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Tuesday
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Presidential Documents

Title 3—

The President

Proclamation 5313 of March 29, 1985

Suspension and Modification of Import Fees on Certain Sugars, Sirups and Molasses

By the President of the United States of America

A Proclamation

1. By Proclamation No. 5164 of March 19, 1984, I imposed import fees on certain sugars, sirups and molasses pursuant to Section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624).

2. The Secretary of Agriculture has advised me that he has reason to believe that changed circumstances require the termination of those import fees for articles described in item 956.15 of the Tariff Schedules of the United States (TSUS) and the modification of those import fees for articles described in items 956.05 and 957.15 of the TSUS.

3. I agree that there is reason for such belief by the Secretary of Agriculture, and therefore I am requesting the United States International Trade Commission to make an investigation with respect to this matter pursuant to Section 22 of the Agricultural Adjustment Act of 1933, as amended.

4. The Secretary of Agriculture has further advised me that a condition exists with regard to the importation of those certain sugars, sirups and molasses requiring emergency treatment and therefore the import fees for articles described in TSUS item 956.15 should be suspended and the import fees for articles described in TSUS items 956.05 and 957.15 should be modified without awaiting the report and recommendations of the United States International Trade Commission.

5. On the basis of the information submitted to me, I find and declare that changed circumstances require the suspension and modification of the import fees for sugars, sirups and molasses, as described below, without awaiting the report and recommendations of the United States International Trade Commission.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by Section 22 of the Agricultural Adjustment Act of 1933, as amended, and the Constitution and statutes of the United States of America, do hereby proclaim as follows:

A. The application of the fees prescribed for item 956.15 and the provisions of headnote 4(c) of part 3 of the Appendix to the Tariff Schedules of the United States are suspended.

B. Items 956.05 and 957.15 of part 3 of the Appendix to the Tariff Schedules of the United States are amended by inserting "One cent per pound" in place of "An amount determined and adjusted in accordance with headnote 4(c)" in both places in which it occurs.

C. The provisions of paragraph C of Proclamation No. 5164 are suspended.

D. This proclamation shall be effective as of 12:01 a.m. Eastern Standard Time April 1, 1985, and shall remain effective pending my action upon receipt of the report and recommendations of the United States International Trade Commission on this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of March, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-7989
Filed 4-1-85; 11:08 am]
Billing code 3195-01-M

Editorial note: For the President's letter to the Chairman of the U.S. International Trade Commission, dated Mar. 29, 1985, on the subject of the import fees, see the *Weekly Compilation of Presidential Documents* (vol. 21, p. 385).

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1872, 1942, 1944, 1951, 1955 and 1962

Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: Farmers Home Administration (FmHA) is issuing three new regulations to prescribe policies and procedures for servicing cases where an unauthorized loan or other financial assistance was received. These regulations cover FmHA's housing and community and business programs and amend portions of existing regulations which deal with unauthorized interest credits on section 502 Rural Housing loans and unauthorized loans and grant assistance under section 504. The regulations apply to FmHA loans, grants, and other financial assistance, such as interest subsidies and set forth detailed procedures for collecting loans, grants, and subsidies which were unauthorized. This action establishes a set of uniform policies and procedures for servicing unauthorized loans or other cases of financial assistance since the Agency has no formalized procedures. Occasionally, FmHA program review assessments or external audits reveal cases where program recipients were not entitled to the loan or other assistance granted by FmHA. These regulations address such cases and set forth various corrective measures to remedy the violation. This action has the effect of facilitating the effective servicing of cases falling within the category of unauthorized loans or other assistance.

DATES: May 2, 1985.

FOR FURTHER INFORMATION CONTACT: Frances B. Calhoun, Chief, Property Management Branch, Single-Family Housing Servicing and Property Management Division, Farmers Home Administration, U.S. Department of Agriculture, Room 5309, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, D.C. 20250, Telephone (202) 382-1452.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures set forth in Departmental Regulation 1512-1 which implements Executive Order 12291 and was determined to be "nonmajor" since the annual effect on the economy is less than $100 million and will create no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document was reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action which significantly affects the quality of the environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an environmental impact statement is not required.

Some of the FmHA programs/activities affected by these regulations are subject to the provisions of intergovernmental consultation in the manner delineated in 7 CFR Part 3015, Subpart V, "Intergovernmental Review of Administration Programs and Activities." See FmHA Instruction 1940-J available in any FmHA Office. The FmHA Water and Waste Disposal Loan and Grant and Community Facilities Loan Programs are subject to State and local review under section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

Dwight O. Calhoun, Acting Associate Administrator, FmHA, has determined that this action will not have a significant economic impact on a substantial number of small entities because the number of FmHA borrowers affected by this rule is estimated to be no more than one percent of the total caseload, and a low volume of the one percent is expected to be small entities. The economic impact on the small entities affected is not expected to be significant to their overall operations.

Primary policies and authorities set forth in these regulations are:

(a) An effort will be made to collect all financial assistance which is determined to be unauthorized.

(b) When the recipient of unauthorized assistance does not repay that assistance and the amount involved is $1,000 or more, the security, if any, should be liquidated. Exceptions are cases where it is determined (1) The recipient was not at fault, (2) it would be highly inequitable to require liquidation, and (3) continuation with the loan will not adversely affect FmHA's financial interests; or (4) in any case where it is clearly not in the Government's best financial interest to force liquidation. In those case, alternative options in lieu of calling the loan are outlined for each program.

(c) Appeal rights will be given to the recipient unless the recipient and the servicing official have reached an agreement on satisfactory arrangements for repayment.

(d) In cases where the recipient does not repay the unauthorized assistance at once and liquidation is not required, account adjustments will be made in accordance with the Subpart applicable to the type loan involved.

(e) The Administrator, FmHA, will have authority to make exceptions to provisions of these Subparts which are not inconsistent with the statute authorizing the FmHA program involved.

Provisions of these regulations require complying changes to Subpart A of Part 1872, Subparts A and H of Part 1942, Subparts A and J of Part 1944, Subparts E and G of Part 1951, Subpart A of Part 1955, and Subpart A of Part 1962 of this chapter.

On May 23, 1984, a proposed rule was published in the Federal Register (49 FR 21744) for a 60-day review and comment period. The proposed rule contained four Subparts. Subpart L, pertaining to Farmer Programs, has been withheld from this final rule. When the regulations for special servicing of delinquent and problem case farm

borrowers are published as a final rule. Subpart L will be published simultaneously.

There was only one commentor from the private sector, and those comments were confined to Subpart M, §§ 1951.606 and 1951.607. These comments were, basically, that it is untenable for the Government to attempt to recoup financial assistance to which the recipient was not entitled when it was received because of error on the part of an FmHA employee. Sections 1951.608 and 1951.612 were apparently overlooked by the commentor, because § 1951.608 provides that where the recipient is (1) not at fault, (2) it would be highly inequitable to require prompt repayment of the unauthorized assistance, and (3) failure to collect the unauthorized assistance in full will not adversely affect FmHA's financial interests, FmHA may continue with the recipient. Section 1951.612 then specifies the servicing options for different situations when the three provisions outlined above are met.

The reasoning behind these regulations is:

(1) There are cases where recipients have obtained financial assistance to which they were not entitled.

(2) Regardless of the reason for their receiving that assistance, it is money owed to the Government and an effort must be made to collect it.

(3) If it is not repaid in full promptly, provisions are made to continue with the recipient on existing or modified terms if there was no intent by the recipient to defraud, it would be inequitable to enforce collection, and the Government's financial interests are not adversely affected. A number of comments were made by FmHA employees and some changes resulted from these. Included in this category are:

(a) In the "Policy" section of each subpart, the phrase was added: ". . . unless any applicable Statute of Limitations has expired."

(b) In the "Decision on servicing actions" section of each subpart, headings were added to each subsection to direct the reader more easily through the section.

(c) In the respective sections concerning liquidations, [§§ 1951.608 (e)(1)(i)(A), 1951.658 (e)(1)(i)(A), and 1951.708 (e)(1)(i)(A)], a phrase is added to clarify that the amount outstanding includes the total of principal, accrued interest, and any recoverable costs charged to the account.

(d) The titles of §§ 1951.618, 1951.668, and 1951.715 were changed for clarification.

(e) The definition of "servicing official," was expanded to provide that "District Director" could also include a District Loan Specialist if so designated.

(f) In Subpart N, modifications were made to provide for use of a direct input computer form to notify the Finance Office of account adjustments. This form (Form FmHA 1951–52) is unique to the accounting system used for Multiple Family Housing accounts.

(g) Several other minor changes were made to correct typographical errors and for additional clarification.

Several other suggestions from FmHA personnel were considered but not adopted, primarily because it was deemed they did not fit within the scope of these regulations or were otherwise not appropriate.

Catalog of Federal Domestic Assistance Titles and Numbers:
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.417 Very Low-income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans

List of Subjects

7 CFR Part 1872

Foreclosure, Loan programs—Agriculture, and Rural areas.

7 CFR Part 1942

Community development, Community facilities, Grant programs—Housing and community development, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, and Water supply—Domestic.

7 CFR Part 1944

Farm labor housing, Aged, Grant programs—Housing and community development, Home Improvement, Loan programs—Housing and community development, Migrant Labor, Public housing, Rent subsidies, Low and moderate income housing—Rental, Mortgages, Rural housing, and Subsidies.

7 CFR Part 1951

Account servicing, Credit, Grant programs—Housing and community development, Interest credit, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Mortgages, Recapture of subsidy, Reporting requirements, and Rural areas.

7 CFR Part 1955

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

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

Accordingly, Chapter XVIII, Title 7 of the Code of Federal Regulations, is amended as follows:

PART 1872—REAL ESTATE SECURITY

Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note-only Cases

§ 1872.17 [Amended]

1. In § 1872.17 paragraph (g), in the 6th and 9th lines from the end of the paragraph, the number of the form entitled "Accelerated Repayment Agreement" is changed from "Form FmHA 465–11," to "Form FmHA 1965–11."

PART 1942—ASSOCIATIONS

Subpart A—Community Facility Loans

2. In § 1942.17, paragraph (r)(5) is revised to read as follows:

§1942.17 Appendix A—Community Facility Loans.

* * * * *

(r) * * *

(5) Other loan servicing actions will be in accordance with Subparts E and O of Part 1951 of this chapter.

* * * * *

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

3. § 1942.376 is revised to read as follows:

§ 1942.376 Grant servicing.

Grants will be serviced in accordance with §1951.215 of Subpart E and Subpart O of Part 1951 of this chapter.

PART 1944—HOUSING

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

4. In § 1944.34, paragraph (j) is revised to read as follows:

§ 1944.34 Interest credit.

* * * * *

(j) Unauthorized interest credit. When it is determined that a borrower has received interest credit to which he/she was not entitled (unauthorized interest credits), the case will be serviced according to Subpart M of Part 1951 of this chapter.

* * * * *

Subpart J—Section 504 Rural Housing Loans and Grants

5. § 1944.473 is revised to read as follows:

§ 1944.473 Unauthorized loans and/or grants.

Unauthorized loans and/or grants are those where it is determined the recipient was not eligible for the assistance received or where loan and/or grant was approved for unauthorized purposes. A case of this type will be serviced according to Subpart M of Part 1951 of this chapter.

PART 1951—SERVICING AND COLLECTIONS

Subpart E—Servicing of Community Program Loans and Grants

§ 1951.201 [amended]

6. At the end of § 1951.201, the following sentence is added: "Community Programs cases where unauthorized loan or other financial assistance has been received will be serviced according to Subpart O of Part 1951 of this chapter."

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

§1951.301 [Amended]

7. At the end of § 1951.301, the following sentence is added: "Single Family Housing cases where unauthorized loan or other financial assistance has been received will be serviced according to Subpart M of Part 1951 of the chapter."

8. Subpart M is added to Part 1951 and reads as follows:

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

Sec.

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

§ 1951.601 Purpose.

This Subpart prescribes the policies and procedures for servicing Single-Family Housing (SFH) loans and/or grants made by Farmers Home Administration (FmHA) when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, or any other direct financial assistance. It does not apply to guaranteed loans. As used in this Subpart, SFH includes section 502 Rural Housing (RH) loans and section 504 loans and grants, as well as sections 523 and 524 Rural Housing Site (RHS) loans, Section 523 Self-Help Technical Assistance (TA) grants, and section 525 Technical and Supervisory Assistance (TSA) grants.

§1951.602 Definitions.

As used in this Subpart, the following definitions apply:

(a) *Active borrower.* A borrower who has an outstanding account in the records of the Finance Office, including collection-only or an unsatisfied account balance where a voluntary conveyance was accepted without release from liability or foreclosure did not satisfy the indebtedness.

(b) *Assistance.* Financial assistance in the form of a loan, grant, or subsidy received.

(c) *Debt instrument.* Used as a collective term to include promissory note, assumption agreement, grant agreement/resolution, or bond.

(d) *False information.* Information, known to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.

(e) *Inaccurate information.* Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

(f) *Inactive borrower.* A former borrower whose loan(s) has(have) been paid in full or assumed by another party(ies) and who does not have an outstanding account in the records of the Finance Office.

(g) *Recipient.* "Recipient" refers to an individual or entity that received a loan, an interest subsidy, or a grant which was unauthorized.

(h) *Servicing official.* For all Single-Family Rural Housing loans or section 504 grants, the servicing official is the County Supervisor; for all other types of loans or grants, the servicing official is the District Director, an Assistant District Director, or a District Loan Specialist so designated.

(i) *Unauthorized assistance.* Any loan, interest subsidy, or grant received by a borrower or grantee for which there was no regulatory authorization, or for which the recipient was not eligible. Interest subsidy includes interest credits, and subsidy benefits received because a loan was made at a lower interest rate than that to which the recipient was entitled, whether the incorrect interest rate was selected erroneously by the approval official, or the documents were prepared in error.

§1951.603 Policy.

When unauthorized assistance has been received, an effort must be made to collect from the recipient the sum which is determined to be unauthorized, regardless of amount, unless any applicable Statute of Limitations has expired.

§1951.604 Categories of unauthorized SFH assistance.

(a) Unauthorized SFH assistance includes but is not limited to these categories:

(1) *Section 502 loan:* (i) The recipient was not eligible for a loan.

(ii) The recipient was eligible for a loan but had an income in a category for which there were no funds available at the time the loan was approved, and the loan was obligated from funds designated for another income category. For example, an otherwise-eligible recipient with above-moderate income who received a loan from low- or moderate-income funds. This does not include a loan obligated as low-income where the income rose to moderate prior to closing provided the case was handled according to § 1944.33(a) of this chapter.

(iii) The recipient was eligible and the loan was made for authorized purposes but the recipient received unauthorized subsidy benefits because the loan was closed at an interest rate lower than the correct rate in effect when the loan was approved.

(iv) The loan was made for unauthorized purposes including but not limited to the following:

(A) To buy or improve income-producing land; or buy, build or improve income-producing buildings or finance a building not essential for RH purposes.

(B) To buy, build, or improve a dwelling which exceeds modest standards for size, design, and cost as compared to other housing in the locality for low- and moderate-income families as defined in § 1944.16 (a) or (b) or Subpart A of Part 1944 of this chapter.

(C) To buy or improve a nonfarm tract that exceeds a minimum-adequate site as defined in § 1944.11(c) of this chapter.

(D) To refinance debts not meeting the requirements of § 1944.22 of this chapter.

(E) To buy, build, or improve with an initial loan, a dwelling located in an area not designated as rural, unless it is on a farm as defined in § 1944.2(h) of this chapter.

(v) Unauthorized or excessive interest credits were granted.

(vi) Where recapture of subsidy was due but:

(A) The loan was assumed by another party without collecting the amount due from the transferor (or without the transferee assuming it); or

(B) Final payment was accepted but did not include the recapture amount due.

(2) *Section 504 loan or grant.* (i) The recipient was not eligible for a loan or grant.

(ii) The loan or grant was made for unauthorized purposes.

(iii) The recipient obtained more than the statutory maximum amount of loan and/or grant.

(3) *Sections 523 and 524 Rural Housing Site (RHS) loan, section 523 Self-Help Technical Assistance (TA) grant, and section 525 Technical and Supervisory Assistance (TSA) grant.*

(i) The recipient was not eligible for the loan/grant.

(ii) The loan or grant was made for unauthorized purposes.

(b) Categories *not* to be considered as unauthorized assistance within the scope of this Subpart include but are not limited to:

(1) The determination is made that the recipient did not have repayment ability for a loan initially.

(2) The determination is made that the recipient could likely have obtained credit elsewhere or financed housing needs with other resources at the outset.

§ 1951.605 [Reserved]

§ 1951.606 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General (OIG), USDA; through reviews made by FmHA personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been received by a recipient of FmHA assistance. If FmHA has reason to believe unauthorized assistance was received, but is unable to determine whether or not the assistance was received, but is unable to determine whether or not the assistance was in fact unauthorized, the case will be referred to the Regional Office of the General Counsel (OGC) or the National Office, as appropriate, for review and advice. In every case where it is known or believed by FmHA that the assistance was based on false information, investigation by the OIG will be requested as provided for in FmHA Instruction 2012–B (available in any FmHA office). If OIG conducts an investigation, the actions outlined in § 1951.607 of this Subpart will be deferred until the OIG investigation is completed and the report is received. The reason(s) for the unauthorized assistance being received by the recipient will be well documented in the case file, and will specifically state whether it was due to:

(a) Submission of inaccurate information by the recipient;

(b) Submission of false information by the recipient;

(c) Submission of inaccurate or false information by another party on the recipient's behalf such as a loan packager, developer, real estate broker, or professional consultants such as engineers, architects, and attorneys, when the recipient did not know the other party had submitted inaccurate or false information;

(d) Error by FmHA personnel, either in making computations or failure to follow published regulations or other agency issuances; or

(e) Error in preparation of a debt instrument which caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved.

§ 1951.607 Notification to recipient.

(a) Collection efforts will be initiated by the servicing official by a letter substantially similar to Exhibit A of this Subpart (available in any FmHA office), and mailed to the recipient by "Certified Mail, Return Receipt Requested," with a copy to the State Director and, for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will be sent to all recipients who received unauthorized assistance, regardless of amount. The letter will:

(1) Specify in detail the reason(s) the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance to be repaid according to Exhibit D of this Subpart (available in any FmHA office); and

(3) Establish an appointment for the recipient to discuss with the servicing official the basis for FmHA's claim; and give the recipient an opportunity to provide facts, figures, written records or other information which might alter FmHA's determination that the assistance received was unauthorized.

(b) If the recipient meets with the servicing official, the servicing official will outline to the recipient why the assistance was determined to be unauthorized. The recipient will be given an opportunity to provide information to refute FmHA's findings. When requested by the recipient, the servicing official may grant additional time for the recipient to assemble documentation. When an extension is granted, the servicing official will specify a definite number of days to be allowed and establish the follow up necessary to assure that servicing of the case continues without undue delay.

§ 1951.608 Decision on servicing actions.

When the servicing official is the same individual who approved the unauthorized assistance, the next-higher supervisory official must review the case before further actions are taken by the servicing official.

(a) *Payment in full.* If the recipient agrees with FmHA's determination or will pay in a lump sum, the servicing official may allow a reasonable period of time (usually not to exceed 90 days) for the recipient to arrange for repayment. The amount due will be the amount stated in the letter as shown in Exhibit A of this Subpart (available in any FmHA office). The servicing official will remit collections to the Finance Office according to the Forms Manual Insert (FMI) for Form FmHA 451–2, "Schedule of Remittances," as follows:

(1) In the case of a loan, for application to the borrower's account as an extra payment.

(2) In the case of a grant, as a "Miscellaneous Collection for Application to the General Fund."

(3) In the case of improperly granted interest credit, as a "Miscellaneous Collection for Application to the General Fund."

(4) In the case of a loan or grant which was identified in an OIG audit, the servicing official will report the repayment as outlined in § 1951.612(b) or § 1951.618(a)(1)(i) as applicable.

(b) *Continuation with recipient.* If the recipient agrees with FmHA's determination or is willing to pay the amount in question but cannot repay the unauthorized assistance within a reasonable period of time, continuation is authorized and servicing actions outlined in § 1951.612 will be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in § 1951.602(d);

(2) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(3) Failure to collect the unauthorized assistance in full will not adversely affect FmHA's financial interests.

(c) *Notice of determination when agreement is not reached.* If the recipient does not agree with FmHA's determination, or if the recipient fails to respond to the initial letter prescribed in § 1951.607 within 30 days the servicing official will notify the recipient by letter substantially similar to Exhibit B of this Subpart (available in any FmHA office) (sent by Certified Mail, Return Receipt Requested), with a copy to the State Director, and for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will include:

(1) The amount of assistance finally determined by FmHA to be unauthorized;

(2) A statement of further actions to be taken by FmHA as outlined in paragraphs (e)(1) or (e)(2) of this section; and

(3) The appeal rights as prescribed in Exhibit B of this Subpart (available in any FmHA office).

(d) *Appeals.* Appeals resulting from the letter prescribed in paragraph (c) of this section will be handled according to Subpart B of Part 1900 of this Chapter. All appeal provisions will be concluded before proceeding with further actions. If the recipient does not prevail in an appeal, or when an appeal is not made during the time allowed, the servicing official will proceed with the actions outlined in paragraph (e) of this section, as applicable. If, during the course of appeal, the appellant decides to agree with FmHA's findings or is willing to repay the unauthorized assistance, the servicing official will proceed with the actions outlined in paragraphs (a), (b), or (e) of this section.

(e) *Liquidation of loan(s) or legal action to enforce collection.* When a case cannot be handled according to the provisions of paragraphs (a) or (b) of this section, or if the recipient refuses to execute the documents necessary to make account adjustments or establish an obligation to repay the unauthorized assistance as provided in § 1951.612, one of the following actions will be taken:

(1) *Active borrower with a secured loan.* (i) The servicing official will attempt to have the recipient liquidate voluntarily. If the recipient agrees to liquidate voluntarily, this will be documented by an entry in the running record of the case file. A letter will be prepared by the servicing official and signed by the recipient agreeing to voluntary liquidation. For organizations, a resolution of the governing body may be required in addition to the running record notation. If the recipient does not agree to voluntary liquidation, or agrees but it cannot be accomplished within a reasonable period of time (usually not more than 90 days), forced liquidation action will be initiated in accordance with Subpart A of Part 1955 of this Chapter unless:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and any recoverable costs charged to the account, is less than $1,000; or

(B) It can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If the servicing official wishes to make an exception to forced liquidation under paragraph (e)(i)(B) of this section, a request for an exception under § 1951.619 will be made.

(ii) When all of the conditions of paragraphs (a) or (b) of this section are met, but the recipient does not repay or refuse to execute documents to effect necessary account adjustments according to the provisions of § 1951.612, liquidation action will be initiated as provided in paragraph (e)(1)(i) of this section.

(iii) When forced liquidation would be initiated except that the loan is being handled under paragraphs (e)(1)(i)(A) or (e)(1)(i)(B) of this section, account adjustments will be made by FmHA without the signature of the recipient according to § 1951.618(a)(5). In these cases, the recipient will be notified by letter of the actions taken with a copy of Forms FmHA 1951–12, "Correction of Loan Account," of FmHA 1951–13, "Change in Interest Rate," as applicable, enclosed to reflect the adjustments.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as note-only, collection-only, or unsatisfied balance after liquidation).* The servicing official will document the facts in the case and submit it to the State Director who will request the advice of OGC on pursuing legal action to effect collection. The State Director will tell OGC what assets, if any, are available from which to collect.

§§ 1951.609–1951.611 [Reserved]

§ 1951.612 Servicing options in lieu of liquidation or legal action to collect.

When the conditions outlined in § 1951.608(b) are met, servicing options outlined in this section may be considered. Accounts will be serviced according to this section and § 1951.618.

(a) *Servicing SFH cases involving unauthorized assistance.*—(1) *Outstanding Section 502 loan.* Continuation with the loan may be authorized and one of the following servicing actions will be taken as appropriate to the case:

(i) If the recipient's income was above the moderate-income level but the recipient was otherwise eligible and the loan was approved for authorized purposes, a loan closed *before* November 30, 1983, will be converted to an "above-moderate" RH loan. A loan in this category which was closed after November 30, 1983, will be converted to an "Other Real Estate" (ORE) loan. In either case, the interest rate from Exhibit C of this Subpart (available in any FmHA office) which was in effect on the date the loan was approved will be used and the final due date of the original loan will be unchanged. The change in interest rate will be accomplished according to § 1951.618 (a)(1)(iii) or (b)(1)(i), as applicable. If unauthorized interest credits are also involved, that will be serviced simultaneously according to paragraph (a)(2) of this section so that payments are reversed and reapplied only once. A delinquency created through these actions will be serviced according to Subpart G of Part 1951 of this Chapter.

(ii) If the recipient was eligible for a loan and the loan was approved for authorized purposes but the incorrect interest rate was charged, resulting in receipt of unauthorized subsidy benefits, the interest rate must be corrected to that which was in effect when the loan was approved. The change in interest rate will be accomplished according to § 1951.618 (a)(1)(iii) or (b)(1)(i), as applicable. A delinquency which is created through these actions will be serviced according to Subpart G of Part 1951 of this Chapter.

(iii) If the recipient was not eligible for a loan, or if the loan was approved for unauthorized purposes as outlined in paragraph (a)(1)(iv) of § 1951.604, the recipient may be allowed to enter into an accelerated repayment agreement according to FmHA Instruction 465.1, XVII G, § 1872.17(g) of Subpart A of Part 1872 of this Chapter except that the above-moderate interest rate which was in effect on the date the loan was

approved will be used according to Exhibit C of this Subpart (available in any FmHA office). This provision should be used only where repayment ability can be projected. A loan serviced according to paragraph (a)(1)(iii) of this section will be reclassified as an ORE loan.

(iv) When the case is not serviced according to paragraphs (a)(1) (i), (ii), or (iii) of this section, continuation with the loan on the existing terms is authorized, after which the loan will be serviced as an authorized loan, *except* that, if interest credits are granted in a case where continuation is authorized under the provisions of this paragraph (a)(1)(iv) of this section, all subsidy granted will be recaptured to the extent proceeds are available when the property is sold, allowing a deduction for authorized selling expenses only. Where interest credits are granted in cases of this type, the following actions must be taken:

(A) The borrower must agree in writing to the recapture of subsidy as outlined in paragraph (a)(1)(iv) of this section executing an agreement in the format of Exhibit E of this Subpart (available in any FmHA office).

(B) The original executed agreement will be placed in the case file, and the borrower's card in the management system will be marked "ALL SUBSIDY SUBJECT TO RECAPTURE—SEE AGREEMENT ATTACHED TO NOTE OR ASSUMPTION AGREEMENT."

(C) If necessary to secure recapture, a supplemental mortgage will be taken with the advice of OGC.

(D) If the borrower refuses to execute the agreement prescribed in paragraph (a)(1)(iv)(A) of this section, interest credits will *not* be granted on the loan.

(2) *Unauthorized interest credits.*

(i) *On outstanding loan.* Continuation with the loan is authorized provided the recipient executes the forms necessary to effect correction of the account through reversal and reapplication of payments. The account will be serviced according to § 1951.618(a)(3).

(ii) *On inactive loan.* Have the recipient execute a promissory note and give the best mortgage obtainable to secure repayment of the unauthorized interest credits. The interest rate will be the same as in the promissory note for the loan which was subsidized through the unauthorized interest credits, and the term will be within the recipient's repayment ability or a maximum of 5 years.

(3) *Outstanding Section 504 loan.*

(i) *Secured loan.* Continuation under the existing terms is authorized.

(ii) *Unsecured loan.* Continuation under the existing terms is authorized, and the best mortgage obtainable will be taken to secure the loan.

(4) *Outstanding Section 523 or 524 Rural Housing Site loan.* When the objectives of the loan can be achieved, continuation under the existing terms is authorized.

(5) *Section 504 grant.* Have the recipient execute a promissory note and the best mortgage obtainable to secure repayment of the unauthorized assistance. The amount will be the grant amount and the terms will be as follows:

(i) If the recipient was eligible for a section 504 loan at the time the grant was made, the interest rate and term will be the same as if a section 504 loan had been made instead of a great.

(ii) If the recipient was not eligible for either a section 504 loan or grant, or if the grant was made for unauthorized purposes, the note will bear interest at 5 percent for a term of not more than 5 years.

(6) *Section 523 Self-Help Technical Assistance (TA) grant or Section 525 Technical and Supervisory Assistance (TSA) grant.* If the grant objectives can be achieved, continuation under the terms of the grant agreement is authorized. If the grant objectives cannot be achieved and the grant assistance actually paid out is to be repaid as provided in the grant agreement, interest will be charged at the rate specified in the grant agreement for default of 5 percent per annum if the grant agreement does not specify an interest rate for default cases. When grant assistance is to be repaid, no further disbursement of committed funds will be made.

(b) *Collections, recordkeeping, and reporting in connection with repayment of unauthorized grant assistance.* When a recipient is to repay unauthorized grant assistance as provided in paragraphs (a)(5) or (a)(6) of this section, the servicing official must maintain records on the "account" as the Finance Office cannot set up an account for repayment of a grant. The servicing official will attempt to collect the monies due, and all collections will be remitted with Form FmHA 451–2 as "Miscellaneous Collections for Application to the General Fund." For cases identified in *OIG audits only*, the servicing official will report by the 1st of March, June, September, and December of each year the following information on cases of this type to the State Director: Recipient's name, case number, fund code, audit report number, audit finding number, date of claim, original amount of claim, amount collected during the reporting period, and the balance owed on the unauthorized grant assistance. The State Director will submit a composite report to the Finance Office by the 15th of March, June, September, and December of each year.

§ 1951.613–1951.617 [Reserved]

§ 1951.618 Account adjustments and reporting requirements.

When a final determination has been made that unauthorized assistance has been granted, the Finance Office will be notified of necessary account adjustments as outlined in this section, depending upon whether the case of unauthorized assistance was identified by OIG in an audit report or by another means. The Finance Office will service the accounts as prescribed in this section.

(a) *Audit cases.* Only the cases of unauthorized assistance identified by an OIG audit will be reported to the Finance Office by submission of Form FmHA 1951–12, completed in accordance with the FMI. The Finance Office will flag the account for monitoring and reporting as required. Any payment reversed will be reapplied as of the original date of credit. "Loan" refers to an account with an active borrower unless specified as "inactive."

(1) *Unauthorized loan.* When the loan is unauthorized because the recipient was not eligible or because the loan was made for unauthorized purposes, the Finance Office will be advised as follows:

(i) *Repayment in full.* If the recipient has arranged to repay the unauthorized loan, the payment will be remitted with Form FmHA 451–2, in accordance with the FMI. Form FmHA 1951–12 will reflect the amount and the Schedule Number.

(ii) *Accelerated repayment agreement.* If the recipient has entered into an "Accelerated Repayment Agreement," Form FmHA 1965–11 will be prepared and distributed according to the FMI, attaching the original form to Form FmHA 1951–12.

(iii) *Continuation with loan under existing or modified terms.* When it is determined that all the conditions outlined in § 1951.608(b) are met and continuation with the loan under the existing or modified terms is authorized, the servicing official will submit Form FmHA 1951–12 to the Finance Office to reflect this.

(2) *Unauthorized subsidy benefits received through use of incorrect interest rate.* When the interest rate on a loan is changed, Form FmHA 1951–12 will be submitted to notify the Finance Office of the correct interest rate to be charged from the loan closing date.

Payments made will be reversed and reapplied at the corrected interest rate, after which the unauthorized subsidy benefits will be reported to OIG as resolved. The loan will then be treated as an authorized loan. When a loan is converted to above-moderate RH or ORE, the loan must be identified and serviced by the servicing official accordingly.

(3) *Unauthorized interest credits.* Unauthorized interest credits will be recovered through submission of Form FmHA 1944–15, "Interest Credit Agreement Cancellation," or Form FmHA 1944–6, "Interest Credit Agreement," to cancel or adjust the amount of interest credits for each period of time unauthorized interest credits were received. Form FmHA 1951–12 will be prepared in accordance with the FMI and Forms FmHA 1944–15 or 1944–6, as applicable, will be attached. Payments made during the period unauthorized interest credits were received will be reversed and reapplied according to the documents submitted, after which the unauthorized interest credits will be reported to OIG as resolved. A delinquency which is created will be serviced according to Subpart G of Part 1951 of this Chapter.

(4) *Liquidation pending.* When liquidation is initiated under the provisions of this Subpart, Form FmHA 1951–12 will be submitted to advise the Finance Office of the unauthorized assistance account to be established. This account will be flagged "FAP" (Foreclosure Action Pending) or "CAP" (Court Action Pending), as applicable.

(5) *Liquidation not initiated.* Cases in which liquidation has not been initiated because of the provisions of § 1951.608(e)(1)(i)(A) or (e)(1)(i)(B) will be adjusted according to § 1951.612 and this section, and the adjustments will be reflected on Form FmHA 1951–12. In this instance *only*, account adjustments will be made even though the recipient does not sign Form FmHA 1951–12 and any related documents.

(6) *Unauthorized grant assistance.* The State Office will submit a composite report for the State to the Finance Office by the 15th of March, June, September, and December each year, reflecting the information outlined in § 1951.612(b).

(7) *Establishment of account of inactive borrower or judgment account.*

(i) When a recipient agrees to repay unauthorized assistance and executes documents to evidence the obligation, Form FmHA 1951–12 will reflect this, and the Finance Office will establish the account according to the terms shown on Form FmHA 1951–12.

(ii) When a judgment is obtained against a recipient, Form FmHA 1962–20, "Notice of Judgment," will be forwarded to the Finance Office for establishment of a judgment account.

(8) *Reporting.* At prescribed intervals, the Finance Office will report to the OIG on the status of cases involving unauthorized assistance which were identified by OIG in audit reports. The amounts to be reported will be determined by the Finance Office after account servicing actions have been completed. For reporting purposes, the following applies:

(i) For circumstances outlined in paragraph (a)(1), (a)(2), or (a)(7)(i) of this section, reporting will be as follows:

(A) When unauthorized assistance is paid in full, this will be reported on the next scheduled report only.

(B) When unauthorized assistance is to be repaid under an accelerated repayment agreement, the collections and status will be included on each scheduled report until the account is paid in full.

(C) When continuation with the loan on existing or modified terms is approved, this will be reported on the next scheduled report, and no further reporting is required.

(ii) For unauthorized subsidy cases as provided in paragraph (a)(2) or (a)(3) of this section, after the unauthorized amount has been repaid or payments have been reversed and reapplied at the correct interest rate, the unauthorized subsidy will be reported as resolved on the next scheduled report. No further reporting is required.

(iii) When liquidation action is pending as provided in paragraph (a)(4) of this section, the status will be included on each scheduled report until the liquidation is completed or the loan is otherwise paid in full.

(iv) When liquidation is not initiated as provided in paragraph (a)(5) of this section, this will be reported on the next scheduled report (along with collections, if any). No further reporting is required.

(v) When unauthorized grant assistance is scheduled to be repaid as provided in paragraph (a)(6) of this section, collections and status as reported by the State Office will be included in the report to OIG until the amount is paid in full.

(b) *Nonaudit cases.* Basically, servicing is the same for audit and nonaudit cases; however, when receipt of unauthorized assistance is identified by a means other than OIG audit report, the Finance Office will be notified only if adjustments to an account or reinstatement of an inactive account are necessary. Once adjustments are made as provided in paragraph (b) of this section, the loan(s) will be serviced in the same manner as an authorized loan(s). Any payment reversed will be reapplied as of the original date of credit. After payments are reversed and reapplied, the servicing official will receive Form FmHA 451–26, "Transaction Record," from the Finance Office reflecting the account status.

(1) Account adjustments will be handled as follows:

(i) When a change in interest rate retroactive to the date of loan closing on a loan is necessary, Form FmHA 1951–13 will be completed according to the FMI and submitted to the Finance Office. Payments will be reversed and reapplied accordingly.

(ii) For unauthorized interest credits on SFH loans, Form FmHA 1944–15 or Form FmHA 1944–6, as applicable, will be submitted to the Finance Office. Payments will be reversed and reapplied accordingly.

(iii) For accounts to be rescheduled or reamortized, Form FmHA 1965–11, or 452–2, "Reamortization and/or Deferral Agreement," as applicable, will be prepared and submitted in accordance with the respective FMI.

(iv) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such as obligation, the servicing official will notify the Finance Office by memorandum, attaching a copy of the promissory note. The Finance Office will establish the account according to the terms of the promissory note.

(v) When a judgment is obtained against a recipient, Form FmHA 1962–20, "Notice of Judgment," will be forwarded to the Finance Office for establishment of a judgment account.

(vi) When a loan is paid in full, the remittance will be handled in the same manner as any other final payment.

(2) A delinquency created through reversal and reapplication of payments to effect corrections outlined in paragraph (b)(1) of this section will be serviced according to Subpart G of Part 1951 of this Chapter.

§ 1951.619 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this Subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and submitted through the Assistant Administrator, Housing. Requests will be supported with documentation to explain the adverse

effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or maintained if the exception is granted.

§§ 1951.620–1951.649 [Reserved]

§ 1951.650 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0105.

9. Subpart N is added to Part 1951 to read as follows:

Subpart N—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing

Sec.

Subpart N—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing

§ 1951.651 Purpose.

This Subpart prescribes the policies and procedures for servicing Multiple Family Housing (MFH) loans and/or grants made by Farmers Home Administration (FmHA) when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, or any other direct financial assistance. As used in this Subpart, MFH loans and grants are Section 515 Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) loans and Sections 514 and 516 Labor Housing (LH) loans and grants.

§ 1951.652 Definitions.

As used in this Subpart, the following definitions apply:

(a) *Active borrower.* A borrower who has an outstanding account in the records of the Finance Office, including collection-only or an unsatisfied account balance where a voluntary conveyance was accepted without release from liability or foreclosure did not satisfy the indebtedness.

(b) *Assistance.* Financial assistance in the form of a loan, grant, or subsidy received.

(c) *Debt instrument.* Used as a collective term to include promissory note, assumption agreement, grant agreement/resolution, or bond.

(d) *False information.* Information, known to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.

(e) *Inaccurate information.* Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

(f) *Inactive borrower.* A former borrower whose loan(s) has(have) been paid in full or assumed by another party(ies) and who does not have an outstanding account in the records of the Finance Office.

(g) *Recipient.* "Recipient" refers to an individual or entity that received a loan, or portion of a loan, an interest subsidy, or a grant which was unauthorized.

(h) *Unauthorized assistance.* Any loan, interest subsidy, or grant, or any portion thereof, received by a borrower or grantee for which there was no regulatory authorization, or for which the recipient was not eligible.

Interest subsidy includes interest credits, rental assistance, and subsidy benefits received because a loan was made at a lower interest rate than that to which the recipient was entitled, whether the incorrect interest rate was selected erroneously by the approval official, or the documents were prepared in error.

§ 1951.653 Policy.

When unauthorized assistance has been received, an effort must be made to collect from the recipient the sum which is determined to be unauthorized, regardless of amount, unless, any applicable Statute of Limitations has expired. The prepayment restrictions imposed by Subpart E of Part 1944 of this Chapter do not apply to cases of unauthorized assistance.

§ 1951.654 Categories of unauthorized assistance.

Unauthorized assistance includes, but is not limited to, these categories:

(a) The recipient was not eligible for the assistance.

(b) The property, as approved, does not qualify for the program. For example: An RRH or LH project which clearly is above modest in size, design and/or cost or was not located in an area designated as rural when the initial loan was made.

(c) The loan or grant was made for unauthorized purposes. For example: Purchase of an excessive amount of land.

(d) The recipient was granted unauthorized subsidy in the form of:

(1) Interest credits (IC) on an RRH loan;

(2) Rental Assistance (RA) in connection with an RRH or LH loan; or

(3) A subsidy benefit received through use of an incorrect interest rate.

§ 1951.655 [Reserved]

§ 1951.656 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General, USDA, (OIG); through reviews made by FmHA personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been received by a recipient of FmHA assistance. If FmHA has reason to believe unauthorized assistance was received, but is unable to determine whether or not the assistance was in fact unauthorized, the case will be referred to the Regional Office of the General Counsel (OCC) or the National Office, as appropriate, for review and advice. In every case where it is known or believed by FmHA that the assistance was based on false information, investigation by the Office of the Inspector General (OIG) will be requested as provided for in FmHA Instruction 2012–B (available in any FmHA office). If OIG conducts an investigation, the actions outlined in § 1951.657 of this Subpart will be deferred until the OIG investigation is completed and the report is received. The reason(s) for the unauthorized assistance being received by the recipient will be well documented in the case file, and will specifically state whether it was due to:

(a) Submission of inaccurate information by the recipient;

(b) Submission of false information by the recipient;

(c) Submission of inaccurate or false information by another party on the recipient's behalf such as a loan packager, developer, real estate broker, or professional consultants such as engineers, architects, management agents and attorneys, when the recipient did not know the other party had submitted inaccurate or false information;

(d) Error by FmHA personnel, either in making computations or failure to follow published regulations or other agency issuances; or

(e) Error in preparation of a debt instrument which caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved.

§ 1951.657 Notification to recipient.

(a) Collection efforts will be initiated by the District Director by a letter substantially similar to Exhibit A of this Subpart (available in any FmHA office), and mailed by the servicing official to the recipient by "Certified Mail, Return Receipt Requested," with a copy to the State Director and, for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will be sent to all recipients who received unauthorized assistance, regardless of amount. The letter will:

(1) Specify in detail the reason(s) the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance to be repaid according to Exhibit C of this Subpart (available in any FmHA office); and

(3) Establish an appointment for the recipient to discuss with the District Director the basis for FmHA's claim; and give the recipient an opportunity to provide facts, figures, written records or other information which might alter FmHA's determination that the assistance received was unauthorized.

(b) If the recipient meets with the District Director, the District Director will outline to the recipient why the assistance was determined to be unauthorized. The recipient will be given an opportunity to provide information to refute FmHA's findings. When requested by the recipient, the District Director may grant additional time for the recipient to assemble documentation. When an extension is granted, the District Director will specify a definite number of days to be allowed and establish the followup necessary to assure that servicing of the case continues without undue delay.

§ 1951.658 Decision on servicing actions.

When the District Director is the same individual who approved the unauthorized assistance, the State Director must review the case before further actions are taken by the District Director.

(a) *Payment in full.* If the recipient agrees with FmHA's determination or will pay in a lump sum, the District Director may allow a reasonable period of time (usually not to exceed 90 days) for the recipient to arrange for repayment. The amount due will be the amount stated in the letter as shown in Exhibit A of this Subpart (available in any FmHA office). The District Director will remit collections to the Finance Office according to the Forms Manual Insert (FMI) for Form FmHA 1944–9, "Multiple Housing Certification and Payment Transmittal," as follows:

(1) In the case of the loan, for application to the borrower's account as an extra payment.

(2) In the case of a grant, as a "Miscellaneous Collection for Application to the General Fund."

(3) In the case of a loan or grant which was identified in an OIG audit, the District Director will report the repayment as outlined in § 1951.668 (a)(1)((i), (a)(3), or (a)(6) as applicable.

(4) In the case of RA, the repayment will be handled as outlined in § 1951.661 (a)(3) and Exhibit E to FmHA Instruction 1930–C.

(b) *Continuation with recipient.* If the recipient agrees with FmHA's determination or is willing to pay the amount in question but cannot repay the unauthorized assistance within a reasonable period of time, continuation is authorized and servicing actions outlined in § 1951.668 will be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in § 1951.652 (d);

(2) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(3) Failure to collect the unauthorized assistance in full will not adversely affect FmHA's financial interests.

(c) *Notice of determination when agreement is not reached.* If the recipient does not agree with FmHA's determination, or if the recipient fails to respond to the initial letter prescribed in § 1951.657 within 30 days, the District Director will notify the recipient by letter substantially similar to Exhibit B of this Subpart (available in any FmHA office) (sent by Certified Mail, Return Receipt Requested), with a copy to the State Director, and for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will include:

(1) The amount of assistance finally determined by FmHA to be unauthorized;

(2) A statement of further actions to be taken by FmHA as outlined in paragraphs (e)(1) or (e)(2) of this section; and

(3) The appeal rights as prescribed in Exhibit B of this Subpart (available in any FmHA office).

(d) *Appeals.* Appeals resulting from the letter prescribed in paragraph (c) of this section will be handled according to Subpart B of Part 1900 of this Chapter. All appeal provisions will be concluded before proceeding with further actions. If the recipient does not prevail in an appeal, or when an appeal is not made during the time allowed, the District Director will proceed with the actions outlined in paragraph (e) of this section, as applicable. If during the course of appeal the appellant decides to agree with FmHA's findings or is willing to repay the unauthorized assistance, the District Director will proceed with the actions outlined in paragraphs (a) or (b) of this section.

