission deems advisable.

The Commission requests all interested persons and organizations to submit written responses and recommendations related to the questions listed below. If you use information or data from outside sources, please cite them, and, if possible, provide a copy of the material.

The questions are meant to be exhaustive, but simply indicate areas of Commissions concern. The Commission also welcomes any other questions and recommendations it should consider. Your response should clearly state which question(s) you are addressing.

Topic #1: Availability and Appropriateness of Postsecondary, Adult, and Continuing Educational Opportunities for Persons Who are Deaf

(a) Are appropriate postsecondary, adult, and continuing educational opportunities available to persons who are deaf? If not, what are the shortcomings?

(b) Are quality support services (*e.g.*, interpreting, notetaking, tutoring) being provided in response to section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794)?

(c) Are current transition programs sufficient to meet the needs of students when they graduate from high school?

(d) Are current vocational education programs readily accessible to students who are deaf?

(e) What are the current and future needs of vocational rehabilitation services to persons who are deaf?

(f) What can be done to promote and/or increase the participation of adults who are deaf in adult and continuing education at the community level?

(g) To what extent are out of state tuition and expenses discouraging or hindering student from attending postsecondary schools located outside of their home state?

(h) Since state rehabilitation funds follow students to whichever school they attend, are vocational rehabilitation counselors discouraging students from attending postsecondary schools outside of their home state?

Topic #2: The Advisability of Expanding the Number of Federally Supported Postsecondary Regional Programs

Background

The Regional Postsecondary Education Program for the Deaf (RPEPD) is limited to four schools. Currently, they are California State University at Northridge, Seattle Central Community College, St. Paul Technical Vocational Institute, and the University of Tennessee. Federal funding for these programs come in three year grants, with the amount of funding fluctuating from year-to-year, and from grant-to-grant.

(a) Should the number of schools participating in the RPEPD be expanded or not? Why?

(b) If additional regional programs should be created, what criteria should be used to select or design them?

(c) What are current and future needs of the regional programs?

(d) What are the effects of three year grants as opposed to continued funding upon these programs?

(e) What impact has section 504 had on the need for the RPEPD?

(f) What are, if any, the constraints on students' choice of which federally supported program (Gallaudet University (GU), the National Technical Institute for the Deaf (NTID), and the four regional programs to attend?

(g) Should each of the four regional programs offer a similar range of degrees and programs so that students do not have to go to out-of-region programs?

(h) What are shortcomings in the four regional programs, GU and NTID?

(i) Is it desirable to have a consortium of the four regional programs, GU and NTID? If necessary, how should a consortium be established? What would be the advantages and disadvantages of a consortium?

(j) Are the regional programs readily accessible to members of minority groups?

Topic #3: Training and Technical Assistance Needs at All Levels of Educational Programs

(a) What qualifications do teachers have to meet in order to become certified to teach students who are deaf? Are there appropriate training programs (general, special, or deafness-specific) where teachers can obtain these qualifications?

(b) Are evaluation and certification procedures for professionals (*e.g.*, speech therapists, language instructors, and audiologists), teachers, and interpreters sufficient to ensure quality services?

(c) Are current educational administration programs (general, special, deafness-specific) adequately preparing their students to administer educational programs for persons who are deaf?

(d) Are current interpreter training programs adequate to meet the need for educational interpreter services?

(e) What are the minimum guidelines or criteria to ensure the quality of interpreter training programs?

(f) What standards should interpreters meet in order to interpret in educational settings?

(g) Are sufficient professional development opportunities being offered to administrators, teachers, interpreters and professionals?

(h) What is the potential for using existing educational programs for the deaf (*e.g.*, day/residential schools) as resource centers in providing assistance to regular schools with students who are deaf?

(i) Are sufficient speech, language, and audiological services available to serve students who are deaf?

(j) Are speech therapists, language instructors, and audiologists adequately prepared to work with students who are deaf?

(k) What are the training and technical assistance needs for regular teachers who have students who are deaf in their classrooms?

(l) What are the training and technical assistance needs for infant and early childhood education programs?

(m) What are the training and technical assistance needs for professionals and staff working in dormitory programs?

(n) To what extent are all levels of education and government agencies coordinating their training and technical assistance activities for the deaf population?