(e) *Liquidation of loan(s) or legal action to enforce collection.* If the recipient is unwilling or unable to arrange for repayment as provided in paragraph (a) of this section or continuation is not feasible as provided in paragraph (b) of this section, one of the following actions, as appropriate, will be taken:

(1) *Active borrower with a secured loan.* (i) The District Director will attempt to have the recipient liquidate voluntarily. If the recipient agrees to liquidate voluntarily, this will be documented by an entry in the running record of the case file. Where real property is involved, a letter will be prepared by the District Director and signed by the recipient agreeing to voluntary liquidation. For organizations, a resolution of the governing body may be necessary in addition to the running record notation. If the recipient does not agree to voluntary liquidation, or agrees but it cannot be accomplished within a reasonable period of time (usually not more than 90 days), forced liquidation action will be initiated in accordance with Subpart A of 1955 of this chapter unless:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and any recoverable costs charged to the account, is less than $1,000; or

(B) It can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If the District Director wishes to make an exception to forced liquidation under paragraph (e)(1)(i)(B) of this section, a request for an exception under § 1951.669 will be made.

(ii) When all of the conditions of paragraphs (a) or (b) or this section are met, but the recipient does not repay or

refuses to execute documents to effect necessary account adjustments according to the provisions of § 1951.661, liquidation action will be initiated as provided in paragraph (e)(1)(i) of this section.

(iii) When forced liquidation would be initiated except that the loan is being handled under paragraphs (e)(1)(i)(A) or (e)(1)(i)(B) of this section account adjustments will be made by FmHA without the signature of the recipient according to § 1951.668(a)(5). In these cases, the recipient will be notified by letter of the actions taken with a copy of Form FmHA 1951–12, "Correction of Loan Account," if applicable.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as collection-only, or unsatisfied balance after liquidation).* The District Director will document the facts in the case and submit it to the State Director who will request the advice of OGC on pursuing legal action to effect collection. The State Director will tell OGC what assets, if any, are available from which to collect. The case file, recommendation of State Director and OGC comments will be forwarded to the National Office for review and authorization to implement recommended servicing actions.

§ 1951.659–1951.660 [Reserved]

§ 1951.661 Servicing options in lieu of liquidation or legal action to collect.

When all of the conditions outlined in § 1951.658(b) are met, an unauthorized loan or grant will be serviced according to this section and § 1951.668, provided the recipient has the legal and financial capabilities.

(a) *Active borrower/grantee.*—(1) *Unauthorized loan.* (i) *Correction of problem.* If the problem causing the assistance to be unauthorized can be corrected, corrective action will be required. For example, where a subsidy was in excess amount; or where the loan included funds for purchase of excess of the unauthorized amount, the recipient will refund the excess land, the recipient will be required to sell the excess land and the proceeds will be applied to the account as an extra payment.

(ii) *Continuation on existing terms.* When there is no specific problem which can be corrected, continuation on the existing terms is authorized.

(2) *Unauthorized subsidy benefits received through use of incorrect interest rate.* When the recipient was eligible for the loan but should properly have been charged a higher interest rate than that shown in the debt instrument, resulting in the receipt of unauthorized subsidy benefits, the interest rate must be corrected to that which was in effect when the loan was approved. All payments made will be reversed and reapplied at the correct interest rate and future installments will be scheduled at the correct interest rate. A delinquency which is created will be serviced according to Subpart B of Part 1965 of this Chapter. After reapplication of payments, the loan will be serviced as an authorized loan. Change in interest rate will be accomplished according to § 1951.668. When the recipient is a public body with loans secured by bonds on which interest rate cannot legally be changed or payments reversed or reapplied, continuation on existing terms is authorized.

(3) *Unauthorized interest credits or rental assistance.* In cases involving RA and/or IC, the subsidy benefits should be terminated as provided in the Interest Credit and Rental Assistance Agreement. Unauthorized RA will be serviced as a delinquent account according to paragraph X B of Exhibit E of Subpart C of Part 1930 of this Chapter.

(i) *Tenant's failure to properly report changes in income or size of the household to the borrower.* In cases where a tenant has received RA and/or IC benefits to which he/she was not entitled because of the tenant's failure to properly report income or changes in household size, the borrower-landlord will provide the tenant with a notice of intent to recoup improperly advanced rental subsidy benefits. Such a notice must inform the tenant of the amount improperly advanced and the lump sum or monthly amount that will be added to the tenant's rent to recoup the improper rental subsidy. The borrower will inform the District Director of the unauthorized benefits and of the agreement made by the tenant to repay. Money collected will be remitted according to the FMI for Form FmHA 1944–9. If the borrower has rental assistance, that portion attributable to RA will be credited to the borrower's RA account. In the event that the tenant does not repay through active collection efforts including legal remedy, the borrower will report the facts to the District Director. The District Director will report to the State Director who will obtain the advice of OGC on further actions.

(ii) *Tenant knowingly misrepresented income or number of occupants to the borrower.* If it appears the tenant has knowingly misrepresented income to the borrower, the District Director will look into the case to determine the facts. If the District Director determines that income or number of occupants was misrepresented, he/she will direct the borrower-landlord to demand and to attempt to recoup improperly received rental subsidy from the tenant. Money collected will be remitted to the Finance Office according to the FMI for Form FmHA 1944–9. If the tenant fails to make restitution, the District Director will refer the case to the State Director who will request the advice of OGC on further actions.

(iii) *Unauthorized RA and/or IC paid due to borrower's error.* Whether unauthorized RA or IC was received by the borrower due to miscalculation or oversight by the borrower or the borrower's management agent, the borrower is required to make restitution to FmHA. This restitution will not be charged to any tenant or to the project as any part of the budget or operating expense. The restitution will be handled as a refund according to the FMI for Form FmHA 1944–49. In the case of a nonprofit or public body borrower, when funds from nonproject sources are not available, the State Director may make an exception and allow project income not required for approved operating budget items to cover the cost of restitution.

(iv) *Rental assistance assigned to wrong household.* When the tenant has correctly reported income and household size, but RA was assigned by the borrower to the household in error, the tenant's RA benefit will be cancelled and reassigned.

(A) *Notification and cancellation.* Before the borrower notifies the tenant, the borrower or management agent will review the case with the District Director. If the District Director verifies that an error was made based on information available at the time the unit was assigned, the tenant will be given 30 days written notice by the borrower or management agent that the unit was assigned in error and that the RA benefit will be cancelled effective on the next monthly rental payment due after the end of the 30-day notice period. The written notice will provide that:

(*1*) The tenant has the right to cancel the lease based on the loss of subsidy benefit to the tenant.

(*2*) The RA granted in error will not be recaptured.

(*3*) The tenant may meet with management to discuss the cancellation and the facts on which the decision was based. The borrower must give the tenant appeal rights under Subpart L or Part 1944 of this Chapter.

(B) *Reassignment of RA.* Rental assistance will be reassigned in accordance with Paragraph XII of Exhibit E to Subpart C of Part 1930 of this chapter.

(v) *Rental assistance in excess of contract.* When rental assistance is

advanced in excess of the RA contract limit, the District Director will send a report of the facts and a recommendation of proposed action through the State Director to the Assistant Administrator, Housing. The Assistant Administrator will determine the disposition of the case and notify the State Director, who will instruct the District Director of the required action.

(4) *Unauthorized grant assistance.* (i) When the recipient will repay unauthorized grant assistance over a period of time, interest will be charged at the rate specified in the grant agreement for default from the date received until paid. Repayment will be scheduled over a period consistent with the recipient's repayment ability but not to exceed 10 years. The District Director must maintain collection records as the Finance Office cannot set upon an account for repayment of a grant. The District Director will attempt to collect the monies due, and all collections will be remitted with Form FmHA 451–2, "Schedule of Remittances," as a "Miscellaneous Collection for Application to the General Fund." For cases identified in OIG audits only, the District Director will report quarterly to the State Office according to § 1951.668 (a)(6).

(ii) If it is determined the recipient cannot repay unauthorized grant assistance, the assistance may be left outstanding under the terms of the grant agreement. In the case of committed funds not yet disbursed, no further disbursements will be made without prior consent of the Administrator.

(5) *Cases where recipient has both authorized and unauthorized loans outstanding.* When a recipient has both authorized and unauthorized loans outstanding, installments will be scheduled to be paid concurrently on all loans. Each loan will be serviced according to the loan servicing regulations in effect for an authorized loan of its type.

(b) *Inactive borrower.* When a borrower no longer has an outstanding account in the records of the Finance Office, the following actions will be taken:

(1) Have the recipient execute a promissory note in the amount of the assistance determined to be unauthorized in the Exhibit A (available in any FmHA office) letter according to § 1951.657. This note will bear interest at the rate which was in effect for the type loan associated with the unauthorized assistance when it was approved. The term will not exceed 10 years.

(2) Take the best mortgage obtainable to secure the note.

§§ 1951.662–1951.667 [Reserved]

§ 1951.668 Servicing unauthorized assistance accounts.

When a final determination has been made that unauthorized assistance has been granted, the Finance Office will be notifed of necessary account adjustments as outlined in this section, depending upon whether the case or unauthorized assistance was identified by OIG in an audit report or by another means. The Finance Office will service the accounts as prescribed in this section.

(a) *Audit cases.* Ony the cases of unauthorized assistance identified by OIG will be reported to the Finance Office. Form FmHA 1951–12 will be completed in accordance with the FMI, and the District Director will prepare and submit Form FmHA 1951–52, "MFH Record Adjustment—Audit Claim," according to the FMI to advise the Finance Office. The Finance Office will flag the account for monitoring and reporting as required. Each payment reversed will be reapplied as of the original date of credit. "Loan" as used in this section refers to an account with an active borrower unless specified as "inactive."

(1) *Unauthorized loan.* When the loan is unauthorized because the recipient was not eligible or because the loan was approved for unauthorized purposes, the Finance Office will be advised as follows:

(i) *Repayment in full.* If the recipient has arranged to repay the unauthorized loan, the payment will be remitted with Form FmHA 1944–9, in accordance with the FMI. Forms FmHA 1951–12 and 1951–52 will reflect the amount and the Schedule Number from Form FmHA 1944–9.

(ii) *Continuation with loan on existing terms.* When continuation with the loan on the existing terms is approved according to § 1951.661 (a)(1)(ii), the District Director will submit Form FmHA 1951–52 to the Finance Office to reflect this.

(2) *Unauthorized subsidy benefits received through use of incorrect interest rate.* When the interest rate on an entire loan is changed, Form FmHA 1951–52 will be submitted to notify the Finance Office of the correct interest rate to be charged from the loan closing date. Payments made will be reversed and reapplied at the corrected interest rate, after which the unauthorized subsidy benefits will be reported to OIG as resolved. The loan will thereafter be treated as an authorized loan.

(3) *Unauthorized interest credits and/or rental assistance.* Unauthorized rental assistance and/or interest credits will be recovered according to the provisions of § 1951.661. The District Director will report to the State Office by the 1st of March, June, September, and December of each year, the repayment of unauthorized rental assistance and/or interest credits by account name, case number, account code, audit report number, finding number, date of claim, amount of claim, amount collected during period, and balance owed at end of reporting period. The State Office will forward a consolidated report to the Finance Office no later than the 15th of March, June, September, and December of each year for inclusion in the OIG report.

(4) *Liquidation pending.* When liquidation is initiated under the provisions of this Subpart, Form FmHA 1951–52 will be submitted to advise the Finance Office of the unauthorized assistance account to be established. This account will be flagged "FAP" (Foreclosure Action Pending) or "CAP" (Court Action Pending), as applicable. The account status will also be amended in the MFH Information Tracking and Retrieval System (MISTR) according to Subpart G of Part 2033 (available in any FmHA State or District Office).

(5) *Liquidation not initiated.* Cases in which Liquidation has not been initiated because of the provisions of § 1951.658 (e)(1)(i)(A) or (e)(1)(i)(B) will be adjusted according to §1951.661 and this section of this Subpart, and the adjustments will be reflected on Form FmHA 1951–52. In this instance only, account adjustments will be made even though the recipient does not sign Form FmHA 1951–52 and any related documents.

(6) *Unauthorized grant assistance.* When grant funds are to be repaid as provided in § 1951.661(a)(4) the District Director will report to the State Office by the 1st of March, June, September, and December of each year, the amount of collections by account name, case number, fund code, audit report number, finding number, date of claim, original amount of claim, amount collected during period, and the balance owed at end of reporting period on the unauthorized grant assistance. The State Office will submit a composite report to the Finance Office by the 15th of March, June, September, and December of each year.

(7) *Establishment of account for inactive borrower.* When an inactive borrower agrees to repay unauthorize assistance and executes documents to evidence such an obligation, Forms FmHA 1951–12 and 1951–52 will be completed according to the FMIs. The Finance Office will establish the

account according to the terms indicated on Form FmHA 1951–52.

(8) *Reporting.* At prescribed intervals, the Finance Office will report to the OIG on the status of cases involving unauthorized assistance which were identified by OIG in audit reports. The amounts to be reported will be determined by the Finance Office after account servicing actions have been completed. For reporting purposes, the following applies:

(i) For an unauthorized loan account as provided in paragraphs (a)(1) or (a)(4) of this section, reporting will be as follows:

(A) When unauthorized assistance is paid in full, this will be reported on the next scheduled report only.

(B) When continuation with the loan on existing terms is approved, the case will be reported as resolved on the next scheduled report, and no further reporting is required.

(ii) For unauthorized subsidy cases as provided in paragraphs (a)(2) or (a)(3) of this section, after the unauthorized amount has been repaid or payments have been reversed and reapplied at the correct interest rate, the unauthorized subsidy will be reported as resolved on the next scheduled report. No further reporting is required.

(iii) When an account is established with liquidation action pending as provided in paragraph (a)(4) of this section, the status will be included on each scheduled report until the liquidation is completed or the account is otherwise paid in full.

(iv) When liquidation is not initiated as provided in paragraph (a)(5) of this section, this will be reported on the next scheduled report (along with collectons, if any). No further reporting is required.

(v) When unauthorized grant assistance is scheduled to be repaid, the collections and status reported by the State Office to the Finance Office by memorandum according to paragraph (a)(6) of this section will be included in the OIG Report until the account is paid in full.

(vi) When an inactive borrower has agreed to repay unauthorized assistance according to paragraph (a)(7) of this section, the account will be reported initially, and collections and status will be included in each scheduled report until the account is paid in full.

(b) *Nonaudit cases.* Basically, servicing is the same for audit and nonaudit case; however, when receipt of unauthorized assistance is identified by a means other than an OIG audit report, the Finance Office will be notified only if adjustments to an active account or reinstatement of an inactive account are necessary, or grant funds are repaid. Once adjustments are made as provided in this paragraph, the loan(s) will be treated as an authorized loan(s). Any payment reversed will be reapplied as of the original date of credit. After payments are reversed and reapplied, the District Director will receive Form FmHA 451–26, "Transaction Record," from the Finance Office reflecting the account status.

(1) Account adjustments will be handled as follows:

(i) When a change in interest rate retroactive to the date of loan closing is necessary, Form FmHA 1951–13, "Change in Interest Rate," will be completed according to the FMI and executed by the borrower. Form FmHA 1951–521 will be submitted to the Finance Office. Payments will be reversed and reapplied accordingly.

(ii) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, the District Director will notify the Finance Office by memorandum, attaching a copy of the promissory note. The Finance Office will establish or reinstate the account according to the terms of the promissory note.

(iii) If a loan is paid in full, the remittance will be handled in the same manner as any other final payment.

(2) A delinquency created through reversal and reapplication of payments to effect corrections outlined in paragraph (b)(1)(i) of this section will be serviced according to Subpart B of Part 1965 of this Chapter.

§ 1951.669 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this Subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and submitted through the Assistant Administrator, Housing. Requests will be supported with documentation to explain the adverse effect on the Government's interest, proposed alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1951.670–1951.699 [Reserved]

§ 1951.700 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0104.

10. Subpart O is added to Part 1951 to read as follows:

Subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs

Sec.

Subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs

§ 1951.701 Purpose.

This Subpart prescribes the policies and procedure for servicing Community and Business Program loans and/or grants made by Farmers Home Administration (FmHA) when it is determined that the borrower grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, or any other direct financial assistance. It does not apply to guaranteed loans.

§ 1951.702 Definitions.

As used in this Subpart, the following definitions apply:

(a) *Active borrower.* A borrower who has an outstanding account in the records of the Finance Office, including collection-only or an unsatisfied account balance where a voluntary conveyance was accepted without release from liability of foreclosure did not satisfy the indebtedness.

(b) *Assistance.* Finance assistance in the form of a loan, grant, or subsidy received.

(c) *Debt instrument.* Used as a collective term to include promissory note, assumption agreement, grant agreement agreement/resolution, or bond.

(d) *False information.* Information, known to be incorrect, provided with the intent to obtain benefits which would

not have been obtainable based on correct information.

(e) *Inaccurate information.* Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

(f) *Inactive borrower.* A former borrower whose loan(s) has (have) been paid in full or assumed by another party(ies) and who does not have an outstanding account in the records of the Finance Office.

(g) *Recipient.* "Recipient" refers to an individual or entity that received a loan, or portion of a loan, an interest subsidy, a grant, or a portion of a grant which was unauthorized.

(h) *Servicing official.* For Community Programs, the servicing official is the District Director, an Assistant District Director, or a District Loan Specialist so designated. For Business Programs, the servicing official is the State Director or Designee.

(i) *Unauthorized assistance.* Any loan, interest subsidy, grant, or portion thereof received by a recipient for which there was no regulatory authorization for which the recipient was not eligible. Interest subsidy includes subsidy benefits received because a loan was closed at a lower interest rate than that to which the recipient was entitled, whether the incorrect interest rate was selected erroneously by the approval official or the documents were prepared in error.

§ 1951.703 Policy.

When unauthorized assistance has been received, an effort must be made to collect from the recipient the sum which is determined to be unauthorized, regardless of amount, unless any applicable Statute of Limitation has expired.

§ 1951.704—1951.705 [Reserved]

§ 1951.706 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General, USDA, (OIG); through reviews made by FmHA personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been receive by a recipient of FmHA assistance. If the servicing official has reason to believe unauthorized assistance was received, but is unable to determine whether or not the assistance was in fact unauthorized, the case file including the advice of the Regional Office of the General Counsel (OGC) will be referred to the National Office for review and comment. In every case where it is known or believed by FmHA that the assistance was based on false information, investigation by the OIG will be requested as provided for in FmHA Instruction 2012–B (available in any FmHA office). If OIG conducts an investigation, the actions outlined in § 1951.707 will be deferred until the OIG investigation is completed and the report is received. The reason(s) for the unauthorized assistance being received by the recipient will be well documented in the case file, and will specifically state whether it was due to:

(a) Submission of inaccurate information by the recipient;

(b) Submission of false information by the recipient.

(c) Submission of inaccurate or false information by another authorized party acting on the recipient's behalf including professionl consultant such as engineers, architects, and attorneys, when the recipient did not know the other part had submitted inaccurate or false information;

(d) Error by FmHA personnel, either in making computations or failure to follow published regulations or other agency issuances; or

(e) Error in preparation of a debt instrument which caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved.

§ 1951.707 Notification to recipient.

(a) Collection efforts will be initiated by the servicing official by a letter substantially similar to Exhibit A of this Subpart (available in any FmHA office), and mailed to the recipient by "Certified Mail, Return Receipt Requested," with a copy to the State Director and, for a case identifed in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will be sent to all recipients who received unauthorized assistance, regardless of amount. The letter will:

(1) Specify in detail the reason(s) the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance, including any accrued interest to be repaid; and

(3) Establish an appointment for the recipient to discuss with the servicing official the basis for FmHA's claim; and give the recipient an opportunity to provide facts, figures, written records or other information which might alter FmHA's determination that the assistance received was unauthorized.

(b) If the recipient meets with the servicing official, the servicing official will outline to the recipient why the assistance was determined to be unauthorized. The recipient will be given an opportunity to provide information to refute FmHA's findings. When requested by the recipient, the servicing official may grant additional time for the recipient to assemble documentation. When an extension is granted, the servicing official will specify a definite number of days to be allowed and establish the follow up necessary to assure that servicing of the case continues without undue delay.

§ 1951.708 Decision on servicing actions.

When the servicing official is the same individual who approved the unauthorized assistance, the next-higher supervisory official must review the case before further actions are taken by the servicing official.

(a) *Payment in full.* If the recipient agrees with FmHA's determination or will pay the amount in question, the servicing official may allow a reasonable period of time (usually not to exceed 90 days) for the recipient to arrange for repayment. The amount due will be determined according to § 1951.711(a), the servicing official will remit collections to the Finance Office according to the Forms Manual Insert (FMI) for Form FmHA 451–2, "Schedule of Remittances," as follows:

(1) In the case of a loan, for application to the borrower's account as an extra payment.

(2) In the case of a grant, as a "Miscellaneous Collection for Application to the General Fund."

(3) In the case of a loan or grant which was identified in an OIG audit, the servicing official will report the repayment as outlined in § 1951.711(b)(2) or 1951.715 as applicable.

(b) *Continuation with recipient.* If the recipient agrees with FmHA's determination or is willing to pay the amount in question but cannot repay the unauthorized assistance within a reasonable period of time, continuation is authorized and servicing actions outlined in § 1951.711 will be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in §1951.702(d);

(2) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(3) Failure to collect the unauthorized assistance in full will not adversely affect FmHA's financial interests.

(c) *Notice of determination when agreement is not reached.* If the recipient does not agree with FmHA's determination, or if the recipient fails to respond to the initial letter prescribed in § 1951.707 within 30 days, the servicing

official will notify the recipient by letter substantially similar to Exhibit B of this Subpart (available in any FmHA office) (sent by Certified Mail, Return Receipt Requested), with a copy to the State Director, and for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will include:

(1) The amount of assistance finally determined by FmHA to be unauthorized including any accrued interest.

(2) A statement of further actions to be taken by FmHA as outlined in paragraphs (e)(1) or (e)(2) of this section; and

(3) The appeal rights as prescribed in Exhibit B of this Subpart (available in any FmHA office).

(d) *Appeals.* Appeals resulting from the letter prescribed in paragraph (c) of this section will be handled according to Subpart B of Part 1900 of this Chapter. All appeal provisions will be concluded before proceeding with further actions. If the recipient does not prevail in an appeal, or when an apeal is not made during the time allowed, the servicing official will document the facts in the case file and submit to State Director, if the servicing official is other than State Director, who will proceed with the actions outlined in paragraph (e) of this section, as applicable. If during the course of appeal the appellant decides to agree with FmHA's findings or is willing to repay the unauthorized assistance, the servicing official will proceed with the actions outlined in paragraphs (a), (b), or (e) of this section.

(e) *Liquidation of loan(s) or legal action to enforce collection.* When a case cannot be handled according to the provisions of paragraphs (a) or (b) of this section, or if the recipient refuses to execute the documents necessary to establish an obligation to repay the unauthorized assistance as provided in §1951.711, one of the following actions will be taken:

(1) *Active borrower with a secured loan.* (i) The servicing official will attempt to have the recipient liquidate voluntarily. If the recipient agrees to liquidate voluntarily, this will be documented in the case file. Where real property is involved, a letter will be prepared by the servicing official and signed by the recipient agreeing to voluntary liquidation. A resolution of the governing body may be required.If the recipient does not agree to voluntary liquidation, or agrees but it cannot be accomplished within a reasonable period of time (usually not more than 90 days), forced liquidation action will be initiated in accordance with applicable provisions of Subpart A of Part 1955 of this Chapter unless:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and any recoverable costs charged to the account, is less than $1,000; or

(B) It can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If the servicing official wishes to make an exception to forced liquidation under paragraph (e)(1)(i)(B) of this section, a request for an exception under § 951.716 will be made.

(ii) When all of the conditions of paragraphs (a) or (b) of this section are met, but the recipient does not repay or refuses to execute documents to effect necessary account adjustments according of the provisions of § 1951.711, liquidation action will be initiated as provided in paragraph (e)(1)(i) of this section.

(iii) When forced liquidation would be initiated except that the loan is being handled under paragraphs (e)(1)(i)(A) or (e)(1)(i)(B) of this section, continuation with the loan on existing terms will be provided. In these cases, the recipient will be notified by letter of the actions taken.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as collection-only, or unsatisfied balance after liquidation).* The servicing official will document the facts in the case file and submit it to the State Director, if the servicing official is other than the State Director, who will request the advice of the OGC on pursuing legal action to effect collection. The case file, recommendation of State Director and OGC comments will be forwarded to the National Office for review and authorization to implement recommended servicing actions. The State Director will tell OGC what assets, if any, are available from which to collect.

§ 1951.709—1951.710 [Reserved]

§ 1951.711 Servicing options in lieu of liquidation or legal action to collect.

When the conditions outlined in § 1951.708(b) are met, the servicing options outlined in this section will be considered. Accounts will be serviced according to this section and § 1951.715.

(a) *Determination of unauthorized loan and/or grant assistance amount.*

(1) *Unauthorized loan amount.* The principal loan amount that was unauthorized will be determined. The unauthorized amount will be the unauthorized principal plus any accrued interest on the unauthorized principal at the note interest rate until the date paid in accordance with §1951.708(a), or until the date other satisfactory financial arrangements are made in accordance with paragraphs (b)(1) or (c) of this section.

(2) *Unauthorized grant amount.* The unauthorized grant actually expended will be determined. The unauthorized amount will be the unauthorized grant with accrued interest at the interest rate stipulated in the respective executed grant agreement for default cases until the date paid in accordance with § 1951.708(a), or until the date other satisfactory financial arrangements are made in accordance with paragraphs (b)(2) or (c) of this section.

(b) *Continuation on modified terms.* When the recipient has the legal and financial capabilities, the case will be serviced according to one of the following, as appropriate. In each instance, the servicing official will advise the Finance Office by memorandum of the actions necessary to effect the account adjustment.

(1) *Unauthorized loan.* A loan for the unauthorized amount determined according to paragraph (a)(1) of this section will be established at the interest rate specified in the outstanding debt instrument or at the present market interest rate, whichever is greater, for the respective community and business program area. The loan will be amortized for a period not to exceed fifteen (15) years, the remaining term of the original loan, or the remaining useful life of the facility whichever is shorter.

(2) *Unauthorized grant.* The unauthorized grant amount determined according to paragraph (a)(2) of this section will be converted to a loan at the market interest rate for the respective Community and Business Programs area in effect on the date the financial assistance was provided, and will be amortized for a period not to exceed fifteen (15) years. The recipient will be required to execute a debt instrument to evidence this obligaton, and the best security position practicable in a manner which will adequately protect the FmHA's interests during the repayment period will be taken as security. When the recipient is to repay grant assistance, the servicing official must maintain records on the "account" as the Finance Office cannot set up an account for repayment of a grant. The servicing official will attempt to collect the monies due and all collections will be remitted with Form FmHA 451–2 to the Finance Office as "Miscellaneous Collections for Application to the General Fund." For cases identified in OIG audits only, the servicing official will report by the 1st of March, June,

September, and December of each year the following information on cases of this type to the State Director: Recipient's name, fund code, audit report number, audit finding number, date of claim, amount of claim, amount collected during the reporting period, and the balance owed on the unauthorized grant assistance.

(3) *Unauthorized subsidy benefits received.* When the recipient was eligible for the loan but should have been charged a higher interest rate than that in the debt instrument, which resulted in the receipt of unauthorized subsidy benefits, the case will be handled as outlined in this paragraph when legally possible. The interest rate will be adjusted to the appropriate interest rate which was in effect on the date of loan approval or when the recipient was notified according to § 1951.707 of this Subpart, whichever is greater. (see Exhibit C of this Subpart for interest rates (available in any FmHA office).) No retroactive adjustment of interest rate and collection of unauthorized subsidy benefits will be required. Appropriate adjustments will be made to recipient's account to reflect the revised installments. No reversal and reapplication of previous payments will be required.

(c) *Continuation of existing terms.* When the recipient does not have the legal and/or financial capabilities for the options outlined in paragraphs (b)(1), (b)(2), or (b)(3) of this section, as appropriate, to be exercised, the recipient may be allowed to continue to meet the loan/grant obligations outlined in the existing loan/grant instruments. Unless the unauthorized assistance was identified in an OIG audit, no Finance Office notification or action is necessary. If identified by OIG, the servicing official will advise the Finance Office by memorandum of the determination to continue with the recipient on the existing terms of the loan/grant.

(d) *Reporting requirements to National Office.* An annual report will be submitted by the State Office to the Assistant Administrator, Community and Business Programs, within 30 days following the end of the Government's fiscal year for each case of unauthorized assistance or subsidy benefits. The report will include for each case the account name, case number, fund code, OIG audit number (if applicable), amount collected during period, and the balance owed on the unauthorized assistance. Each State Office is responsible for coordinating with the servicing official's office so that this information can be accumulated and consolidated by the State Office within the allotted time. A negative report is required from States which have no unauthorized assistance cases.

§ 1951.712–1951.714 [Reserved]

§ 1951.715 Account adjustments and reporting requirement.

Cases of unauthorized assistance which require Finance Office notification and action, regardless of whether they were identified in an OIG audit or by other means, will be submitted to the Finance Office by memorandum from the servicing official, as provided in applicable paragraphs of § 1951.711 of this Subpart. Each memorandum should include account (borrower) name, case number, audit report number (if applicable), finding number (if applicable), fund code, loan number, and an explanation of the actions to be taken. If the unauthorized assistance was identified in an OIG audit report, the memorandum should be clearly annotated "Audit Claim for OIG Report" as a part of the subject. The explanation should provide sufficient details to allow the Finance Office to properly adjust the account. The State Office will forward a consolidated report on unauthorized grant assistance identified in an OIG audit to the Finance Office by the 15th of March, June, September, and December of each year reflecting the information reported by servicing officials in accordance with § 1951.711(b)(2) for inclusion in the report to OIG.

(a) *Entire loan unauthorized.* When the entire loan is unauthorized because the recipient was not eligible or because the loan was approved for unauthorized purposes, the servicing official will advise the Finance Office, by memorandum, which of the following servicing actions will be taken.

(1) *Repayment in full.* If the recipient has arranged to repay the unauthorized loan in full through refinancing or other available resources, the payment will be remitted with Form FmHA 451–2 and the schedule number will be included in the memorandum.

(2) *Continuation with loan on existing or modified terms.* When it is determined, according to § 1951.711 (b)(1) or (c), that continuation with the loan on the existing or modified terms will be provided, the servicing official will advise the Finance Office by memorandum of this determination including an explanation of the terms, if modified.

(b) *Portion of loan unauthorized.* When only a portion of the loan has been determined to be for unauthorized purposes, the servicing official will advise the Finance Office, by memorandum, of the servicing actions as follows:

(1) *Repayment in full of unauthorized portion.* If the recipient has arranged to repay the unauthorized portion of the loan through refinancing or other available resources, the remittance will be submitted with Form FmHA 451–2, and the schedule number will be included in the memorandum.

(2) *Continuation with unauthorized portion of loan on existing or modified terms.* When it is determined, according to § 1951.711 (b)(1) or (c), that continuation with the unauthorized portion of the loan on the existing or modified terms will be provided, the servicing official will advise the Finance Office by memorandum of this determination, including an explanation of the terms if modified. The authorized portion will retain the original loan number with installments adjusted accordingly. Payments previously made will not be reversed and reapplied. The amortized unauthorized amount will be assigned the next available loan number. Installments for the authorized and unauthorized loans will be scheduled and paid concurrently.

(c) *Unauthorized subsidy benefits received.* The unauthorized subsidy benefits received will be serviced according to § 1951.711 (b)(3) or (c).

(d) *Liquidation pending.* When liquidation is initiated under the provisions of this Subpart, the servicing official will advise the Finance Office, by memorandum, that an unauthorized assistance account is to be established. This account will be flagged "FAP" (Foreclosure Action Pending) or "CAP" (Court Action Pending), as applicable.

(e) *Liquidation not initiated.* Cases in which liquidation would normally be initiated, but where it is not because of the provisions of § 1951.708(e)(1), will be serviced in accordance with § 1951.708(e)(1)(iii). If the unauthorized assistance was identified through means other than an OIG audit report, the Finance Office will not be notified and no action is necessary.

(f) *Unauthorized grant assistance.* A grant that is to be repaid will be serviced according to § 1951.711(b)(2). If the unauthorized assistance was identified through means other than an OIG audit report and a determination has been made not to recover, the Finance Office will not be notified and no action is necessary.

(g) *Reporting.* At prescribed intervals, the Finance Office will report to the OIG on the status of cases involving unauthorized assistance which were

identified by OIG in audit reports. The amounts to be reported will be determined by the Finance Office after account servicing actions have been completed. For reporting purposes, the following applies:

(1) For an unauthorized loan account established as provided in paragraphs (a) or (b) of this section, reporting will be as follows:

(i) When unauthorized assistance is paid in full, this will be reported on the next scheduled report only.

(ii) When continuation with the loan on existing or modified terms is approved, this will be reported on the next scheduled report, and no further reporting is required.

(2) For unauthorized subsidy cases as provided in paragraph (c) of this section, once the interest rate has been appropriately adjusted, the unauthorized subsidy will be reported as resolved on the next scheduled report. No further reporting is required.

(3) When an account is established with liquidation action pending as provided in paragraph (d) of this section, the status will be included on each scheduled report until the liquidation is completed or the account is otherwise paid in full.

(4) When liquidation is not initiated as provided in paragraph (e) of this section, this will be reported on the next scheduled report. No further reporting is required.

(5) When unauthorized grant assistance is scheduled to be repaid as provided in paragraph (f) of this section, collections and status will be included in the report to OIG until the amount is paid in full.

§ 1951.716 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this Subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and submitted through the Assistant Administrator, Community and Business Programs. Requests will be supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1951.717–1951.749 [Reserved]

§ 1951.750 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0103.

PART 1955—PROPERTY MANAGEMENT

Subpart A—Liquidation of Loans and Acquisition of Property

9. In § 1955.15, paragraph (d)(15)(i) is revised to read as follows:

§ 1955.15 Foreclosure of loans secured by real estate.

* * * * *

(d) * * *

(15) * * * (i) If a deficiency judgment is obtained in accordance with paragraph (b)(2) of this section, the account will be classified as a judgment case and Form FmHA 1962–20, "Notice of Judgment," will be prepared and distributed according to the FMI. [For MFH cases the District Director should contact the State Office or MFH Unit in the Finance Office for instructions on altering Form 1962–20 to meet the requirements of the Automated Multiple Family Housing Accounting System (AMAS).] The account will be serviced in accordance with Section 1962.49(e) of Subpart A of Part 1962 of this chapter. When action to obtain a deficiency judgment is pending at the time Form FmHA 465–6 (Form FmHA 1965–19 for MFH cases) is sent to the Finance Office, the action will be indicated on the form.

* * * * *

PART 1962—PERSONAL PROPERTY

Subpart A—Servicing and Liquidation of Chattel Security

§ 1962.49 [Amended]

10. In § 1962.49, paragraph (e)(1), the number of the form entitled "Notice of Judgment" is changed from "Form FmHA 455–20" to "Form FmHA 1962–20."

Authorities: 7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, Sec. 10, Pub. L. 93–357, 88 Stat. 392, 7 CFR 2.23, 7 CFR 2.70, 29 FR 14764, 32 FR 9850.

Dated: February 22, 1985.

Dwight O. Calhoun,

Acting Associate Administrator, FmHA, Farmers Home Administration.

[FR Doc. 85–7809 Filed 4–1–85; 8:45 am]

BILLING CODE 3410–07–M

7 CFR Part 1942

Community Facility Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding loans and grants for Community Facility projects. This action is being taken to eliminate restrictions that could adversely affect certain low income communities. The intended effect of this action is to correct an unforeseen problem created by the September 19, 1984 regulation change. This will allow FmHA to more effectively serve the needs of rural communities participating in FmHA's Community Facility programs.

EFFECTIVE DATE: April 2, 1985.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6328, Washington, DC 20250, telephone: (202) 382–9589.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries; Federal, State, or Local government agencies; or geographic regions. Futhermore, there will be no 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. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. Additional efforts to administer the changes are expected to be minimal. Increased program costs are, therefore, not anticipated. The net result is expected to provide better service to rural communities.

The FmHA programs and projects which are affected by these instructions are subject to State and local review under section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Programs." 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, Public Law 91-190, an Environmental Impact Statement is not required.

The FmHA Administrator, has determined that the action will not have a significant economic impact on a substantial number of small entities because the proposed action will only affect a small number of rural communities.

The Catalog of Federal Domestic Assistance programs affected are No. 10.418, Water and Waste Disposal Systems for Rural Communities, and No. 10.423, Community Facilities Loans.

This action requires no change in recordkeeping or reporting requirements imposed upon the public.

This action amends FmHA's policies for making loans and development grants. These loans and grants assist in financing the development costs of community facilities and domestic water and waste disposal systems to rural communities and other associations of farmers, ranchers, rural residents, and other rural users.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking since the purpose of the change is to correct an unforeseen problem created by a previous regulation change and any delay would be contrary to the public interest.

On September 19, 1984, FmHA published a final rule at 49 FR 36827 amending its regulations to use median household income (MHI) in lieu of median family income (MFI) in determining interest rates and amount of grant assistance. This change has resulted in some low income rural communities not being eligible for intermediate interest rate loans and grant assistance in five States and Puerto Rico. In these States and Puerto Rico, 85 percent of the nonmetropolitan median houshold income (NMHI) is below the poverty line prescribed by the Office of Management and Budget for a family of four, as adjusted under section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d). Under current regulations intermediate interest rates and development grants cannot be made to rural communities whose MHI is more than 85 percent of a State's NMHI, but also below the poverty line.

This was not intended to occur as a result of the above regulation change. It was never the intent of FmHA to eliminate intermediate interest rates and grant assistance to rural communities whose MHI is below the poverty line.

To address this problem, FmHA amends Subparts A and H of Part 1942 by authorizing intermediate interest rates and development grants to rural communities whose MHI is more than 85 percent of a State's NMHI but also below the poverty line. This will allow FmHA to continue to provide financial assistance to low income communities in accordance with the objectives of the Administration and Congress.

FmHA amends Subpart A of Part 1942 as follows:

1. Sections 1942.17(c)(2)(iii)(C) (*2*) and (*3*) to clarify the point distribution where the MHI of the service area is more than 85 percent of a State's NMHI but also below the poverty line.

2. Section 1942.17(f)(3) to authorize intermediate interest rates where the MHI of the service area is more than 85 percent of a State's NMHI but also below the poverty line.

FmHA amends Subpart H of Part 1942 as follows:

1. Section 1942.360(a)(14) to change the eligibility for grant assistance. The change will authorize the use of grant funds where the MHI of the service area is more than 85 percent of a State's NMHI but also below the poverty line. Also, to add a definition for "poverty line."

2. Section 1942.363(c)(2)(i) to remove the definition of "poverty line" now in Section 1942.360(a)(14).

3. Section 1942.363(c)(2)(ii) to clarify the use of 1.0 percent of MHI in determining the amount of grant assistance where the MHI of the service area is above the poverty line but not more than 85 percent of the State's NMHI.

4. Section 1942.363(c)(2)(iii) is removed. This paragraph is not needed with the revision to section 1942.360(a)(14).

List of Subjects in 7 CFR Part 1942

Community development, Grant programs—Housing and Community Development, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

PART 1942—ASSOCIATIONS

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

Subpart A—Community Facility Loans

1. In § 1942.17, paragraphs (c)(2)(iii)(C) (*2*) and (*3*), and paragraph (f)(3) are revised to read as follows:

§ 1942.17 Community Facilities.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(C) * * *

(*2*) More than the proverty line and less than 85 percent of the State's nonmetropolitan median household income—20 points.

(*3*) More than the poverty line and between 85 percent and 100 percent, inclusive, of the State's nonmetropolitan median household income—15 points.

* * * * *

(f) * * *

(3) *Intermediate rate.* The intermediate interest rate will be set at the poverty line rate plus one-half of the difference between the poverty line rate and the market rate. It will apply to loans that do not meet the requirements for the poverty line rate and for which the median household income of the service area is below the poverty line or not more than 85 percent of the nonmetropolitan median household income of the State.

* * * * *

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

2. Section 1942.360 is amended by revising paragraph (a)(14) to read as follows:

$1942.360 Grant Limitations.

(a) * * *

(14) Pay any costs of a project when the median household income of the service area is above the poverty line and more than 85 percent of the nonmetropolitan median household income of the State. The poverty line will be that income prescribed by the Office of Management and Budget for a family of four, as adjusted under Section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d).

* * * * *

3. Section 1942.363 is amended by removing paragraph (c)(2)(iii) and revising paragraph (c)(2)(i) and paragraph (c)(2)(ii) to read as follows:

§ 1942.363 Determining the need for development grants.

* * * * *

(c) * * *

(2) * * *

(i) *.5 percent* when the median household income of the service area is below the poverty line.

(ii) *1.0 percent* when the median household income of the service area is above the poverty line but not more than 85 percent of the State's nonmetropolitan median household income.

* * * * *

(7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70)

Dated: February 28, 1985.

Dwight O. Calhoun,

Acting Associate Administrator, Farmers Home Administration.

[FR Doc. 85-7861 Filed 4-1-85; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Exceptions to Notice and Comment Rulemaking Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The final rule amends the Commission's rules of practice by revising Commission rulemaking procedures contained in 10 CFR 2.804 and 2.805 to clarify the Commission's use of the exceptions to notice and comment rulemaking contained in section 4 of the Administrative Procedure Act, 5 U.S.C. 553(b). This clarification is necessary in light of the U.S. Court of Appeals for the District of Columbia decision in *Union of Concerned Scientists* v. *Nuclear Regulatory Commission*, 711 F. 2d 370 (D.C. Cir. 1983).

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-8689.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Court of Appeals for the District of Columbia, in its decision in *Union of Concerned Scientists* v. *Nuclear Regulatory Commission*, 711 F. 2d 370 (D.C. Cir. 1983) ("*UCS* v. *NRC*"), vacated the Commission's rule of June 30, 1982, which amended operating licenses by removing the deadline for the environmental qualification of electric equipment (47 FR 28363, June 30, 1982). The D.C. Circuit held that by making the rule immediately effective instead of providing for notice and comment, the NRC had among other things, violated Commission regulations. This holding was based on language in 10 CFR 2.804 which the Court read, contrary to the Commission's interpretation, as a requirement for prior notice and opportunity for comment in all Commission rulemakings. The Court concluded that the NRC had divested itself of whatever discretion applicable statutes might allow for dispensing with notice and comment.

In response, the Commission issued a proposed rule to clarify its regulations so as to leave no doubt that the Commission does assert, to the extent allowable, its discretion under Section 4 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b), to make exceptions to the general requirements for notice and opportunity for comment in informal rulemaking (49 FR 13043, April 2, 1984). In making this clarification, however, the Commission also noted that the D.C. Circuit in *UCS* v. *NRC* had called into question the extent to which the Commission can lawfully claim discretion to invoke the APA exceptions to notice and comment rulemaking. As an alternative reason for vacating the rule under review, the D.C. Circuit held that the notice and hearing requirements in Section 189a of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2239a, prevented the Commission from relying on the APA "good cause" exception in the June 30, 1982, rulemaking. In the Commission's view, however, the Court's explanation of this holding left unclear whether the Court saw Section 189a as a general bar to use of the APA "good cause" exception in any NRC rulemaking affecting the activities of licensees, or as a less sweeping restriction that would only apply to rulemakings which specifically amend reactor licenses. Consequently, the Commission moved the D.C. Circuit to vacate this part of its opinion. The Commission noted to the Court that the discussion of the relation between Section 189a and the APA "good cause" exception was unnecessary to the result of the case, raised issues which had not been briefed, was ambiguous in its scope, and could, if read broadly, interfere severely with the Commission's ability to act promptly in the interest of public health and safety. The Court then called for simultaneous briefing by the parties on the availability of the APA "good cause" exception in Commission rulemaking. The Commission filed a brief which maintained that Section 189a does not restrict use of the "good cause" exception. The Union of Concerned Scientists argued that there was a virtually total bar to use of the exception. After receiving this additional briefing, the Court on December 5, 1983 denied without opinion the Commission's motion to amend the decision, offering no further explanation or clarification of its holding, and ordered that its mandate should issue.

In the Supplementary Information to the proposed rule, the Commission noted its view that any reading of Section 189a which interferes with the Commission's ability to take immediate action affecting the activities of NRC licensees, whether by individual order or by rulemaking, when safety requires it, is contrary to the intent of Congress and is an erroneous interpretation of the Atomic Energy Act. A limitation on use of the APA "good cause" exception clearly has the potential for such interference and therefore should be interpreted narrowly.

Under these circumstances, it is reasonable to interpret the court's opinion no broader than the language and the context require. Accordingly, the Commission interprets the language in *UCS* v. *NRC* relevant to the availability of the "good cause" exception to apply only to the rulemaking under review in that case, *i.e.*, amendments of specific reactor licenses requiring prior notice by statute, while leaving unaffected the Commission's authority under the APA to make other kinds of rules effective without prior notice and comment when there is good cause. In response to the D.C. Circuit's opinion in *USC* v. *NRC*, the Commission proposed to include in 10 CFR 2.804 language providing that the APA exceptions to notice and comment rulemaking will apply only where notice and comment are not required by statute.

The proposed rule left intact for the most part the Commission's longstanding and consistent interpretation of its statutory authority and of rulemaking procedures contained in 10 CFR Part 2, Subpart H, that the Commission could avail itself of the exceptions to notice and comment rulemaking contained in the APA for—

- Interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A); or
- When the agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B).

To ensure that the regulation unambiguously reflected the Commission's intentions, the proposed rule amended 10 CFR 2.804 and 2.805 to provide explicitly for Commission

discretion to invoke in appropriate situations the APA exceptions to notice and comment rulemaking cited above, as permitted by law. Under the proposed rule, notice and comment would not be mandatory in Commission rulemaking within the scope of section 553 of the U.S. Code, when they involve interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice, or where the Commission for good cause finds that notice and comment are impracticable, unnecessary or contrary to the public interest.

II. Comments

The Commission received five comments on the proposed rulemaking. Two of these were from the nuclear industry (Yankee Atomic Electric Company, Comment 2; Middle South Services, Comment 4), one from a private citizen (M.L. Lewis, Comment 1), one from a public interest group (Union of Concerned Scientists, Comment 5), and one from a Federal agency (Administrative Conference of the United States, Comment 3).

One of these commenters (M.L. Lewis) expressed the opinion that the proposed rule was an attempt to remove the public's right to comment on a rule before it becomes effective. The proposed rule simply incorporates into the Commission's regulations, the exceptions to notice and comment provided in the APA. These statutory exceptions, generally available to all agencies, are a congressional recognition that in some situations the normal public participation procedures should not be required in advance of taking the action. Public comment, however, will be sought post-promulgation pursuant to new Section 2.804(e) where it is necessary because of public interest in the rule. The Commission's normal practice, in keeping with Section 4 of the APA, is to provide for public participation in Commission rulemakings.

Another commenter, the Administrative Conference of the United States (ACUS), recommended that the final rule provide an opportunity for "post-promulgation" comment whenever the good cause exception of Section 4 of the APA was invoked because prior notice and comment was "impracticable" or "contrary to the public interest." However, such post-promulgation comment need not be provided when the good cause exception was invoked because prior notice and comment are "unnecessary." This corresponds to Administrative Conference Recommendation 83-2, 1 CFR 305. 83-2 (1984). Recommendation 83-2 stated that experience has confirmed the need for a "good cause" exception from the APA's notice and comment requirements. However, a post-promulgation comment opportunity "will give interested persons a chance to expose any errors or oversights that occurred in the formulation of the rule and to present policy arguments for changing the rule." *Id.* at 158. The post-promulgation comment opportunity should not extend to rules for which the agency determines public notice and comment to be "unnecessary" because such rules have been found by the courts to be minor or merely technical amendments in which the public has little interest.

The Commission agrees in principle with the recommendation of the ACUS. Accordingly, the final rule incorporates a new provision, 10 CFR 2.804(e), to provide for post-promulgation comment on rules when the "good cause" exception is invoked when prior notice and comment is "impracticable" or "contrary to the public interest." After receipt of comments, the Commission will publish a statement in the **Federal Register** which provides an evaluation of any significant issues raised by the public comments, as well as any revisions to the rule that have resulted from the staff evaluation of the public comments.

In addition, the ACUS recommended that the Commission should normally use notice and comment when adopting interpretative rules or general policy statements that are likely to have a substantial impact on the public, or at least to provide a post-promulgation comment opportunity if there has been no notice and comment prior to the adoption of such rules or statements. This corresponds to ACUS Recommendation 76-5, 1 CFR 305.76-5 (1984). The Commission normally provides for notice and opportunity for comment on policy statements and interpretative rules, and will continue to do so in the future. In order to retain the flexibility provided by the exception in Section 4 of the APA, the Commission has not adopted the ACUS recommendation completely. The Commission, in 10 CFR 2.804(e), provides for a post-promulgation comment opportunity for interpretative rules or general statements of policy issued without prior notice and comment, except when the Commission finds that post-promulgation comment would "serve no public interest or would be so burdensome as to outweigh any forseeable gain." This latter provision reflects ACUS Recommendation 76-5. *Id.*

A third commenter, the Union of Concerned Scientists (UCS), asserted that Section 189a of the Atomic Energy Act requires the Commission to provide notice and opportunity for comment with respect to *any* rulemaking proceeding dealing with the activities of licensees and consequently prohibits the Commission from restricting the limitation on the use of the APA exceptions to notice and comment rulemaking to rulemakings which amend reactor licenses. Section 189a(1) of the Atomic Energy Act provides, among other things, that:

> In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, *and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees,* and in any proceeding for the payment of compensation, an award or royalties under sections 2183, 2187, 2236(c) or 2238 of this title, *the Commission shall grant a hearing* upon the request of any person whose interest may be affected by the proceeding. (Emphasis added)

UCS argues that this provision constitutes a statutory bar to the use of the APA exceptions from notice and comment rulemaking. These exceptions are normally available, "except when notice or hearing is required by statute." 5 U.S.C. 553(b). According to the commenter, this proposition was affirmed in *UCS* v. *NRC* where the D.C. Circuit held that "[w]hether characterized as a license amendment or a rulemaking, the Commission's action runs afoul of the express terms of Section 189(a) which unequivocally requires notice and opportunity to comment for both types of proceedings." *Supra* at 380. Therefore, the commenter argues, the Commission cannot limit the decision in *UCS* v. *NRC* to the specific type of rule at issue in that case, i.e. rules which specifically amend reactor licenses. Furthermore, the commenter does not believe that the Commission needs the APA "good cause" exception to take immediate action when safety requires it: In support, the commenter cited the Commission's ability to issue an "immediately effective license amendment" when no significant hazards are involved or to issue an "immediately effective order."

In response, the Commission first reiterates its earlier statement that it is reasonable to give the Court's opinion in *UCS* v. *NRC* an interpretation no more restrictive than the language and context appear to require. As noted earlier, the Court's explanation of its holding left unclear whether the Court saw section 189a of the Atomic Energy

Act as a general bar to the use of the APA "good cause" exception in any NRC rulemaking affecting the activities of licensee, or as a less sweeping restriction, which would only apply to rulemakings which specifically amend reactor licenses. The Commission would note that Section 181 of the Atomic Energy Act states that "[t]he provisions of the Administrative Procedure Act . . . shall apply to all agency action taken under this Act," 42 U.S.C. 2231. It is well-established that Commission rulemaking is governed by the APA requirements for informal rulemaking, set out in 5 U.S.C. 533, in which the exceptions to notice and comment appear.[1] Unless the APA exceptions are withdrawn by language elsewhere in the Atomic Energy Act, it should be presumed the Congress intended the exceptions to be available. The Commission does not believe that the language of Section 189a, or any other language in the Atomic Energy Act, compels a finding that Congress intended to deprive the Commission of the rulemaking flexibility permitted by the APA. Nothing in the language of Section 189a or the legislative history specifies that in rulemaking the Commission is to be limited by the constraints of the APA, but denied the opportunity to use the flexibility provided by the APA. The Commission's interpretation of the Atomic Energy Act as not prohibiting the promulgation of a rule without notice and opportunity to comment when APA "good cause" requirements have been met has been consistent and longstanding, and is reflected in Commission practice.[2]

The interpretation on which UCS insists cannot be reconciled with the Nuclear Regulatory Commission's clear responsibility to act swiftly to protect public health and safety when it perceives that a regulated activity presents an undue risk. Under the regulatory framework established by the Atomic Energy Act, the Commission's primary means of responding to hazards is by suspending, revoking, or amending licenses. The notice and hearing requirements for such actions are set out in Section 189a(1) of the Act in the same language that applies to rulemaking dealing with the activities of licensees. Accordingly, if Congress intended the language of Section 189a(1) to be read, as the commentor would read it, as an absolute bar on the Commission's ability to promulgate regulations without delay even when there is good cause for doing so, the same bar apparently would apply to immediate action by the Commission to suspend or revoke licenses in circumstances where delay could have grave consequences. This cannot have been Congress' intention. Even the commentor recognizes that such a restriction would be fundamentally at odds with the Commission's responsibilities.[3] The Commission therefore rejects their interpretation of Section 189[a] as overriding the APA good cause exception and requiring prior notice and comment in all Commission licensing and rulemaking activities, regardless of circumstances.

The language the commenter cites from *UCS* v. *NRC that* "[w]hether characterized as a license amendment or a rulemaking, the Commission's action runs afoul of the express terms of section 189a which unequivocally requires notice and comment for both types of proceedings," *supra* at 380, must be read in the context of the Court's reference to Section 187 of the Atomic Energy Act, 42 U.S.C. 2237. Section 187 explicitly provides that "the terms and conditions of all licenses shall be subject to amendment, revision, or modification, . . . by reason of rules and regulations issued in accordance with the terms of this Act." As the Court noted:

> We express no opinion on the arguments of the parties on the question whether these amendments must be made by adjudication or whether they fall within that category of license amendments that may be made by rule under section 187 of the Atomic Energy Act, 42 U.S.C. § 2237 (1976). That is a matter for the NRC to determine in the first instance on remand. We merely hold here that notice and an opportunity to comment must be provided whatever administrative route is taken. Section 187 provides that "[t]he terms and conditions of all licenses shall be subject to amendment . . . by reason of rules and regulations *issued in accordance with the terms of this chapter* [sic]." 42 U.S.C. § 2237 (emphasis added). Since section 189(a) requires a hearing "in any proceeding for the issuance . . . of rules and regulations dealing with the activities of licensees," id. § 2239(a), a license amendment effected pursuant to section 187 but without notice and comment would not be "issued in accordance with the terms of this chapter." *Id.*

In order to comply with the Court's decision, 10 CFR 2.804 of the final rule provides for prior notice and comment whenever a rulemaking would specifically amend reactor licenses. However, as noted earlier, the Commission believes it is reasonable to give the Court's opinion an interpretation no more restrictive than the language and context requires.

Any reading of Section 189a, which interferes with the Commission's ability to take immediate action affecting the activities of NRC licensees, whether by order or by rulemaking, when safety requires it, is contrary to the intent of Congress. A limitation on use of APA "good cause" exception clearly has the potential to interfere with the Commissions safety responsibilities and therefore should be interpreted narrowly. The existence of the other mechanisms cited by the commenter that would enable the Commission to act quickly in the event of a safety emergency is not a sufficient rationale to deny the Commission the availability of all mechanisms provided by law, such as the use of the APA exceptions to notice and comment rulemaking.

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[1] *See, e.g. Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519 (1978).

[2] For example, see the following instances where the Commission has invoked the APA exceptions to notice and comment rulemaking: Amendment to Definition of Production Facility, 26 FR 4989 (June 8, 1961); Siting of Reprocessing Plants and Related Waste Management Facilities, 36 FR 5411 (March 23, 1971); Prohibition of Site Preparation and Related Activities, 37 FR 5745 (March 21, 1972); Exemption for Facilities Processing Irradiated Materials Containing Limited Quantities of Special Nuclear Materials, 39 FR 4871 (February 8, 1974); Application of Certain Cost—Benefit Analysis Requirements of Appendix I to Certain Nuclear Power Plants, 40 FR 40816 (September 4, 1975); Codes and Standards for Nuclear Power Plants, 41 FR 23831 (June 14, 1976); Revocation of Certain Reporting Requirements, 43 FR 49175 (October 25, 1978); Amendment to Definition of Basic Components, 43 FR 48621 (October 10, 1978); Domestic Licensing Proceedings; Modified Adjudicatory Procedures, 44 FR 65050 (November 9, 1979); Packaging of Radioactive Materials for Transport and Transportation of Radioactive Materials Under Certain Conditions, 44 FR 63083 (November 2, 1979); Physical Protection of Irradiated Reactor Fuel in Transit, 44 FR 34466 (June 15, 1979); Emergency Planning and Preparedness for Production and Utilization Facilities, 46 FR 63031 (December 30, 1981); Commission Review Procedures for Power Reactor Construction Permits and Operating Licenses 47 FR 40535 (September 15, 1982); Filing of Copies of Changes to Emergency Plans and Procedures, 47 FR 57670 (December 29, 1982).

[3] The Union of Concerned Scientists states in its comments that the Commission retains authority to take immediate safety action, but apparently believes that language in Section 189a authorizing immediately effective license amendments that involve "no significant hazards consideration" gives the Commission its sole power to act immediately to protect safety. This language was not included in the 1954 statute and did not appear until the 1962 amendments. Thus, UCS's approach implies that prior to 1962 the Commission had no power at all to take immediate safety action affecting licensees and that after 1962, Congress allowed such action only through the device of amending licenses, even if a temporary license suspension would be more appropriate. This approach is contradictory to the emphasis on safety and flexibility apparent throughout the Act, its legislative history, and longstanding Commission practice prior to 1962. A more reasonable approach which the Commission adopts, is that Congress intended from the beginning that the APA exceptions for immediately effective action should be available to the Commission and were not to be overridden by Section 189.

On a separate matter, UCS also objected to a provision currently in 10 CFR 2.804 which allows the Commission to use means of providing notice of proposed rulemaking other than publication in the **Federal Register**. Section 2.804(a) provides that:

> when the Commission proposes to adopt, amend, or repeal a regulation it will cause to be published in the **Federal Register** a notice of proposed rulemaking unless all persons subject to the notice are named and either personally served or otherwise have actual notice in accordance with law.

According to the commenter, Section 189a of the Atomic Energy Act requires the Commission to provide a notice and comment hearing to any person whose interest may be affected by the proceeding. Because this could include all members of the public affected by the proceeding, the commenter argues that it is misleading to suggest that the Commission could avoid **Federal Register** publication by attempting personal service of all affected members of the public. In addition, the commenter asserts that the provision would be illegal if the Commission intends to implement the rule by giving notice only to the licensees governed by particular rules.

This provision is within the permissible scope of 5 U.S.C. 552(a), is not an issue that was addressed in *USC* v. *NRC*, and does not fall within the ambit of this rulemaking. Therefore, this provision is unaffected by this rulemaking and is retained as part of Commission regulations.

Another commenter, (Yankee Atomic) writing in support of the rule, stated that the notice and comment requirements of Section 4 of the Administrative Procedure Act must be followed whenever a Commission rulemaking ". . . changes existing rights and obligations . . ." for licensees. The basis for this statement, and the source of the quoted material, is the decision in *Lewis—Mota* v. *Secretary of Labor*, 469 F.2d 478, 482 (2d. Cir. 1972). In response, the Commission reiterates that any limitations on the use of the APA exceptions from notice and comment inferred from *UCS* v. *NRC* only apply to the kind of rulemaking under review in that case, i.e. rules that specifically amend reactor licenses. Under the final rule, the Commission can avail itself of the APA exemptions, if the requisite criteria are met, for any other rulemakings even if they do affect the "rights and obligation" of licensees. The case cited by the commenter, *Lewis-Mota* v. *Secretary of Labor*, focused on an application of the APA exception from notice and comment rulemaking for *interpretative* rules. The issue in the case was whether the particular rule was a "substantive" rule or an "interpretative" rule. The phrase cited by the commenter was made in the context of determining whether the rule was a "substantive" rule, i.e., whether it "changes existing rights and obligations." In applying the exemptions contained in Section 4 of the APA, the Commission will follow all applicable law, including judicial decisions, in determining whether a rule is an interpretative rule or a substantive rule as a part of its determination concerning what rulemaking procedures are applicable.

Finally, one commenter (Middle South Services), although supporting the rule, recommended that 10 CFR 2.805 be amended to ensure that public participation in Commission rulemaking is of a "timely" fashion. The Commission does not believe that it is necessary to amend Section 2.805 to include the word "timely." Each Commission rulemaking establishes appropriate requirements for timely participation.

III. Final Rule

Section 2.804(d). This section provides for Commission discretion to invoke, in appropriate situations, the APA exceptions to notice and comment rulemaking as permitted by law. Under the final rule, notice and comment would not be mandatory in Commission rulemaking within the scope of section 553 of the U.S. Code, when they involve interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice, or where the Commission for good cause finds that notice and comment are impracticable, unnecessary or contrary to the public interest. However, the use of such exceptions is not available when notice and comment are required by statute. The Commission interprets the *UCS* v. *NRC* case as establishing such a limitation on the use of the APA exceptions only for rules which specifically amend reactor licenses. The exceptions to notice and comment will be available for use, in appropriate situations for all other rules, including those that deal with the activities of licensees.

Section 2.804(e). This section provides for post-promulgation comment for all rules issued on the basis of the good cause exception when prior notice and comment was "impracticable" or "contrary to the public interest." Section 2.804(e) will also provide a post-promulgation comment opportunity for policy statements and interpretative rules that are issued without prior notice and comment. However, this opportunity for post-promulgation comment on interpretive rules and policy statement is not required if the Commission finds that such procedures would serve no public interest or would be so burdensome as to outweigh any forseeable gain.

Section 2.804(f). This section provides for a Commission evaluation of all significant issues raised by the comments received under the post-promulgation procedures of § 2.804(e).

Section 2.805(a). This section has been revised to reflect the revisions made to § 2.804.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. It merely clarifies and affirms existing Commission practice on utilizing the statutory exceptions to notice and comment rulemaking contained in Section 4 of the Administrative Procedure Act, 5 U.S.C. 553.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and

reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

Subpart H—Rulemaking

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

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Section 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.300–2.309 also issued under Pub. L. 97–415, 96 Stat. 2071 (42 U.S.C. 2133). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Sections 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91–580, 84 Stat. 1437 (42 U.S.C. 2135).

2. In § 2.604, paragraph (a) is revised and new paragraphs (d), (e), and (f) are added to read as follows:

§ 2.804 Notice of proposed rulemaking.

(a) Except as provided by paragraph (d) of this section, when the Commission proposes to adopt, amend, or repeal a regulation, it will cause to be published in the **Federal Register** a notice of proposed rulemaking, unless all persons subject to the notice are named and either are personally served or otherwise have actual notice in accordance with law.

. . . . .

(d) The notice and comment provisions contained in paragraphs (a), (b), and (c) of this section will not be required to be applied—

(1) To interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(2) When the Commission for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest, and are not required by statute. This finding, and the reasons therefor, will be incorporated into any rule issued without notice and comment for good cause.

(e) The Commission shall provide for a 30-day post-promulgation comment period for—

(1) Any rule adopted without notice and comment under the good cause exception on paragraph (d)(2) of this section where the basis is that notice and comment is "impracticable" or "contrary to the public interest."

(2) Any interpretative rule, or general statement of policy adopted without notice and comment under paragraph (d)(1) of this section, except for those cases for which the Commission finds that such procedures would serve no public interest, or would be so burdensome as to outweigh any foreseeable gain.

(f) For any post-promulgation comments received under paragraph (e) of this section, the Commission shall publish a statement in the **Federal Register** containing an evaluation of the significant comments and any revisions of the rule or policy statement made as a result of the comments and their evaluation.

3. In § 2.805, paragraph (a) is revised to read as follows:

§ 2.805 Participating by interested persons.

(a) In all rulemaking proceedings conducted under the provisions of § 2.804(a), the Commission will afford interested persons an opportunity to participate through the submission of statements, information, opinions, and arguments in the manner stated in the notice. The Commission may grant additional reasonable opportunity for the submission of comments.

. . . . .

Dated at Washington, D.C., this 28th day of March 1985.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 85–7848 Filed 4–1–85; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 204, 208, and 217

[Docket No. R–0542]

Regulations D, H, and Q; Repurchase Agreement Involving Shares of a Money Market Mutual Fund Whose Portfolio Consists Wholly of United States Treasury and Federal Agency Securities; State Member Bank Purchase of Shares of a Money Market Mutual Fund Whose Portfolio Consists Wholly of Securities That the Bank May Purchase Directly

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final interpretation.

SUMMARY: The Board of Governors has issued an interpretation of the definition of deposit in Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) and Regulation Q—Interest on Deposits (12 CFR Part 217) to exclude from the definition of the term "deposit" repurchase agreements involving shares of a money market mutual fund whose portfolio consists wholly of United States Treasury and federal agency securities. The Board of Governors has also issued an interpretation to Regulation H—Membership of State Banking Institutions in the Federal Reserve System (12 CFR Part 208) to permit state member banks to purchase shares in a money market mutual fund whose portfolio consists entirely of assets that the bank may purchase directly.

EFFECTIVE DATE: The reserve computation period beginning June 4, 1985.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Associate General Counsel (202/452–3430), or Elaine M. Boutilier, Attorney (202/452–2418), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

SUPPLEMENTARY INFORMATION:

List of Subjects

12 CFR Part 204

Banks, banking, Currency, Federal Reserve System, Penalties, Reporting requirements.

12 CFR Part 208

Banks, banking, Federal Reserve System; Reporting requirements, Securities.

12 CFR Part 217

Advertising, Banks, banking, Federal Reserve System, Foreign banking.

Pursuant to its authority under sections 9 and 19 of the Federal Reserve Act (12 U.S.C. 321 *et seq.* and 461 *et*

seq.), the Board amends 12 CFR Part 204, Regulation D, 12 CFR Part 208, Regulation H and 12 CFR Part 217, Regulation Q as follows:

PART 204—[AMENDED]

1. Regulation D (12 CFR Part 204) is amended by adding a new § 204.124 as follows:

§ 204.124 Repurchase agreement involving shares of a money market mutual fund whose portfolio consists wholly of United States Treasury and Federal agency securities

(a) The Federal Reserve Act, as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96–221) imposes Federal reserve requirements on transaction accounts and nonpersonal time deposits held by depository institutions. The Board is empowered under the Act to determine what types of obligations shall be deemed a deposit (12 U.S.C. 461). Regulation D—Reserve Requirements of Depository Institutions exempts from the definition of "deposit" those obligations of a depository institution that arise from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States government or any agency thereof that the depository institution is obligated to repurchase (12 CFR 204.2(a)(1)(vii)(B)). A parallel exemption in Regulation Q—Interest on Deposits exempts from the definition of "deposit" obligations that evidence an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the bank is obligated to repurchase (12 CFR 217.1(f)(2)).

(b) The National Bank Act provides that a national bank may purchase for its own account investment securities under limitations and restrictions as the Comptroller may prescribe (12 U.S.C. 24, ¶ 7). The statute defines investment securities to mean marketable obligations evidencing indebtedness of any person in the form of bonds, notes, and debentures. The Act further limits a national bank's holdings of any one security to no more than an amount equal to 10 percent of the bank's capital stock and surplus. However, these limitations do not apply to obligations issued by the United States, general obligations of any state and certain obligations of federal agencies. In addition, generally a national bank is not permitted to purchase for its own account stock of any corporation. These restrictions also apply to state member banks (12 U.S.C. 335).

(c) The Comptroller of the Currency has permitted national banks to purchase for their own accounts shares of open-end investment companies that are purchased and sold at par (i.e., money market mutual funds) provided the portfolios of such companies consist solely of securities that a national bank may purchase directly (Banking Bulletin B–83–58). The Board of Governors has permitted state member banks to purchase, to the extent permitted under applicable state law, shares of money market mutual funds ("MMMF") whose portfolios consist solely of securities that the state member bank may purchase directly (12 CFR 208.123).

(d) The Board has determined that an obligation arising from a repurchase agreement involving shares of a MMMF whose portfolio consists wholly of securities of the United States government or any agency thereof [1] would not be a "deposit" for purposes of Regulations D and Q. The Board believes that a repurchase agreement involving shares of such a MMMF is the functional equivalent of a repurchase agreement directly involving United States government or agency obligations. A purchaser of shares of a MMMF obtains an interest in a *pro rata* portion of the assets that comprise the MMMF's portfolio. Accordingly, regardless of whether the repurchase agreement involves United States government or agency obligations directly or shares in a MMMF whose portfolio consists entirely of United States government or agency obligations, an equitable and undivided interest in United States and agency government obligations is being transferred. Moreover, the Board believes that this interpretation will further the purpose of the exemption in Regulations D and Q for repurchase agreements involving United States government or federal obligations by enhancing the market for such obligations.

PART 208—[AMENDED]

2. Regulation H (12 CFR Part 208) is amended by adding a new § 208.123 as follows:

§ 208.123 Purchase of shares of a money market mutual fund whose portfolio consists wholly of securities that the member bank may purchase directly.

(a) The National Bank Act provides that a national bank may purchase for its own account investment securities under limitations and restrictions as the Comptroller may prescribe (12 U.S.C. 24, ¶ 7). The statute defines investment securities to mean marketable obligations evidencing indebtedness of any person in the form of bonds, notes, and debentures. The Act further limits a national bank's holdings of any one security to no more than an amount equal to 10 percent of the bank's capital stock and surplus. However, these limitations do not apply to obligations issued by the United States, general obligations of any state and certain obligations of federal agencies. In addition, with certain limited exceptions, a national bank is not permitted to purchase for its own account stock of any corporation. These restrictions also apply to state member banks (12 U.S.C. 335).

(b) The Comptroller of the Currency has permitted national banks to purchase for their own accounts shares of open-end investment companies that are purchased or sold at par (i.e., money market mutual funds) provided the portfolios of such companies consist solely of securities that a national bank may purchase directly.

(c) The Board of Governors has determined to permit state member banks to purchase shares of money market mutual funds ("MMMF") whose portfolios consist solely of securities that the state member bank may purchase directly. The purchase by a state member bank of shares of such a MMMF is functionally equivalent to the bank's purchase of the securities that comprise the portfolio of the MMMF. A bank that purchases shares of a MMMF acquires an undivided equitable ownership interest in the securities that comprise the MMMF portfolio. Moreover, purchase of shares of such a MMMF would not result in speculative risks or wide fluctuations because the bank currently may purchase directly the assets comprising the MMMF portfolio and because of the rules of the Securities and Exchange Commission concerning MMMFs. Indeed, by providing greater scope for diversification, particularly for smaller banks, allowing the purchase of such MMMF shares may contribute to lower risk than purchase by the state member bank of the assets comprising the MMMF portfolio directly.

(d) The Board has adopted the following conditions, similar to those adopted by the Comptroller of the Currency for national banks, to ensure that in those cases in which a state member bank may purchase securities in limited amounts, the bank does not

[1] The term "United States government or any agency thereof" as used herein shall have the same meaning as in § 204.2(a)(1)(vii)(B) of Regulation D, 12 CFR 204.2(a)(1)(vii)(B).

exceed the limitations indirectly through the purchase of MMMF shares:

(1) The fund is an open-end investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and Securities Act of 1933 or a privately offered fund sponsored by an affiliated commercial bank.[2]

(2) When the fund's assets consist solely of and are limited to obligations that are eligible for investment without limit by a state member bank, there is no limit on the bank's investment. But where the fund contains securities subject to the bank's investment or lending limitations, investment in the MMMF may not exceed these investment or lending limitations. Where the state member bank purchases shares in more than one fund containing securities subject to the bank's investment or lending limitations, the bank's aggregate investment in such funds may not exceed these investment or lending limitations. Where the state member bank purchases such securities directly, the aggregate maximum allowable investment in such MMMF(s) is reduced accordingly.

(3) The fund's shares are bought and sold at par (i.e., the fund is a money market fund).

(4) The shareholder has an equitable and equal proportionate undivided interest in the underlying assets of the fund.

(5) Shareholders are shielded from personal liability for acts or obligations of the fund.

(6) The bank's investment policy, as formally approved by its board of directors, specifically provides for such investments; prior approval of the board of directors is obtained for initial investments in specific funds and recorded in the official board minutes; and procedures, standards, and controls for the implementation of such investments are established.

(7) The bank conducts reviews at least monthly of its holdings of investment company shares to ensure that such investments are in accordance with the foregoing principles.

[2] This provision concerning a privately offered fund sponsored by an affiliated commercial bank is a limited provision applicable only to a privately sponsored fund of a subsidiary of a holding company whose shares may be purchased only by other subsidiaries of the holding company.

(e) State member banks would also be subject to any other restrictions imposed by applicable state law.

PART 217—[AMENDED]

3. Regulation Q (12 CFR Part 217) is amended by adding a new § 217.161 as follows:

§ 217.161 Repurchase agreements involving shares of a money market mutual fund whose portfolio consists wholly of United States Treasury and Federal agency securities.

(a) The Federal Reserve Act, as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96–221) imposes federal reserve requirements on transaction accounts and nonpersonal time deposits held by depository institutions. The Board is empowered under the Act to determine what types of obligations shall be deemed a deposit (12 U.S.C. 461). Regulation D—Reserve Requirements of Depository Institutions exempts from the definition of "deposit" those obligations of a depository institution that arise from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States government or any agency thereof that the depository institution is obligated to repurchase (12 CFR 204.2(a)(1)(vii)(B)). A parallel exemption in Regulation Q—Interest on Deposits exempts from the definition of "deposit" obligations that evidence an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the bank is obligated to repurchase (12 CFR 217.1(f)(2)).

(b) The National Bank Act provides that a national bank may purchase for its own account investment securities under limitations and restrictions as the Comptroller may prescribe (12 U.S.C. 24, ¶ 7). The statute defines investment securities to mean marketable obligations evidencing indebtedness of any person in the form of bonds, notes, and debentures. The Act further limits a national bank's holdings of any one security to no more than an amount equal to 10 percent of the bank's capital stock and surplus. However, these limitations do not apply to obligations issued by the United States, general obligations of any state and certain obligations of federal agencies. In addition, generally a national bank is not permitted to purchase for its own account stock of any corporation. These restrictions also apply to state member banks (12 U.S.C. 335).

(c) The Comptroller of the Currency has permitted national banks to purchase for their own accounts shares of open-end investment companies that are purchased and sold at par (i.e., money market mutual funds) provided the portfolios of such companies consist solely of securities that a national bank may purchase directly (Banking Bulletin B–83–58). The Board of Governors has permitted state member banks to purchase, to the extent permitted under applicable state law, shares of money market mutual funds ("MMMF") whose portfolios consist solely of securities that the state member bank may purchase directly (12 CFR 208.123).

(d) The Board has determined that an obligation arising from a repurchase agreement involving shares of a MMMF whose portfolio consists wholly of securities of the United States government or any agency thereof [3] would not be a "deposit" for purposes of Regulations D and Q. The Board believes that a repurchase agreement involving shares of such a MMMF is the functional equivalent of a repurchase agreement directly involving United States government or agency obligations. A purchaser of shares of a MMMF obtains an interest in a *pro rata* portion of the assets that comprise the MMMF's portfolio. Accordingly, regardless of whether the repurchase agreement involves United States government or agency obligations directly or shares in a MMMF whose portfolio consists entirely of United States government or agency obligations, an equitable and undivided interest in United States and agency government obligations is being transferred. Moreover, the Board believes that this interpretation will further the purpose of the exemption in Regulations D and Q for repurchase agreements involving United States government or federal obligations by enhancing the market for such obligations.

By order of the Board of Governors, March 28, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–7621 Filed 4–1–85; 8:45 am]

BILLING CODE 6210–01–M

[3] The term "United States government or any agency thereof" as used herein shall have the same meaning as in § 204.2(a)(1)(vii)(B) of Regulation D, 12 CFR 204.2(a)(1)(vii)(B).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-97-AD; Amdt. 39-5027]

Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to Airbus Industrie Model A300 B2 and B4 series airplanes which requires inspections for cracking of flap beams No. 2, left and right. During fatigue tests, the flap beam developed cracks and ultimately failed. This condition can lead to flap asymmetry and create a hazardous flight condition.

EFFECTIVE DATE: May 9, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Airbus Industrie, Airbus Support Division, Centreda, Avenue Didier Daurat, 31700 Blagnac, France, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S; telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The French Civil Aviation Authority (DGAC) has issued a Consigne de Navigabilité which mandates compliance with the requirements of Airbus Industrie Service Bulletin A300-57-116.

Analyses show that cracks may occur at the bolt holes of the flap beam base members and light alloy side members. Fatigue tests proved these analyses, since the flap beam developed cracks at 43,000 simulated landings and failed in the expected locations at 48,000 simulated landings. Based on this data, the manufacturer determined that the flap beam must be inspected prior to 15,000 landings to detect cracks before failure of the beam.

The service bulletin prescribes inspections for cracking of the base steel member of the light alloy side members of the flap beams No. 2, LH and RH. The service bulletin also prescribes replacement of the flap beams if cracks exceed a specified dimension.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring the action mentioned above was published in the Federal Register on November 20, 1984 (49 FR 45755). The comment period closed on December 30, 1984, and interested persons have been afforded an opportunity to participate in the making of this amendment. Two comments were received. The manufacturer indicated that a note should be added to paragraph A. of the AD to clarify the method of measuring crack length. This has been done in the final document. The other commenter had no objections to the AD.

In addition to the change mentioned above, another paragraph has been added to the AD which allows adjustments in the inspection intervals so that the inspections can be accomplished during the operator's maintenance schedules.

It is estimated that 33 airplanes will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD is estimated to be $15,840.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Airbus Industrie Model A300 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes, certificated in all categories. To prevent flap asymmetry, within 120 days after the effective date of this AD or upon reaching 15,000 landings, whichever occurs later, accomplish the following, unless previously accomplished:

A. Inspect the base steel member and light alloy side members of the flap beams No. 2, LH and RH, for cracks, in accordance with the accomplishment instructions of Airbus Industrie Service Bulletin A300-57-116, Revision 1, dated August 27, 1983.

1. If no cracks are found, repeat the inspection at intervals not to exceed 1,700 landings.

2. If cracks are detected, repeat the inspection at intervals not to exceed 250 landings as long as crack length is 4mm or shorter. If crack length exceeds 4mm, the flap beam must be replaced before further flight.

Note.—Measurement of crack length is performed by measurement of the probe displacement (perpendicular to symmetry plane of beam) between defect indication appearance and its complete disappearance. Do not interpret the bolt hole indication as a defect indication. These two indications appear very close together because the defects originate from the bolt holes.

B. Five thousand (5,000) additional landings are permitted before performing the first of the repetitive inspections required by paragraph A.1., above, if the modification described in Airbus Industrie Service Bulletin A300-57-128, dated August 27, 1983, is incorporated, provided:

1. No cracks are detected, and

2. The number of landings accumulated is 16,700 or less.

C. Upon request of an operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of that operator, if the request contains substantiating data to justify the change for that operator.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective May 9, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on March 25, 1985.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-7744 Filed 4-1-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-NM-59-AD; Amdt. 39-5028]

Airworthiness Directives; Lockheed-California Company Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires the modification of the bleed air duct overheat sensor system and structure in the Mid-Electrical Service Center (MESC) area in Lockheed Model L-1011 series airplanes. This action is prompted by reports of clamp and duct failures in the vicinity of the MESC area during flight. This condition could result in total loss of electrical power and, as a consequence, would result in the loss of communications, flight instruments, control systems, and environmental systems.

DATES: Effective May 9, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Edward S. Chalpin, Aerospace Engineer, Systems & Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) requiring the modification of the bleed air duct overheat sensor system and structure in the Mid-Electrical Service Center (MESC) area in Lockheed Model L-1011 series airplanes was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on August 8, 1984 (49 FR 31703). The comment period for the proposal closed September 28, 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. Seven comments were received.

Three commenters questioned whether the Hamilton Standard Bulletin 21-1113, referenced in Lockheed Service Bulletin 093-21-214, was considered part of the structural modification required by the proposed airworthiness directive. They objected to reworking the seals in the flow control valve because they considered that the leakage of hot air, both through the valve motor seal and the vent hole in the valve housing, was insignificant. The FAA has not included the valve rework as part of the requirements of this AD.

One commenter objected to the adoption of Lockheed Service Bulletin 093-21-222, which calls for the installation of structural barriers between duct channels. The commenter's reasoning was based upon the belief that the downstream area where the modification is installed is not as critical as the upstream area. The commenter asserted that adequate protection was afforded by the added flow sensors and thermal detectors in the upstream area. The FAA disagrees. The structural modification called for in Lockheed Service Bulletin 093-21-222 provides for barriers which would help inhibit hot air cross-flow between channels and the activation of the incorrect overheat indicator. Though more overheat or flow sensors would be present upstream of the flow control valves, the barriers would provide for better isolation of the duct channels and, thus, better detection of leaks overall.

Another commenter requested that the FAA incorporate into the final AD an interim inspection of the ducts, fittings, and clamps prior to the installation of the modifications. The FAA disagrees. Although an interim inspection might aid in detecting loose clamps or imminent fitting or duct failures, it cannot assure the operator of an intact system in the future. The FAA considers the compliance time of 3,600 flight hours before installation of the required modification to be appropriate to safeguard the MESC from duct and clamp failures, since the modification will include a more extensive detection system and structural isolation barriers.

Finally, four commenters felt that the compliance time was overly restrictive. The FAA has determined that the severity of the problem justifies the compliance time of 3,600 flight hours. Kits are presently available from the manufacturer.

It is estimated that 91 U.S. registered airplanes will be affected by this AD; that it will take a total of 40 manhours per airplane to accomplish the required actions; and that the average labor cost will be $40 per manhour. The cost of modification parts is estimated to be $7,330 per aircraft.

Based on these figures, the total cost impact of this AD on the U.S. fleet is estimated to be $812,630.

For these reasons, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Model L-1011 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

After careful review of the available data, including the comments noted above, the FAA had determined that air safety and the public interest require the adoption of the proposed rule.

List of Subjects in CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L-1011 series airplanes, serial numbers -1002 to and including -1221 (unless Lockheed Service Bulletin 093-21-164 dated November 2, 1983, or later FAA approved revisions has been accomplished), certificated in all categories.

Compliance required within the next 3,600 flight hours after the effective date of this AD, unless previously accomplished. To minimize the potential for unrecoverable loss of all AC/DC electrical power, including the emergency bus, accomplish the following:

A. Extend and reroute Fenwall Thermal Overheat Sensors below Mid-Electrical Service Center (MESC) floor and remove excess flow sensors and modify the structure below the MESC floor as outlined in the Accomplishment Instructions of Lockheed Service Bulletin 093-21-214, dated December 9, 1983, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Extend barrier in the MESC area in accordance with Lockheed Service Bulletin 093-21-222, dated January 9, 1984, or later revisions approved by the Manager, Los

Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment become effective May 9, 1985.

(Sections 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on March 25, 1985.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-7745 Filed 4-1-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-34-AD; Amdt. 39-5025]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends an existing airworthiness directive (AD) which requires inspections of the fuselage lower skin in the immediate area surrounding the VHF antenna, on certain McDonnell Douglas DC-9 series airplanes. This amendment reduces the threshold to 2,000 landings. This amendment is prompted by a report of a 15-inch crack in the skin adjacent to the mounting holes for the VHF antenna on an airplane with 5,450 landings. If allowed to go undetected, this type of crack could result in rapid depressurization of the airplane.

DATES: Effective April 15, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kyle L. Olsen, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION: AD 85-03-58, Amendment 39-4994 (50 FR 4637; February 1, 1985), requires initial visual inspections at 150 landings, and repetitive visual inspections at 250 or 1,000 landings, to detect cracks in the fuselage skin adjacent to or under the lower forward VHF antenna on DC-9 series airplanes with 10,000 or more landings.

After Amendment 39-4994 was issued, one operator reported finding a 15-inch crack along the left hand side of the VHF antenna mounting holes, and cracks in both sides of the support intercostal along the length of the antenna base. This airplane had a total of 5,450 landings.

Since this situation is likely to exist or develop on other airplanes of the same type design, this amendment is being issued to require inspection for cracks of the lower fuselage skin, forward and aft of the VHF antenna, on all DC-9 airplanes with 2,000 or more landings. This reduced threshold is considered necessary to provide an adequate level of safety in view of crack growth rate scatter encountered in service.

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

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

List of Subjects 14 CFR Part 39

Aviation Safety, Aircraft

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending AD 85-03-08, Amendment 39-4994 (50 FR 4637, February 1, 1985) by revising the first phrase of paragraph A. to read as follows:

"A. For airplanes with 2,000 or more landings, * * *"

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective April 15, 1985.

(Sections 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on March 25, 1985.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-7746 Filed 4-1-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-138-AD; Amdt. 39-5026]

Airworthiness Directive; Sperry SPZ-7000 Digital Automatic Flight Control System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which imposes a restriction on use of the Sperry SPZ-7000 Digital Automatic

Flight Control Systems in the instrument landing system (ILS) mode. The AD is prompted by reports of improper glide slope tracking. This condition, if not corrected, can result in premature contact with the ground and loss of aircraft.

DATES: Effective April 15, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Sperry Flight Systems, Avionics Division, P.O. Box 29000, Phoenix, Arizona 85038. This information may also be examined at, Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Thompson, Aerospace Engineer, Systems & Equipment Section, ANM-173W, FAA, Northwest Mountain Region, Western Aircraft Certification Office, 15000 Aviation Blvd., Hawthorne, California; telephone (213) 536-6375. Mailing Address: FAA, Northwest Mountain Region, Western Aircraft Certification Office, ANM-173W, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

SUPPLEMENTARY INFORMATION: There have been reports that a Sperry SPZ-7000 Digital Automatic Flight Control System can provide incorrect glide slope tracking during an autopilot coupled approach in the instrument landing system (ILS) mode, resulting in excessive departure from the beam center.

When the ILS mode is engaged above the normal valid radio altimeter range (2,000 feet), the FZ-700 computer P/N 7003183-901/902 may allow ILS signal gain reduction too early on the descent and provide poor or no glide slope tracking; this can result in premature contact with the ground.

This condition is known to exist on, but may not be limited to, the following installations:

(a) Sikorsky Model S-76A helicopters modified in accordance with Supplemental Type Certificate (STC) No. SH2218NM.

(b) S.N.I.A.S. Model AS-365N helicopters modified in accordance with STC No. SH2215NM.

Since this condition is likely to exist on other automatic flight control systems of the same type design, this airworthiness directive requires the use of any manual autopilot control mode except the ILS mode until below 2,000 feet radio altitude, after which time, the autopilot/flight director ILS mode can be engaged.

This restriction is to remain in effect until an approved modification is incorporated in the Sperry SPZ-7000 AFCS FZ-700 computer P/N 7003183-901/902.

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

The 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 Order 12291 with respect to this rule since the rule must be immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation 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

Aviation safety; Aircraft, Air transportation, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Sperry Flight Systems, Avionics Division: Applies to Sperry Model SPZ-7000 with FZ-700 computer Part No. 7003183-901 or 7003183-902 installed. The SPZ-7000 installation is known to exist on, but may not be limited to, Sikorsky Model S-76A helicopters modified in accordance with Supplementary Type Certificate (STC) No. SH2218NM, and S.N.I.A.S. Model AS-365N helicopters modified in accordance with STC No. SH2215NM.

Compliance is required within ten (10) days after the effective date of this AD, unless previously accomplished.

To prevent improper (dangerous) excursions from the glide slope during instrument landing system (ILS) approach, accomplish the following:

A. Install a placard adjacent to the autopilot/flight director mode selector in full view of pilot, stating "DO NOT ENGAGE ILS MODE ABOVE 2000 FEET AGL DURING ILS APPROACH."

B. Installation of FZ-700 computers, P/N 7003183-902 with mode "E" incorporated, on Sikorsky S-76A helicopters terminates the requirement of paragraph A. of this AD.

C. Alternate modifications or other actions which provide an acceptable level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

This amendment becomes effective April 15, 1985.

(Sections 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on March 25, 1985.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-7747 Filed 4-1-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 40802-4102]

Foreign Trade Statistics; Amendments to the Regulations

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Foreign Trade Statistics Regulations (FTSR) to eliminate the requirement for filing Shipper's Export Declarations (SEDs) for shipments from the United States and Puerto Rico to the Northern Mariana Islands and to reflect the transfer of the Panama Canal to the Republic of Panama.

EFFECTIVE DATE: April 2, 1985.