(o) What are deaf education programs doing to ensure that the training and technical assistance needs of persons who are deaf are being met?

Topic #4a: Availability and Appropriateness of Elementary/Secondary Educational Opportunities and Effects of Part B Of the Education of the Handicapped Act on Infant, Early Childhood, Elementary and Secondary Educational Programs For the Deaf

Background

Part B of the Education of the Handicapped Act (EHA) requires (1) that persons with disabilities, regardless of the nature or severity of their disability, be provided a free appropriate public education, (2) that students with disabilities be educated with nondisabled students to the maximum extent appropriate to their needs, (3) that educational agencies undertake to identify and locate all unserved children with disabilities, (4) that evaluation procedures be improved in order to avoid the inappropriate education that results from the misclassification of students, and (5) that procedural safeguard be established to enable parents and guardians to influence decisions regarding the evaluation and placement of their children.

(a) Are current elementary/secondary education programs available and appropriate? If not, what are the shortcomings the Commission should consider?

(b) What is the quality of infant and early childhood education programs?

(c) How should the concept of "appropriate education" under part B of the EHA apply to students who are deaf? The concept of "least restrictive environment"?

(d) For purposes of policy interpretations, should there be a generic approach to all disabilities or a specific approach to deafness?

(e) What should be the selection criteria for determining appropriate placements (self-contained classes in regular schools, day/residential progams, or mainstreaming programs) for individuals who are deaf? Is there a need for federal guidelines for the selection criteria?

(f) What are the minimum standards to ensure quality support services (*e.g.*, interpreting, notetaking, and tutoring)?

(g) What should be the role of day/residential schools under part B of the EHA? Is the desired role different from the current role?

(h) To what extent should local educational agencies give priority to parental preference for educational placement of children?

(i) To what extent does parental preference for communication method (*e.g.*, oral, cued speech, or total communication) play in determining how and where children who are deaf are educated?

(j) Who should decide what communication method(s) should be taught in local education program?

Topic #4b: Appropriateness of Roles Played By the Model Secondary School for the Deaf (MSSD) and the Kendall Demonstration Elementary School (KDES)

(a) What should be the "model" roles of MSSD/KDES? Are the desired roles different from the current roles?

(b) How should the principles of part B of the EHA apply to MSSD/KDES?

(C) What are the priority needs on which MSSD/KDES should focus in the development of curricula, instructional techniques, materials and programs to assist educational institutions to provide quality programs for students who are deaf?

(d) To what extent have KDES and MSSD used public and residential schools to test and evaluate their curricula, instructional techniques, and/or materials?

(e) How frequently do KDES and MSSD assess the need for other deaf programs?

(f) Are KDES and MSSD coordinating their research activities with other groups who are also conducting research on the pre-college deaf population?

(g) What technical assistance and outreach activities should KDES develop to promote quality elementary programs, and train parents of infants and children in specialized learning skills?

(h) What technical assistance and outreach activities should MSSD develop to promote quality secondary programs?

(i) Are MSSD/KDES in support of or in competition with other educational programs serving students who are deaf?

(j) What should be the admission policies of MSSD regarding academic achievement levels?

(k) Is there a need for model programs to meet the needs of students who are low-functioning or who have additional disabilities?

(l) What should be the roles of MSSD/KDES' national advisory groups, Gallaudet University's Board of Trustees, and the U.S. Department of Education's liaison official in overseeing MSSD/KDES? Are the desired roles different from the current roles?

(m) Should MSSD be relocated from the main campus of Gallaudet University?

Topic #5: Role and Impact of Research, Development, Dissemination, and Outreach Activities at Gallaudet University (GU) and the National Technical Institute for the Deaf (NTID)

(a) What is the current role and impact of research, development, dissemination and outreach activities at GU/NTID? Should any of these activities be continued, strengthened, or terminated?

(b) What are educational needs (for all age levels) that GU/NTID are addressing or should address in their outreach activities?

(c) How should research and development priorities be determined?

(d) What priority needs should GU/NTID consider in their research and development activities?

(e) Is there adequate outside oversight of these activities? Between GU and NTID? How should these activities be monitored to ensure cost-effectiveness and quality?

(f) Should research and development projects at GU/NTID be funded from Congressional appropriations, competitive grants, or both?