FOR FURTHER INFORMATION CONTACT: Barry Cohen, Chief, Foreign Trade Division, Bureau of the Census, (301) 763-5342.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking published in the **Federal Register** of September 24, 1984, (49 FR 37425) proposed amending the FTSR to eliminate the requirement for filing SEDs for shipments from the United States and Puerto Rico to the Northern Mariana Islands and to reflect the transfer of the Panama Canal to the Republic of Panama.

On January 9, 1978 the Northern Mariana Islands entered into a political union with the United States, *The*

Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America.

Public Law 94–241, 48 U.S.C. 1681 (hereinafter referred to as the "Covenant"). Section 502(a) of the Covenant states that Federal laws and regulations applicable to Guam and the several states should apply to the Northern Mariana Islands.

On June 1, 1968 the Government of Guam began collecting statistical documentation on merchandise imported into Guam in preparation for implementing its program for compiling Guam's trade statistics. Therefore, effective March 21, 1970, it was decided to eliminate the requirement for filing SEDs for shipments to Guam. At the same time SED filing requirements for shipments to certain "United States Possessions" (except for shipments to American Samoa and the Virgin Islands of the United States) were eliminated. On September 28, 1976 SED filing requirements for shipments to American Samoa also were eliminated.

Section 370.4 of the Export Administration Regulations was amended in October 1979 exempting shipments to the Trust Territory of the Pacific Islands (that is, the Caroline, Marshall, and Northern Mariana Islands) from licensing requirements.

Section 603(c) of the Covenant provides that imports from the Northern Marians Islands shall be subject to the same treatment as import from Guam; therefore, Customs Service Decision 83–51 of February 22, 1983, accords to imports into the United States from the Northern Mariana Islands duty-free treatment for certain merchandise as set forth in the General Headnotes and Rules for Interpretation of the Tariff Schedules of the United States.

Accordingly, this amendment is not at variance with the Convenant or procedures of other agencies, but provides for consistency in the reporting of both import and export trade data of the Northern Mariana Islands.

On October 1, 1979 the United States transferred jurisdiction over the Panama Canal Zone to the Republic of Panama. To reflect this transfer, which incorporates the Canal Zone with the Republic of Panama, the Foreign Trade Statistics Regulations (FTSR) are amended so that all requirements for SEDs to foreign countries apply, without specifying, to the Republic of Panama. Previously, shipments from the United States to the Panama Canal Zone Government and Panama Canal Company for their exclusive use were exempt from SED filing requirements because the Canal Zone was under the sole jurisdiction of the United States Government.

Because these changes affected the reporting requirements, interested persons were given 60 days from the date of publication in the **Federal Register** (September 24 to November 23, 1984) to submit their comments regarding the notice.

Discussion of Major Comments

No comments were received.

Regulatory Impact Analysis and Information Collection

These amendments do not constitute a major rule as defined in Executive Order 12291. Pursuant to the provision of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), the General Counsel of the Department of Commerce certified to the Small Business Administration that these amendments will not have a significant economic effect on a substantial number of small entities. Further, these amendments impose no additional reporting burden on the public. The collection of this information has been approved by the Office of Management and Budget under Control numbers 0607–0001, 0607–0018, 0607–0150, and 0607–1052.

This Final Rule is being made effective immediately because it eliminates the requirement for filing SEDs for shipments from the United States and Puerto Rico to the Northern Mariana Islands.

List of Subjects in 15 CFR Part 30

Economic statistics, foreign trade, Reporting and recordkeeping requirements.

Amendment to the Regulations

The Foreign Trade Statistics Regulations (15 CFR Part 30) are amended as set forth below.

PART 30—FOREIGN TRADE STATISTICS

Section 30.1 is amended by revising paragraph (a)(1) to read as follows:

§ 30.1 General statement of requirement for Shipper's Export Declarations.

(a) * * *

(1) To foreign countries or areas including Trust Territories under U.S. administration, with the exception of the Northern Mariana Islands, and to Foreign Trade Zones located in foreign countries or areas from any of the following: * * *

* * * * *

(Title 13, United States Code, secs. 301–307; and Title 5, United States Code, sec. 301; Reorganization Plan No. 5 of 1950, Department of Commerce Organization Order No. 35–2A, August 4, 1975, 40 FR 42765)

John G. Keane,

Director, Bureau of the Census.

January 4, 1985.

I Concur.

J.M. Walker, Jr.,

Assistant Secretary, Department of the Treasury.

February 15, 1985.

[FR Doc. 85–7794 Filed 4–1–85; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 for use in Externally Applied Drugs and Cosmetics; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administraton (FDA) is postponing the closing date for the provisional listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 for use as color additives in externally applied drugs and cosmetics. The new closing date will be June 3, 1985. This postponement will provide additional time for determining the applicability of the statutory standard for the listing of noningested color additives to the results of the scientific investigations of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37.

DATES: Effective April 2, 1985, the new closing date for D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 will be June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Gerad McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of April 2, 1985, for the provisional listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 for use in externally applied drugs and cosmetics by a final rule published in the **Federal Register** of February 1, 1985 (50 FR 4641). The agency had previously extended the closing dates for these color additives on several occasions. For a full procedural history of the provisional

listing of these color additives, see 48 FR 38814 for D&C Red No. 19 and D&C Red No. 37 and 48 FR 44774 for D&C Orange No. 17.

FDA extended the closing date for the provisional listing of these color additives on these occasions to permit consideration of the scientific and legal aspects of the submissions of the petitioner, the Cosmetic, Toiletry and Fragrance Association, Inc., in support of the safety of the external uses of these color additives. Although D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 have been shown to be animal carcinogens upon ingestion, somewhat different questions are raised by the request to list these color additives for noningested use. It has taken more time to review the data involved in resolving these questions than the agency anticipated. Additional time is still needed to determine the applicability of the statutory standard for the listing of color additives for noningested use to D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37. The regulations set forth below will postpone the April 2, 1985 closing date for the provisionally listed use of these color additives until June 3, 1985. The postponement will also provide additional time for the preparation and the publication of **Federal Register** documents setting forth the final decision on the petitions for the permanent listing of these color additives for external use. The continued use of these color additives in the externally applied products for the short time needed for the adequate review of the data and for the preparation of **Federal Register** documents that will announce the decision on these color additives will not pose a hazard to the public health.

FDA has received a petition from Public Citizen Health Research Group that asks the agency to ban the use of these color additives. This petition is currently under review. This postponement will provide additional time for consideration of this petition.

Because of the short time until the April 2, 1985 closing date, FDA concludes that notice and public procedure on these amendments are impracticable, and that good cause exists for issuing the postponement as a final rule. This final rule will permit the uninterrupted use of these color additives until June 3, 1985. To prevent any interruption in the provisional listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 and in accordance with 5 U.S.C. 553(d)(1) and (3), this final rule is being made effective April 2, 1985.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706(b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376(b), (c), and (d)) and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

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

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives*, by revising the closing date for "D&C Orange No. 17," "D&C Red No. 19," and "D&C Red No. 37" in paragraph (b) to read "June 3, 1985."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing*, by revising the closing date for "D&C Orange No. 17," "D&C Red No. 19," and "D&C Red No. 37" in paragraph (d) to read "June 3, 1985."

Effective date. This final rule shall be effective April 2, 1985.

(Secs. 701, 706(b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376(b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 476, note))

Dated: March 18, 1985.

Joseph P. Hile,

Acting Commissioner for Regulatory Affairs.

[FR Doc. 85–7768 Filed 4–1–85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of FD&C Red No. 3 and of FD&C Yellow No. 5 in Cosmetics and Externally Applied Drugs and of Their Lakes in Food and Ingested Drugs; Provisional Listing of FD&C Yellow No. 6 for Use in Food, Drugs and Cosmetics; Provisional Listing of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 in Drugs and Cosmetics; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in coloring cosmetics and externally applied drugs and of the lakes of these color additives for use in coloring food and ingested drugs; of FD&C Yellow No. 6 for use in food, drugs, and cosmetics; and of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 for use in drugs and cosmetics. The new closing date for the provisional listing of all of these color additives will be June 3, 1985. This postponement will provide additional time for the determination of the applicability of the statutory standard for the listing of color additives to the results of the scientific investigations of FD&C Red No. 3, FD&C Yellow No. 5, FD&C Yellow No. 6, D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36.

DATES: Effective April 2, 1985, the new closing date for FD&C Red No. 3 and its lakes, FD&C Yellow No. 5 and its lakes, FD&C Yellow No. 6, D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 will be June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Gerad McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of April 2, 1985, for the provisional listing of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in cosmetics and in externally applied drugs and for the provisional listing of the use of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5 in food and ingested drugs; of FD&C Yellow No. 6 for use in foods, drugs, and cosmetics; and of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 for use in drugs and cosmetics by a rule published in the **Federal Register** of February 1, 1985 (50 FR 4642). The agency had previously extended the closing dates for these color additives on several occasions. For a full procedural history of the provisional listing of these color additives, see 48 FR 45237 for FD&C Red No. 3, 48 FR 45760 for FD&C Yellow No. 5, 49 FR 13344 for FD&C Yellow No. 6, 48 FR 42807 for D&C Red No. 8 and D&C Red No. 9, 48 FR 44773 for D&C Red No. 33, and 49 FR 38935 for D&C Red No. 36.

FDA extended the closing dates for the provisional listing of each of these color additives and of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5 to permit the consideration of the scientific and legal aspects of the data concerning the safety of their provisionally listed uses. FDA expected that the current

closing dates would provide time for the preparation and publication of appropriate regulations in the **Federal Register** regarding the final decision on the petitions for the permanent listing of the aforementioned uses of these color additives and of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5.

The review of the data relevant to the provisionally listed uses of FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes, FD&C Yellow No. 6, D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 has required more time than anticipated, however. Additional time is still needed to determine the applicability of the statutory standard for listing color additives to D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, D&C Red No. 36, and FD&C Yellow No. 6, as well as to FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes.

This postponement will provide additional time for the preparation and publication of the appropriate **Federal Register** documents setting forth the decision on the petitions for the permanent listing of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in coloring cosmetics and externally applied drugs and of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in coloring food and ingested drugs; for the permanent listing of FD&C Yellow No. 6 for use in food, drugs, and cosmetics; and for the permanent listing of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 for use in coloring drugs and cosmetics. The continued use of these color additives for the short time needed for a fully coordinated review of the data and for the preparation of the **Federal Register** documents will not pose a hazard to the public health.

FDA has received a petition from Public Citizen Health Research Group that asks the agency to ban the use of these color additives (Docket No. 84P-0429). The petition is currently under review. This postponement will provide additional time for consideration of this petition.

Because of the short time until the April 2, 1985 closing date, FDA concludes that notice and public procedure on these amendments are impracticable, and that good cause exists for issuing this postponement as a final rule. This final rule will permit the uninterrupted use of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, D&C Red No. 36, and FD&C Yellow No. 6, as well as FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes, until June 3, 1985. To prevent any interruption in the provisional listing of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, D&C Red No. 36, and FD&C Yellow No. 6, as well as FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes, and in accordance with 5 U.S.C. 553(d) (1) and (3), this regulation is being made effective on April 2, 1985.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Food, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d))) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

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

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives*, by revising the closing dates for "FD&C Yellow No. 5," "FD&C Yellow No. 6," and "FD&C Red No. 3" in paragraph (a) to read "June 3, 1985" and by revising the closing dates for "D&C Red No. 8," "D&C Red No. 9," "D&C Red No. 33," and "D&C Red No. 36," in paragraph (b) to read "June 3, 1985."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing*, by revising the closing dates for "FD&C Yellow No. 5," "FD&C Yellow No. 6," "FD&C Red No. 3," "D&C Red No. 8," "D&C Red No. 9," "D&C Red No. 33," and "D&C Red No. 36" in paragraph (d) to read "June 3, 1985" and by revising the closing dates for "FD&C Red No. 3" and "D&C Red No. 33" in paragraph (e) to read "June 3, 1985."

Effective date. This final rule is effective April 2, 1985.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated: March 18, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-7769 Filed 4-1-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 5c, 11, and 301

Miscellaneous Amendments; Corrections

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction.

SUMMARY: This document contains corrections to **Federal Register** publications of October 23, 1981; May 11, 1984; October 31, 1984; February 20, 1985; and March 26, 1985.

DATE: These corrections are effective March 29, 1985.

FOR FURTHER INFORMATION CONTACT: George Bradley, Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attn: CC:LR:T, Telephone 202-566-3486 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 23, 1981, the **Federal Register** published temporary regulations relating to the special rules for leases under the Economic Recovery Tax Act of 1981. These regulations, issued as Treasury Decision 7791, appeared at 46 FR 51907.

On May 11, 1984, the **Federal Register** published final regulations relating to tables for valuing annuities, life estates, terms for years, remainders, and reversions for purposes of Federal income, estate and gift tax. These regulations, issued as Treasury Decision 7955, appeared at 49 FR 19973.

On October 31, 1984, the **Federal Register** published temporary regulations relating to tax shelter registration and the requirement to maintain lists of investors in potentially abusive tax shelters. These regulations, issued as Treasury Decision 7990, appeared at 49 FR 43640.

On February 20, 1985, the **Federal Register** published temporary regulations relating to the substantiation with respect to certain means of transportation for taxable years beginning after 1984. These regulations, issued as Treasury Decision 8009, appeared at 50 FR 7038.

On March 26, 1985, the **Federal Register** published regulations relating to the effect of windfall profit tax overpayments on estimated income tax payments and penalties. These regulations, issued as Treasury Decision 8016, appeared at 50 FR 11853.

Need for Correction

As published, the amendatory language for Treasury Decisions 7955, 7990, 8009, and 8016 inadvertently contains language that was not intended and that may be misleading. In addition, Treasury Decision 7791 inadvertently contains a paragraph designation that should be removed.

Accordingly, 26 CFR is corrected as follows:

PART 1—INCOME TAX

Paragraph 1. In the second column of 50 FR 7044, published February 20, 1985, the amendatory language that is designated "Par. 4." is revised to read as follows:"

"Par. 4. A new § 1.274–6T is added immediately after § 1.274–6 to read as follows:"

Par. 2. Beginning in the third column of 50 FR 11855, published March 26, 1985, the amendatory language that is designated "Par. 6." and the accompanying text which proposed to revise 1.6655–1(b)(5)(ii)(B), and the amendatory language that is designated "Par. 7." and the accompanying text which proposed to revise 1.6655–2(c)(1)(ii)(B) are removed.

PART 5c—TEMPORARY INCOME TAX REGULATIONS UNDER THE ECONOMIC RECOVERY TAX ACT OF 1981

Par. 3. In the second column of 46 FR 51910, published October 23, 1981, in the first line of text of § 5c.168 (f)(8)–5, the language "(a) *Term of lease*—(1) *Basic rules.* To" is removed and the language "(a) *Term of lease—Basic rules.* To" is added in its place.

PART 11—TEMPORARY INCOME TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Par. 4. In the third column of 49 FR 19992, published May 11, 1984, in the amendatory language that is designated "Par. 10.", the language "which is appropriate" is removed and the language "whichever is appropriate" is added in its place.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. In the first column of 49 FR 43646, published October 31, 1984, in the amendatory language that is designated "Par. 2.", the language "and answers 17 and 18 to read as follows" is removed and the language "and answers 17(1) and 18 to read as follows" is added in its place.

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 85–7912 Filed 4–1–85; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 601 and 602

[T.D. 8011]

OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act

Correction

In FR Doc. 85–6015, beginning on page 10221, in the issue of Thursday, March 14, 1985, make the following corrections:

PART 602—[CORRECTED]

§ 602.101 [Corrected]

Section 602.101 paragraph (c) is corrected as follows:

1. On page 10224, in the first column, in the table, under column one, the entry "§ 1.708–(b)(2) (i) and (ii)" should read "§ 1.708–1(b)(2) (i) and (ii)".

2. On page 10226, in the first column, in the table, under column one, the entry "§ 11.412(c)–11 (a) thought (d)" should read "§ 11.412(c)–11 (a) through (d)".

3. On page 10227, in the second column, in the table, under column one, on the twenty-eighth line from the bottom, after "§ " remove "51."

4. On the same page in column three, on the eleventh line, in the table, in the second column, "1545–0242" should read "1545–0123".

5. On the same page, same column, on the twenty-sixth line, in the table, in the second column, "1545–0023" should read "1545–0230".

6. And on the same page, same column, forty-fourth line insert "§" just at the beginning of the entry "301.6017–1" in the first column.

7. On page 10228, in column one, in the table, on the sixth line, in the first column, the entry should read "§ 301.7216–2(l)".

BILLING CODE 1505–01–M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Specially Adapted Housing Assistance—Computation of Cost

AGENCY: Veterans Administration.

ACTION: Final Regulation.

SUMMARY: The VA (Veterans Administration) in implementing Pub. L. 98–543, the Veterans' Benefits Improvement Act of 1984, 98 Stat. 2735, is amending its regulations to conform to a statutory change increasing the maximum amount of specially adapted housing assistance from $5,000 to $6,000 for service-connected disabled veterans who are blind or have lost, or lost the use of, both hands.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: George D. Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389–3042.

SUPPLEMENTARY INFORMATION: The specially adapted housing assistance program is codified in chapter 21 of title 38, United States Code. Previously, section 802(b) of the statute limited assistance to the lesser of (1) the actual cost of the adaptations determined to be reasonably necessary, or (2) $5,000.

This amendment implements section 304 of Pub. L. 98–543, which increases the maximum statutory assistance to $6,000.

As a result of this legislation, there will be an increase in the value of the benefit available to service-connected disabled veterans who are blind or have lost, or lost the use of, both hands, and must make special adaptations to a residence because of such disabilities.

This amendment conforms the existing regulations to the requirements of Pub. L. 98–543. Since this amendment merely implements a statutory change intended to provide an increase in a benefit to veterans seeking specially adapted housing assistance, the VA is not seeking public participation in promulgating this regulation. The intent of the legislation is clear, and prior publication for public comment is unnecessary. Accordingly, these changes come within exceptions to the general VA policy of prior publication of proposed regulatory development as set out in 38 CFR 1.12. Because a proposed notice is not necessary and will not be published, this change does not come within the definition of the term "rule" (5 U.S.C. 601(2)) under the Regulatory Flexibility Act, and is not subject to the requirements of that Act.

The amendment has been reviewed pursuant to Executive Order 12291, entitled Federal Regulation, and has been found to be a nonmajor regulation. The regulation will not impact on the public or private sectors as a major rule. It will not have an annual effect on the economy of $100 million or more, cause

a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance Program Number 64.106)

This amendment is adopted under authority granted to the Administrator by sections 210(c), 801(b)(1) and 802(b) of title 38, United States Code, and the enabling legislation.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan programs—Housing and Community Development, Manufactured homes, Veterans.

Approved: March 18, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 36—[AMENDED]

Title 38, CFR, Part 36, LOAN GUARANTY is amended as follows:

§ 36.4404 [Amended]

Section 36.4404 is amended by changing the amount "$5,000" to "$6,000" in paragraph (b)(2).

(38 U.S.C. 802(b); sec. 304, Pub. L. 98-543).

[FR Doc. 85-7833 Filed 4-1-85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A-9-FRL-2808-8]

Withdrawal of Delegation of New Source Performance Standards (NSPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Withdrawal of Delegation.

SUMMARY: The EPA hereby places the public on notice that it has withdrawn delegation of several categories of NSPS authority from the California Air Resources Board (CARB) on behalf of the Monterey Bay Unified Air Pollution Control District (MBUAPCD). The action to withdraw the delegation of authority was requested by the CARB and the MBUAPCD. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from the State and local governments to EPA.

EFFECTIVE DATE: January 2, 1985.

ADDRESS: Monterey Bay Unified Air Pollution Control District, 1164 Monroe Street, Suite 10, Salinas, CA 93906.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested withdrawal of delegation for several NSPS categories on behalf of the MBUAPCD. The request to withdraw the categories was based on the following information provided by the MBUAPCD.

1. There are no existing sources to which these categories apply.

2. These sources are not expected to locate in the District in the foreseeable future.

In response to the above, withdrawal of authority was granted by a letter dated December 18, 1984 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 "Q" Street, Sacramento, CA

Dear Mr. Boyd: In response to your request of December 3, 1984, we are granting your request for withdrawal of delegation of authority for the following New Source Performance Standards, on behalf of the Monterey Bay Unified Air Pollution Control District.

40 CFR Part 60 Subpart	Category
P	Primary Copper Smelters.
Q	Primary Zinc Smelters.
R	Primary Lead Smelters.
S	Primary Aluminum Reduction Plants.
T	Phosphate Fertilizer Industry (PFI).
U	PFI: Superphosphoric Acid Plants.
V	PFI: Diammonium Phosphate Plants.
W	PFI: Triple Superphosphate Plants.
X	PFI: Granular Triple Superphosphate.
Y	Coal Preparation Plants.
Z	Ferroalloy Production Facilities.
AA	Iron and Steel Plants.

We have reviewed the information provided and determined that authority to implement and enforce these subparts can be withdrawn.

Sincerely,

Judith E. Ayres,
Regional Administrator.

cc: Monterey Bay Unified Air Pollution Control District

With respect to the areas under the jurisdiction of the MBUAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source categories should be directed to the EPA, Region 9 office at the address shown in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

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

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*)

Dated: March 15, 1985.

David P. Howekamp,
Acting Regional Administrator.

[FR Doc. 85-7666 Filed 4-1-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 61

[A-9-FRL-2809-1]

Delegation of National Emission Standards for Hazardous Air Pollutants (NESHAP); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NESHAP authority to the California Air Resources Board (CARB) on behalf of the Northern Sonoma County Air Pollution Control District (NSCAPCD). This action is necessary to bring the NESHAP program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NESHAP categories from EPA to State and local governments.

EFFECTIVE DATE: January 2, 1985.

ADDRESS: Northern Sonoma County Air Pollution Control District, 134 A North Street, Healdburg, CA 95448.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NESHAP categories on behalf of the NSCAPCD. Delegation of authority was granted by

a letter dated December 18, 1984 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box, 2815, Sacramento, CA

Dear Mr. Boyd: In response to your request of December 5, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of National Emission Standards for Hazardous Air Pollutants (NESHAP) on behalf of the Northern Sonoma County Air Pollution Control District (NSCAPCD). We have reviewed your request for delegation and have found the NSCAPDC's programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NESHAP	40 CFR Part 61 Subpart
Asbestos	M

In addition, we are redelegating the following NESHAP categories since the NSCAPCD's revised programs and procedures are acceptable:

In addition, we are redelegating the following NSPS and NESHAP categories since the MCAPCD's revised programs and procedures are acceptable:

NESHAP	40 CFR Part 61 Subpart
General Provisions	A
Beryllium	C
Beryllium Rocket Motor Firing	D
Mercury	E
Vinyl Chloride	F

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

cc: Northern Sonoma County Air Pollution Control District

With respect to the areas under the jurisdiction of the NSCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NESHAP source categories should be directed to the NSCAPCD at the address shown in the **ADDRESS** section of this notice.

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

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of Section 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: March 15, 1985.

David P. Howekamp,
Acting Regional Administrator.

[FR Doc. 85-7665 Filed 4-1-85; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 61

[A-9-FRL-2809-2]

Delegation of National Emission Standards for Hazardous Air Pollutants (NESHAP); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NESHAP authority to the California Air Resources Board (CARB) on behalf of the North Coast Unified Air Pollution Control District (NCUAPCD). This action is necessary to bring the NESHAP program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NESHAP categories from EPA to State and local governments.

EFFECTIVE DATE: January 2, 1985.

ADDRESS: North Coast Unified Air Pollution Control District, 5630 South Broadway, Eureka, CA 95501.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NESHAP categories on behalf of the NCUAPCD. Delegation of authority was granted by a letter dated January 24, 1985 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA

Dear Mr. Boyd: In response to your request of December 5, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of National Emission Standards for Hazardous Air Pollutants (NESHAP) on behalf of the North Coast Unified Air Pollution Control District (NCUAPCD). We have reviewed your request for delegation and have found the NCUAPCD's programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NESHAP	40 CFR Part 61 Subpart
Equipment Leaks (Fugitive Emission Sources) of Benzene.	J
Asbestos	M
Equipment Leaks (Fugitive Emission Sources) of Benzene.	V

In addition, we are redelegating the following NESHAP categories since the NCUAPCD's revised programs and procedures are acceptable:

In addition, we are redelegating the following NSPS and NESHAP categories since the MCAPCD's revised programs and procedures are acceptable:

NESHAP	40 CFR Part 61 Subpart
General Provisions	A
Beryllium	C
Beryllium Rocket Motor Firing	D
Mercury	E
Vinyl Chloride	F

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

cc: North Coast Unified Air Pollution Control District

With respect to the areas under the jurisdiction of the NCUAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NESHAP source categories should be directed to the NCUAPCD at the address shown in the **ADDRESS** section of this notice.

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

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of Section 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: March 15, 1985.
David P. Howekamp,
Acting Regional Administrator.
[FR Doc. 85-7664 Filed 4-1-85; 8:45 am]
BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201, App. A

[FIRMR Temp. Reg. 10]

Triennial Review of Agency Administration and Operation of Information Resources Management

Correction

In FR Doc. 85-7067 beginning on page 11861 in the issue of Tuesday, March 26, 1985, make the following corrections:

Appendix A—[Corrected]

1. On page 11862, in the middle column, in the paragraph designated "8.", in the fifth line, after the word "ongoing" add the following language: "review activity in the IRM area. Examples include".

2. On page 11863, in the last column, in the paragraph designated "b.", in the third line, "Policy (KMPP)" should read "Policy Branch (KMPP)".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket Nos. 78-72 and 80-286]

MTS and WATS Market Structure; and Amendment of the Rules and Establishment of a Joint Board; Correction

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order adopting guidelines and Waiver of the rules; Correction.

SUMMARY: This document corrects an error in the Memorandum Opinion and Order (FCC 85-71) which refers to tariff filing dates incorrectly. The Memorandum Opinion and Order is published elsewhere in this issue.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo or Margot Bester at (202) 632-6363.

Erratum

Released: March 6, 1985.

On February 14, 1985, the Commission adopted a *Memorandum Opinion and Order* in this proceeding, FCC 85-71, released February 26, 1985. The first full sentence on page 21 (para. 41) of this *Order* inadvertently states that the National Exchange Carrier Association (NECA) and the American Telephone and Telegraph Co. (AT&T) flow-through tariff filings are to be made on March 15, 1985. As clearly stated elsewhere in the *Order*, only NECA is to file on March 15; AT&T is to file on 45 days' notice for effectiveness June 1. Accordingly, the sentence should be corrected to read as follows:

In order to ensure prompt reflection of the increased subscriber line charge revenues in the carrier common line rates and in AT&T's toll rates, we are requiring that NECA and AT&T make tariff filings which adjust their presently effective charges to reflect the increased flat rate recovery of interstate NTS costs.

Federal Communications Commission.
Albert Halprin,
Chief, Common Carrier Bureau.
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47 CFR Part 69

[CC Docket Nos. 78-72 and 80-286; FCC 85-71]

MTS and WATS Market Structure; and Amendment of the Rules and Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order adopting guidelines and waiver of certain sections of the rules.

SUMMARY: In this *Order*, The Commission adopts guidelines for the implemenation of the optional tariff provisions for the recovery of carrier common line costs. The Commission also adopts procedural guidelines for Joint Board review of experimental tariffs for the recovery of the interstate allocation of NTS costs and procedures to ensure that the revenues generated by the subscriber line charges for residential and single line business customers are flowed through to the public in the form of toll rate reductions. This action is taken to implement the guidelines for alternative tariffs.

EFFECTIVE DATE: The waiver of the sections in Part 69 is effective April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo or Margot Bester at (202) 632-6363.

Memorandum Opinion and Order

In the matter of MTS and WATS Market Structure, CC Docket No. 78-72; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286.

Adopted: February 14, 1985.
Released: February 26, 1985.
By the Commission.

I. Introduction

A. Summary

1. The Commission hereby adopts guidelines for the implementation of the optional alternative tariff provisions for the recovery of carrier common line costs provided for in our *Decision and Order* in this proceeding adopted December 19, 1984.[1] The Commission also adopts procedural guidelines for Joint Board review of experimental tariffs for the recovery of the interstate allocation of NTS costs, and procedures to ensure that the revenues generated by the subscriber line charges for residential and single line business customers are flowed through to the public in the form of toll rate reductions.

2. With regard to the procedures and support data for alternative tariffs, we provide that: (1) The alternative tariffs are to be filed as part of the local exchange carrier's basic access charge tariff; (2) state or Joint Board concurrence is to be obtained before the actual tariff filing is made with the FCC; (3) an alternative tariff can be made with the Commission at any time during the access charge year; (4) Part 61.38 data is to be filed with the alternative tariff provisions along with a letter from the state commission or the Joint Board certifying their concurrence; (5) information is to be filed with the tariff showing that it is properly targeted to prevent bypass of the local exchange by reducing the level of non-traffic sensitive cost recovery from users with a high volume of interstate toll traffic over their switched access lines;[2] (6) the submission to the state commission is to contain proposed tariff pages and all of the support data required for the filing with the Commission, although the state or Joint Board may request additional information; and (7) the state or Joint Board will be notified of any changes in an alternative tariff filing required by the Commission and allowed to withdraw its concurrence.

3. In order to ensure that the alternative tariff filings are effective in combatting bypass and do not produce distortions in the competitive

[1] *Decision and Order, MTS and WATS Market Structure, and Amendment of Part 67 of the Commission's Rules*, CC Docket Nos. 78-72 and 80-286, 50 FR 939 (January 8, 1985).

[2] The Commission will consider requests for waiver of these requirements concerning the timing of filings and supporting materials in appropriate circumstances.

marketplace, the Commission is adopting the following substantive requirements concerning the volume discount mechanism in alternative traffis: (1) Volume discounts are to be limited to customers served by offices equipped for Feature Group D and are to be based on a particular customer's total originating switched access minutes at a single premise including use of services provided by the other common carriers as well as AT&T; (2) the discount is to be implemented by the local exchange company as a direct credit to the customer; (3) when carriers engaged in resale obtain switched access at the local business rate in conjunction with the resale of WATS, the usage over the WATS access line may be excluded from eligibility for the discount. The local exchange carriers are free to file alternative tariff provisions which do not satisfy these criteria, but they will be required to demonstrate that their filing satisfies the Commission's concerns about the effectiveness of the tariffs in preventing bypass and ensuring that the tariffs do not produce distortions in the competitive marketplace. The Commission is also directing the Joint Board to complete its review of experimental tariff proposals [3] and present its recommendations to the Commission within five months of submission of the proposal.

4. In addition, the Commission adopts the following procedures to ensure that the revenue generated by the residential and single line business subscriber line charge to be effective June 1, 1985 is flowed through to the public in the form of toll rate reductions: (1) On March 15, 1985,[4] the National Exchange Carrier Association (NECA) is to file premium and non-premium carrier common line rates to be effective June 1, 1985 reflecting a reduction in the rates which are effective today equivalent to the projected residential and single line business subscriber line charge revenues;[5] (2) the § 69.206 (b) formula is to be used in calculating the OCC non-premium carrier common line charge to be filed on March 15, 1985 by NECA; and (3) the American Telephone and Telegraph Co. (AT&T) is to file revisions to its MTS and WATS tariffs. AT&T Tariff Nos. 1 and 2 which reflect a reduction in its rates which are effective today equivalent to the projected reduction in its premium carrier common line charges[6] on 45 days' public notice to be effective June 1, 1985.[7]

B. Background

5. On November 15, 1984, the Joint Board adopted its *Recommended Decision and Order* concerning the recovery of the interstate allocation of non-traffic sensitive (NTS) local exchange costs.[8] The Commission adopted the Joint Board's recommendations with minor changes and clarifications at its meeting on December 19, 1984.[9] The Joint Board recommended that the Commission implement limited subscriber line charges for residential and single line business subscribers. Under the Joint Board proposal, a $1.00 monthly subscriber line charge for these customers would be implemented effective June 1, 1985. This would be increased to $2.00 per month effective June 1, 1986.

6. The Joint Board also recommended that local exchange telephone companies, with the concurrence of state regulatory officials or the Joint Board,[10] be given the flexibility to implement optional alternative interstate tariff provisions for the recovery of carrier common line costs in order to combat localized bypass problems. The Joint Board envisioned that these alternative tariffs would reflect volume discount rates for interstate access or other innovative rate structures designed to encourage use of the local switched network by the interexchange carriers and large volume customers. The Joint Board also emphasized that in order for these alternative rates or tariff structures to be fully effective in preventing bypass of the local network, large volume switched access users in the relevant study area must realize cost savings. The Joint Board proposed that the Commission allow a uniform monthly surcharge up to a maximum of $.35 on the subscriber line charge for all customers in the relevant study area to fund any revenue shortfall resulting from the alternative tariff filings. In addition, the Joint Board recommended that the alternative tariff filings be structured to ensure nationwide averaging of carrier common line costs as required by our access charge rules.[11]

7. In addition, the Joint Board recommended that a further Joint Board proceeding be instituted in late 1986 to examine the effectiveness of the subscriber line charges and optional alternative tariff provisions in preventing bypass, promoting economic efficiency, and preserving universal service. The purpose of this proceeding would be to recommend what, if any, further steps should be taken by the Commission. The Joint Board also urged the Commission to explore more

[3] Alternative tariff proposals will involve mechanisms other than those specified in Part 69 of our rules for recovering carrier common line costs. Experimental tariff proposals may go beyond this to reflect different mechanisms for recovering the entire interstate allocation of NTS costs.

[4] The presently scheduled March 1, 1985 date for the NECA tariff filing reflecting the $1.00 subscriber line charge for residential and single line business customers as well as the flow through revisions to the premium and non-premium carrier common line charge is being extended to March 15, 1985 to ensure that NECA will have adequate time to prepare a filing which reflects the Commission's action concerning subscriber line charges for party line service customers. Section 69.3 of the Commission's rules is hereby waived to allow these filings to be made on less than 90 days' public notice.

[5] The NECA filing is also to reflect the refund of the exchange carrier's excess earnings for 1978. *Decision, AT&T Earnings on Interstate and Foreign Services During 1978*, 49 FR 49502 (December 20, 1978). The Commission will act on the Petitions for Stay of the refund decision before this tariff becomes effective.

[6] AT&T is also to reflect the refund of its excess earnings for 1978 in this filing. *AT&T Earnings on Interstate and Foreign Services During 1978*, 49 FR 49502 (December 20, 1978).

[7] This filing is not to reflect any other changes in AT&T's underlying costs.

[8] *See Recommended Decision and Order*, CC Docket Nos. 78-72 and 80-286, 49 FR 48325 (December 12, 1984). In this *Order*, the Joint Board also made recommendations concerning: (1) Modifications to the previously adopted measures for assisting subscribers in areas where the cost of providing telephone service is unusually high; and (2) measures to assist low income households in affording telephone service.

[9] *See* note 1 *supra*.

[10] The Joint Board recommended that alternative tariff filings be allowed pursuant to Part 69 of the Commission's rules only when the local exchange company concludes that such tariff changes are desirable and the state regulatory commission concurs in that decision. The Joint Board also recommended that the local companies be allowed to ask the Joint Board to override a state commission's objection or act on such proposals if the state commission does not do so within 60 days of the filing. Once state commission or Joint Board concurrence is obtained, the actual tariff would be filed with the FCC on 90 days' public notice and reviewed pursuant to normal FCC tariff filing procedures.

[11] The averaging of most NTS costs through the carrier common line access charge element contributes to maintaining geographically averaged interstate toll rates. In order to ensure continued averaging of carrier common line costs, the Joint Board recommended that the local exchange companies implementing alternative tariffs pay into the NECA pool as if these tariffs were not in effect. In the first year of the alternative tariff, the company's payment into the NECA pool would be based on an extrapolation from its current carrier common line minutes, ignoring the stimulation effect of the alternative tariff. In subsequent years, the number of minutes to be used in calculating the company's payments to the NECA pool would be developed based on a comparison of: (1) Projections based on the company's carrier common line minutes in the last year prior to the implementation of the alternative tariff; and (2) the previous year's carrier common line minutes and the minutes under the alternative tariff. The objective would be to develop an estimate of the company's total switched access minutes excluding the stimulation effect of the alternative tariff.

comprehensive alternative tariff mechanisms for recovering the interstate allocation of NTS costs by providing for review of such proposals through the Joint Board process.[12]

8. In recommending that local exchange companies be given the option of developing alternative tariff provisions for the recovery of carrier common line costs, the Joint Board recognized that there were a number of questions concerning the implementation of such tariffs which should be examined further. Accordingly, on December 18, 1984, the Chief, Common Carrier Bureau released an *Order Inviting Comments*[13] which requested comments concerning these implementation issues. Comments were also requested concerning guidelines for Joint Board review of experimental tariff proposals. Comments were filed on January 11, 1985. Replies were filed on January 23, 1985.

II. Order Inviting Comments

9. This *Order* requested comments concerning a number of issues related to the procedures for filing alternative tariffs and the supporting data to accompany these filings.[14] The Bureau also requested comments concerning measures to ensure that the alternative tariffs are effective in combatting bypass. In this regard, the Joint Board noted that there appeared to be two approaches for designing volume discount alternative tariffs. One approach involves changes in the access charges paid by the interexchange carriers with these changes reflected in their long distance rates to the public. The other approach involves billing credits or offsets for high volume toll users. The *Order* asked for comments concerning how we could ensure that the benefits of alternative tariff provisions implemented through changes in the interstate access charges paid by the interexchange carriers would be reflected in rates to the public.[15] The Bureau also requested comments on the need for guidelines to ensure that the alternative tariff mechanism did not undermine competition, and whether resale could undermine the effectiveness of alternative tariff provisions in combatting bypass.[16]

III. Tariff Filing Procedures and Support Data

A. Comments

10. *Approach for filing tariffs.* AT&T stated that the alternative tariffs should be filed either as exception rates or as separate rate elements within a basic access tariff. MCI Telecommunications Corporation (MCI) stated that these tariffs should be filed as a modification to the local exchange company's existing access tariff. Satellite Business Systems (SBS) argued that the local exchange carriers should incorporate all end user and alternative tariff charges in a single separate tariff in order to facilitate Commission review. The Bell Operating Companies (BOCs) were divided on this issue. Ameritech and Bell Atlantic argued that these tariff provisions should be filed as separate tariffs. BellSouth, US West, Pacific Bell and Southwestern Bell all stated that the carriers should be given flexibility in the approach used for filing alternative tariffs. NYNEX argued that alternative tariffs should be filed as a separate section in the basic access tariff. GTE Corporation (GTE), United Telephone System, Inc. (United) and Rochester Telephone Company (Rochester Telephone) stated that the carriers should be given flexibility in choosing the form of the tariff filings. The United States Telephone Association (USTA), National Telephone Cooperative Association (NCTA), National Rural Telecom Association (NRTA) and the Organization for the Protection and Advance of Small Telephone Companies (OPASTCO) (the Associations) filed joint comments taking the position that the local exchange companies should be allowed the option of choosing the approach to be used in filing the alternative tariff. The states of Florida and Michigan[17] argued that the local exchange companies should be permitted to select whether alternative tariff provisions are filed as a separate tariff or as provisions within the carrier's basic access tariff. Aeronautical Radio, Inc. (ARINC) also supported flexible procedural guidelines for the implementation of these tariffs.

11. *Supporting Materials Needed.* AT&T asserted that Part 61 of the Commission's rules provides satisfactory guidelines for tariff support material. Ameritech stated that Part 61 information should be submitted to the FCC only if the state commission does not concur with a filing. BellSouth asserted that compliance with Part 61 requirements should be sufficient but stated that the exchange carriers should be allowed to reference their annual access charge data filing. US West stated that the details of the supporting data to be provided should be left to the states and the exchange carriers since the states have their own procedures. NYNEX stated that Part 61 of the rules should apply, but in a simplified form to facilitate implementation of these filings. Pacific Bell and the Associations stated that the Part 61 data is more than adequate for FCC review of these filings. The State of Florida argued that if a state commission decides that Part 61 requirements are inadequate, it should have the authority to request additional support data. The Ad Hoc Telecommunications Users Association (Ad Hoc) and the International Communications Association (ICA) stated that Part 61 information should be required.

12. AT&T stated that no useful purpose would be served by requiring the local exchange carriers to document a specific bypass threat in order to file an alternative tariff. MCI argued that exchange companies should submit present evidence of a bypass threat in the affected study area in order to justify the apparent discrimination inherent in the alternative tariffs. SBS argued that we should establish precise rules regarding bypass showings to be required for implementation of an alternative tariff. Ameritech took the position that the state commissions did not need extensive cost data to make determinations on alternative tariffs but

[12] For example, the Florida Public Service Commission filed a petition on November 8, 1984 for authority to implement a comprehensive unified interstate and intrastate access charge plan in Florida on an experimental basis (Florida Plan). The Commission adopted an *Order Inviting Comments* concerning the Florida Plan on January 9, 1985. CC Docket Nos. 78-72 and 80-286, 50 FR 2833 (January 22, 1985).

[13] *Order Inviting Comments*, CC Docket Nos. 78-72 and 80-286, 49 FR 50410 (Dec. 28, 1984).

[14] Specifically, the *Order* requested comments on: (a) Whether the alternative tariff provisions should be filed as exception rates or rate elements within the basic access tariff or as a separate tariff; (b) what guidelines should be adopted concerning the form of the alternative tariff proposals and the supporting data to be submitted to the FCC, the state commissions and the Joint Board (i.e. illustrative tariff pages, cost data, and documentation of a bypass threat); (c) whether we should adopt guidelines concerning development of traffic projections to be used in determining the level of the subscriber line surcharge to cover any shortfall caused by these alternative tariffs; (d) whether the local exchange carriers should be allowed to file alternative tariff provisions with the FCC (assuming state or Joint Board concurrence) at any time during the access charge year; and (e) what measures could be taken to limit the administrative burdens on the local exchange carriers and state and federal regulators.

[15] In conjunction with this, the Bureau requested information concerning the ability of local exchange companies to measure terminating interstate switched access minutes and whether such traffic should be included in alternative tariff provisions.

[16] The Bureau also requested comments on whether alternative tariff provisions reflecting a system of billing credits to subscribers would contravene the prohibition on rebates contained in section 203 of the Act.

[17] The state of Michigan and the Michigan Public Service Commission filed jointly.

stated that evidence of a bypass threat was necessary. Bell Atlantic also stated that full cost support data is unnecessary, but argued that the exchange carriers should have to demonstrate the threat of bypass. BellSouth stated that further studies of the threat of bypass should not be required. US West argued that although details of the proposals should be left to the states and the local exchange carriers, cost data should be filed, and the exchange carriers should be required to demonstrate the threat of bypass. NYNEX also took the position that the threat of bypass should be demonstrated, but stated that cost data should not be required since the total NTS revenue requirement for the access rate year will not change. Pacific Bell stated that cost data must be submitted to demonstrate the existence of potential bypass in a study area. GTE, United and Rochester Telephone all agreed that guidelines should be flexible and that cost support data and the information required to document the existence of a potential bypass threat should be kept to a minimum. The Associations argued that cost data should not be required since the surcharge and alternative tariff plan reflect a demand-based approach to the threat of bypass. They also asserted that the local carriers should only have to demonstrate potential, rather than actual, bypass in support of their tariffs. The National Cable Television Association, (NCTA) stated in its reply that these tariffs should be subject to traditional Commission tariff review procedures.

13. Both the District of Columbia Public Service Commission (D.C. Commission) and the State of Florida argued that the local exchange carrier should be required to demonstrate the existence of a bypass threat and to support its proposal with extensive cost support data. The state of Michigan argued that the local exchange carriers should be allowed to submit broad based cost support data and limit their bypass showing to a demonstration of the potential for bypass. In its reply comments, the Ohio Office of Consumers' Counsel (OCCO) recommended that alternative tariff proposals be subject to evidentiary hearings. ARINC stated that the local carriers should be required to demonstrate that bypass alternatives are available to the targeted customers in its service areas.

14. *Development of Traffic Projections.* AT&T argued that guidelines with respect to traffic forecasts should focus on the documentation required to support forecasts and not the choice of a particular forecasting method. Ameritech, Bell Atlantic, and BellSouth took the position that the exchange carriers should pay into the NECA pool on the basis of actual carrier common line minutes of use rather than estimated minutes of use as contemplated by the Joint Board proposal. Bell Atlantic stated that any attempt to use projected minutes could result in lengthy proceedings to resolve disputes concerning the proper projection. This position was supported by United, ALLTEL Corp. and the Associations. US West stated that the Commission should set forth detailed guidelines to govern the exchange carriers' traffic projections and that those projections should be examined by a standard of reasonableness. NYNEX argued that separate traffic forecasts were not necessary since forecasts are an essential part of the exchange carriers' participation in the carrier common line rate development process. Pacific Bell and Southwestern Bell took the position that the guidelines for these traffic projections should be similar to those for projections used in the interstate access tariff filings. They also argued that periodic reconciliations should be required to ensure that alternative tariffs do not undermine the averaging of NTS costs for carrier common line purposes. Rochester Telephone suggested an approach which would not require traffic projections in addition to those already done for the NECA filing. The state of Florida argued that we should require justification for projected changes in demand. The state of Michigan took the position that reconciliations were not necessary since traffic projections submitted by the exchange carriers will always be subject to the scrutiny of those reviewing the tariff.

15. *Timing of Alternative Tariff Filings.* AT&T advocated a single annual filing deadline to coincide with the new access charge year after 1985. SBS also stated, that in the interest of administrative efficiency, a single annual filing deadline should be established, assuming that the exchange carriers have received state commission or Joint Board approval. Teltec Saving Communications Company (Teltec) stated that adequate notice of alternative tariff proposals must be given so that affected parties will have a meaningful opportunity to respond. All of the Bell Operating Companies as well as United, Rochester, the state of Michigan, Ad Hoc and the Associations took the position that the local companies should be allowed to file alternative tariff provisions at any time during the access year in order to maximize flexibility. Rochester also argued that the notice requirements should be waived to the extent necessary to allow implementation of alternative tariffs effective June 1, 1985. The D.C. Commission stated that these tariffs should be filed only when the access charge itself is scheduled to be filed in order to minimize confusion by the public.

16. Bell Atlantic asserted that the alternative tariff filing should be submitted to the FCC and the appropriate state commission simultaneously to ensure that the state commissions take timely action. BellSouth argued that the state commission and Joint Board should have a 30 day period for review, and that once concurrence is obtained, the local exchange carrier should be allowed to file these tariffs with the FCC on 45 days' notice. US West took the position that waivers of the FCC rules should be liberally granted in order to minimize administrative burdens. NYNEX maintained that the state should concur or reject within a 90 day period, and that the Joint Board should concur or reject within 45 days. Southwestern Bell asserted that the FCC should be liberal in granting waivers of unnecessary rules and impose a two month limit on Joint Board review. The Associations argued that administrative burdens on the local exchange carriers could be minimized if the 60 day notice period for state review and the 90 day notice period with the FCC were allowed to run concurrently. The state of Michigan stated that the tariffs could be allowed to go into effect after 30 or 60 days' notice barring negative FCC action.[18]

B. Discussion

17. *Approach for Filing Tariffs.* In the *Order*, we solicited comments from interested parties as to whether the

[18] The Ad Hoc Telecommunications Users Committee (Ad Hoc) filed a Motion for Leave to Accept Late Filed Pleading in conjunction with their reply comments. According to the motion, Ad Hoc's pleading was completed in time for filing on January 23, 1985, but inadvertently was not included in the package of filings submitted to the Commission on that day. We grant Ad Hoc's motion and accept its late-filed pleading because of this inadvertent error. US West also filed a Motion for Extension of Time to file reply comments. US West stated that it needed more time to prepare its comments because of the complex issues raised by the Bureau's *Order* and because it was also preparing pleadings at the same time in another Commission proceeding. We deny US West's motion, finding that it has not shown good cause for an extension of time in light of the need for expeditious action in this proceeding.

alternative tariff provisions for the recovery of carrier common line costs should be filed as exception rates, rate elements within the basic access charge tariffs or as a separate tariff. After consideration of the rationales offered for the various approaches, we conclude that the alternative tariff provisions should be filed in a separate section of each exchange carrier's basic access charge tariff. Such a requirement will make it easier for subscribers to learn of the existence of a discount than if the discount provisions were to appear in a totally separate tariff. We are also requiring that the filing with the state commission contain all of the information that we are requiring for the formal tariff filing with the FCC. This will ensure that the state commission has adequate information on which to base its decision concerning concurrence in the filing.

18. *Support Data Required.* We require that the cost information submitted with the alternative tariff provisions meet the requirements of Part 61.38 of our rules.[19] Part 61 provides the procedures that common carriers must follow when filing tariffs pursuant to section 203 of the Act. Part 61 has recently been revised to eliminate unnecessary requirements and adopt more flexible procedural options to ease the carriers' compliance burdens.[20] Section 61.38 specifically delineates the cost information needed to support a tariff filing. In conformity with our standard practices, we will allow § 61.38 cost support filings to cross reference data already on file. However, we will require demand and revenue projections and information concerning their effects to be submitted with the alternative tariff filing.

19. We see no need to require that carriers demonstrate the extent of actual or potential bypass in their service territory in conjunction with an alternative tariff filing. The threat of bypass has been established and is well documented in the record of the *MTS and WATS Market Structure* proceeding.[21] Nothing precludes the state commissions from requiring more detailed information regarding the threat of bypass. For our purposes, we will simply require the carriers to demonstrate that the volume discount is properly targeted to those users of switched access services with high volumes of interstate toll traffic over their switched access lines.

20. *Traffic Projections for Payments into the NECA Pool.* As noted above, the Joint Board's *Recommended Decision* (which was subsequently adopted by the Commission) provided that local exchange carriers which implement alternative tariffs would pay into the NECA carrier common line pool based on the number of carrier common line minutes which they would have billed without the stimulation effect of the alternative tariff. Thus, in the first year of an alternative tariff, the carrier's payment into the NECA pool would be based on an extrapolation from its previous year's carrier common line minutes, ignoring the stimulation effect of the alternative tariff. In subsequent years, the number of minutes to be used in calculating the company's payments to the NECA pool would be developed by comparing projections based on the company's carrier common line minutes in the last year prior to the alternative tariff and the total of the previous year's carrier common line minutes and the minutes under the alternative tariff. Under this approach, increased revenues due to the stimulation of traffic under the alternative tariffs would reduce the level of the subscriber line surcharge.

21. Many of the commenting parties stated that actual rather than projected minutes should be used to calculate a carrier's payment into the NECA pool. They argued that the procedures adopted by the Commission would be extremely difficult to implement. These assertions appear to be meritorious, and we are persuaded that we should waive Section 69.611 of our rules and provide for use of actual access minutes in calculating a carrier's payments into the NECA pool in order to eliminate the administrative burdens and uncertainty which could result from use of the previously adopted approach.

22. *Timing of Filings.* As stated in the *Recommended Decision*, the exchange carriers are required to obtain state commission [22] or Joint Board concurrence before filing alternative tariffs with the FCC.[23] This procedure is necessary to avoid FCC processing time devoted to alternative tariffs which may never receive state or Joint Board concurrence. After concurrence is obtained, the exchange carrier may file the alternative tariff provisions with the FCC at any time during the year.[24] If we require any changes in the alternative tariff filing, the state or Joint Board will be notified and given ten working days after the notice is mailed from our headquarters to withdraw its concurrence.[25] Notice to the FCC that a state or the Joint Board is withdrawing its concurrence is to be provided in writing.

IV. Substantive Requirements Concerning the Alternative Tariffs

A. Comments

23. *Tariff Structure Best Suited to Combating Bypass.* AT&T asserted that since the threat of bypass arises from the toll charges paid by high volume users, it can be combatted only by giving interexchange carriers the means to structure toll rates so as to reduce the incentive to bypass. MCI argued that volume discounts should not be offered until equal access is available to serve the large volume user. It also took the position that the local exchange carriers should provide volume discounts directly to large users. SBS agreed that the best approach to ensure that the end user does not bypass is a system of billing credits.

24. Most of the BOCs stated that the Commission should allow the local exchange carriers to implement either a system of billing credits or a carrier common line discount for the interexchange carriers. Southwestern Bell argued that a carrier common line reduction was the most practical approach. GTE stated that it was unable to say that either option was likely to produce benefits in excess of the implementation costs. United, Rochester Telephone, ALLTEL and CP National argued that the surcharge revenues

[19] However, we will allow the states to request any additional information from the local exchange carriers that they conclude is necessary to properly evaluate the alternative tariff filings.

[20] *Amendment of Parts 1 and 61 of the Commission's Rules, Report and Order*, CC Docket No. 83-992, 49 FR 40858 (October 18, 1984).

[21] *Bypass of the Public Switched Network* (Com. Car. Bur., December 19, 1984), accepted by *Order*, FCC 84-635, released January 18, 1985.

[22] The states must concur or object within 60 days after an alternative tariff proposal is filed.

[23] Alternative tariff filings must be accompanied by a letter from the state commission or Joint Board stating that they concur in the filing. This letter is to contain the name, telephone number and address of a state commission or Joint Board contact person.

[24] *See, National Exchange Carrier Association, Inc.*, Mimeo No. 1900, released January 17, 1985. In that decision, the Chief, Common Carrier Bureau allowed NECA to increase the carrier common charge before June 1, 1985, the effective date for new access charge filings. The Bureau allowed these revisions because NECA was relying on previously filed cost data to support modification of its current rates. An alternative tariff filing would not involve changes in underlying cost support data, either.

[25] In order to ensure adequate opportunity for the state commission or Joint Board to consider any changes in an alternative tariff filing, the contact person listed in the letter of concurrence accompanying the tariff will be notified by telephone before the notice is mailed. When appropriate, the notice will also be sent by U.S. Express Mail or courier service.

should be distributed directly to qualifying end users by the local exchange companies. The Associations stated that the exchange carriers should have the option of implementing end user credits or carrier common line discounts. The D.C. Commission and the state of Michigan favored the use of billing credits. The state of Florida argued that any reduction in the carrier common line charge should result in reduced rates to the subscriber. OCCO opposed the customer surcharge, arguing that it is not worth the administrative problems it will cause. ARINC argued that the Commission should provide for billing credits or some other form of direct pass-through to end users of reduced carrier common line charges. ICA argued that the carriers benefitting from the alternative tariffs should be required to pass the cost savings through to end users. Commline, Inc.[26] opposed giving the local exchange carriers flexibility in choosing which approach to use. Bell Atlantic, BellSouth, US West, and NYNEX also stated that a billing credit is not contrary to the prohibition against rebates contained in Section 203 of the Act since the credit would be reflected in the tariff.

25. *Flow Through of Carrier Common Line Reduction.* AT&T asserted that all interexchange carriers receiving a discount should be required to show how they plan to use the savings to combat bypass, regardless of whether they are required to file tariffs. MCI argued that the Commission should require dominant carriers to insert explicit provisions in their tariffs ensuring the flow through of their access charge savings to appropriate large users. Ameritech, Pacific Bell, and Southwestern Bell stated that the interexchange carriers should be required to notify the Commission concerning how they intend to flow savings through to end users. NYNEX stated that market forces should be allowed to govern the implementation of these tariffs. The state of Florida took the position that the interexchange carriers should be required to notify the FCC and the state commissions concerning how they propose to flow through any cost savings.

26. *Effect of Alternative Tariffs on Interstate Service Competition.* AT&T asserted that providing alternative tariff credits to each interexchange carrier in proportion to its share of total carrier common line charges in the study area would avoid placing any carrier at a competitive disadvantage. MCI stated that volume discounts must be limited to offices where equal access has been implemented in order to prevent anti-competitive effects. SBS argued that the discount must not be affected by the choice of interexchange carrier. Ameritech agreed that an access charge discount for interexchange carriers could undermine competition if the discount were not based on the subscriber's total traffic regardless of the carrier involved. Bell Atlantic also stated that the credit should be structured to apply without regard to the identity of the interexchange carrier or carriers serving the end user. BellSouth stated that alternative tariff discounts directed to high volume users regardless of their choice of interexchange carrier would ensure fair competition. US West argued that implementation of these tariffs would promote fair interexchange competition regardless of the approach used. NYNEX stated that to ensure fair competition, the exchange carriers should be required to apply the same percentage discount to all carrier common line rates for the various feature groups. Southwestern Bell stated that the tariff proposal which could be considered to be the most non-discriminatory—an across the board decrease in carrier common line rates—may be the least effective method of reducing the incentive for bypass.

27. GTE and United both asserted that the interests of all of the interexchange carriers could be protected by prohibiting the alternative tariffs from discriminating between the services provided by the interexchange carriers. Rochester Telephone stated that making high volume users of the local switched network eligible for a discount would minimize the effect on competition. The Associations stated that the exchange carriers should be required to apply the same percentage discount to all carrier common line feature group rates in order to ensure that implementation of these tariffs would not adversely affect competition.

28. The D.C. Commission stated that a system of billing credits to end users would have no impact on toll competition. The state of Michigan argued that if an exchange carrier proposes an alternative tariff for which non-premium access customers are eligible, such customers should receive a discounted credit. ICA stated that any alternative tariff should be consistently applied to all interexchange carriers and their customers who have the potential for bypass. The National Cable Television Association expressed concern that the alternative tariff mechanism may be used to discourage the development of new services. Commline also expressed concern that the implementation of alternative tariffs might hamper the development of economically efficient alternative local distribution technologies.

29. *Inclusion of Terminating Access Traffic.* AT&T stated that the amounts paid for both originating and terminating access traffic should be included in any volume discount because purchasers of switched access may have significant volumes of terminating traffic. Ameritech, Bell Atlantic, and Pacific Bell all maintained that any alternative tariff mechanism must focus on originating access, since terminating access cannot be measured. BellSouth, US West, NYNEX and Southwestern Bell argued that the local exchange carriers should decide whether terminating minutes should be considered in their plan. Rochester Telephone stated that alternative tariffs should exclude terminating usage. The Associations argued that the local exchange companies should be allowed to decide whether to include terminating usage in alternative tariff proposals. The state of Florida took the position that local exchange carriers which can measure terminating traffic should include terminating switched access minutes in any discount. The state of Michigan argued that basing alternative tariffs on originating traffic would be preferable, but stated that the carriers should not be precluded from proposing tariffs which apply to terminating minutes.

30. *Resale.* AT&T argued that resellers should be treated in the same manner as other customers of the exchange carrier. AT&T further argued that the potential for resale to undermine the effectiveness of the alternative tariffs could be minimized by structuring the tariffs to provide credits to the interexchange carriers based on their total carrier common line payments. MCI stated that the alternative tariffs should not contain resale restrictions because resale will help restrain exchange carrier abuse of the alternative tariff mechanism. Teltec argued that resale is a fundamental force in a free market and will not undermine the effectiveness of the alternative tariffs.

31. Ameritech argued that resale could undermine the effectiveness of alternative tariffs reflecting volume discounts. Ameritech stated that an end user credit would mitigate this problem since the tariff could be designed so that resale carriers would not qualify. Bell Atlantic stated that the extent and effect of resale are impossible to predict at this

[26] Colony Communications, Inc. concurred in Commline's comments and replies.

time, but urged the Commission to remain receptive to proposals for dealing with resale problems if they develop. BellSouth and Pacific Bell stated that since resellers can benefit from bypass, they should be given the same incentives to remain on the switched network as other high volume users. US West, NYNEX, and Southwestern Bell argued that resale could undermine the effectiveness of the alternative tariff provisions since resellers could qualify as large users and pass along the benefits of the lower rates to smaller users who would not qualify for lower rates individually. NYNEX and Southwestern Bell stated that the local exchange carriers should be given maximum discretion regarding the structure of alternative tariffs. United and Rochester Telephone stated that any discount plan is susceptible to arbitrage through resale and argued that the Commission should permit the exchange carriers to exclude resellers from eligibility for the discounts. The Associations also stated that resale could undermine the effectiveness of the tariff. The state of Florida argued that resellers should be treated as interexchange carriers with regard to bypass credits. The state of Michigan took the position that the local exchange carrier should bear the burden of developing an alternative tariff which does not promote resale.

B. Discussion

32. The alternative interstate tariff mechanism should serve as a useful supplement to subscriber line charges in combatting localized bypass problems. However, we cannot allow alternative tariffs to undermine full and fair interexchange competition. We must also ensure that these tariffs are properly structured to effectively reduce high volume users' incentives for bypass of the local switched network. Based on our analysis of the comments in this proceeding, we have concluded that there are certain tariff structures which appear to satisfy our concerns in this regard. We are not prohibiting the local exchange carriers from filing alternative tariffs using other approaches which satisfy these concerns. However, we emphasize that alternative tariff filings which would undermine interexchange competition or which are not structured to effectively reduce bypass incentives will not be allowed to become effective.

33. In order to ensure that the alternative tariff filings are effective in combatting bypass and do not produce distortions in the competitive marketplace, we conclude that volume discounts in the alternative tariffs should be limited to customers served by offices equipped for Feature Group D and should be based on a particular customer's total originating switched access minutes from a single premise. The total traffic volume on which the discount is based must include services offered by the other common carriers (OCCs) as well as AT&T in order to avoid adverse competitive effects. Since a particular customer's usage of OCC services employing Feature Groups A and B from a particular location cannot generally be measured, we believe that alternative tariff discounts must be limited to customers served by offices which have been equipped for Feature Group D. A customer's traffic from a particular location using an OCC service employing Feature Group D can be measured. There may also be some OCC traffic in these offices using premium Feature Group A which cannot be measured in this manner, but the amount of this traffic should be sufficiently limited to allow implementation of volume discount alternative tariffs without an appreciable effect on interexchange competition.[27] Discounts must also be directed to subscribers with high volumes of interstate toll traffic from a particular location because it is the concentration of toll traffic to or from a single location that creates the incentive to bypass the switched local network. Directing the discount to customers with high volumes of toll usage without regard to the number of locations involved would not target the discount to those users with the greatest inventive to bypass.

34. We also conclude that volume discount alternative tariffs should be implemented by the local exchange carrier as a direct credit to the subscriber.[28] This approach will eliminate the difficulties involved in ensuring that the interexchange carriers flow the benefits that they would receive from a carrier common line discount through to high volume users. It also appears that this approach will be much more effective in ensuring that the benefits received by the high volume user are in fact proportional to that customer's total interstate toll usage from a particular location (including OCC usage). Such end user credits do not constitute an unlawful refund or rebate pursuant to section 203 of the Communications Act, 47 U.S.C. 203, since the credit will be set out in the local exchange carrier's tariff.[29] *MCI Telecommunications Corp.*, 53 FCC 2d 572 (1975).

35. We also find that alternative tariff discounts should generally be limited to originating switched access minutes. The comments indicate that terminating interstate traffic to a particular customer location cannot be measured under normal circumstances. Several of the commenting parties also state that exclusion of terminating toll traffic will not undermine the effectiveness of the alternative tariffs because toll traffic is usually more highly concentrated at the originating end.

36. A number of the commenting parties took the position that resale would undermine the effectiveness of the alternative tariffs. Other parties argued that carriers engaged in resale are potential bypassers and should receive the volume discount. We conclude that there are certain circumstances under which a carrier engaged in resale does not have an incentive to bypass on the originating end and should not qualify for an alternative tariff volume discount. In particular, a carrier engaged in resale should not receive the discount for traffic over a WATS closed end access line when the carrier obtains switched access to the local network at the local business rate in conjunction with resale of the WATS service. In this situation, the carrier engaged in resale has no incentive to bypass because replacement of the WATS access line with a special access connection would force the carrier to pay switched access charges for access to the local network. This is the result of our rules which allow a carrier reselling WATS to obtain access to the local exchange at the local business rate in order to prevent double payment of switched access charges—once for customer access to the resale carrier and a second time for the resale

[27] Since the charge for premium Feature Group A access and Feature Group D access will be similar, the OCC can be allowed to make a business judgment as to whether loss of the discount offsets other possible advantages which may be associated with the use of premium Feature Group A.

[28] Under this approach, the local exchange carrier would show an interstate credit stated in a dollar amount on the local bills rendered to customers with high volumes of interstate toll traffic. This credit could be applied against the customer's charges for interstate access or local exchange service. Use of the credit in this fashion would not affect jurisdictional separations and would allow use of the credit mechanism even if the implemeating local exchange carrier no longer provided billing services for AT&T or any other interexchange carrier.

[29] Section 203, 47 U.S.C. 203, requires that the carriers file tariffs showing the rates, terms and conditions for their service offerings. It prohibits them from charging, or otherwise receiving amounts other than those set out in these tariffs. Refunds or rebates of the tariffed charges are also prohibited. From this language it is clear that the prohibition on rebates does not limit the tariff structures which the carriers may use. Instead, it prohibits a net charge which is different than that shown in the tariff.

carrier's access to the WATS serving office.

V. Procedural Guidelines for Joint Board Review of Experimental Tariff Proposals

A. Comments

37. AT&T stated that both the local exchange carriers and the state commissions should be permitted to develop experimental tariff plans. SBS argued that an experimental tariff with unified state and federal charges would be illegal if filed with a state since the FCC cannot delegate its regulatory responsibilities. Teltec expressed concern that certain aspects of the experimental tariff proposed by Florida are contrary to established federal policies and stated that careful federal review is required before experimental tariffs are allowed to become effective. Ameritech and Pacific Bell both stated that the Commission should adopt very flexible guidelines in this area since the purpose of these tariffs is to develop data concerning different cost recovery approaches. BellSouth and Southwestern Bell both argued that experimental tariffs should be consistent with FCC access charge policies.

38. GTE argued that experimental tariffs should be developed by the local exchange carriers, not the state commissions. United took the position that the FCC should defer acceptance of these tariffs until 1986 pending the resolution of issues relating to state flexibility in designing alternative tariffs. Rochester Telephone proposed that the Commission adopt a policy which is flexible enough to permit exchange carriers to devise experiments suited to their individual circumstances, but strict enough to discourage the filing of numerous speculative proposals. The Associations argued that our guidelines for experimental tariffs should be the same as for alternative tariffs.

39. The state of Florida took the position that state commissions should have a great deal of latitude in designing experimental tariffs. OCCO also asserted that the states should be allowed to experiment with different NTS cost recovery the issues concerning the implementation of alternative tariffs before considering experimental tariffs. ARINC emphasized that experimental tariffs should not delay implementation of access charges.

B. Discussion

40. Although a number of parties have suggested the adoption of substantive guidelines for Joint Board review of experimental tariff proposals, we believe that steps to ensure prompt review of these proposals are all that is desirable. Clearly, an experimental tariff proposal which reflects an approach to NTS cost recovery that is fundamentally different from that recently recommended by the Joint Board and adopted by the Commission will require very careful scrutiny. However, we do not believe that such proposals should be barred. Accordingly, we are directing the Joint Board to complete preparation of its recommendations concerning such proposals within five months of the submission of the proposal.[30] Review of experimental tariff proposals which involve relatively minor changes in the recently adopted NTS cost recovery structure should be completed in less time whenever possible.

VI. Flow Through of Subscriber Line Charge Revenues

41. In the Commission's December 19, 1984 *Decision and Order* in this proceeding, we stated that we would adopt guidelines to ensure that the full amount of the revenue generated by the $1.00 residential and single line business subscriber line charge is flowed through to consumers in the form of reduced interstate toll rates.[31] There are a number of factors such as changes in underlying NTS costs as well as the increased subscriber line charge revenues which could affect the level of the NECA carrier common line charge. In order to ensure prompt reflection of the increased subscriber line charge revenues in the carrier common line rates and in AT&T's toll rates, we are requiring that NECA and AT&T make tariff filings on March 15, 1985 which adjust their presently effective charges to reflect the increased flat rate recovery of interstate NTS costs. These filings are not to reflect any other change in costs or modifications in rate structure. This will ensure that the rate reductions flowing from implementation of residential and single line business subscriber line charges are not delayed by the need to consider other cost or rate structure changes reflected in the same tariff filing. NECA and AT&T are free to make other tariff filings reflecting changes in underlying costs or rate structures.

42. Accordingly, we are directing NECA to file carrier common line rates on March 15, 1985 [32] to be effective June 1, 1985, that reflect a reduction in the premium and non-premium rates that are effective today that is equivalent to the projected revenues from the residential and single line business subscriber line charges and the exchange carrier portion of the excess 1978 earnings.[33] The § 69.206(b) formula is to be used in lieu of the § 69.206(c) formula for purposes of computing the non-premium per line and per minute charges. For purposes of this filing, the carrier common line revenue requirement described in §§ 69.205(b) and 69.206(b) will be computed on the assumption that revenues from the current premium and non-premium carrier common line charges would have equaled the carrier common line revenue requirement in the absence of residential and single line business subscriber line charges. In order to achieve consistency, we are also directing NECA and all exchange carriers that file separate charges for other elements to use the § 69.206(b) formula to compute all premium and non-premium charges.

43. We are also directing AT&T to file MTS and WATS rates which reflect a reduction in its rates in effect today equivalent to the projected reduction in its premium carrier common line charge payments as well as its 1978 excess earnings[34] on 45 days' public notice to be effective June 1, 1985. AT&T is to divide this reduction between its domestic and foreign services in proportion to the switched access minutes of use for these services. AT&T is to reflect its reduction in domestic rates in the form of an across the board reduction in all of its MTS and WATS offerings. AT&T is not to include changes in its domestic rate structure in this filing. We are not requiring AT&T to implement an across the board reduction in its foreign toll rates. In light of the fact that AT&T's earnings on particular international toll routes may vary and the other unique factors affecting international toll service, we believe that targeting the reduction to particular routes may be appropriate in this area. To the extent that AT&T does not implement an across the board international toll rate reduction, it will be required to file cost support data and other information necessary to justify its decisions concerning targeting of the reductions in its international rates. We

[30] The Joint Board may extend the period for its review of experimental tariff proposals by one month when necessary. Review of the experimental tariff proposal filed by the Florida Public Service Commission is to be completed within five months of the release of the Commission *Order* requesting comments on that proposal.

[31] CC Docket Nos. 78-72 and 80-286, 50 FR 939 (January 8, 1985). In conjunction with this, we hereby waive § 69.502 of the rules to extend the effective date of this provision pending further Commission action.

[32] *See* note 4, *supra.*

[33] *See* note 5, *supra.*

[34] *See* note 6, *supra.*

will scrutinize AT&T's filing to ensure that any selective international rate reductions are not anti-competitive in nature.

VII. Ordering Clauses

44. Accordingly, IT IS ORDERED, That local exchange carriers proposing alternative tariff provisions for the recovery of carrier common line charge revenues shall follow the procedural and substantive guidelines contained herein.

45. It is further ordered, That §§ 69.3, 69.206(c), 69.502 and 69.611 of the Commission's rules ARE WAIVED.

46. It is further ordered, That the Ad Hoc Telecommunications Users Committee's Motion for Leave to Accept Late Filed Pleading is granted.

47. It is further ordered, That US West's Motion for Extension of Time to file comments is denied.

48. The Joint Board is directed to review experimental tariff filings in accordance with the schedule set out herein.

49. NECA and AT&T are directed to make tariff filings as described herein.[35]

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-7748 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-522; RM-4653]

FM Broadcast Stations in Pine Top, AZ; Changes in Table of Allotments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of D & M, Inc., allots FM Channel 294 to Pine Top, Arizona, as that community's first FM Channel.

EFFECTIVE DATE: May 3, 1985.

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

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Pine Top, Arizona); MM Docket No. 84-522, RM-4653.

Adopted: March 13, 1985.
Released: March 28, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 24408, published June 13, 1984, proposing the allotment of Class C FM Channel 294 to Pine Top, Arizona, as that community's first allotment. The *Notice* was adopted in response to a petition filed by D & M, Inc. ("petitioner"). Petitioner submitted supporting comments reaffirming its interest in the channel. Double Eagle Broadcasting ("DEB"), licensee of Station KXJJ, Clifton, Arizona, submitted an unacceptable counterproposal requesting Channel 293 at Clifton and Channel 275 at Pine Top in order to upgrade its facilities to a Class C station.[1] Petitioner filed reply comments in response to the comments. KBW Associates, Inc. ("KBW"), licensee of Stations KRFM and KVSL (AM), Show Low, Arizona filed reply comments in opposition to the proposal. Petitioner filed a "Motion to Strike" and KBW filed an opposition thereto.[2] Petitioner seeks to have KBW's reply comments struck because it contends they raise new matters which were more appropriately filed as comments.

2. KBW argues that the allocation of Channel 294 to Pine Top would preclude the use of that channel as well as others throughout the state of Arizona. KBW states that Pine Top is more than adequately served by numerous radio services, and should be denied an allotment.

3. The issues raised by KBW are not valid reasons for considering denying an assignment. See, *Revision of FM Assignment Policies and Procedures*, BC Docket No. 808-130, 90 FCC 2d 88 (1982), wherein the Commission eliminated preclusion as a consideration. Further, the Commission indicated that it would continue to give emphasis to local service. Therefore, a community's need for first local service cannot be met by other stations not licensed to that locality.

4. After careful consideration of the proposal, the Commission believes that the public interest would be served by the allotment of FM Channel 294 to Pine Top, Arizona, thereby providing that community with a first FM service. The assignment can be in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

5. Concurrence of the Mexico government has been received since Pine Top is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

6. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 3, 1985, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with regard to the following community:

City	Channel No.
Pine Top, AZ	294

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

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Divisions, Mass Media Bureau.

[FR Doc. 85-7759 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-520; RM-4693]

FM Broadcast Stations in Ellwood, CA; Change in Table of Allotments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allocates Channel 233 to Ellwood, California, as that community's first local FM allotment, at the request of Thomas M. Eells.

[35] These actions are taken pursuant to sections 1, 4 (i)&(j), 201, 202, 203, 205, 218, 221(c), 403, and 410 of the Act, 47 U.S.C. 151, 154 (i)&(j), 201, 202, 203, 205, 218, 221(c), 403 and 410. This *Order* is to be effective March 14, 1985. To the extent that the Administrative Procedure Act, 5 U.S.C. s 553, would normally require publication of the provisions adopted herein 30 days prior to their effective date, the Commission finds that there is good cause to make these provisions effective March 14, 1985 in order to allow interested companies to go forward with alternative tariff filings as soon as possible and to allow the prompt filing of the NECA and AT&T flow through tariffs with a substantial period of public notice.

[1] The counterproposal is unacceptable because Channel 293 at Clifton, is short-spaced to a vacant channel at Las Mosco, Mexico (Channel 292).

[2] Since KBW is responding to DEB's counterproposal we believe it is appropriate for consideration. Therefore, the Motion to Strike is denied.

EFFECTIVE DATE: May 3, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Ellwood, California); MM Docket No. 84–520, RM–4693.

Adopted: March 13, 1985.
Released: March 26, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 24409, published June 13, 1984, seeking comments on the allotment of Class B FM Channel 233 to Ellwood, California, as that community's first local service. The *Notice* was issued in response to a petition filed by Thomas M. Eells ("petitioner") and he has filed comments reiterating his intent to apply for the channel.

2. The *Notice* raised the issue of whether Ellwood qualified as a community, as required by section 307(b) of the Communications Act, as it is not listed in the 1980 U.S. Census. In response, petitioner states that the Resource Management Department of the County of Santa Barbara considers Ellwood to be a distinct community and attaches an affidavit attesting to this belief. Petitioner also points out that the National Automobile Club includes Ellwood in its map entitled "Santa Barbara County and Its Communities." He states that Ellwood has its own school, a post office with an Ellwood zip code, and a number of commercial establishments which identify themselves with the community, such as Ellwood Graphics, Ellwood Apartments, and the Ellwood Mutual Water Company. Petitioner also asserts that there are community-oriented organizations such as the Ellwood School Parent-Teacher Association, Lion's Club and Optimists Club, among others.

3. We believe that the petitioner has provided us with sufficient indicia to conclude that Ellwood does meet the Commission's definition of a community for allotment purposes. It is an identifiable population grouping with businesses and community organizations which identify themselves with the residents of Ellwood. Further, the County of Santa Barbara recognizes a specific area as the community of Ellwood, with a population of 13,076 persons.

4. Channel 233 can be allotted in compliance with the Commission's mileage separation requirements, provided Station KBBY, Channel 236 at Ventura, California, moves from the site where it is presently licensed to the new site for which a construction permit has been granted (BPH–831216AL).

5. We believe the public interest would be served by allotting Channel 233 to Ellwood, California, as it could provide that community with its first local FM service. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 3, 1985, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Ellwood, CA	233

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

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7758 Filed 4–1–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–440; RM–4657, RM–4679]

FM Broadcast Stations in Grand Junction, CO, Change in Table of Assignment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channels 282 and 300 to Grand Junction, Colorado, at the request of Daniel L. Harris and Keith E. Lamonica, respectively. The assignment of the two channels could provide Grand Junction with its third and fourth local FM services.

EFFECTIVE DATE: May 1, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Grand Junction, Colorado); MM Docket No. 84–440, RM–4657, RM–4679.

Adopted: March 11, 1985.
Released: March 25, 1985.

By the Chief, Policy and Rules Divisions.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 20312, published May 14, 1984, requesting comments on the proposal to assign FM Channels 282 and 300 to Grand Junction, Colorado, as that community's third and fourth local services, at the request of Daniel L. Harris ("Harris") and Keith E. Lamonica ("Lamonica"), respectively. Comments were filed by International Broadcast Network, Inc. ("IBN"), by Decker Communications ("Decker"), and by Larry Capetto ("Capetto"). Comments in opposition to the assignments were filed by Mesa Broadcasting Company ("Mesa") to which Lamonica responded. Both channels can be assigned in compliance with the Commision's minimum distance separation and other technical requirements.

2. Mesa is the licensee of one of the two existing Grand Junction FM stations, Station KQIX, Channel 226, and AM Station KQIL. Mesa contends that Grand Junction is already adequately served by the two existing FM stations and four AM stations, and will receive service from three additional FM stations licensed to nearby communities, two of which are now on the air. Therefore, based on the size of Grand Junction, with a 1980 U.S. Census population of 28,144 persons, it feels that the community does not provide a sufficient population and economic base to support two additional radio services. However, it states that should the Commission feel that the assignment of the two additional channels would be in the public interest, it requests that we assign lower-powered Class A frequencies instead of the requested Class Cs channels.

3. As noted earlier, four parties have expressed an intention to apply for the Class C FM channels, if assigned. Both IBN and Decker, in addition to expressing their intention to apply for one of the channels, if assigned, provide demographic data to show that Grand Junction is a substantial community which could benefit from the increased aural service. Lamonica, the only party filing reply comments, reiterates his interest in a Class C and specifically discounts any interest in utilization of a Class A channel. It appears that Mesa's opposition to the assignment of two additional Class C allocations is centered around its concern of economic harm to its existing co-owned stations. However, this argument is not sufficient justification for its denial. For as we have held previously, the question of economic impact is more appropriately considered when raised in connection with an application for a channel. See, *Chadron, Nebraska*, 52 R.R. 2d 1480 (1982), and *Sacramento, California*, 50 R.R. 2d 951 (1982).

4. In view of the above considerations and having found no policy objections to the proposal, we believe the public interest would be served by assigning Channels 282 and 300 to Grand Junction, Colorado. As noted earlier, these assignments could provide a third and fourth local FM service to the community. Accordingly, pursuant to the authority contained in sections (i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 1, 1985, the FM Table of Assignments § 73.202(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Grand Junction CO	222, 226, 282, and 300

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

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-7749 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-509; RM-4690]

FM Broadcast Stations in Slayton, MN; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 276A to Slayton, Minnesota, in response to a petition filed by Dorothea A. Kinsman. The assignment could provide a first local broadcast service for Slayton.

EFFECTIVE DATE: May 1, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Slayton, Minnesota); MM Docket No. 84-509, RM-4690.

Adopted: March 13, 1985.
Released: March 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 24399, published June 13, 1984, in response to a petition filed by Dorothea A. Kinsman ("petitioner"). The *Notice* proposed the assignment of FM Channel 276A to Slayton, Minnesota, as that community's first FM service. Petitioner filed comments in support of the *Notice* and restated her intention to apply for the channel, if assigned.

2. A staff study indicates that Channel 276A could be assigned to Slayton, Minnesota, in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules. However, this allotment would limit the 16 kilometer buffer zone of Station KTFC, Sioux City, Iowa.[1]

3. In view of the above considerations, we believe the public interest would be served by a grant of the petitioner's request, since it could provide for the first FM service in that community.

[1] Existing Class C stations operating with less than a 300 meter antenna height are now permitted the buffer zone. However, this requirement does not apply to petitions such as the instant one which were filed before March 1, 1984. See BC Docket 80-90, *recons.* 97 FCC 2d 279 (1984).

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 1, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules is amended with respect to the community listed below:

City	Channel No.
Slayton, MN	276A

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

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-7753 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-515; RM-4398]

FM Broadcast station in Stephenville, TX; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns FM Channel 252A to Stephenville, Texas, in response to a petition filed by Ms. R.K. Jack. A counterproposal filed by Mayor J.C. Pratt, for a Channel 252A assignment to Dublin, Texas, is dismissed.

EFFECTIVE DATE: April 29, 1985.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Stephenville, Texas); MM Docket 83-515, RM-4398.

Adopted: March 13, 1985.
Released: March 21, 1985.

By the Chief, Policy and Rules Division.

1. The Commission in its *Notice of Proposed Rule Making*, 48 Fed. Reg. 28493, published June 22, 1983, proposed the assignment of Channel 252A to Stephenville, Texas, as its second FM allocation, in response to a petition filed by Ms. R.K. Jack ("petitioner"). A *Further Notice* was adopted in this proceeding (49 FR 15096, published April 17, 1984), to consider substituting Channel 252A for Channel 289, rather than adding Channel 252A as a second FM service. In response to the *Further Notice*, Dixie Broadcasters ("Dixie") [1] filed comments partially opposed to the proposal. Comments in support were filed by Donita S. Jones. The original petitioner, Ms. R.K. Jack, did not respond to the *Further Notice*. On June 11, 1984, Jack L. Pratt, Mayor of Dublin, Texas, submitted a letter requesting that Channel 252A be assigned to Dublin.

2. Since the *Further Notice* was adopted, the Commission has issued a construction permit to "Dixie" for operation on Channel 289 at Stephenville, Texas. Thus the comments of "Dixie" requesting that this proceeding be held in abeyance until such time as the Commission acts on its application to modify the facilities of Station KWWM (FM) from Channel 252A to Channel 289, is moot.

3. The request of Mayor Pratt to assign Channel 252A to Dublin, Texas, did not meet the filing deadline for counterproposals as set forth in § 1.420(d) of the Rules. Therefore, since no justification was set forth for the late filing, we have not accepted the proposal for consideration in this proceeding.

4. After consideration of the comments filed in response to the *Further Notice*, we find that the public interest would benefit from the assignment of Channel 252A at Stephenville as it could provide for a second FM service to that community. Although the petitioner did not express a continuing interest in the proposal, Donita S. Jones, in comments, stated her intention to apply for Channel 252A at Stephenville, if assigned.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 29, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Stephenville, TX	252A, 289

6. It is further ordered, That the request of Mayor Jack L. Pratt, seeking to have Channel 252A assigned to Dublin, Texas, is dismissed.

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

8. For further information concerning this proceeding, contact Montrose H. Tyree (202) 634-6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-7757 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-462; RM-4646]

FM Broadcast Stations in Christiansted, St. Croix, Virgin Islands; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Paul L. Crogan, assigns Channel 232A to Christiansted, St. Croix, Virgin Islands, as that community's fifth local FM broadcast service.

EFFECTIVE DATE: May 1, 1985.

ADDRESS: Federal Communications Commission, Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Christiansted, St. Croix, Virgin Islands): MM Docket No. 84-462, RM-4646.

Adopted: March 11, 1985.
Released: March 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 21969, published May 24, 1984, proposing the assignment of FM Channel 232A to Christiansted, St. Croix, Virgin Islands, as that community's fifth local broadcast service, at the request of Paul L. Crogan ("Petitioner"). Petitioner filed supporting comments restating an intention, either personally or as part of a corporation formed by him, to apply for the channel, if assigned. Joseph Bahr ("Bahr") filed an opposition to the proposal, to which the petitioner responded.

2. Bahr, licensee of FM Station WVIS (Channel 291), Fredericksted, St. Croix, Virgin Islands suggests the assignment of Channel 232A to Charlotte Amalie Virgin Islands, instead.[1] The request was unacceptable as a counterproposal because Bahr failed to express an intention to apply for a channel at Charlotte Amalie, if assigned. Generally the Commission does not consider alternate uses of a channel without an interest therefor. See *Second Report and Order* in Docket No. 80-130, 90 FCC 2d 88 (1982).

3. Petitioner states that the opposing comments were actually late-filed comments to the Charlotte Amalie-Isabel Segunda proceeding, MM Docket No. 83-1142, and should not be considered herein. See footnote 1 *supra*.

4. The Commission believes that the public interest would be served by the assignment of FM Channel 232A to Christiansted, St. Croix, Virgin Islands, as a fifth local FM service. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 1, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended to read as follows for the community listed below:

City	Channel No.
Christiansted, VI	232A, 236, 258, 262, and 291.

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

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

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

[1] Dixie Broadcasters is the licensee of Station KWWM (FM), Stephenville, Texas.

[1] Recently the Commission assigned Channel 296A to Charlotte Amalie in *Report and Order*, MM Docket No. 83-1142, 49 Fed. Reg. 36379, published September 17, 1984.

Federal Communications Commission.
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 85-7750 Filed 4-1-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-646; RM-4719]

FM Broadcast Stations in Stevens Point, WI; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 285A to Stevens Point, Wisconsin, as that community's third local FM assignment, at the request of Stevens Point Broadcasters. The request of Baraboo Broadcasting Corp. to assign Channel 285A to Wisconsin Rapids, Wisconsin, is dismissed as technically defective.

EFFECTIVE DATE: May 3, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of section 73.202(b), Table of Assignments, FM Broadcast Stations (Stevens Point, Wisconsin); MM Docket No. 84-646, RM-4719.

Adopted: March 13, 1985.
Released: March 26, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 27960, published July 9, 1984, proposing the assignment of Channel 285A to Stevens Point, Wisconsin, at the request of Stevens Point Broadcasters ("petitioner"). The assignment of Channel 285A could provide that community with its third local FM service. Comments were filed by the petitioner reiterating its intent to apply for Channel 285A, if assigned, and Baraboo Broadcasting Corp. ("Baraboo"), to which the petitioner responded.

2. In its comments, Baraboo requests that Channel 285A be assigned to Wisconsin Rapids, as that community's second FM allocation. It contends that Wisconsin Rapids is a city of "equal size and equal need." Therefore, according to Baraboo, Wisconsin Rapids should receive its second local FM service before Stevens Point receives its third. Petitioner, in its reply comments, avers that should Channel 285A be assigned to Wisconsin Rapids, the transmitter would have to be located 10.9 miles outside the city limits. It notes that a transmitter located this distance from the city limits would not be able to provide the requisite city grade signal to the entire community of license. Therefore, the channel should be assigned to Stevens Point where it can be utilized at a site which will provide the required signal coverage to the entire community and a party has expressed an interest in use of the frequency, according to the petitioner.

3. The staff has conducted its own analysis of the assignment of Channel 285A to Wisconsin Rapids and confirms the findings of the petitioner. In order to prevent short-spacing to Station WAXX, Channel 283 at Eau Claire, Wisconsin, and to Station WNFM, Channel 285A at Reedsburg, Wisconsin, the transmitter for a Channel 285A operation at Wisconsin Rapids would have to be located at least 8.7 miles northeast. At this distance, the requisite city grade (70 dBu) signal cannot be provided to the community. Therefore, the request of Baraboo will be dismissed as technically defective. See Section 73.315 of the Rules.

4. We believe the assignment of Channel 285A at Stevens Point, Wisconsin, to be in the public interest, as it could provide the community with its third local FM service. The channel can be assigned in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.2 kilometers (2.6 miles) southwest.

5. Accordingly, it is ordered, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, That effective May 3, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended to read as follows for the community listed below:

City	Channel No.
Stevens Point, WI	244A, 250, and 285A.

6. It is further ordered, That the request of Baraboo Broadcasting Corp. to assign Channel 285A to Wisconsin Rapids, Wisconsin, is dismissed.

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

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 85-7760 Filed 4-1-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-496; RM-4704]

FM Broadcast Stations in Sturgeon Bay, WI; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 249A to Sturgeon Bay, Wisconsin, in response to a petition filed by Door County Radio Company as that community's third FM assignment.

EFFECTIVE DATE: May 1, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 76.202(b), Table of Assignments, FM Broadcast Stations (Sturgeon Bay, Wisconsin); MM Docket No. 84-496, RM-4704.

Adopted: March 13, 1985.
Released: March 25, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 23899, published June 8, 1984, proposing the assignment of FM Channel 249A to Sturgeon Bay, Wisconsin as that community's third FM assignment. The *Notice* was adopted in response to a petition filed by Door County Radio Company ("petitioner"). Supporting comments were filed by petitioner in which it reaffirmed its intention to apply for the channel, if assigned. Comments in opposition were filed by Door County Broadcasting

Company, Inc. ("Door County") to which petitioner did not respond.