Topic #6: Instructional Media Services and Captioned Films Programs

(a) What is the status, production, and distribution of federally funded educational captioned films?

(b) What are the current and potential uses of captioning in education (*e.g.*, vocational education, educational films, drama, job training) of students who are deaf?

(c) To what extent should the federal government support closed captioning of television programs?

(d) What are the advantages and disadvantages of open-captioning as opposed to closed-captioning? Under what circumstances is open-captioning preferable to closed-captioning?

(e) In light of the increasing number of vendors offering captioning services, what role should the federal government play in subsidizing any or all of them?

(f) Should the federal government provide or continue to provide funds for programming, decoder subsidies, decoder development, and public awareness?

(g) What has been the effect of the availability of captioning on the educational ability of persons who are deaf?

(h) Since some states (*i.e.*, California and Michigan) provide telecommunication devices for deaf persons or TDDs at "no cost", should decoders for closed captioned television programs also be provided at "no cost"?

(i) What is the effect of captioning upon children with reading difficulties and children for whom English is a second language?

Topic #7: Illiteracy Among Deaf Persons

(a) What is the impact of closed captioned programs on the reading skills of persons who are deaf?

(b) What is the possibility for the use of captioning by literacy programs?

(c) What is the definition of illiteracy when applied to persons who are deaf?

(d) What are appropriate language development strategies and programs for teaching children who are deaf?

(e) To what extent do illiteracy eradication efforts assist persons who are deaf?

(f) What is the ratio of illiteracy by age group among persons who are deaf as compared to the hearing population and persons with English as a second language?

(g) What effect does illiteracy have on job opportunities and advancement for persons who are deaf?

(h) If speech recognition by computers reaches its potential, what impact could this have on deaf persons who cannot read the print output?

Topic #8: Any Other Recommendations To Improve the Quality of Education of the Deaf at all Educational Levels

(a) Is there a need for a clearinghouse for the deaf? What are alternative and cost-effective means for sharing of information for and between parents, educators, professionals, students, and consumers?

(b) What are appropriate procedures and the availability of detection services for identification of hearing loss in infants and young children?

(c) What are effective intervention strategies for infants and children who are deaf?

(d) How do preschool programs/elementary schools coordinate with the medical community in early identification of children with hearing impairments?

(e) To what extent do elementary schools and/or social and education agencies encourage parents of children who are deaf to improve their communication and educational involvement with their children?

(f) What is the impact of Supplemental Security Income (SSI) benefits on education? To what extent should schools encourage students to apply for SSI? Should model guidelines be provided?

(g) What emphasis should deaf culture be given in educational programs for students who are deaf? How can it be effectively offered?

(h) What is the status and quality of education at all levels for members of minority groups?

(i) In what ways can or should adults who are deaf be used as role models for students who are deaf?

(j) What are employment opportunities in regular school systems for teachers who are deaf?

(k) Should the U.S. Department of Education's oversight responsibility over GU, NTID, and federally funded regional programs be increased or decreased?

(l) To what degree should the U.S. Department of Education be involved with major policy making at GU/NTID and the four federally supported regional programs?

(m) Are technological advances being realized in education of persons who are deaf? If not, what can be done to promote the use of technology?

Topic #9: Cost Effectiveness of Providing the Education of the Deaf

(a) What is the cost-effectiveness of federal support for educational programs serving persons who are deaf?

(b) How much emphasis should be given to the concept of "critical mass" (the number of students sufficient to ensure quality education programs/support services) at all educational levels?

(c) Are deaf programs in consolidated school districts more cost effective than individual school programs for persons who are deaf?

(d) What are the cost implications of admitting hearing and foreign students to GU and foreign students to NTID?

(e) Since 70 percent of students who are deaf are educated in public schools and the trend shows that more students are moving from state residential schools;

—To what extent has this trend affected the cost per student for educating students at residential schools?

—Is there a certain number of students needed to be enrolled in residential schools in order to justify their operation?

—Are residential schools cost effective?

Records will be kept of the responses and will be available for public inspection at the office of the Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets, SW., Washington, DC.

Pat Johanson,

Staff Director, Commission on Education of the Deaf.

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S.J. Res. 63/Pub. L. 100-16

To designate March 21, 1987, as Afghanistan Day. (Mar. 27, 1987; 101 Stat. 130; 2 pages) Price: $1.00