2. In opposition Door County asserts that Sturgeon Bay has "sufficient radio service" in a "very small city" which also receives broadcasts from Marinette, Wisconsin, and Menominee, Michigan. Further, the addition of another radio service in the Sturgeon Bay market would "fractionalize the audience . . . resulting in reduced services to the community." Door County concludes, therefore, that an "additional radio station in Sturgeon Bay would not be in the public interest, convenience or necessity."

3. The focal point of Door County's opposition appears to be its concern of economic harm if the Commission allocates a third FM channel to Sturgeon Bay, Wisconsin. However, the Commission's FM policy revisions in 1982,[1] eliminated any consideration of economic impact as an issue in a rule making proceeding. As we stated therein and have held on other occasions, that if the status of a community is not in question and a petitioner believes that the service is needed, the Commission does not generally question this judgment. Rather, such a matter is a business judgment that should be made by the applicant. If the station's viability proves to be erroneous, then the applicant, and not the public, will suffer the unpropitious consequences of a business failure. See, *Chadron, Nebraska*, 52 R.R. 2d 1480 (1982); and *Sacramento, California*, 50 R.R. 2d 951 (1982).

4. As to Door County's allegation that the addition of another radio station in Sturgeon Bay would not be in "the public interest, convenience or necessity," this is a burden which it must bear to establish how, in fact, the public would be harmed by the competition.[2] It is a matter, therefore, that can best be addressed at the application stage rather than in a rule making proceeding. See *Bend, Oregon*, 46 FR 62858, published December 29, 1981, and cases cited therein.

5. In consideration of the foregoing, it appears that the benefits of the proposal are clear, since it could provide an additional competitive service to the community and a third local nighttime voice for the expression of diversified programming. We believe this determination is consistent with the Commission's policy favoring competition through the authorization of additional broadcast services, and is consistent with the mandate of § 307(b) of the Communications Act of 1934, as amended, to provide a fair, efficient and equitable distribution of radio services among the various communities. The proposal is also in accord with our assignment priorities set forth in the *Second Report and Order, supra*, and with traditional assignment principles.[3]

6. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Rules. The concurrence of the Canadian government in the assignment of Channel 249A to Sturgeon Bay has been received.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 1, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended, for the following city:

City	Channel No.
Sturgeon Bay, WI	230, 249A, and 261A.

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

9. For further information concerning the above, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7751 Filed 4–1–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84–503; RM–4759]

TV Broadcast Stations in Oshkosh, WI; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television Channel *50 to Oshkosh, Wisconsin, as that community's first noncommercial educational television service, in response to a petition filed by the State of Wisconsin-Educational Communications Board.

EFFECTIVE DATE: May 1, 1985.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Jeffrey D. Sutherland, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Oshkosh, Wisconsin); MM Docket No. 84–503, RM–4759.

Adopted: March 13, 1985.
Released: March 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rulemaking*, 49 FR. 24406, published June 13, 1984, which proposed the assignment and reservation of UHF television Channel *50 to Oshkosh, Wisconsin, as that community's first local educational television facility, in response to a petition filed by the State of Wisconsin-Educational Communications Board ("petitioner"). Supporting comments were filed by the petitioner reiterating its intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. Oshkosh (population 49,620),[1] the seat of Winnebago County (population 131,703), is located in east central Wisconsin, approximately 125 kilometers (80 miles) northwest of Milwaukee. Currently, Oshkosh is assigned UHF television Channel 22, for which a construction permit has been issued.

3. As indicated in the *Notice*, UHF television Channel *50 can be assigned to Oshkosh consistent with the applicable minimum distance separation requirements to §§ 73.610 and 73.698 of the Commission's Rules.

4. In light of the above, we believe the public interest would be served by the assignment and reservation of UHF television Channel *50 to Oshkosh, Wisconsin, since it could provide a first local educational television service to the community.

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered.

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[1] See *Second Report and Order* in BC Docket No. 80–130, *Revisions of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982).

[2] *Carroll Broadcasting* v. *F.C.C.*, 258 F. 2d 550 (D.C. Cir. 1958).

[3] See, *Anamosa and Iowa City, Iowa*, 46 F.C.C. 2d 520, 524–55 (1974).

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

That effective May 1, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended to include the community listed below, as follows:

City	Channel No.
Oshkosh, WI	22+ and *50+

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

7. For further information concerning the above, contact Nancy V. Joyner or Jeffrey D. Sutherland, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-7752 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-652; RM-4745]

TV Broadcast Stations in Eureka, CA; Change in Table of Assignments.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television Channel 29 to Eureka, California, as that community's third commercial television service, in response to a petition filed by Sainte Broadcasting Corporation.

EFFECTIVE DATE: May 3, 1985.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Jeffrey D. Sutherland, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Eureka, California); MM Docket No. 84-652, RM-4745.

Adopted: March 13, 1985.
Released: March 26, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 29420, published July 20, 1984, proposing the assignment of UHF television Channel 29 to Eureka, California, as that community's third commercial television service, in response to a petition filed by Sainte Broadcasting Corporation ("petitioner"). Supporting comments were filed by petitioner reiterating his intention to apply for the channel, if assigned.

2. Eureka (population 24,153),[1] the seat of Humboldt County (population 108,514), is located on the California coast, approximately 370 kilometers (230 miles) north of San Francisco. Currently, commercial VHF Channels 3 (Station KIEM-TV) and 6 (Station KVIQ(TV)), as well as noncommercial educational Channel 13 (Station KEET(TV)) are licensed to the community.

3. A staff engineering study reveals that UHF television Channel 29 can be assigned to Eureka, California in conformity with the applicable minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

4. In light of the fact that the proposed assignment could provide a third commercial television service to Eureka for the expression of diverse viewpoints and programming, we believe the public interest would be served by assigning Channel 29 thereto.

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

City	Channel No.
Eureka, CA	3-, 6-, *13-, and 29

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

7. For further information concerning the above, contact Nancy V. Joyner or Jeffrey D. Sutherland, Mass Media Bureau (202) 634-6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-7763 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

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

47 CFR Part 73

[MM Docket No. 84-651; RM-4750]

TV Broadcast Stations in Jackson, MS; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 51 to Jackson, Mississippi, as that community's sixth local allocation, at the request of Larry G. Fuss, Sr.

EFFECTIVE DATE: May 3, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Jackson, Mississippi; MM Docket No. 84-651, RM-4750.

Adopted: March 11, 1985.
Released: March 26, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 29428, published July 20, 1984, proposing the assignment of UHF TV Channel 46 to Jackson, Mississippi, at the request of Larry G. Fuss, Sr. ("petitioner"). The allocation could provide Jackson with its sixth local television service. Petitioner filed comments reiterating his intention to apply for the channel, if assigned.

2. As stated in the *Notice*, the assignment of Channel 46 at Jackson would require a site restriction of at least 20.1 miles south to avoid a short-spacing to Channel *32, unoccupied and unapplied for, at Yazoo City, Mississippi. However, petitioner has indicated an interest in utilizing a site west-southwest of Jackson, in the vicinity of a current "antenna farm." As this would not be possible with the site restriction which we have announced, he requests that Channel *32 be deleted from Yazoo City, either with the substitution of channel *52 therefor or with no replacement.

3. The Commission has traditionally refrained from deleting unused educational channels, without replacement, absent compelling justification. See, *e.g., Cullowhee and Andrews, North Carolina, et al.*, MM

Dockets 83-1135 and 84-378, 49 FR 19070, published May 4, 1984, and cases cited therein. As the petitioner has indicated that a substitute channel is available for use at Yazoo City, we see no reason to consider the deletion of Channel *32 without replacement. Concerning the petitioner's suggestion that Channel *52 be assigned to Yazoo City as a replacement for Channel *32, we find that this is not necessary. The staff has performed a channel search and found that Channel 51 can be assigned to Jackson, without requiring the imposition of a site restriction. Therefore, we believe that if Channel 51 were assigned, petitioner and any other interested party would be free to consider a transmitter site in the vicinity of the "antenna farm."

4. Based on the above discussion, we believe that the provision of an additional local television service at Jackson would be in the public interest. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(l), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 3, 1985, the TV Table of Assignments, § 73.606(b) of the Rules, is amended to read as follows for the community listed below:

City	Channel No.
Jackson, MS	3, 12+, 16, *29+, 40+, and 51.

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

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-7762 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-712; Rm-4768]

TV Broadcast Stations in Sumter, SC; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 63 to Sumter, South Carolina, as its first commercial TV assignment, in response to a petition filed by Rodney M. Sprott.

EFFECTIVE DATE: May 3, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Sumter, South Carolina); MM Docket No. 84-712, RM-4768.

Adopted: March 11, 1985.
Released: March 26, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 30544, published July 31, 1984, in response to a petition filed by Rodney M. Sprott ("petitioner"). The *Notice* proposed the assignment of UHF Television Channel 63 to Sumter, South Carolina as its first commercial television channel. Petitioner filed comments in support of the *Notice* and restated his intention to apply for the channel, if assigned.

2. Sumter (population 24,890),[1] seat of Sumter County (population 88,243), is located in central South Carolina, approximately 130 kilometers (80 miles) north of Charleston, South Carolina.

3. In view of the fact that the assignment could provide a first commercial TV channel to Sumter, we believe that the public interest would be served by assigning Channel 63 to that community. Channel 63 can be assigned in conformance with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Commission's Rules, it is ordered, That effective May 3, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the community listed below:

City	Channel No.
Sumter, SC	*27-, and 63-

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

[1] Population figures are taken from the 1980 U.S. Census.

6. For further information concerning the above, contact Kathleen Scheurele, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-7764 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-650; RM-4785]

TV Broadcast Stations in Grundy, VA; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television 68 to Grundy, Virginia, as its first TV assignment, in response to a petition filed by Reverend Buford Smith.

EFFECTIVE DATE: May 3, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Grundy, Virginia); MM Docket No. 84-650, RM-4785.

Adopted: March 11, 1985.
Released: March 26, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 29427, published July 20, 1984, which proposed the assignment of UHF Television Channel 68 to Grundy, Virginia, as that community's first television broadcast service, in response to a petition filed by Reverend Buford Smith ("petitioner"). Comments were filed by the petitioner restating his intention to apply for the channel, if assigned.

2. The Commission believes that the public interest would be served by assigning UHF Television Channel 68 to Grundy. A need for television service to the community has been shown and the assignment can be made consistent with the minimum distance separation

requirements of § 73.610 of the Commission's Rules, provided there is a site restriction of 2.5 miles southeast of Grundy. The site restriction will prevent a short spacing to a construction permit for Station WEKT on Channel 69 at Paintsville, Kentucky.

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

City	Channel No.
Grundy, VA	68

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

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

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7761 Filed 4–1–85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 27

[Docket No. 56b; Amdt. No. 27–2]

Nondiscrimination on the Basis of Handicap in Programs Receiving Financial Assistance From the Department of Transportation

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: This document amends Appendix A to the Department of Transportation's existing interim final rule concerning nondiscrimination on the basis of handicap in programs receiving financial assistance from the Department. Appendix A provides examples of various compliance approaches. This document amends one of the examples to make it conform with the changes in the Urban Mass Transportation Administration (UMTA) program resulting from recent statutory changes.

DATE: This rule is effective April 2, 1985.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Office of Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10105, 400 Seventh Street SW., Washington, D.C. 20590, (202) 426–4723. Hearing-impaired persons may contact Mr. Ashby by dialing TTY (202) 755–7687.

SUPPLEMENTARY INFORMATION: The Department's requirements for various UMTA recipients concerning nondiscrimination on the basis of handicap are found in 49 CFR Part 27. Section 27.77(a)(1) requires recipients of funds from UMTA, under section 3 and 5 of the Urban Mass Transportation Act of 1964, as amended, (49 U.S.C. 1602 and 1604) (UMT Act) to certify that "special efforts are being made in their service area to provide transportation that handicapped persons, including wheelchair users and semiambulatory persons, can use." In addition, the rule requires the special efforts to "be consistent with the guidance in Appendix A. . . ."

Appendix A provides advisory information on programming for handicapped persons. While the Appendix does not specify a particular program designed to meet the special efforts requirement, it does provide three examples that illustrate a level of effort that will be deemed to satisfy the requirements with respect to wheelchair users and semiambulatory persons. It is important to note that the examples are not regulatory standards or minimums, but merely examples.

The first example describes a program for wheelchair users and semiambulatory persons under which a recipient spends "an average annual dollar amount equivalent to a minimum of 3.5 percent of the financial assistance that the urbanized area receives under section 5 of the UMT Act." The example states that the expenditure need not be of section 5 funds, but may be derived from sources other than section 5.

In the Surface Transportation Assistance Act of 1982 (Pub. L. No. 97–424) (the STAA of 1982), Congress added a new section 9 Block Grant program to the UMT Act. The section 9 program begins in FY 84 and generally replaces the section 5 program. Therefore, Congress did not appropriate any new section 5 funds for FY 84 in the Department of Transportation and Related Agencies Appropriation Act of 1984 (Pub. L. No. 98–78). UMTA will, however, apportion some section 5 funds in FY 84. These funds will be reapportioned funds that were previously apportioned but lapsed to the urbanized areas after their initial four year period of availability under section 5(c)(4) of the UMT Act. This amount, however, will be considerably less than the total section 5 apportionment for any one previous year. As a result, if a recipient were to continue to follow the example described above, its expenditure for FY 84 or subsequent fiscal years could be markedly decreased since, its section 5 apportionment will be decreased.

The Department is concerned that this change in the UMTA program would have an adverse effect on the transportation service provided to handicapped persons. Consequently, the Department is amending Example 1 in Appendix A so that the dollar expenditure should be equivalent to 3.5 percent of the section 5 funds the recipient received in FY 83. The Department is confident that this change will not work any hardship on recipients, yet ensure an adequate level of service for handicapped persons.

It should be emphasized that under this example, a recipient would not have to spend any UMTA funds to satisfy the example. Although a recipient could choose to spend its section 5 or 9 funds, for example, to fund projects that count towards the 3.5 percent, it could spend all local funds. The expenditure of an equivalent dollar amount is all that the example stipulates.

On September 8, 1983, the Department published a notice of proposed rulemaking (NPRM) that would replace the current interim rule (48 FR 40614). The Department received more than 640 comments on the NPRM and has completed its review of the comments. The Department is resolving issues raised by the comments and is analyzing costs and benefits. The Department hopes to publish a final rule later in 1985.

Rulemaking Process Requirements

Notice and Comment; Immediate Effective Date

Under the Administrative Procedure Act, Federal agencies are required to publish all substantive rules not less than 30 days before the rule's effective date (5 U.S.C. 553(d)). An exception is provided, however, when the agency determines for good cause that such a period is not necessary. In this situation, the Department finds that there is good cause to make this amendment effective immediately. There is potential confusion for UMTA recipients who have opted to follow Example 1 about the appropriate level of expenditure since their section 5 apportionment for this fiscal year will be considerably

decreased from past years. Therefore, in order to prevent any further confusion and to ensure a continuing and reliable level of service for handicapped persons, the Department finds that this amendment must be effective immediately. In addition, the same reasons support the Department's decision that notice and comment are unnecessary under 5 U.S.C. 553(b).

Environmental Impact Evaluation

This amendment will have no significant environmental impact.

Executive Order 12291 and DOT Regulatory Policies and Procedures

This amendment is not considered a "major rule" as defined in Executive Order 12291 or a significant regulation under the Department's Regulatory Policies and Procedures.

Regulatory Flexibility Act

The Department certifies that this amendment does not have a significant economic impact on a substantial number of small entities. Since the Department is amending the existing regulation to maintain an already described level of expenditure, there will be no significant economic impact on any UMTA recipients.

List of Subjects in 49 CFR Part 27

Mass transportation, Handicapped.

Authority

(Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); section 3, 5, 16, and 18 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, 1612, and 1614); section 165(b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142 nt.))

Issued on March 27, 1985.

Elizabeth Hanford Dole,

Secretary of Transportation.

For the reasons set forth in the preamble,

Title 49 of the Code of Federal Regulations, Part 27, § 27.71, is amended by revising the first sentence in the first paragraph of Example 1 in Appendix A thereof to read:

Appendix A—Advisory Information on Programming for Handicapped Persons

* * * * *

1. A program for wheelchair users and semiambulatory handicapped persons that will involve the expenditure of an average annual dollar amount equivalent to a minimum of 3.5 percent of the financial assistance that the urbanized area received in FY 83 under section 5 of the UMT Act.

* * * * *

[FR Doc. 85-7866 Filed 4-1-85; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 41154-4154]

Tanner Crab Off Alaska; Season Closure

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

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that early closure of the Tanner crab fishery in the Southeast District in Registration Area A is necessary to protect Tanner crab stocks. The Secretary of Commerce (Secretary) therefore issues this notice of closure of the Southeast District to fishing for Tanner crab by vessels of the United States. The intended effect is to conserve Tanner crab stocks.

DATES: This notice is effective from noon, Alaska Standard Time (AST), March 28, 1985, until noon, Alaska Daylight Time (ADT), May 1, 1985. Public comments on this notice of closure are invited until April 15, 1985.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

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

SUPPLEMENTARY INFORMATION:

Background

The fishery management plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments of season and area openings and closures. Implementing rules at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary under criteria set out in that section.

Section 671.26(c) establishes two districts within Registration Area A in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. One of these is the Southeast District. The FMP specifies the optimum yield (OY) for the Southeast District to be 1.0–3.0 million pounds.

Since the 1981/1982 season, commercial fisheries and stock assessment information indicate that the Tanner crab stock is declining. Young crabs newly recruited into the fishery now dominate the commercial harvest. The catch of Tanner crabs taken incidentally while conducting research on king crab stocks in southeast Alaska has shown a decline from about 9.7 Tanner crabs per pot in 1981 to about 2.9 Tanner crabs per pot in 1984. Based on this information, the Alaska Department of Fish and Game (ADF&G) issued a news release on December 20, 1984, to allow a 1985 harvest of up to 1.5 million pounds.

The 1985 fishery opened on February 10. Current weekly catches are smaller than weekly catches for the 1984 season, indicating that stocks have declined even more than was known before the 1985 fishery opened. During the second, third, and fourth statistical reporting weeks of the 1985 season, cumulative catches were only 61–65 percent of the cumulative catches for the same statistical weeks during the 1984 season. This new information justifies limiting the harvest to 1.0 million pounds. About 900,000 pounds were landed through March 19, 1985. At the current rate of harvest, 1.0 million pounds will be taken by noon, March 28, 1985.

In light of this information, the Regional Director, under § 671.27(b), has determined that

(1) The actual condition of Tanner crab stocks in the Southeast District is substantially different from the condition anticipated at the beginning of the fishing year; and

(2) This difference reasonably supports the need to protect those Tanner crab stocks by closing the Southeast District of Registration Area A, as defined in § 671.26(c)(1)(i). This district is therefore closed to all fishing for Tanner crab from noon, AST, March 28, 1985, until noon, ADT, May 1, 1985, at which time the closure of this district prescribed in § 671.26(c)(2)(i) will begin.

This closure will become effective when this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the ADF&G. Public comments on this notice of closure may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this closure will be

reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the Southeast District will be subject to damage by overfishing unless this closure takes effect promptly. The Agency therefore finds for good cause that advance opportunity for public comment on this notice is contrary to the public interest, and that its effective date should not be delayed.

This action is taken under regulations specified at § 671.27, and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information request, as defined in the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 671

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 28, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-7862 Filed 3-29-85; 9:53 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 63
Tuesday, April 2, 1985

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Tomato Juice

Correction

In FR Doc. 85-6430, beginning on page 10970, in the issue of Tuesday, March 19, 1985, make the following corrections:

1. On page 10970, third column, in the table of contents, in the entry for § 52.3622, the first word should read "Definitions", and in the entry for § 52.3625, insert "of" between "fill" and "Container".

§ 52.3622 [Corrected]

2. On page 10971, first column, in § 52.3622, paragraph (a)(1), second line, insert "in" between "red" and "tomato"; in paragraph (a)(2), thirteenth line should read:

"21 percent of the area of Yellow (2.5 YR 5/12)", and in column two, paragaph (a)(3)(ii), fourteenth line, "finish," should read "finish),".

§ 52.3626 [Corrected]

3. On the same page, third column, in § 52.3626, paragraph (a), first line, "to" should read "or".

§ 52.3627 [Corrected]

4. On page 10972, first column, in § 52.3627, in Table II, the first line of table heads "Tomato soluble solids (minimum)" and "5.0 pct by weight" should have appeared at the end of the table preceding the footnotes.

BILLING CODE 1505-01-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-024]

Public Hearing on Importation of Certain Animal Embryos

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Public Hearing on Importation of Certain Animal Embryos.

SUMMARY: This document gives notice of a public hearing concerning a proposal to establish regulations governing the importation into the United States of certain embryos of cattle, sheep, goats, other ruminants, swine, horses, and asses.

DATE: The public hearing will be held May 15, 1985, beginning at 10 a.m.

ADDRESS: The public hearing will be held at the Airport Sheraton Inn, 7301 Northwest Tiffany Springs Road, Kansas City, Missouri.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, Senior Staff Veterinarian, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8530.

SUPPLEMENTARY INFORMATION:

Public Hearing

On October 22, 1984, a document was published in the **Federal Register** (49 FR 41257-41261) which proposed to establish regulations governing the importation into the United States of certain embryos of cattle, sheep, goats, other ruminants, swine, horses, and asses. The document provided for receipt of written comments on or before December 21, 1984. A document published in the **Federal Register** on January 14, 1985 (50 FR 1863), reopened and extended the comment period to July 15, 1985, and announced that a public hearing would be scheduled to receive additional comments on the proposed rule. This document gives notice of the public hearing.

A representative of the Animal and Plant Health Inspection Service will preside at the hearing. Any interested person may appear and be heard in person, by attorney, or by other representative.

The hearing will begin at 10 a.m. and is scheduled to end at 5 p.m. local time. However, the hearing may be terminated at any time after it begins if all of those persons desiring an opportunity to speak have been heard. Persons who wish to speak are requested to register with the presiding officer prior to the hearing. The prehearing registration will be conducted at the location of the hearing from 9 a.m. to 10 a.m. Those registered persons will be heard in the order of their registration. Any other person who wishes to speak at the hearing will be afforded such opportunity after the registered persons have been heard. It is requested that duplicate copies of any written statements that are presented be provided to the presiding officer at the hearing.

If the number of preregistered persons and other participants in attendance at the hearing warrants it, the presiding officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard.

Dated: March 28, 1985.

J.K. Atwell,
Deputy Administrator, Veterinary Services.

[FR Doc. 85-7860 Filed 4-1-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-79-102]

Energy Conservation Program for Consumer Products; Request for Comments Concerning the Use of Computer Simulation or Engineering Analysis for Rating Central Air Conditioners

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of inquiry.

SUMMARY: The Department of Energy (DOE) is publishing for comment a document entitled "A Rating Procedure for Mixed System Central Air Conditioners." This document describes a procedure to determine the energy performance of a central air conditioner

combination (condensing unit and indoor coil) without conducting the full laboratory procedure prescribed by DOE test procedures. DOE is planning to amend the test procedures for central air conditioners to prescribe, among other actions, the procedure to rate untested central air conditioner combinations.

DATE: DOE will accept comments, data and information not later than June 3, 1985.

ADDRESSES: Written comments and statements shall be sent to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Docket No. CAS–RM–79–102, Room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9319.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–112.1, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9513

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, 92 Stat. 3266, and requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including central air conditioners. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

Test procedures for central air conditioners were originally proposed by notice issued June 7, 1977, 42 FR 30401, June 14, 1977. Final test procedures for central air conditioners were prescribed on November 21, 1977, 42 FR 60150, November 25, 1977. DOE proposed to amend the test procedures on April 6, 1979 (44 FR 23468, April 19, 1979) in order to include testing procedures for heat pumps, and solicited public comments on the need to modify any provisions of the existing test procedures for all types of central air conditioners. Final test procedures for central air conditioners (including heat pumps) were prescribed on December 10, 1979, 44 FR 76700, December 27, 1979.

The December 1979 final rule recognized that laboratory testing of every combination of condensing unit and evaporator coil would be burdensome to users of the test procedures. Coil manufacturers (typically small entities), commenting on the April 1979 proposal, stressed the impossibility of laboratory testing all combinations they offer for sale. Condensing unit manufacturers (typically large entities) were in favor of an alternative to laboratory testing as long as it resulted in equal accuracy for their combinations. Consequently, in the December 1979 final rule, the Department allowed the use of an unspecified computer simulation or engineering analysis to predict the energy performance of untested combinations provided that, at a minimum, laboratory testing was done on the model combination representing the largest sales volume, and the simulation technique demonstrated an acceptable level of repeatable accuracy.

Since 1979, users of the test procedures have reported a high degree of variability resulting from the allowance to use simulation techniques. For instance, it has been reported to DOE that utilities which have instituted rebate programs for the purchase of high efficiency central air conditioners have received different ratings for the same combinations. The simulation techniques that have been submitted to DOE, in accordance with § 430.23(m)(7) of 10 CFR, exhibit a variety of methodologies.

In response to the concerns raised, DOE asked the National Bureau of Standards (NBS) to evaluate various simulation techniques to determine the level of accuracy and repeatability. Concurrent with the NBS research, the Air-Conditioning and Refrigeration Institute (ARI) contracted with the Electrical Testing Laboratories (ETL) to conduct a test program to compare results of a number of simulation methods in use with actual test results. These efforts indicated that although some simulation techniques would appear to have reasonable accuracy, other techniques demonstrated significant variability of results. Based on a review of the ARI test results, the techniques used by the independent coil manufacturers appear to exhibit a higher degree of variability than the techniques used by condensing unit manufacturers. Part of the variability is believed to be attributable to the inability of coil manufacturers to obtain energy performance information regarding the condensing units that are to be used with their product.

In the interest of improving this situation NBS, with input from the ARI, coil manufacturers, and consulting engineers, has developed a uniform procedure for rating untested combinations. Today's notice publishes the NBS recommended procedure for the purpose of receiving further comment from interested parties. DOE is considering the adoption of this procedure as the only allowable method to rate the energy performance of untested combinations, thus eliminating the problematic provisions which allow the use of unspecified engineering analysis and computer simulations. DOE realizes that some users of the specified procedure may find the predictions somewhat conservative (e.g. lower efficiencies) when compared to the predictions using their own proprietary simulations. If the new procedure is adopted as drafted, these users would be faced with a decision either to accept the conservative rating or to rate based on testing. DOE believes the adoption of a single method to rate untested combinations is justified in order to improve the overall accuracy and consistency of the energy performance information available to the consumer.

Today's Notice of Inquiry is to solicit comments on this rating procedure. After comments are received, the Department plans to issue a Notice of Proposed Rulemaking (NOPR). This NOPR will propose amendments to the central air conditioner test procedure, among which will be provisions on rating untested central air conditioner combinations.

II. Technical Approach

The technical approach for the simplified rating procedure for untested combinations was developed by NBS. Initially, NBS conducted a series of tests on one condensing unit with several different evaporator coils for developing a simplified rating procedure for a family of coils for one condensing unit. The simplified rating procedure was later expanded by computer modeling to cover different condensing units. The simplified rating procedure was verified by comparing tested ratings to ones from the simplified rating procedure for 22 combinations.[1] The ratings based on

[1] These 22 combinations consisted of 11 different condensing units, each tested with two different coils.

tests for the 22 combinations were provided to DOE by ARI. For all 22 combinations, the ratings from the simplified rating procedure were within 5 percent of the test value for both SEER and capacity.

The procedure published today is simply the mathematical expressions necessary to rate an untested combination. The mathematical expressions, including the values of the coefficients and exponents, have been developed through computer and laboratory studies conducted by NBS. The procedure requires knowledge of the following factors: (1) capacity of the matched system; (2) indoor fan power of the mixed and matched systems; (3) coil capacity of the mixed and matched coils; (4) the type of expansion device on the mixed and matched systems; and (5) the physical geometry of the expansion device on the mixed and matched systems. With these data the user is able to calculate the energy performance of untested combinations of central air conditioners using the NBS simplified rating procedures.

III. Questions for Public Comment

DOE is interested in receiving comments and data concerning the accuracy and workability of this approach. Also DOE welcomes discussion on technical improvements or alternatives to this approach. It is hoped that some comments will include actual test data. If it is thought that some aspects of these data are proprietary in nature, the commenter may request that this information be treated as confidential. The procedures for requesting confidential treatment are described below in Section IV.

In addition, DOE welcomes and encourages interested parties to comment on any issue pertaining to the central air conditioner test procedures.

IV. Comment Procedure

Interested persons are invited to submit written comments to DOE. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "Central Air Conditioners Rating Method (Docket No. CAS–RM–79–102)". Six (6) copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and all other relevant information will be considered by DOE before proposing an amendment. Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and 6 copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information and treat it according to its determination. Notice of a determination of non-confidential status shall be given no less than seven (7) calendar days prior to intended public disclosure.

Factors of interest to DOE when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information was previously made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

Issued in Washington, D.C., March 15, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

A Rating Procedure for Mixed System Central Air Conditioners

The following relationships have been developed for rating the mixed system central air conditioner charged with R22 refrigerant. The term "matched" refers to that component which was part of the system that was tested, whereas "mixed" refers to the system whose performance is being determined by this procedure. Two performance parameters (capacity and seasonal energy efficiency ratio) are to be determined. Since this rating procedure is a relative methodology, that is, based on changes from a matched system value (which was test based), obtaining the component (i.e., coil, expansion device) data from the same source is paramount. When such data for the matched system are not available in the literature, it is expected that the mixed system rater obtain the matched equipment and make the measurements necessary.

Capacity at DoE Test A Conditions, Q_x

$$Q_x = [Q_m + 3.413 \cdot P_{F,m}]\, QR^{0.37} \cdot R^{a} - 3.413 \cdot P_{F,x}$$

Seasonal Energy Efficiency Ratio, $SEER_x$

$$SEER_x = SEER_m \left(\frac{Q_x}{Q_m}\right)_{82} \cdot \left(\frac{P_x}{P_m}\right)_{82}^{-1}$$

$$\left(\frac{Q_x}{Q_m}\right)_{82} = \left[1 + \frac{3.25 \cdot P_{F,m}}{Q_m}\right] QR^{\gamma} \cdot R^{a} - 3.25\, \frac{P_{F,x}}{Q_m}$$

$$\left(\frac{P_x}{P_m}\right)_{82} = QR^{0.14} \cdot R^{\beta}$$

Exponents

$a = -0.15$ for $R > 1$

$a = 0$ for $R < 1$

$\beta = 0.$ for $R > 1$

$\beta = -0.2$ for $R < 1$

$\gamma = 0.44$ if mixed expansion device is a capillary tube(s) or a thermostatic expansion valve

$\gamma = 0.35$ if mixed expansion device is an orifice

Other symbols

$P_{F,m}$ = energy input to an indoor fan of a matched system at air mass flow rate at which capacity of a matched coil, $Q_{c,m}$, is evaluated. If indoor fan is not supplied with the system, $P_{F,m}$ is evaluated as follows: $P_{F,m} = DFM_m \cdot 0.365$ (watt)

where CFM_m is a volumetric flow of air through the matched indoor coil (ft^3/min)

$P_{F,x}$ = energy input to an indoor fan of a mixed system at air mass flow rate at which capacity of a mixed coil, $Q_{c,x}$, is evaluated. If indoor fan is not supplied with the system, $P_{F,x}$ is evaluated as follows: $P_{F,x} = CFM_x \cdot 0.365$ (watt)

where CFM_x is a volumetric flow of air through the mixed indoor coil (ft^3/min)

Q_m = capacity of a matched system at DoE Test A (Btu/h)

Q_x = capacity of a mixed system at DoE Test A (Btu/h)

$$QR = \frac{Q_{c,x}}{Q_{c,m}}$$, evaporator scaling factor

$Q_{c,x}$ = Capacity of a mixed coil (Btu/h)

$Q_{c,m}$ = capacity of a matched coil

Capacities of mixed and matched coils have to be obtained by the same verified method. The following are conditions that have to be met:

—air conditions—80 °F dry bulb/67°F wet bulb
—air mass flow rate—equal to the mass flow rate at which particular coil is working in the system
—refrigerant saturation temperature at evaporator outlet—45°F
—refrigerant superheat at evaporator outlet—the same for both matched and mixed coils

If coil capacities are obtained by means of a catalog or computer simulation, the same method has to be applied for both coils. Coil material and geometry namely, inside tube diameter, tube staggering, fin spacing, fin thickness, fin shape, and number of tube depth rows have to be accounted for.

R = expansion device scaling factor

Evaluation of factor R depends on the type of expansion device:

*If mixed expansion device is a TXV - R = 1

*If both expansion devices consist of capillary tubes

$$R = \frac{\Sigma\phi_{x,i}}{\Sigma\phi_{m,j}} = \frac{\phi_{x,1} + \phi_{x,2} + \phi_{x,3} + \cdots\phi_{x,i}}{\phi_{m,1} + \phi_{m,2} + \cdots\phi_{m,j}}$$

where 0_x and 0_m are flow factors for capillary tubes employed in mixed and matched expansion devices, respectively, and determined based on their geometry with the aid of ASHRAE Guide and Data Book Equipment Volume, 1983, Chapter 20, Figure 38.

*If mixed expansion device consists of orifices and matched expansion device consists of orifices:

$$R = \frac{\Sigma\phi_{x,i}}{\phi_{m,j}} = \frac{\phi_{x,1} + \phi_{x,2} + \cdots\phi_{x,i}}{\phi_{m,1} + \phi_{m,2} + \cdots\phi_{m,j}}$$

$$\text{where } \phi_x = \frac{D_x^2}{(0.58 + 0.008\,\frac{L_x}{D_x})^{0.5}}$$

$$\phi_m = \frac{D_m^2}{(0.58 + 0.008\,\frac{L_m}{D_m})^{0.5}}$$

D_x = inner diameter of an orifice employed in a mixed expansion device (inch)
L_x = length of an orifice employed in a mixed expansion device (inch)
D_m = inner diameter of an orifice employed in a matched expansion device (inch)
L_{cm} = length of an orifice employed in a matched expansion device (inch)

*If a mixed expansion device consists of orifices, and a matched expansion device consists of capillary tubes:

$$R = \frac{\Sigma\phi_{x,i}}{109.6 * \Sigma\phi_{m,j}} = \frac{\phi_{x,1} + \phi_{x,2} + \ldots + \phi_{x,i}}{109.6(\phi_{m,1} + \phi_{m,2} + \ldots + \phi_{m,j}}$$

$$\text{where } \phi_x = \frac{72200 D^2_x}{(0.58 + 0.008 \frac{L_x}{D_x})^{0.5}}$$

D_x = inner diameter of an orifice employed in a mixed expansion device (inch)
L_x = length of an orifice employed in a mixed expansion device (inch)
ϕ_m = flow factor for a capillary tube employed in a matched expansion device, and determined based on geometry with the aid of ASHRAE Guide and Data Book, Equipment Volume, 1983, Chapter 20, Figure 38.

*If a mixed expansion device consists of capillary tubes and a matched expansion device consists of orifices:

$$R = \frac{109.6 \cdot \Sigma\phi_{x,i}}{\Sigma\phi_{m,j}} = \frac{109.6(\phi_{x,1} + \phi_{x,2} + \ldots + \phi_{x,i})}{\phi_{m,1} + \phi_{m,2} + \ldots + \phi_{m,j}}$$

where ϕ_x = flow factor for a capillary tube employed in a mixed expansion device, and determined based on geometry with the aid of ASHRAE Guide and Data Book, Equipment Volume, 1983, Chapter 20, Fig. 38.

$$\phi_m = \frac{72200 D^2_m}{(0.58 + 0.008 \frac{L_m}{D_m})^{0.5}}$$

D_m = inner diameter of an orifice employed in a matched expansion device (inch)
L_m = length of an orifice employed in a matched expansion device (inch)

Note.—(1) Subscript i and j in all above given cases corresponds to the number of parallelly connected capillary tubes or orifices in mixed and matched expansion devices, respectively.

(2) This method for evaluating R does not cover cases of capillary tube or orifices connected in series.

(3) This methodology for evaluation of performance of a mixed system cannot be used if obtained R is less than 0.85.

$SEER_m$ = seasonal energy efficiency ratio, matched system (Btu/(h • watt))
$SEER_x$ = seasonal energy efficiency ratio, mixed system (Btu/ (h • watt))

SUMMARY OF PERFORMANCE PREDICTIONS FOR A MIXED SYSTEM

[All performance data given as a fraction of ETL test results]

System	Matched system data as per ARI catalog		NBS prediction based on ARI catalog data		Consultant prediction based on ARI catalog data		NBS prediction based on ETL test results		Expansion device scaling factor, R
	Q_{95}	SEER	Q_{95}	SEER	Q_{95}	SEER	Q_{95}	SEER	
2	0.987	0.980	0.977	0.981	0.953	0.957	0.990	1.000	1.30
3	0.980	0.969	.958	0.939	1.021	1.112	.977	.968	1.01
4	1.035	1.019	1.050	1.045	1.124	1.110	1.016	1.024	1.00
5	1.006	0.931	1.060	0.947	0.959	1.002	1.054	1.017	0.77
6	0.909	0.938	0.937	0.911	1.078	1.040	1.029	.970	1.03
7	0.967	0.976	0.955	0.930	1.038	1.057	.986	.952	1.03
8	1.027	0.974	1.029	0.943	1.151	1.032	1.005	.970	1.40
10	1.005	1.048	0.974	0.964	1.036	1.129	.970	.921	0.73
11	0.916	0.903	0.922	0.908	0.935	0.936	1.007	1.006	0.91

Note.—Q_{95}—Capacity of DoE Test A Conditions.

[FR Doc. 85-7645 Filed 3-29-85; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 306

Octane Certification and Posting Rule

AGENCY: Federal Trade Commission.

ACTION: Request for comments.

SUMMARY: The Federal Trade Commission ("FTC"), in accordance with the Regulatory Flexibility Act and publication of a Plan for the Periodic Review of Commission Rules, 46 FR 35118 (July 7, 1981), is soliciting comments and data on whether the Octane Certification and Posting Rule, 16 CFR Part 306 ("the Rule"), has had a significant economic impact on small entities, and if it has, whether the Rule should be amended to minimize any such significant economic impact on small entities.

DATE: All comments and data should be received by the Commission no later than May 2, 1985.

ADDRESS: Comments and data should be sent to Secretary, Federal Trade Commission, Washington, D.C. 20580. Submissions should be identified as "Octane Rule—RFA Comment".

FOR FURTHER INFORMATION CONTACT: James G. Mills, or Don Winfrey, (202) 376-8934, Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (the "RFA"), requires that the FTC conduct a periodic review of rules that have or will have a significant economic impact upon a substantial number of small entities.

Section 203(c)(1) of the Petroleum Marketing Practices Act (PMPA) [1] requires that the Commission prescribe, by rule, a uniform method by which a person may certify to another the octane rating of automotive gasoline, and a uniform method of displaying the octane rating of automotive gasoline at the point of sale to ultimate consumers. On March 30, 1979, the Commission issued the Octane Certification and Posting Rule,[2] which fulfills these requirements. The Rule establishes standard procedures for determining, certifying and posting (by means of a label on the fuel dispenser) the octane rating of automotive gasoline intended for sale to consumers. In addition, the Rule contains recordkeeping requirements that require gasoline refiners and importers to retain octane rating test records and gasoline distributors and retailers to retain octane certification records pertaining to the gasoline they sell in commerce for one year. Thus, the certification, or representation of the octane rating, of a particular shipment of gasoline begins with the importer or refiner and travels through the chain of distribution to the retailer, where the octane rating is posted on the pump. The Rule is intended to enable consumers to buy gasoline with an octane rating that is high enough to prevent inefficient and harmful "engine knock" and to help consumers to avoid buying gasoline with an octane rating that is needlessly higher than the requirements of their automobiles.

In the promulgation of the Octane Rule, an effort was made to minimize the burden imposed by these requirements, including the burden on small businesses, by permitting the octane certification requirement to be satisfied by documents already in use in the industry (shipping receipts, delivery tickets, etc.), on which the octane rating was already being noted, or to be accomplished with a one-time letter of certification.

For the purpose of this review under the RFA, the term "small entity" is defined under the Small Business Size Standards, codified at 13 CFR Part 121, and recently revised by the Small Business Administration (49 FR 5024 *et seq.* February 9, 1984)). The definitions of "small entity" applicable to those business entities covered by the Rule are: For petroleum refiners, fewer than 1,500 employees; for petroleum and petroleum products wholesalers, fewer than 500 employees; and for gasoline service stations, under $4.5 million in annual sales.

The purpose of this review is limited to determining whether the Rule should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the Rule upon a substantial number of small entities.

In order to conduct the periodic review of this Rule pursuant to the RFA, the FTC poses the following questions for comment. The Commission requests that the factual data (*e.g.*, economic and accounting information, statistical analysis, surveys, studies, etc.) upon which submitted comments are based be included with the comments.

(1) Has the Rule had a significant economic impact (costs and/or benefits) on a substantial number of small entities? Please describe the details of any such significant negative and/or positive economic impact.

(2) Is there a continued need for the Rule and all of its requirements?

(3) (a) What burdens, if any, does compliance with the Rule place on small entities?

(b) To what extent are these burdens that small entities would also experience under standard and prudent business practice?

(4) What changes, if any, should be made to the Rule that would minimize the economic effect on small entities?

(5) To what extent does the Rule overlap, duplicate or conflict with other federal, state and local government rules?

(6) Have technology, economic conditions or other factors changed in the area affected by the Rule since its promulgation in 1979 and, if so, what effect do these changes have on the Rule or those covered by it?

List of Subjects in 16 CFR Part 306

Gasoline, Labeling, Trade practices.

Authority: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1980).

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-7798 Filed 4-1-85; 8:45 am]

BILLING CODE 6750-01-M

[1] Pub. L. 95-297, 92 Stat. 322, 15 U.S.C. 2801 *et seq.*, (1978) ("PMPA").

[2] 44 FR 19160 (March 30, 1979) (codified at 16 CFR Part 306).

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 19

Right to Financial Privacy Act of 1978; Proposed Implementation Regulations

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would authorize Department of Labor units to request financial records from a financial institution pursuant to the formal written request procedure established by the Right to Financial Privacy Act of 1978, 92 Stat. 3697, 12 U.S.C. 3401 *et seq.*, and would set forth the conditions under which such requests may be made. Section 1108(2) of the Right to Financial Privacy Act of 1978 requires that the formal written request be authorized by regulations promulgated by the head of the agency or department. These proposed regulations would thus, once implemented, enable Department of Labor units to utilize the formal written request procedure to obtain financial records.

DATES: Comments may be submitted until May 2, 1985.

ADDRESS: Send comments to Seth D. Zinman, Associate Solicitor for Legislation and Legal Counsel, Office of the Solicitor, U.S. Department of Labor, Room N–2428, 200 Constitution Avenue NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Sofia P. Petters, Counsel for Administrative Legal Services, Office of the Solicitor, U.S. Department of Labor, Room N–2428, 200 Constitution Avenue NW., Washington, D.C. 20210; telephone (202) 523–8188.

SUPPLEMENTARY INFORMATION: The Right to Financial Privacy Act of 1978, 92 Stat. 3697, 12 U.S.C. 3401 *et seq.*, limits government access to financial records of customers of financial institutions. In order for government agencies to obtain such records, the Act provides for customer authorization, authorized search warrants, judicial and adminstrative subpoenas, and formal written requests by a governmental authority. Formal written requests may only be made pursuant to a regulatory authorization promulgated by the head of the agency or department, 12 U.S.C. 3408(2).

In order to assist those departmental agencies or units that have no statutory administrative subpoena power, the proposed regulatory authorization is needed to comply with 12 U.S.C. 3408(2).

Classification

The proposed rule is procedural in character in that it implements the formal written procedure established by the Right to Financial Privacy Act of 1978. Therefore, this proposed rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, and 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. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that the proposed rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Under Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the proposal is procedural in character in that it implements the formal written request procedure established by the Right to Financial Privacy Act of 1978 and thus no economic impact is expected with respect to small entities, nor with respect to other entities as well. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

This proposed rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not contain a collection of information requirement.

List of Subjects in 29 CFR Part 19

Privacy.

Accordingly, it is proposed that a new Part 19 be added to Subtitle A of Title 29 of the Code of Federal Regulations as follows:

PART 19—RIGHT TO FINANCIAL PRIVACY ACT

Sec.

Authority: Sec. 1108, Right to Financial Privacy Act of 1978, 92 Stat. 3697 *et seq.*, 12 U.S.C. 3401 *et seq.*, (5 U.S.C. 301); and Reorganization Plan No. 6 of 1950.

§ 19.1 Definitions.

For purposes of this regulation, the term:

(a) "Financial institution" means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumer Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative bank, credit union, consumer financial institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(b) "Financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

(c) "Person" means an individual or a partnership of five or fewer individuals.

(d) "Customer" means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name.

(e) "Law enforcement inquiry" means a lawful investigation or official proceeding inquiring into a violation of or failure to comply with any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

(f) "Departmental unit" means those offices, divisions, bureaus, or other components of the Department of Labor authorized to conduct law enforcement inquiries.

(g) "Act" means the Right to Financial Privacy Act of 1978.

§ 19.2 Purpose.

The purpose of these regulations is to authorize Departmental units to request financial records from a financial institution pursuant to the formal written request procedure authorized by section 1108 of the Act, and to set forth the conditions under which such requests may be made.

§ 19.3 Authorization.

Departmental units are hereby authorized to request financial records of any customer from a financial institution pursuant to a formal written request under the Act only if:

(a) No administrative summons or subpoena authority reasonably appears to be available to the Departmental unit to obtain financial records for the

purpose for which the records are sought;

(b) There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry and will further the inquiry;

(c) The request is issued by the Assistant Secretary or Deputy Under Secretary heading the Departmental unit requesting the records, or by a senior agency official designated by the head of the Departmental unit. Officials so designated shall not delegate this authority to others;

(d) The request adheres to the requirements set forth in § 19.4; and

(e) The notice requirements set forth in section 1108(4) of the Act, or the requirements pertaining to delay of notice in Section 1109 of the Act are satisfied, except in situations where no notice is required. (e.g., section 1113(g)).

§ 19.4 Contents of request.

The formal written request shall be in the form of a letter or memorandum to an appropriate official of the financial institution from which financial records are requested. The request shall be signed by an issuing official of the requesting Departmental unit, as specified in § 19.3(c). It shall set forth that official's name, title, business address and business phone number. The request shall also contain the following:

(a) The identity of the customer or customers to whom the records pertain;

(b) A reasonable description of the records sought;

(c) Any other information that the issuing official deems appropriate, e.g., the date on which the requesting Departmental unit expects to present a certificate of compliance with the applicable provisions of the Act, the name and title of the individual to whom disclosure is to be made, etc.

(d) In cases where customer notice is delayed by a court order, a copy of the court order shall be attached to the formal written request.

§ 19.5 Certification.

Prior to obtaining the requested records pursuant to a formal written request, a senior official designated by the head of the requesting Departmental unit shall certify in writing to the financial institution that the Departmental unit has complied with the applicable provisions of the Act.

Signed at Washington, D.C. this 27th day of March 1985.

Ford B. Ford,

Under Secretary of Labor.

[FR Doc. 85-7856 Filed 4-1-85; 8:45 am]

BILLING CODE 4510-23-M

POSTAL SERVICE

39 CFR Part III

Extension of Time for Filing Comments on "Plus" Issues

AGENCY: Postal Service.

ACTION: Proposed rule; extension of time.

SUMMARY: On March 6, 1985, the Postal Service published a proposed rule change intended to clarify postal regulations related to second-class mail, particularly as they concern so-called "Plus" issues or editions. 50 FR 9051 (March 6, 1985). The Postal Service requested comments on the proposed regulations on or before April 5, 1985. *Id.*

Several mailers have asked that the deadline for comments be extended so that they may make a more complete assessment of the proposal and its potential impact.

The Postal Service believes that comments generated by such assessments will provide valuable information. The Postal Service is therefore extending the deadline for comments on the proposed rule change by 45 days, or until May 20, 1985.

DATES: Comment on the proposed rule change must now be received on or before May 20, 1985.

ADDRESS: Written comments should be directed to Robert Lowry, Law Department, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260-1142. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the Law Department, Room 5103, Comsat Building North, 955 L'Enfant Plaza North, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Robert Lowry, (202) 245-3891.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85-7785 Filed 4-1-85; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

Vessel Obligation Guarantees; Waivers for Foreign Built Main Diesel Engines

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) is withdrawing an Advance Notice of Proposed Rulemaking (ANPRM) published on April 21, 1983. It proposed to allow all applications for waiver of the "Buy American" requirement with respect to issuing Title XI "obligation guarantees" for the construction of vessels using foreign-built high speed and medium speed diesel engines, if such diesel engines afford a specified energy savings.

FOR FURTHER INFORMATION CONTACT: Mr. Paul E. Speicher, Jr., Office of Naval Architecture and Engineering, Maritime Administration (721) 400 Seventh Street SW., Washington, D.C. 20590. Tel (202) 426-5727.

SUPPLEMENTARY INFORMATION: By an ANPRM published in the **Federal Register** (48 FR 17120) on April 21, 1983, MARAD proposed a policy of allowing all applications for waivers to use foreign-built high and medium speed diesel engines in the construction of vessels financed with "obligation guarantees" issued pursuant to Title XI, Merchant Marine Act, 1936 (46 U.S.C. 1271-1279), if using such foreign-built diesel engines would: (1) Result in a 10 percent fuel savings (on a thermal basis); or (2) allow vessel operation using a lower quality fuel that would reduce the magnitude of distillate fuel consumed by 50 percent over the best comparable U.S.-built engine. In view of the fact that MARAD on March 21, 1985, published a comprehensive proposed rulemaking action related to all "Buy American" requirements in its Title XI obligation guarantee program, that includes the subject matter of this ANPRM within its scope (50 FR 11397), this separate rulemaking action is being withdrawn.

Authority: 46 U.S.C. 1114(b); 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: March 28, 1985.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 85-1827 Filed 4-1-85; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-231; RM-4265]

FM Broadcast Stations in Panama City, FL; Proposed Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of petition.

SUMMARY: Action taken herein dismisses a petition filed by WANM, Inc. to assign FM Channel 285A to Panama City, Florida. The petition is dismissed because no expression of interest has been filed by the petitioner or any other party.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Panama City, Florida); MM Docket No. 83-231, RM-4265.

Adopted: March 13, 1985.
Released: March 21, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is the *Notice of Proposed Rule Making*, 48 FR 14675, published April 5, 1983, requesting the assignment of FM Channel 285A to Panama City, Florida, in response to a petition filed by WANM, Inc. ("petitioner"). Petitioner filed comments supporting the assignment.

2. As one of four applicants for Channel 292A at Panama City, the petitioner suggested that another channel be assigned to avoid a comparative hearing. However, neither competing applicants nor the petitioner expressed an interest in applying for the proposed additional channel at Panama City. Therefore, consistent with Commission policy and the procedures set forth in the Appendix to the *Notice*, we must dismiss the petition to assign an FM channel to Panama City.

3. In view of the foregoing, it is ordered, That the petition of WANM, Inc. requesting the assignment of FM Channel 285A to Panama City, Florida, is hereby dismissed.

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

5. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-7756 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1132

[Ex Parte No. 445 (Sub-No. 1)]

Intramodal Rail Competition

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: The Commission intends to adopt rules to govern its handling of various competitive access issues.[1] The proposed rules result from petitions requesting the Commission to adopt rules to provide standards to govern the cancellation of through routes and joint rates, and the prescription of through routes, through rates and reciprocal switching. We now have before us two proposals—one by the National Industrial Transportation League (NITL) and the Association of American Railroads (AAR) jointly, and the other by Railroads Against Monopoly—which we are offering for public comment.[2] The first proposal is thought necessary to maintain and promote the intermodal competition contemplated under the Staggers Act and the second is designed to address the concern of small regional railroads that cancellation by large carriers of their joint rates and through routes adversely affects their right to compete. Following the comment period, the Commission intends to adopt rules that are acceptable to as broad a section of the marketplace as is possible consistent with statutory requirements.

DATES: Interested parties must notify the Commission in writing of their intent to participate by April 17, 1985. A service list will be issued by May 2, 1985, and all comments must be served on parties on the service list.

Comments are due May 17, 1985.
Replies are due June 3, 1985.

ADDRESS: Send an original and 15 copies of comments referring to Ex Parte No. 445 (Sub-No. 1) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: The text of the two sets of proposed rules is reproduced in the appendix. Additional information is contained in the Commission decision. To obtain a copy of the full decision write to Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call 202-275-7428.

This action does not appear to affect the quality of the human environment, energy conservation, or have a significant effect on small entities.

Lists of Subjects in 49 CFR Part 1132

Railroads, Administrative Practice and Procedure.

Authority: 49 U.S.C. 10321, 10703, 10705, 10707 and 11103, and 5 U.S.C. 553.

Decided: March 22, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

Appendix

PART 1132—[AMENDED]

We propose to amend Chapter X of Title 49 of the Code of Federal Regulations by adding a new § 1132.3 to read as one of the alternatives set forth below:

Alternative 1, AAR/NITL Proposed Rules:

§ 1132.3 Through route and through rate cancellation regulations

(a) *Notification, explanation, and justification.* A carrier proposing to cancel a through route and/or a joint rate shall publish notice of its intent to make such a cancellation forty-five days prior to the effective date of such cancellation. Upon request of any affected party seeking (1) an explanation of how the proposed cancellation would affect such party, or (2) justification for the cancellation as it would apply to a route or rate actively utilized or participated in by such party, the carrier proposing to cancel shall provide such explanation of justification within ten days.

(b) *Negotiation.* Prior to bringing any proceeding challenging a cancellation or seeking the prescription of a through route or through rate, any party intending to initiate such a proceeding shall first seek to enter into negotiations to resolve its dispute with the

[1] Competitive access is the term now in use to describe a number of intrarailroad operating practices, *viz.*, joint rates and through routes, reciprocal switching, and terminal trackage rights.

[2] On March 12, 1985, AAR and the Chemical Manufacturers Association filed a joint petition for rulemaking on competitive access issues. They state that the terms of the AAR/CMA agreement are substantially similar to and entirely consistent with the standards previously proposed by AAR/NITL, but that the AAR/CMA agreement clarifies the AAR/NITL agreement. This petition will be treated as a comment, and must be served on parties to this proceeding when the service list is served. Also, because the petition has been served on all parties to Ex Parte Nos. 445 and 456, we will accept comments on the AAR/CMA agreement.

prospective defendants in any such proceeding. Any such party may bring a proceeding challenging a cancellation or seeking prescription of a through route or through rate five days after seeking to enter into negotiations, if such negotiations have not successfully resolved the dispute. Participation in such negotiations does not waive a party's right to file a timely petition for suspension for investigation.

(c) *Suspension for investigation of a proposed through route and/or joint rate cancellation.* The ICC shall suspend for investigation a proposed cancellation of a through route and/or a joint rate if it determines:

(1) That a protesting shipper has utilized the through route and/or joint rate proposed to be cancelled to meet a significant portion of its current or future railroad transportation needs; or

(2) That a protesting carrier has utilized or would utilize the affected through route and/or joint rate for a significant amount of traffic; and

(3) That such cancellation would eliminate effective railroad competition for the affected traffic between the origin and destination.

(d) *Investigation of cancellations.* In investigating a proposed cancellation of a through route and/or a joint rate, the Commission shall determine that the cancellation is contrary to the public interest under 49 U.S.C. 10705 if it finds that the cancellation, or a rate that would remain in place after the cancellation, is contrary to the competition policies of 49 U.S.C. 10101 or is otherwise anticompetitive. In making its determination, the Commission shall take into account all relevant factors, including:

(1) Factors relevant under 49 U.S.C. 10101a and 10705, including 10705(e)(1);

(2) The revenues of the involved railroads on the affected traffic via the rail routes in question;

(3) The efficiency of the rail routes in question, including the costs of operating via those routes;

(4) The rates charged or sought to be charged by the cancelling railroad or railroads;

(5) The revenues, following the cancellation, of the involved railroads for the traffic in question via the affected through route; the costs of the involved railroads for that traffic via that route; the ratios of those revenues to those costs; and all circumstances relevant to any difference in those ratios provided that the mere loss of revenue to an affected carrier shall not be a basis for finding that a cancellation is anticompetitive.

However the Commission shall not consider product competition; and if a railroad wishes to rely in any way on geographic competition, it shall have the burden of proving the existence of such competition by clear and convincing evidence. Any investigations of cancellations under the terms of this paragraph will be conducted and concluded by the Commission on an expedited basis. Where a cancellation has been determined to be contrary to the competitive standards of this section, the overall revenue inadequacy of the cancelling carrier shall not excuse such a cancellation.

(e) *Establishment of through routes, throught rates and reciprocal switching.* A through route or a through rate shall be prescribed under 49 U.S.C. 10705 or reciprocal switching shall be established under 49 U.S.C. 11103 if the Commission determines:

(1) That the complaining shipper has utilized or would utilize the through route, through rate or reciprocal switching to meet a significant portion of its transportation needs; or

(2) That the complaining carrier has utilized or would utilize the through route, through rate or reciprocal switching for a significant amount or traffic; and

(3) That the prescription or establishment is necessary to remedy or prevent an act contrary to the competition policies of 49 U.S.C. 10101a or which is otherwise anticompetitive. In making its determination, the Commission shall take into account all relevant factors, including:

(i) Factors relevant under 49 U.S.C. 10101a and 10705, including 10705(e)(1);

(ii) The revenues of the involved railroads on the affected traffic via the rail routes in question;

(iii) The efficiency of the rail routes in question, including the costs of operating via those routes;

(iv) The rates charged or sought to be charged by the cancelling railroad or railroads;

(v) The revenues, following the prescription, of the involved railroads for the traffic in question via the affected route; the costs of the involved railroads for that traffic via that route; the ratios of those revenues to those costs; and all circumstances relevant to any difference in those ratios; provided that the mere loss of revenue to an affected carrier shall not be a basis for finding that a prescription or establishment is necessary to remedy or prevent an act contrary to the competitive standards of this section.

However, the Commission shall not consider the product competition; and if a railroad wishes to rely in any way on geographic competition, it shall have the burden of proving the existence of such competition by clear and convincing evidence. When a sought prescription of a through route, through rate or reciprocal switching is necessary to remedy or prevent an act contrary to the competitive standards of this section, the overall revenue inadequancy of the defendant railroad(s) shall not be a basis of denying the sought prescription.

(f) *Effect of Commission determinations or findings under the standards set forth here.* Any Commission determinations or findings under the preceding paragraphs with respect to compliance or non-compliance with the standards of paragraph (d) or paragraph (e)(3) of this section shall not be given any res judicata or collateral estoppel effect in any litigation involving the same facts or controversy arising under the antitrust laws of the United States.

Alternative 2, RAM Proposed Rules:

§ 1132.3 Through route and through rate cancellation regulations.

(a) Notification, justification and standards for suspension. The ICC shall suspend for investigation a proposed cancellation of a joint rate and/or through route if it determines:

(1) That such cancellation would reduce effective railroad competition for the affected traffic between the origin and destination, or any portion of the affected routes; or

(2) That the mileage between origin and destination over the joint rate or route proposed to be cancelled or closed is not more than the mileage between the same origin and destination over the joint rates and through routes that would remain in effect after the cancellation; or

(3) That the ratio of revenue to variable cost for the cancelling railroad under the affected joint rate and through route is equal to or greater than the lowest ratio over the cancelling railroad's alternative joint or single line routes on the affected traffic between the origin and destination involved; or

(4) That within ten days after receipt of a request for such explanation and justification that the cancelling railroad failed to provide a full explanation and justification for the cancellation as it would apply to a rate or route utilized or participated in by the requesting party, including relevant mileage, revenue and variable cost data adequate to compare efficiency and profitability.

(b) Investigation of cancellations. In an investigation of a cancellation of a through route and/or joint rate, the

Commission shall determine that the cancellation is not consistent with the public interest under 49 U.S.C. 10705 if it finds that:

(1) The ratio of revenue to variable cost for the cancelling railroad under the affected joint rate and through route is equal to or greater that the lowest ratio over the cancelling railroad's remaining alternative single or joint line routes on the affected traffic between the origin and destination involved; or

(2) That such cancellation would reduce effective railroad competition for the affected traffic between the origin and destination, or any portion of the affected routes.

(c) Complaint proceeding regarding cancellations. in a complaint proceeding regarding a cancellation of a through route and/or joint rate, the Commission shall determine that the cancellation is not consistent with the public interest under 49 U.S.C. 10705 if it finds:

(1) That the ratio of revenue to variable cost for the cancelling railroad under the affected joint rate and through route is equal to or greater than the lowest ratio over the cancelling railroad's remaining alternative single or joint line routes on the affected traffic between the origin and destination affected; or

(2) That such cancellation would reduce effective railroad competition for the affected traffic between the origin and destination, or any portion of the affected routes.

In a complaint proceeding, the cancellation of a through route or joint rate shall be presumed to violate the public interest standard of section 10705 if the complainant demonstrates that the route at issue is of reasonably comparable or superior efficiency to any competitive rail route in which the cancelling carrier participates, and the rates of the cancelling carrier will reduce effective railroad competition for the traffic at issue. The cancelling carrier may rebut the presumption by a showing that the cancellation or subsequently applicable rates will not reduce effective railroad competition for the traffic at issue.

(d) *Establishment of through routes and joint rates.* (1) Upon petition of an interested party or on motion of the Commission, a through route or joint rate shall be prescribed if the Commission determines:

(i) That the prescription or establishment is necessary to remedy or prevent an act or condition that is contrary to the competition policies of 49 U.S.C. 10101a, or that is otherwise anticompetitive; or

(ii) That the ratio of revenue to variable cost for any nonconcurring railroad is no lower than the lowest ratio over the alternative joint or single line rail routes on the affected traffic between the origin and destination affected.

(2) In making its determination, the Commission shall take into account all relevant factors, including:

(i) Whether the prescription or establishment is necessary to provide effective railroad competition for the affected traffic between the origin and destination, or any portion of the affected rates, and

(ii) The efficiency of the rail routes in question, and

(iii) The comparison of the revenues and variable costs of all involved railroads over the alternative routes.

Except that product and geographic competition and revenue adequacy and inadequacy shall not be considered.

(e) *Prescription of reciprocal switching and charges.* Reciprocal switching shall be prescribed by the Commission upon an application filed by a shipper or carrier who demonstrates said switching is either practicable and in the public interest or necessary to provide competitive rail service if the Commission determines:

(1) That a shipper has utilized or would utilize such reciprocal switching to meet a significant portion of its current or future transportation needs; or

(2) That the complaining carrier has utilized or would utilize such reciprocal switching for a significant amount of traffic.

(3) Charges for reciprocal switching established by the Commission shall not exceed the fully allocated cost of providing such service.

(4) Any establishment or prescription under the terms of this paragraph will be conducted and concluded by the Commission on an expedited basis.

(5) The provisions of this paragraph are inapplicable if the carrier physically serving the industry is a Class III, Class II or Class I railroad having less than two percent of the railroad industry gross freight revenue.

(f) *Prescription of terminal trackage rights.* Terminal trackage rights, including main line tracks for a reasonable distance outside of a terminal shall be prescribed by the Commission upon an application filed by a carrier who demonstrates said trackage rights are practicable and in the public interest, unless the owning carrier establishes that the granting of an application would substantially impair its ability to handle its own business:

(1) The foregoing provision is inapplicable if the owning carrier is a Class III, Class II or Class I railroad having less than two percent of railroad industry gross freight revenues.

(2) To accomplish the objectives of 49 U.S.C. 1103(a), charges for terminal trackage rights established by the Commission shall put the tenant in the some position as the owning carrier.

(3) Any establishment or prescription under the terms of this paragraph will be conducted and concluded by the Commission on an expedited basis.

[FR Doc. 85-7797 Filed 4-1-85; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. 38904]

49 CFR Part 1207 and 1249

Elimination of Accounting and Reporting Requirements for Motor Carriers of Property; Extension of Time to File Comments

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to notice of proposed rulemaking.

SUMMARY: At 50 FR 7201, February 21, 1985, the Commission proposed to eliminate the uniform system of accounts (49 CFR Part 1207) and revise the periodic reporting requirements (49 CFR Part 1249) for Class I and Class II common and contract motor carriers of property. In response to petitions, the April 8, 1985 due date for comments set by that notice is being extended for 180 days by this notice.

DATE: Comments must be received by October 8, 1985.

ADDRESS: Send comments (original and 15 copies) to: Docket No. 38904, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

SUPPLEMENTARY INFORMATION: The American Trucking Associations, Inc. (ATA) and the Regular Common Carrier Conference (RCCC), by joint petition on behalf of their motor carrier members, have requested that the time for filing comments in this proceeding be extended 180 days. The Household Goods Carrier's Bureau, Inc. (HGCB), on behalf of its members, has made a similar request for a 90-day extension. ATA and RCCC state that they need the extension to provide adequate time to assess the burdens and costs that the

current, proposed, or alternate reporting requirements will have on carriers.

The 180-day extension is warranted. The additional time will give all interested parties an opportunity to provide informed comments on this action while not unduly delaying the Commission's consideration of the proposal.

It is ordered: The date for filing comments is extended to October 8, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

Dated: March 27, 1985.

James H. Bayne,

Secretary.

[FR Doc. 85-7795 Filed 4-1-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Findings on Four Petitions, and of Review of One Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and review.

SUMMARY: The Service announces findings that a petition to reclassify the American alligator to threatened due to similarity of appearance throughout South Carolina has presented substantial information indicating that such action may be warranted, that petitions to add the spiny river snail and desert tortoise to the List of Endangered and Threatened Wildlife have also presented substantial information, and that a petition to list McKay's bunting and the St. Matthew vole has not presented substantial information. The Service also announces a review of the status of the alligator in South Carolina.

DATES: Relevant information or comments may be submitted until further notice.

ADDRESSES: Information, comments, or questions should be submitted to the Associate Director—Federal Assistance (OES), U.S. Fish and Wildlife Service, Washington, D.C. 20240. The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982, requires the Service to make a finding on whether a petition to add a species to the Lists of Endangered and Threatened Wildlife and Plants, or to remove or reclassify a species, presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, such a finding is to be made within 90 days of receipt of the petition, and the finding is then to be promptly published in the **Federal Register.** If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species. Recently, the Service received and made findings on the following four petitions.

1. A petition from the South Carolina Wildlife and Marine Resources Department, dated July 27, 1984, and received by the Service on August 15, 1984, requested reclassification of the American alligator (*Alligator mississippiensis*) to threatened due to similarity of appearance througout the State of South Carolina. At present, the alligator is classified as endangered in some parts of South Carolina and threatened in other parts of the State. The Service has made the finding that this petition does present substantial information indicating that the requested action may be warranted.

2. A petition from the American Malacological Union, dated August 13, 1984, and received by the Service on August 22, 1984, requested determination of either endangered or threatened status for the spiny river snail (*Io fluvialis*) of Tennessee and Virginia. The Service has made the finding that this petition does present substantial information indicating that the requested action may be warranted.

3. A petition from the National Audubon Society, dated August 29, 1984, and received by the Service on the same day, requested determination of endangered status for McKay's bunting (*Plectrophenax hyperboreus*) and the St. Matthew vole (*Microtus abbreviatus fisheri*), both found on St. Matthew Island, Alaska. The petition expressed concern that prospective development on the island could jeopardize these two species and their habitats. This contention, however, is contradicted by detailed additional information available to the Service. Specifically, the proposed development would effect, at most, only about five percent of the island. The petition's expressed fear that development would lead to an increase in the number of predatory arctic foxes, and to introduction of new predators and competitors, does not appear valid, based on experience on other arctic islands and because of various controls and prohibitions. The Service, therefore, has made the finding that this petition does not present substantial information indicating that the requested action may be warranted.

4. A petition submitted jointly by Defenders of Wildlife, the National Resources Defense Council, and the Environmental Defense Fund, dated September 11, 1984, and received by the Service on September 14, 1984, requested determination of endangered status for the desert tortoise (*Gopherus agassizii*) throughout its entire range in Arizona, California, Nevada, and Utah. Currently, only the Beaver Dam Slope, Utah, population of this species is classified as endangered. The Service has made the finding that this petition does present substantial information indicating that the requested action may be warranted.

As required in the case of a positive finding, the Service hereby initiates a review of the status of the American alligator in South Carolina. Reviews of the spiny river snail and desert tortoise are already in progress, as those species were covered, respectively, by the Service's Review of Invertebrate Wildlife in the **Federal Register** of May 22, 1984 (49 FR 21664-21675), and Review of Vertebrate Wildlife in the **Federal Register** of December 30, 1982 (47 FR 58454-58460).

Section 4(b)(3)(B) of the Act requires that within 12 months of receipt of a petition found to present substantial information, a finding be made as to whether the petitioned action is not warranted, warranted, or warranted but precluded by other listing activity. All comments and information received in response to the status reviews of the spiny river snail, American alligator, and desert tortoise will be considered in making such findings regarding these species.

The authors of this notice are Linda M. Hurley and Ronald M. Nowak, Office

of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975).

Authority: Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: March 25, 1985.

J. Craig Potter,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–7826 Filed 4–1–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 63
Tuesday, April 2, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Adjudication of the Administrative Conference of the United States, to be held at 10:00 a.m., Tuesday, April 9, 1985, at 2120 L Street, NW, Suite 500, Washington, D.C. Agenda: (1) Further discussion of legislative proposals to establish a unified corps of administrative law judges; and (2) implications of the recent Supreme Court decision in *Cleveland Board of Education* v. *Loudermill*. Contact: Richard K. Berg, 202–254–7065.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least one day in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting. Minutes of the meeting will be available on request.

Richard K. Berg,
General Counsel.
March 28, 1985.
[FR Doc 85–7840 Filed 4–1–85; 8:45 a.m]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Human Nutrition Information Service

Joint Nutrition Monitoring Evaluation Committee 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: Joint Nutrition Monitoring Evaluation Committee.

Date: April 29, 30, and May 1.

Place: Conference Room 561A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Time: 8:30 a.m. to 4:00 p.m.

Purpose: To evaluate the findings of the Nationwide Food Consumption Survey (NFCS), the National Health and Nutrition Examination Survey (NHANES), and other Federal nutrition monitoring efforts and develop a report on the nutritional status of the U.S. population.

Agenda: The agenda for the seventh meeting will include the following items: review text and charts completed to data and plan future work.

The meeting is open to the public. There is a limited amount of space available for public attendance. Written statements or comments of concern to the committee may be submitted to Isabel D. Wolf, Administrator, Human Nutrition Information Service, 6505 Belcrest Road, Room 360, Hyattsville, MD 20782.

Done at Washington, DC, this 26th day of March 1984.

Isabel D. Wolf,
Administrator.
[FR Doc. 85–7859 Filed 4–1–85; 8:45 am]
BILLING CODE 3410–KE–M

COMMISSION ON CIVIL RIGHTS

Arkansas Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 4:00 p.m. on April 23, 1985, at the Riverfront Hilton Inn, 2 Riverfront Place, the Barring Crossing Room, North Little Rock, Arkansas. The purpose of the meeting is to discuss planning and programming, fair housing, desegregation of colleges and universities, and affirmative action in state government.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Marcia McIvor or Richard Avena in the Southwestern Regional Office (512) 229–5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 26, 1985.

Bert Silver,
Assistant Staff Director for Regional Programs.
[FR Doc. 85–7844 Filed 4–1–85; 8:45 am]
BILLING CODE 6335–01–M

Colorado Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 12:00 noon, on April 20, 1985, at the Executive Tower Building, 1405 Curtis Street, Denver, Colorado. The purpose of the meeting is to hold a mini-forum to gather information on the civil rights enforcement effort in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Minoru Yasui or William Muldrow of the Rocky Mountain Regional Office at (303) 844–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 26, 1985.

Bert Silver,
Assistant Staff Director for Regional Programs.
[FR Doc. 85–7845 Filed 4–1–85; 8:45 am]
BILLING CODE 6335–01–M

Kentucky Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 4:00 p.m., on April 26, 1985, at the Hyatt Regency Lexington 400 West Vine Street, The Board Room Lexington, Kentucky. The purpose of the meeting is to meet with city/county housing officials and representatives from local civil and human rights organizations.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Paul Oberst or Bobby Doctor of the Southern Regional Office at (404) 221–4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 26, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–7843 Filed 4–1–85; 8:45 am]

BILLING CODE 6335–01–M

Montana Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 12:30 p.m., on April 27, 1985, at the Northern Hotel, Broadway at 1st Avenue, North, Billings, Montana. The purpose of the meeting is to brief the Committee on Native American civil rights concerns in the State, review the Montana Jail project and discuss the jurisdiction of the U.S. Commission on Civil Rights.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Angela Russell or William Muldrow of the Rocky Mountain Regional Office at (303) 844–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 26, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–7842 Filed 4–1–85; 8:45 am]

BILLING CODE 6335–01–M

South Dakota Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 1:00 p.m. on April 19, 1985, at the Travelodge Motel, 125 Main Street, Rapid City, South Dakota. The purpose of the meeting is to hold a community forum to collect information on affirmative action for minority businesses in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Rae Johnson, or William Muldrow of the Rocky Mountain Regional Office at (303) 844–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 26, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–7841 Filed 4–1–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 290]

Resolution and Order Approving the Application of the City of Baltimore for a Special-Purpose Subzone at Sparrows Point, MD, Within the Baltimore Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Baltimore, Maryland, grantee of Foreign-Trade Zone 74, filed with the Foreign-Trade Zones Board (the Board) on June 18, 1984, requesting special-purpose subzone status for the shipyard of Bethlehem Steel Corporation at Sparrows Point, Maryland, within the Baltimore Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval is subject to certain conditions, approves the application subject to the following conditions: (1) any steel plate, angles, shapes, channels, rolled sheet stock, bars, pipes and tubes, classified under Schedule 6, Part 2, Subp. B, TSUS, and not incorported into merchandise otherwise classified, and which is used in manufacturing shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and (2) in addition to the annual report, Bethlehem shall advise the Board's Executive Secretary as to significant new contracts, other than for the TAKX project, with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish a Foreign-Trade Subzone at Sparrows Point, Maryland, Within the Baltimore Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act, "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the City of Baltimore, Maryland, grantee of Foreign-Trade Zone No. 74, has made application (filed June 18, 1984, Docket No. 33–84, 49 FR 26770) in due and proper form to the Board for authority to establish a special-purpose subzone at Bethlehem Steel Corporation's shipyard at Sparrows Point, Maryland, within the Baltimore Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied if approval is given subject to the conditions stated in the resolution;

Now, therefore, in accordance with the application filed June 18, 1984, the Board hereby authorizes the establishment of a subzone at Bethlehem's Sparrows Point Shipyard, designated on the records of the Board as Foreign-Trade Subzone No. 74A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations, and those stated in the resolution accompanying

this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 14th day of March 1985 pursuant to Order of the Board.

Foreign-Trade Zones Board.

William T. Archey,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-7788 Filed 4-1-85; 8:45 am]

BILLING CODE 3910-DS-M

International Trade Administration

[C-201-407]

Termination of Countervailing Duty Investigations; Welded Carbon Steel Pipe and Tube Products From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On March 19, 1985, the three subcommittees of the Committee on Pipe and Tube Imports withdrew their countervailing duty petition, filed on October 25, 1984, on welded carbon steel pipe and tube products from Mexico. Based on the withdrawal, we are terminating the countervailing duty investigations.

EFFECTIVE DATE: April 2, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3003.

SUPPLEMENTARY INFORMATION:

Case History

On October 25, 1984, we received a petition filed by the Committee on Pipe and Tube Imports (CPTI) on behalf of the U.S. welded carbon steel pipe and tube products industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that producers, manufacturers, or exporters in Mexico receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the "Act"). On November 7, 1984, CPTI submitted a letter amending the petition to establish separate subcommittees of CPTI to be the petitioners for the three distinct groups of pipe and tube subject to these investigations.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations and, on November 14, 1984, we initiated these investigations (49 FR 46182).

Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303(a)(1) and (b) of the Act apply to these investigations. Accordingly, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to a U.S. industry.

We sent questionnaires to the government of Mexico and the producers of the subject merchandise on November 21, 1984. The responses to our questionnaires were received on January 2, 1985. On January 18, 1985, we preliminary determined that the respondents were receiving bounties or grants and published an appropriate notice (50 FR 4555).

We conducted a verification in Mexico between February 11 and February 22, at government and respondent company offices and examined government and company records. At the request of the Sidermex companies, we held a hearing on March 6, 1985. Post-hearing briefs were filed March 13, 1985.

The final determinations in these investigations would have been due on April 3, 1985. On February 27, 1985, the government of Mexico agreed to a steel trade arrangement with the United States Government which limits the volume of U.S. imports of the subject merchandise. On March 19, 1985, we received a letter from counsel for the petitioners withdrawing their petition.

Scope of the Investigations

The products covered by these investigations fall into three major groups:

(1) Certain small diameter, circular, welded carbon steel line pipe. Small diameter circular welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more but not over 16 inches in outside diameter and with a wall thickness of not less than .065 inch are currently classifed in the *Tariff Schedules of the United States, Annotated* (TSUSA) under items 610.3208 and 610.3209. These products are produced to various API specifications for line pipe, most notably API-5L or API-5X.

(2) Certain light-walled, rectangular, welded carbon steel pipe and tube. Rectangular (including square) welded carbon steel pipe and tube having a wall thickness of less than 0.156 inch are currently classified under TSUSA item 610.4928. This product, commonly referred to in the industry as mechanical or structural tubing, is generally produced to ASTM specifications A-500 or A-513.

(3) Certain small diameter, circular, welded carbon steel pipe and tube. Small diameter circular welded carbon steel pipe and tube, with an outside diameter of .375 inch or more but not over 16 inches, of any wall thickness are currently classified under TSUSA item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A-120 and A-135. Products used in the drilling of oil or gas and classified in these TSUSA numbers are not included in the scope of these ivestigations.

Withdrawal of Petition

On March 19, 1985, petitioners notified us that they were withdrawing their petition, and requested that these investigations be terminated. Under section 704(a) of the Act (19 U.S.C. 1671c(a)), upon withdrawal of a petition, the administering authority may terminate investigations after giving

notice to all parties to the investigations. We have notified all parties to the investigations of petitioners' withdrawal and our intention to terminate. We have assessed the public interest factors set out in section 704(a)(2) of the Act and consulted with potentially affected producers, workers, and consuming interests. On the basis of our assessment of the public interest factors and our consultations with affected interests, we have determined that termination would be in the public interest.

For these reasons, we are terminating our investigations of welded carbon steel pipe and tube products from Mexico.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

March 27, 1985.

[FR Doc. 85-7846 Filed 4-1-85; 8:45 am]

BILLING CODE 3510-25-M

Applications for Duty-Free Entry of Scientific Instruments, University of Illinois et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-321R. Applicant: University of Illinois/Urbana-Champaign Campus, Urbana, IL 61801. Instrument: Pulsed Dye Laser, Model FL 2002E. Original notice of this resubmitted application was published in the **Federal Register** of October 24, 1984.

Docket No. 85-109. Applicant: University of Alabama in Birmingham, University Station, Birmingham, AL 35294. Instrument: Two Electrophysiological Data Interfaces, Model EDI 64. Manufacturer: Institut de Genie Biomedical, Canada. Intended use: Studies of the effects of myocardial infarction, ischemia, pacing, and drug interactions on the cardiac conductive system to gain greater insight into the mechanisms and treatment of cardiac arrhythmias in the canine model. Application received by Commissioner of Customs: March 11, 1985.

Docket No. 85-110. Applicant: Tulane University School of Medicine, 1430 Tulane Avenue, New Orleans, LA 70112. Instrument: Electron Microscope, Model JEM-100CXII with Accessories. Manufacturer: JEOL, Co., Ltd., Japan. Intended use: Scanning and transmission microscopy in the following projects:

1. Mechanical conformation of the internal structure of the carotid sinus.
2. Mechanism of release of catecholamines from adreno-medullary and carotid body cells.
3. Immunocytochemical studies of the neurons of the brain stem.
4. Surface characteristics of exfoliated transitional cell.
5. Microscopic studies of the mucosa of the small bowel.
6. Analysis of development of cortical neurons.
7. The instrument will be used to train *graudate students* and *postdoctoral fellows* in the fundamentals of ultramicroscopy.

Application received by Commissioner of Customs: March 11, 1985.

Docket No. 85-111. Applicant: University of Maryland, School of Medicine, 655 West Baltimore Street, Baltimore, MD 21201. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manfuacturer: JEOL, Ltd., Japan. Intended use: study of the composition and structure of experimental animal biopsy specimens and body fluids. The experiments to be conducted will include:

(i) Examination of neuromuscular juctions from animals exposed to insecticide-type poisons. Sodium and calcium accumulations are expected.

(ii) Study of stimulated electric organ nerve terminals; the accumulation of calcium by synaptic vesicles will be studies.

(iii) Study of nerve terminals in the mammalian brain after seizures; the distribution of sodium and calcium is of interest.

(iv) Study of calcium movements during the various phases of insulin secretion from Islet of Langerhans beta cells.

The instrument will also be used in the training of graduate students and postdoctoral fellows requiring fine structural and analytical techniques in their resarch investigations.

Application received by Commissioner of Customs: March 11, 1985.

Docket No. 85-112. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: Scanning Electron Microscope, Model Steroscan 253-G60PL/250Mk3 with Accessories. Manufacturer: Cambridge Instruments, Inc., United Kingdom. Intended use: Studies of advanced metals, advanced ceramics, and advanced polymeric materials including composite materials. The experiments will be conducted on the following:

1. The structure and properties of ultra-fine grain RS microcrystalline alloys prepared by crystallization from the glassy state.
2. Structure and properties of lithium alloyed 2024 and Al-Mg-Li typed aluminum alloys prepared from rapidly solidified particles.
3. Multiple phase strengthening of R.S.P.M. based superalloys using Γ', oxides and carbides.
4. The structure and properties of RSX7091 Alloy prepared as hot extruded bar.
5. High strength hot, high temperature, high thermo-conductivity copper-base alloys: Ingot and RS alloys.
6. High temperature creep crack growth in four nickel based super alloys.
7. Mechanisms of iodine stress corrosion cracking of zircaloy.
8. Fatigue behavior of rail steels.
9. Microstructure of high temperature oxide and sulfide scales.
10. Fiber reinforced epoxies.
11. Nickel sulfide stones in glass.
12. Design of artifical skin.
13. Experimental treatment of burn victims in field hospitals.

The instrument will also be used for training in the use of scanning electron microscopy. Application received by Commissioner of Customs: March 11, 1985.

Docket No. 85-113. Applicant: Rutgers Medical School, Department of Pathology, P.O. Box 101, Piscataway, NJ 08854. Instrument: Electron Microscope, Model EM 420T with Accessories. Manufacturer: Philips Gloeilampenfabrieken, The Netherlands. Intended use: The instrument is intended to be used in conducting the following research projects:

(1) Structure of the Chick Corneal Basement Membrane.

(2) Corenal Fibroblasts and Morphogenesis of an Orthogonal Collagenous Stroma.

(3) STEM and X-ray Diffraction Analysis of Collagen Fibrils.

(4) SLS-Crystallite Structure and Fibril Patterns.

(5) Binding of Zinc Ions to the Basement Membrane of the Mullerian Duct.

(6) Glomerular Hemodynamics and Serial Section Reconstructions.

(7) Ultrastructural Studies of Genito-Urinary, Renal and Matrix Pathology.

(8) Immunoelectron Microscopic Localization of Adenovirus Early Proteins in Transformed Cells.

Application received by Commissioner of Customs: March 11, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-7784 Filed 4-1-85; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles; Correction

In the Notice of Consolidated Decision appearing at page 11747 of the **Federal Register** of March 25, 1985, the following docket should be deleted:

Docket No. 84-268. Applicant: National Institute of Mental Health Washington, D.C. 20032. Instrument: Electron Microscope, Model EM 10CA and Accessories. Date of Denial Without Prejudice to Resubmission: October 22, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-7781 Filed 4-1-85; 8:45 am]

BILLING CODE 3510-DS-M

Decision for Duty-Free Entry of Scientific Instrument; Correction; Moncrief Radiation Center

In FR Doc. 85-6951 appearing at page 11747 in the **Federal Register** of March 25, 1985, Docket Number 83-232, the second and third sentences under Reasons are to be corrected to read:

In order to make the determination of scientific equivalency, it is clear that some scientific use for the foreign article, whether educational or research, must be intended. Although the foreign article falls within the tariff items eligible for duty-free consideration, its purpose is to plan the treatment of patients undergoing radio-therapy thereby achieving savings in equipment cost and personnel.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-7782 Filed 4-1-85; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; San Diego State University Foundation

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 82-00286R. Applicant: San Diego State University Foundation, San Diego, CA 92182-1900. Instrument: Excimer Laser, Model TE-861S and Accessories. Manufacturer: Lumonics, Inc., Canada. Intended Use: See notice at 47 FR 39546.

Comments: None received.

Decision: Denied. Instruments of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, are being manufactured in the United States.

Reasons: This application is a resubmission of Docket No. 82-00286, which was denied without prejudice to resubmission (DWOP). In the DWOP, we asked the applicant to provide a clear comparison with domestic instruments (Models 800 and 801XR) available from Tachisto Incorporated because the applicant had compared the foreign article with a Tachisto model discontinued prior to the date of purchase (April 5, 1982) of the foreign instrument. In the resubmission the applicant asserts that the Tachisto literature describing performance specifications for models 800XR and 801XR did not specify operation with flourine gas (F_2) at a wavelength of 157 nanometers and, therefore, that those modes do not satisfy research requirements for lasing capabilities with F_2. The National Bureau of Standards (NBS) in its November 16, 1982, memorandum accompanying the DWOP, however, specifically stated that both domestic instruments were capable of operation with F_2.

In its April 21, 1983, memorandum addressing the resubmission, NBS points out that the Tachisto literature provided the applicant, although it does not specifically refer to F, F_2 and N_2 (flourine and nitrogen gases), "does imply operation on these laser gases."

We agree with NBS that charts and diagrams in the Tachisto literature clearly indicate operation on F_2. The literature also presents a table which provides guarantee specifications for laser operation with each of four commonly used lasing (gas) media. Although flourine is not included in this table, a figure in the brochure clearly shows the relative output energies of Tachisto instruments using fluorine and nitrogen as well as the four gases mentioned in the table. The applicant may have overlooked this information, but we agree with NBS that there is "no reason to believe that Tachisto would not have responded with a quotation and specifications to a specific need for an instrument capable of operaton on F_2 gas." The law requires a finding only that an "instrument or apparatus of equivalent scientific value . . . is being manufactured in the United States," not that there be an active United States bidder. 19 U.S.C. 1202, Schedule 8, Part 4, headnote 6.

In order to clarify these matters, we asked the applicant to provide a copy of the letter sent tachisto dated January 18, 1983. The applicant's letter was a general inquiry rather than a request for specific information on an operating characteristic needed for research requirements (such as operation on F_2). Such detailed information would be required, of course, to make a meaningful comparison of the domestic instruments with the foreign instrument.

NBS also advises that both the foreign and domestic instruments satsify the specification claimed pertinent and that the overall operating performance of the referenced instruments is comparable. We also note that the applicant has failed satisfactorily to address the request of the DWOP.

Subsection 301.5(d)(3) of the regulations states that "The burden of proof shall be on the applicant to demonstrate that no instrument of equivalent scientific value for the purposes for which the foreing instrument is to be used is being manufactured in the United States" and Subsection 301.5(e)(8) states that "In the event an applicant fails to address the noted deficiencies in the response to the DWOP, the Director may deny the application."

For all the foregoing reasons, we deny the application.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-7783 Filed 4-1-85; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Indonesia

March 27, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 1, 1985. For further information contact James Nader, International Trade Specialist (202) 377-4212.

Background

On January 31, 1985, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia, a CITA directive was published in the **Federal Register** (50 FR 4568), which established an import restraint limit for men's and boys' cotton knit shirts in Category 338, produced or manufactured in Indonesia and exported during the ninety-day period which began on December 31, 1984 and extended through March 31, 1985. The notice also stated that the Government of the Republic of Indonesia is obligated under the bilateral agreement, if no mutually satisfactory solution is reached on a level for this category during consultations, to limit its exports during the prorated twelve-month period which began on December 31, 1984 and extends through June 30, 1985 to 110,562 dozen.

The notice also stated that merchandise in the category which is in excess of the ninety-day limit, if it is allowed to enter, may be charged to the limit established for the prorated twelve-month period.

The United States Government has decided, inasmuch as no mutually satisfactory solution has been agreed concerning this category, to control imports at the prorated twelve-month limit. The limit may be adjusted to include prorated swing and carryforward.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

March 27, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 1, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 338, produced or manufactured in Indonesia and exported during the period which began on December 31, 1984 and extends through June 30, 1985 in excess of 110,562 dozen.[1]

Textile products in Categories 338, which have been exported to the United States during the ninety-day period which began on December 31, 1984 shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607, December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[1] The limit has not been adjusted to reflect any imports exported after December 30, 1984.

[FR Doc. 85-7735 Filed 4-1-85; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Interagency Committee on Cigarette and Little Cigar Fire Safety; Technical Study Group Meeting

AGENCY: Interagency Committee on Cigarette and Little Cigar Fire Safety, CPSC.

ACTION: Notice of Meeting.

SUMMARY: The Technical Study Group on Cigarette and Little Cigar Fire Safety will meet on April 15 and 16, 1985, in Washington, D.C. The purpose of this meeting is to discuss recommendations for screening tests of commercially available cigarettes, and a proposal for testing of experimental cigarettes by the National Bureau of Standards.

DATE: The meeting will be from 9:30 a.m. through 5:00 p.m. on April 15, 1985; will resume at 9:00 a.m. on April 16, 1985, and will conclude that day.

ADDRESS: The meeting will be in Room 5051, HHS North Building, 330 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Colin B. Church, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION: The Cigarette Safety Act of 1984 (Pub. L. 98-587; 98 Stat. 2925, October 30, 1984) created the Technical Study Group on Cigarette and Little Cigar Fire Safety to prepare a final technical report to Congress within 30 months concerning the technical and commercial feasibility, economic impact, and other consequences of developing cigarettes and little cigars with minimum propensity to ignite upholstered furniture and mattresses.

The Technical Study Group will meet on April 15-16, 1985, to discuss the following topics:

Recommendations for screening tests of commercially available cigarettes;

A proposal for testing of experimental cigarettes by the National Bureau of Standards.

The meeting will be open to observation by members of the public.

but only members of the Technical Study Group may participate in the discussion.

Dated: March 27, 1985.

Colin B. Church,

Federal Employee Designated by the Interagency Committee on Cigarette and Little Cigar Fire Safety.

[FR Doc. 85-7810 Filed 4-1-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, May 7, 1985, Tuesday, May 14, 1985; Tuesday, May 21, 1985 and Tuesday, May 28, 1985 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Installations and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an aency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, D.C. 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 28, 1985.

[FR Doc. 85-7867 Filed 4-1-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Meeting on Educational Research Priorities

AGENCY: Office of the Secretary of Education.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Secretary of Education will conduct a meeting on educational research priorities. This notice announces the date, time, and place for the meeting. It also notifies the general public of their opportunity to attend.

DATE: April 17, 1985 at 9:30 a.m.

ADDRESS: The Secretary's Conference Room, Room 4003, 400 Maryland Avenue SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Thomas R. Ascik, NIE Senior Associate, Room 815K, National Institute of Education, 1200 19th Street NW., Washington, D.C. 20208. Telephone: (202) 254-6070.

SUPPLEMENTARY INFORMATION: The Secretary of Education has invited a small number of distinguished scholars to meet informally for the purpose of exchanging information and views on current and future educational research priorities of the Department of Education. The meeting will include a discussion of the following questions:

—In what areas does the application of knowledge and insights that research can reasonably be expected to produce hold greatest promise for improving the quality of American education?

—How satisfactorily do the research activities currently underway at the Department of Education, and those planned for the future, match the priorities suggested by the anwer to the prior question?

—In particular, were the appropriate priorities reflected in guidance that the National Institute of Education (NIE) supplied in October, 1984 to prospective applicants for educational research and development center grants? It should be noted that no changes will be made in the eleven "missions" previously identified by NIE, but the Secretary may wish to supply additional guidance to prospective applicants on more specific "research areas." Any additional guidance will be published in the **Federal Register** by May 15, 1985.

This meeting is open to the public. Written comments are invited and may be mailed to Thomas Ascik at his address provided above or hand delivered to Mr. Ascik at the meeting.

Dated: March 29, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-7957 Filed 4-1-85; 9:31 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council Refinery Capability Task Group; Meeting

Notice is hereby given that the Refinery Capability Task Group will meet in April 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Refinery Capability Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Refinery Capability Task Group will hold its fourth meeting on Monday, April 15, 1985, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, D.C.

The tentative agenda for the Refinery Capability Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.
2. Review the work of the Task Group.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Refinery Capability Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the pubilc who wishes to file a written statement

with the Refinery Capability Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Mrs. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353–2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on March 26, 1985.

Willian A. Vaughan,

Assistant Secretary Fossil Energy.

[FR Doc. 85–7864 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council; Refinery Survey Task Group; Meeting

Notice is hereby given that the Refinery Survey Task Group will meet in April 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Refinery Survey Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Refinery Survey Task Group will hold its fifth meeting on Monday, April 15, 1985, starting 1:00 p.m. in the Conference Room of the National Petroleum Council, 1625 K Street NW., Suite 600, Washington, D.C.

The tentative agenda for the Refinery Survey Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.
2. Discuss the status of Refinery Survey responses.
3. Discuss proposals for aggregations of survey data.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Refinery Survey Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Refinery Survey Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353/2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on March 26, 1985.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 85–7863 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

Uranium Enrichment; Public Meeting

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Energy (DOE) is conducting a detailed assessment of the economic and technical prospects of two advanced technologies for the enrichment of uranium for use in civilian nuclear power plants. These are the Advanced Gas Centrifuge (AGC) and the Atomic Vapor Laser Isotope Separation (AVLIS) processes, respectively. The objective is to select one of these technologies as the primary option for continued development, demonstration, and potential deployment. Selection is scheduled for May 1985. A meeting is scheduled to report on the status of the uranium enrichment enterprise and the process for technology selection.

DATE: The meeting will be held April 22, 1985, 9:00 a.m. to 6:00 p.m.

ADDRESS: U.S. Department of Energy Auditorium, Germantown, Maryland.

FOR FURTHER INFORMATION CONTACT: William L. R. Rice, Office of Advanced Technology Projects (NE–35), U.S. Department of Energy, Washington, DC 20545 (301/353–4201).

SUPPLEMENTARY INFORMATION:

Introduction

Natural uranium is presently enriched in three gaseous diffusion plants for use as nuclear fuel. The plants are owned by the United States Government and are operated under contract for the DOE at Oak Ridge, Tennessee; Paducah, Kentucky; and Portsmouth, Ohio. Also, a Gas Centrifuge Enrichment Plant (GCEP) is under construction within the perimeter of the gaseous diffusion complex at Portsmouth, Ohio. The first two process buildings of a projected multi-building plant are constructed, along with associated support facilities needed for repair and recycle of gas centrifuges, process gas handling, adminstration, etc. However, majority of the centrifuges to fill these buildings have not been manufactured.

Research and development on advanced enrichment technologies is being supported by DOE. This work encompasses two approaches—development of AGC technology for introduction in GCEP, and the AVLIS process. Both are being developed to reduce cost of enriched uranium.

Process Evaluation

The Office of Uranium Enrichment (UE) of DOE is responsible for the overall management and execution of uranium enrichment programs, including existing plants, future technologies, and enrichment business activities within the U.S. and abroad. Domestic and foreign sales of enriched uranium from this enterprise total approximately $1.6 billion and represent about 47% of the total free world market. A major goal of the enterprise is to remain a competitive world supplier of enriched uranium to fuel nuclear power reactors and to supply U.S. defense needs. In the context of this goal is an objective to offer the lowest priced enrichment services possible to our customers consistent with good business practices.

In June 1984, the Secretary of Energy announced the establishment of a Process Evaluation Board. It was directed to evaluate the two advanced uranium enrichment technologies (AGC and AVLIS) as a key step in the DOE plan to select, by May 1985, one advanced process for continued development and future deployment. The Secretary requested the Board to analyze each technology and develop a report which will form the basis for the technology selection. The evaluation will include a detailed assessment of the technical performance, costs, and schedule for the two processes, and identification of the business and market factors that will impact their future deployment on a large scale.

The bases for evaluating the AGC and AVLIS technologies are presented in a DOE document defining the selection criteria, issued in July 31, 1984. The selection criteria emphasized the economic merit of the technologies. Characteristics for evaluation will include potential product costs, implementation schedules and costs,

cost competitiveness with other means of production, technical status, development risk, the operational aspects of each technology, and the relative attractiveness of alternative financing options. Information on these characteristics is being obtained from all participants in a series of four data packages. The information and the assessment of the information will form the basis for the PEB findings. An integral part of the review process has been a series of topical meetings and detailed peer review meetings, at which the process proponents defend their respective technologies in a series of point, counterpoint presentations. It should be noted that the large majority of the data is classified and cannot be discussed during the public meeting.

Process Selection

The PEB findings will be submitted to the Secretary. UE will consider the PEB findings in the context of the DOE uranium enrichment program goals, and will forward the PEB findings to the DOE selection official, the Secretary of Energy.

The Public Meeting

As scheduled above, DOE will hold a public meeting to present the status of the selection process described above. The purpose of the public meeting is for the Department to receive public, nonclassified input that could affect the Department's future decisions, and to inform the public on the status of these activities. Specifically, the Deputy Assistant Secretary for Uranium Enrichment will provide an overview of the operation of the enrichment enterprise, and the Chairman of the PEB will describe the process leading to the Board's ultimate findings.

Persons wishing to provide a written statement for consideration should provide such statement on or before the day of the meeting. Persons wishing to provide an oral statement will be provided fifteen (15) minutes during the meeting to make such a statement. A written summary of each oral statement must be provided no later than two (2) days before the meeting if the speaker wishes to be placed on the agenda. Within the final two (2) hours of the meeting, an additional five (5) minutes will be provided for any person desiring to make a final statement. Oral statements will only be presented on April 22, 1985. All speakers will be selected on a first come, first served basis, both for fifteen (15) minute statements any for any concluding five (5) minute remarks.

All Statements Should be Submitted to: William L. R. Rice, Office of Advanced Technology Projects (NE–35), U.S. Department of Energy, Washington, DC 20545 (301/353–4201).

A limited number of the U.S., Department of Energy document, "Criteria and Methodology for the Assessment of the AGC and AVLIS technologies", dated July 31, 1984, plus all amendments thereto, will be available and provided upon request and at the day of the meeting at the Department of Energy Auditorium.

Approximately two (2) weeks following conclusion of the meeting, a copy of the meeting transcript will be available for public review. It will be located in the Department of Energy's Freedom of Information Reading Room. This is located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC

Dated: March 20, 1985.

John R. Longenecker,

Deputy Assistant Secretary for Uranium Enrichment.

[FR Doc. 85–7816 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Berkeley Nuclear Laboratory; England

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42. U.S.C. 2160) notice is herby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for supply of the following material: Contract Number WC–EU–277, for the supply of 12 uranium oxide pellets, containing a total of 54 grams of uranium depleted in U–235, to the Berkeley Nuclear Laboratory, England, for use in oxidation rate studies, and subsequent disposal.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 26, 1985.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85–7732 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangements; Central Bureau for Nuclear Measurements, Belgium

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreement involve approval of the following sales: Contract Number S–EU–841, to the Central Bureau for Nuclear Measurements, Geel, Belgium, 620 milligrams of thorium-230, for preparation of targets and isotope dilution mass spectrometry. Contract Number S–EU–842, to Eurodif-Production, France, 445.2 grams of normal uranium, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 26, 1985.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85–7730 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement; Joint Research Center, Federal Republic of Germany

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S–EU–826, to the Joint Research Center, the Federal Republic of Germany, one gram of uranium depleted in the isotope U–235, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 26, 1985.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85–7731 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangements; Government of Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government os Sweden Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above mentioned agreements involve approval of the following retransfers:

RTD/EU (SW)–72, from Sweden to the Federal Republic of Germany, 715 kilograms of uranium, enriched to 2.95% in U–235, for use as fuel in the Philippsburg power reactor.

RTD/SW (EU)–132, from the Federal Republic of Germany to Sweden, 911 grams of uranium, enriched to 0.94% in U–235 and 8 grams of plutonium for post-irradiation examination.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 26, 1985.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85–7729 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

Design and Construction Grant; Restriction of Eligibility for Grant Award

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) announces that pursuant to DOE Financial Assistance Rules, 10 CFR 600.7(b), it is restricting eligibility for the award of a grant for the design and construction of an energy basic industry research laboratory located in Evanston, Illinois.

Procurement request No. 02–85CE90231.000.

FOR FURTHER INFORMATION CONTACT: John J. Brogan, CE–14, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC, (202) 252–1477.

Authority

Title II and section 327 of the Department of the Interior and Related Agencies Appropriations Act, 1985, Public Law 98–473, and DOE Financial Assistance Rules, 10 CFR 600.7(b).

Project Scope

In the Department of the Interior and Related Agencies Appropriations Act, 1985, Congress directed DOE to make available $16 million to establish an energy conservation basic industry research laboratory in Evanston, Illinois. These funds will provide for design and initial construction of the facility which will be the only research center devoted exclusively to DOE's energy conservation program. Eligibility for award of this grant is being restricted to Northwestern University to comply with the specific statutory direction discussed above. The anticipated project period of the grant is June 30, 1985 through June 29, 1987, and the amount of DOE funds to be awarded shall be $15,681,000 by application of section 327 of the Appropriations Act which reduced each amount of budget authority provided in the Act by 2 per cent.

Issued in Washington, D.C. on March 12, 1985.

Hilary J. Rauch,

Manager, Chicago Operations Office.

[FR Doc. 85–7815 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Elk Trading Co., Inc. and Neal Davis; Proposed Remedial Order

Pursuant to 10 CFR 2054.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Elk Trading Company, Inc. This Proposed Remedial Order alleges pricing violations in the amount of $15,897,743.69 plus interest in connection with the resale of crude oil at prices in excess of those permitted under 10 CFR Part 212 during the time period May 1978 through December 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Mary Johnson, Economic Regulatory Administration, Department of Energy, 1403 Slocum, Second Floor, Dallas, Texas 75207 or by calling (214) 767–4646. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, Department of Energy, Forrestal Building, 1000 Independence Ave., SW., Room: 6F–078, Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas on the 11 day of March, 1985.

Ben Lemos, Director

Office of Field Operations, Economic Regulatory Administration.

[FR Doc. 85–7817 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

Proposed Remedial Order; Goldsberry Operating Co., Inc.

AGENCY: Department of Energy.

ACTION: Notice of Amended Proposed Remedial Order to Hood Goldsberry D/B/A Goldsberry Operating Co., Inc.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of an Amended Proposed Remedial Order which was issued to Hood Goldsberry D/B/A Goldsberry Operating Co., Inc. (Goldsberry) doing business at 1200 American Tower, Shreveport, Louisiana 71101. This Amended Proposed Remedial Order alleges that Goldsberry

charged prices in excess of ceiling prices in first sales of domestically produced crude oil in violation of 10 CFR 212.32, 212.54, 212.73 and 212.74 during the period December 1973 through September 1980 in the amount of $300,549.78.

A copy of the Amended Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, ATTN: Sandra K. Webb, Director, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002.

Within fifteen (15) days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Houston, Texas on the 12th day of March, 1985.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 85-7811 Filed 4-1-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF85-304-000, et al.]

Amalgamated Sugar Co. et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.]

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of the notice.

March 26, 1985.

Take notice that the following filings have been made with the Commission:

1. Amalgamated Sugar Company

[Docket No. QF85-304-000]

On March 13, 1985, Amalgamated Sugar Company (Applicant), of P.O. Box 127, Twin Falls, Idaho 83301, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The existing topping-cycle cogeneration facility is located on Orchard Road, South East Twin Falls, Twin Falls County, Idaho. The existing facility consists of two boilers and two extraction steam turbine/generator units. The electric power production capacity of the two units is 4 MW. The electric power output provides 50 percent of the plant's electric power requirement. The thermal energy is used for the extraction of sugar from sugar beets. The primary source of energy is coal.

The proposed addition to the existing topping cycle cogeneration facility will consist of a condensing steam turbine/generator driven by the existing boilers. The electric power production capacity of this unit will be 6 MW. The additional thermal energy will be used for the extraction of sugar from sugar beets.

2. Jeffery Bradley

[Docket No. QF85-296-000]

On March 11, 1985, Jeffery Bradley (Applicant), of c/o Leatherwood, RD #1, Box 399, Bloomsbury, New Jersey 08804 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 10.0 kilowatt wind facility is located on Myler Road in Bloomsbury, New Jersey.

3. Faulkner Land & Livestock

[Docket No. QF85-291-000]

On February 18, 1985, Faulkner Land & Livestock (Applicant), of c/o John Faulkner, H/C 60 Box 1260, Bliss, Idaho 88314 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 as complete filing.

The 0.9 megawatt hydroelectric facility is located in Gooding County, near the town of Bliss, Idaho.

A separate application is required for 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 eligiblity 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.

4. Lawrence E. Steward

[Docket No. QF85-298-000]

On March 11, 1985, Lawrence E. Steward (Applicant), of 3080 Valmont, Unit 1, Boulder, Colorado 80301, 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 proposed small power production facility will be located in Weld County, Colorado. The facility will consist of wind turbine/generators located in a wind farm configuration. The electric power production capacity of the facility will be 20 MW with an annual electric energy production of 60,000 MWH. The primary source of energy will be wind.

5. TDEnergy, Inc.

[Docket No. QF85-294-000]

On March 11, 1985, TDEnergy, Inc. (Applicant), of 68 Broad Street, Boston, Massachusetts 02109 submitted for filing an application for certification of a facility as a qualifying small power production facility, facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 20.0 megawatt wind facility is located in Florida, Massachusetts.

6. TDEnergy, Inc.

[Docket No. QF85-293-000]

On March 11, 1985, TDEnergy, Inc. (Applicant), of 68 Broad Street, Boston, Massachusetts 02109 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 5.0 megawatt wind facility is located in Windsor, Massachusetts.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7734 Filed 4-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-44-000 and TA85-2-44-001]

Commercial Pipeline Co., Inc.; Notice of PGA Filing

March 28, 1985.

Take notice that on March 22, 1985, Commercial Pipeline Co., Inc. ("Commercial") tendered for filing its 47th Revised Sheet No. 3A, superseding 46th Revised Sheet No. 3A reflecting Purchased Gas Adjustments and Total Rate as shown below.

	Current adjustment	Cumulative adjustment	Surcharge adjustment	Total rate
(Base)	$(.1189)	$(.1118)	$(1.5584)	$2.6887
(Excess)	(.0960)	(.0884)	(1.6584)	2.8206

The effective date of Commercial's filing is April 23, 1985.

Commercial states that this filing reflects adjustments in its purchased gas cost to provide for the tracking of a corresponding PGA adjustment by Commercial's sole supplier, Northwest Central Pipeline Corporation. The filing also reflects surcharge adjustments in accordance with Commercial's PGA.

Copies of the filings were served on Commercial's FERC jurisdictional customers, the Kansas Corporation Commission and the Missouri Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 4, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7801 Filed 4-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8820-000, et al.]

Hydroelectric Applications (City of New York, et al.); Notice of Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Exemption (5MW or Less).

b. Project No.: 8820-000.

c. Date Filed: December 24, 1984.

d. Applicant: City of New York.

e. Name of Project: Downsville Dam.

f. Location: East Branch of Delaware River in Delaware County, New York.

g. Filed Pursuant to: Energy Security Act of 1980 Section 408 (16 U.S.C. 2705 and 2708).

h. Contact Person: Joseph T. McGough Jr., Commissioner, Department of Environmental Protection, 2358 Municipal Building, New York, New York 10007

i. Comment Date: May 3, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 204-foot-high, 2,450-foot-long earthfill concrete core dam owned by the City of New York, at crest elevation 1,304 feet m.s.l.; (2) an existing reservoir with a surface area of 6,400-acres and net storage capacity of 430,000 acre-feet; (3) an existing 40-foot-diameter, 520-foot-long diversion tunnel; (4) an existing 6-foot-diameter, 140-foot-long tunnel which bifurcates into a short length of 6-foot-diameter tunnels; (5) a proposed generating unit within the existing valve chamber at the terminus of the south 6-foot-diameter tunnel with a rated capacity of 766-kW; (6) a proposed tailrace conduit approximately 8 feet in diameter and 210 feet long, connected back into the existing 40 feet diameter tunnel; and (7) a proposed powerline connected into the existing power distribution line at the site which ties into the New York State Electric and Gas System. The Applicant estimates a 3.6 million kWh average annual energy production.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

2a. Type of Application: Preliminary Permit.

b. Project No.: 8966-000.

c. Date Filed: February 20, 1985.

d. Applicant: David G. DeMera.

e. Name of Project: Black Lassic and South Shanty Power Project.

f. Location: On Black Lassic and South Shanty Creeks, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. David G. DeMera, P.O. Box 628, Murphys, California 95247.

i. Comment Date: May 28, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 20-foot-long diversion dam on Black Lassic Creek at elevation 4,200 feet; (2) a 4-foot-high, 20-foot-long diversion dam on South Shanty Creek at elevation 4,200 feet; (3) a 24-inch-diameter, 1,500-foot-long diversion conduit; (4) a 2-foot-diameter, 8,400-foot-long penstock; (5) a powerhouse with a total installed capacity of 1,500 kW operating under a head of 1,200 feet; and (6) a 3.5-mile-long, 12.5-kV transmission line from the powerhouse to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 4 million kWh.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $15,000.

k. This notice also consists of the following standard paragraphs: A8, A7, A9, B, C, and D2.

3a. Type of Application: Preliminary Permit.

b. Project No.: 8963-000.

c. Date Filed: February 19, 1985.

d. Applicant: David G. DeMera.

e. Name of Project: Glen Creek Power Project.

f. Location: On Glen Creek, near Forest Glen, within shasta-Trinity National Forest, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. David G. DeMera, P.O. Box 628, Murphys, California 95247.

i. Comment Date: May 28, 1985.

j. Description of Project: The proposed project would consist of: (1) A 3-foot-high, 20-foot-long diversion dam at elevation 3,000 feet; (2) a 24-inch-diameter, 100-foot-long diversion conduit; (3) a 24-inch-diameter, 5,000-foot-long penstock; (4) a powerhouse with a total installed capacity of 700 kW

operating under a head of 500 feet; and (5) a 1,700-foot-long, 12.5-kV transmission line connected to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 2.0 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks insurance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $15,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

4a. Type of Application: Preliminary Permit.

b. Project No.: 8907–000.

c. Date Filed: January 30, 1985.

d. Applicant: Pine Creek Hydro Company.

e. Name of Project: Pine Creek Project.

f. Location: On Pine Creek, near Weitchpec, within Six Rivers National Forest, in Humboldt County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Paul Eichenberger, Eichenberger and Associates, 4020 El Camino Avenue B–4, Sacramento, California 95821.

i. Comment Date: May 24, 1985.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high, 335-foot-long diversion dam at elevation 360 feet; (2) a 83-inch-diameter or 8.5-foot-wide and 4.5-foot-deep, 7,000-foot-long diversion conduit or channel; (3) a 69-inch-diamemter, 350-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 4,560 kW operating under a head of 189 feet; and (5) a 3-mile-long, 12.5-kV transmission line to be connected to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation of 18.7 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $125,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

5a. Type of Application: Preliminary Permit.

b. Project No.: 8604–000

c. Date Filed: September 17, 1984.

d. Applicant: The Incorporated County of Los Alamos.

e. Name of Project: Cochiti Water Power Project.

f. Location: On the Rio Grande in Sandoval County, New Mexico.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ronald C. Jack, County Administrator, Incorporated County of Los Alamos, New Mexico, 2300 Trinity Drive, P.O. Box 30, Los Alamos, New Mexico 87544.

i. Comment Date: May 6, 1985.

j. Competing Application: Project No. 8493, Date Filed August 6, 1984.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Cochiti Dam and Reservoir, located on lands of the Pueblo de Cochiti, and would consist of: (1) A new penstock utilizing the existing outlet works, with modifications, or possibly a completely new pressure conduit constructed to the left of the existing outlet works; (2) a new powerhouse to contain two turbine-generator units rated at 7.5 MW each for a total rated capacity of 15.0 MW with a possible increase to 20 MW if a new pressure conduit is feasible; (3) a tailrace returning flow to the river near the existing stilling basin outlet; (4) a new transmission line connecting to an existing 115-kV line of the Public Service Company of New Mexico about 6.5 miles distant; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 53,000,000 kWh with a possible increase to 59,000,000 kWh if a new pressure conduit is constructed and plant capacity is increased.

l. Purpose of Project: Project energy will be integrated into Los Alamos' power distribution system with the possibility that some of the energy may be marketed to area utilities.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $80,000.

6a. Type of Application: Conduit Exemption.

b. Project No.: 6876–002.

c. Date Filed: October 30, 1984.

d. Applicant: Fillmore City Corporation.

e. Name of Project: Chalk Creek Hydro Project.

f. Location: On Chalk Creek in Millard County, Utah.

g. Filed Pursuant to: Section 30 of the Federal Power Act.

h. Contact Person: Honorable Doris Rasmussen, Mayor, P.O. Box 686, Fillmore, Utah 84631.

i. Comment Date: May 6, 1985.

j. Description of Project: An existing irrigation project consists of a diversion structure on Chalk Creek into a 4,150-foot-long, 24-inch-diameter pipeline leading to a weir which divides the flow between the Fillmore water users irrigation system and the Chalk Creek Irrigation Company (CCI); the CCI flow then enters a 3,000-foot-long, 18-inch diameter pipeline which subsequently serves another irrigation system. The proposed project consist of two powerhouses: (1) An upper powerhouse, near the end of the 24-inch pipeline, to contain a turbine-generator unit rated at 180 KW and discharging flow above the dividing weir; and (2) a lower powerhouse, near the end of the 18-inch pipeline, to contain a turbine-generator unit rated at 120 KW and discharging flow into the lower irrigation system. The Applicant estimates that the average annual energy output would be 899,800 kWh for the upper plant and 720,500 kWh for the lower plant.

k. Purpose of Project: Project energy would be utilized by the Applicant.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3b.

7a. Type of Application: Exemption from Licensing (5MW).

b. Project No.: 8848–000.

c. Date Filed: December 28, 1984.

d. Applicant: Sawyer-Bellamy Mill Associates.

e. Name of Project: Sawyers Mill Project.

f. Location: On the Bellamy River in the City of Dover, Strafford County, New Hampshire.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: Dr. George K. Lagassa, Mainstream Associates, 48 Congress Street, Portsmouth, New Hampshire 03801.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would consist of the following two developments:

A. The Upper Dam development consisting of: (1) An existing 15-foot-

high, 80 foot-long dam; (2) a reservoir having a surface area of 18 acres, a storage capacity of 75 acre-feet, and a normal water surface elevation of 47.9 feet msl; (3) a new intake structure; (4) an existing 11-foot-deep, 22-foot-wide, 25-foot-long open flume; (5) an existing 10-foot-long, 4-foot-diameter steel penstock; (6) a new powerhouse containing one generating unit with an installed capacity of 62 kW; (7) a new 8-foot-long, 4-foot-diameter steel discharge pipe; (8) a new 150-foot-long, 12.47-kV transmission line; and (9) appurtenant facilities. The Applicant estimates the average annual generation would be 145,000 kWh.

B. The Lower Dam development consisting of: (1) An existing 80-foot-long, 18-foot-high dam; (2) a reservoir having a surface area of 0.7 acre, a storage capacity of 2.5 acre-feet, and a normal water surface elevation of 35.5 feet m.s.l.; (3) a new intake structure; (4) a new 350-foot-long-diameter steel penstock; (5) a new powerhouse containing one generating unit having an installed capacity of 105 kW; (6) a new 40-foot-long excavated tailrace; (7) a new 130-foot-long, 12.47-kV transmission line; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 255,000 kWh.

The proposed Sawyers Mill project would have a total installed capacity of 167 kW, and would generate an estimated total of 400,000 kWh annually.

k. Purpose of Project: All project energy generated would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3A.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

a. Type of Application: Exemption (5 MW or Less).

b. Project No: 8606-000.

c. Date Filed: September 18, 1984, and amended on January 10, 1985.

d. Applicant: Niagara Mohawk Power Corporation.

e. Name of Project: Schuylerville Project.

f. Location: On the Fish Creek in the Towns of Schuylerville and Victory Mills, Saratoga County, New York.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: John W. Keib, Senior Systems Attorney, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202.

i. Comment Date May 6, 1985.

j. Description of Project: The proposed project would consist of: (1) An exising 553-foot-long, 20-foot-high concrete gravity dam; (2) a reservoir having a surface area of 13 acres, a storage capacity of 329 acre-feet and a normal water surface elevation of 146 feet msl; (3) an intake structure; (4) an existing above ground pipeline consisting of a 197-foot-long, 9-foot-diameter steel pipe and a 590-foot-long, 9-foot-diameter wood stave pipe; (5) an existing 55-foot-long, 16.5-foot-diameter concrete surge tank; (6) an existing above ground 50-foot-long, 9-foot-diameter steel penstock; (7) an existing powerhouse containing 2 generating units (one existing, one new) with a total installed capacity of 1,620 kW; (8) an existing 80-foot-long tailrace; and (9) appurtenant facilities. The Applicant estimates the average annual generation would be 6,750,000 kWh.

k. Purpose of Project: All project energy generated would be used by the Applicant for distribution to its customers.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

9a. Type of Application: Declaration of Intention.

b. Project No.: EL 85-20-000.

c. Date Filed: February 6, 1985.

d. Applicant: Energy Stream, Inc.

e. Name of Project: Pyramid Creek Hydroelectric.

f. Location: On Pyramid Creek on Unalaska Island in the Aleutian Chain of Alaska.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person: Harry A. Noah, Energy Stream, Inc., 1013 Dimond Boulevard, #352, Anchorage, Alaska 99515.

i. Comment Date: May 1, 1985.

j. Description of Project: The proposed project would utilize an existing City of Unalaska water supply dam and would consist of: (1) An 8,000-foot-long penstock from the water supply dam to the powerbouse; (2) a 10-foot-high, 85-foot-wide, sheet-pile diversion dam on the lower part of the creek; (3) a 4,800-foot-long penstock to the powerhouse; (4) a 25-foot by 35-foot, prefabricated metal powerhouse within the city limits of Unalaska containing a generating unit rated at 1,400 kW and producing an average annual output of 7.1 GWh; and (5) a transmission line from the powerhouse to the city's existing transmission lines.

A Declaration of Intention requests that the Commission commence an investigation to determine if it has jurisdiction over the project.

k. Purpose of Project: Power would be sold to the publicly-owned utility in Unalaska. All power would be consumed within the city limits.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

10a. Type of Application: Major License (over 5 MW).

b. Project No.: 3246-001.

c. Dated Filed: May 3, 1983.

d. Applicant: Missouri Joint Municipal Electric Utility Commission.

e. Name of Project: Mississippi River Locks and Dam No. 26R.

f. Location: On the Mississippi River in St. Charles County, Missouri, and Madison County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Joe R. Moody, Jr., Benham-Holway Power Group, 5300 South Yale Avenue, Tulsa, Oklahoma 74135, and Mr. Richard E. Melon, Missouri Joint Municipal Electric Utility Commission, P.O. Box 401, Jefferson City, Missouri 65102.

i. Comment Date: May 24, 1985.

j. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdication of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A proposed headrace; (2) a proposed powerhouse containing six generating units rated at 13 MW each for a total install capacity of 78 MW; (3) a proposed tailrace; (4) a proposed one-mile-long, 161-kV transmission line; and (6) appurtenant facilities. The estimated average annual energy output for the project is 400,000,000 kWh.

k. Purpose of Project: Power produced at the project would be distributed to members of the Missouri Joint Municipal Electric Utility Commission.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

11a. Type of Application: License (Under 5 MW).

b. Project No.: 8433-000.

c. Date Filed: July 13, 1984.

d. Applicant: The Towns of Londonderry, Windham, Wardsboro, Dummerston, and Newfane, Vermont.

e. Name of Project: Jamaica.

f. Location: On the West River in Windham County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Donnie R. Pope, Hydroelectric Development, Inc. 200 Union Blvd., Suite 306, Denver, Colorado 80228.

i. Comment Date: May 6, 1985.

j. Competing Application: Project No. 7046–000. Date Filed: February 1, 1983.

k. Description of Project: The proposed run-of-river project would utilize the existing U.S. Army Corps of Engineers' Ball Mountain Dam and would consist of: (1) A new 11.5-foot-diameter and 80-foot-long steel penstock connected to the existing outlet works; (2) a new powerhouse with 3 turbine-generator units with a total installed capacity of 3,720 kW; (4) a new 12.47–kV and 2,500-foot-long underground transmission line; and (5) other appurtenances. Applicant estimates an average annual generation of 12,147,000 kWh.

l. Purpose of Project: Project energy would be sold to the Central Vermont Public Service Corporation.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

12a. Type of Application: Preliminary Permit.

b. Project No.: 8967–000.

c. Date Filed: February 21, 1985.

d. Applicant: Nelson's Crossing Hydro Company.

e. Name of Project: Fall River at Nelson's Crossing Project.

f. Location: On Fall River, within Plumas National Forest, in Butte County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Paul Eichenberger, Eichenberger and Associates, 4020 El Camino Ave., B–4, Sacramento, California 9521.

i. Comment Date: May 22, 1985.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high concrete diversion dam at elevation 3,000 feet; (2) a 5,300-foot-long diversion conduit; (3) a 30-inch-diameter, 1,060-foot-long penstock; (4) a powerhouse containing generating units with combined rated capacity of 2,045 kW; and (5) a 5-mile-long, 12.5–kV transmission line will connect the project with an existing Pacific Gas and Electric Company (PG&E) line south of the powerhouse.

k. Purpose of Project: The project's estimated 9.7 million kWh of annual energy will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

13a. Type of Application: Preliminary Permit.

b. Project No.: 8893–000.

c. Date Filed: January 28, 1985.

d. Applicant: Hydro Power Development Inc.

e. Name of Project: Snake River Hydro Power.

f. Location: In Summit County, Colorado on the Snake River.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Bobby L. Cox, Hydro Power Development Inc., Colorado Springs, Colorado 80901.

i. Comment Date: May 28, 1985.

J. Description of Project: The proposed project would consist of: (1) Two proposed diversion dams each approximately 5 feet high and 25 feet long impounding lees than one acre-foot of water at a surface elevation of 9,960 feet m.s.l. diverting the flow of the Peru Creek and Snake River into: (2) the proposed Peru Creek penstock which will be 3 feet in diameter and 1,600 feet in length and the proposed Snake River penstock which will be 3 feet in diameter and 1,900 feet in length with both penstocks converging at; (3) a proposed powerhouse 24 feet long and 10 feet high to contain three turbine/generators for a total rated capacity of 576 kW conveying flows to; (4) a proposed tailrace 48 inches in diameter and 10 feet long; (5) a new 25–kV transmission line 300 feet long; and (6) appurtenant facilities. The estimated average annual energy produced by the project would be 2,037,800 kilowatt hours operating under a net hydraulic head of 125 feet. The project power would be sold to the Public Service Company of Colorado.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 18 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $80,000.

14a. Type of Application: Conduit Exemption.

b. Project No.: 8821–000.

c. Date Filed: December 24, 1984.

d. Applicant: City of New York.

e. Name of Project: Delaware Tunnel.

f. Location: West Delaware Tunnel Outlet in Sullivan County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Joseph T. McGough Jr., Commissioner, Department of Environmental Protection, City of New York, Municipal Building, Rm. 2358, New York, New York 10007.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would utilize the existing City of New York's West Delaware Tunnel and would consist of the following: (1) A new 6-foot-7-inch diameter, 60-foot-long penstock connected to the discharge channel of the outlet works of the existing tunnel; (2) a new power station containing a generating unit with a rated capacity of 6,300-kW at elevation 833.5 feet m.s.l.; and (3) a new 2,700-foot-long transmission line tying into the existing Central Hudson Gas and Electric Corporation system. The Applicant estimates a 16,870-MWh average annual energy production.

k. Purpose of Exemption: An exemption if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

15a. Type of Application: Preliminary Permit.

b. Project No.: 6761–002.

c. Date Filed: September 4, 1984.

d. Applicant: Blackfeet Indian Tribe.

e. Name of Project: Lake Sherburne Hydropower.

f. Location: On Swiftcurrent Creek, within U.S. lands held in trust on behalf of the Blackfeet Tribe, near Babb, in Glacier County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Earl Old Person, Blackfeet Tribe, Browning, Montana 59417.

i. Comment Date: May 24, 1985.

j. Description of Project: The proposed project would utilize the existing 96.5-foot-high Lake Sherburne Dam owned by the Bureau of Reclamation. The proposed project would modify one of the outlet conduit by the installation of a steel penstock to accomodate pressurized releases from the reservoir to a new powerhouse and would consist of: (1) A 300-foot-long, 72-inch-diameter

steel penstock; (2) a powerhouse containing two generating units with a total installed capacity of 2,000 kW; and (3) a 300-foot-long, 14.4-kV transmission line connecting to an existing Glacier Electric Cooperative transmission line. The Applicant estimates an average annual energy prodution of 4.9 million kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $198,000. No new roads would be constructed during the feasibility study.

k. Purpose of Project: The project power would be sold to Montana Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, B, C, and D2.

16a. Type of Application: Preliminary Permit.

b. Project No.: 8869–000.

c. Date Filed: January 7, 1985.

d. Applicant: G&G Associates.

e. Name of Project: Low Head 2 Water Power.

f. Location: East Low Canal lateral owned by the U.S. Bureau of Reclamation near Othello, in Adams County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ray L. Gunderson, Star Route, Box 60, Spirit Lake, Idaho 83869.

i. Comment Date: May 28, 1985.

j. Description of Project: The proposed project would consist of: (1) A 75-foot-long, 36-square foot-cross section conduit located at the existing flow control structure; (2) a powerhouse containing three generating units with a total installed capacity of 270 kW; and (3) a 2,500-foot-long transmission line connecting to an existing transmission line. The Applicant estimates an average annual energy production of 800,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $5,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The project power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

17a. Type of Application: Preliminary Permit.

b. Project No.: 8885–000.

c. Date Filed: January 18, 1985.

d. Applicant: Ririe Hydro Ltd., Partnership.

e. Name of Project: Ririe Dam Hydroelectric.

f. Location: On Willow Creek, within U.S. lands administered by the Bureau of Reclamation, near Popular, in Bonneville County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Archie R. Ford, P.O. Box 1940, Orofino, Idaho 83544.

i. Comment Date: May 22, 1985.

j. Description of Project: The proposed project would utilize the existing 253-foot-high, 1070-foot-long Ririe Dam owned by the Bureau of Reclamation and would consist of: (1) A 200-foot-long penstock from the existing headworks, through the existing outlet conduit, to a new powerhouse located on the southern bank of the outlet channel; (2) a powerhouse containing one to two generating units with a total installed capacity of 2,500 kW; and (3) a 200-foot-long transmission line connecting to an existing transmission line owned by Utah Power and Light. The Applicant estimates an average annual energy production of 10.9 million kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $26,500. No new roads would be constructed or drilling conducted during feasibility study.

k. Purpose of Project: The project power would be sold to Utah Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

18a. Type of Application: Preliminary Permit.

b. Project No.: 8913–000.

c. Date Filed: February 1, 1985.

d. Applicant: La Crosse Associates.

e. Name of Project: La Crosse Hydroelectric Project.

f. Location: On the Mississippi River in Huston County, Minnesota, and Vernon County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joel Kirk Rector, 8 Peabody Terrace #32, Cambridge, Massachusetts 02138.

i. Comment Date: May 28, 1985.

j. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdication of the U.S. Army Corps of Engineers. The proposed projected would consist of: (1) A proposed headrace; (2) a proposed penstock, which would be approximately 25 foot long and approximately 3 feet in diameter; (3) a proposed powerhouse containing two generating units rated at 5,000 kW each; (4) a proposed tailrace; (5) a proposed 69-kV, 400-foot-long transmission line; and (6) appurtenant facilities.

The estimated average annual energy output for the project is 53.50 GWh.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of the Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

19a. Type of Application: Preliminary Permit.

b. Project No.: 8864–000.

c. Date Filed: January 7, 1985.

d. Applicant: Weyerhaeuser Company.

e. Name of Project: Calligan Creek Hydroelectric.

f. Location: On Calligan Creek, near North Bend, in King County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Norbert E. Methven, Weyerhaeuser Company, Tacoma, Washington 98477.

i. Comment Date: May 24, 1985.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-long concrete diversion structure located directly downstream of the outflow of the Calligan Lake at elevation 2,210 feet; (2) an 8,000-foot-long, 42-inch-diameter steel penstock; (3) a powerhouse containing a single generating unit with an installed capacity of 5,050 kW; (4) a switchyard located adjacent to the powerhouse; and (5) a 4-mile-long, 115-kV transmission line. The Applicant estimates an average annual energy production of 20.6 million kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental

feasibility studies and prepare an FERC license application at a cost of $50,000. No new roads would be constructed or drilling conducted during feasibility study.

k. Purpose of Project: The project power would be either used by the Applicant or sold to a nearby utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

20a. Type of Application: Declaration of Intention.

b. Project No.: EL84-24-001.

c. Date Filed: October 29, 1984.

d. Applicant: Robert L. Jackman.

e. Name of Project: Standalone Hydropower.

f. Location: On Mathews Creek in Stevens County, Washington.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person: Robert L. Jackman, Box 588, Northport, Washington 99157.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would utilize an existing catch basin and would consist of: (1) A 2-foot-high, 6-foot-wide intake structure; (2) a 6-inch-diameter, 1,300-foot-long penstock; (3) a generating unit with a rated capacity of 22 kW producing an average annual output of 42,372 kWh; and (4) a ⅛-mile-long transmission line from the unit to the Applicant's residence.

A Declaration of Intention requests that the Commission commence an investigation to determine if it has jurisdiction over the project.

k. Purpose of Project: To generate power for personal home consumption.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

21a. Type of Application: License (Under 5MW).

b. Project No.: 6036-001.

c. Date Filed: July 30, 1984.

d. Applicant: Energenics Systems Inc.

e. Name of Project: Nimrod Dam.

f. Location: Fourche La Fave River, Perry County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Granville J. Smith, Energenics Systems, Inc., 1725 K Street, NW., Washington, D.C. 20006.

i. Comment Date: May 24, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Nimrod Dam and would consist of: (1) A proposed intake structure; (2) a proposed 15-foot-diameter penstock about 25 feet long, bifurcating into a 9-foot-diameter and a 4.5-foot-diameter penstock, each 55 feet long; (3) a proposed powerhouse located on the right dam abutment, about 80 feet downstream of the dam toe, and housing two generating units with a total installed capacity of 2,570 kW; (4) a proposed tailrace about 10 feet long; (5) a proposed 700-foot-long 13.8/kV transmission line to connect with an existing transmission system; and (6) appurtenant facilities.

k. Purpose of Project: The estimated average annual generation of 8.3 GwH would be sold to Arkansas Power & Light Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

22a. Type of Application: Preliminary Permit.

b. Project No.: 8904-000.

c. Date Filed: January 30, 1985.

d. Applicant: Devils Canyon-Hydro Company.

e. Name of Project: Devils Canyon Creek Project.

f. Location: On Devils Canyon Creek, near Hawkins Bar, within Six Rivers National Forest, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Paul Eichenberger, Eichenberger and Associates, 4020 El Camino Avenue B-4, Sacramento, California 95821.

i. Comment Date: May 28, 1985.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high, 165-foot-long diversion dam at elevation 2,005 feet; (2) a 63-inch-diameter or 6.5-foot-wide and 3.5-foot-deep, 8,400-foot-long diversion conduit or channel; (3) a 49-inch-diameter, 1,150-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 3,900 kW operating under a head of 330 feet; and (5) a 12-mile-long, 12.5-kV transmission line from the powerhouse to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates an average annual generation of 15.3 million kWh.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $125,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

23a. Type of Application: Preliminary Permit.

b. Project No.: 8868-000.

c. Date Filed: January 7, 1985.

d. Applicant: G&G Associates.

e. Name of Project: Low Head 1 Water Power.

f. Location: East Low Canal lateral owned by the U.S. Bureau of Reclamation near Othello, in Adams County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ray L. Gunderson, Star Route, Box 60, Spirit Lake, Idaho 83869.

i. Comment Date: May 22, 1985.

j. Description of Project: The proposed project would consist of: (1) A 75-foot-long, 36-square foot-cross section conduit located at the existing flow control structure; (2) a powerhouse containing three generating units with a total installed capacity of 270 kW; and (3) a 300-foot-long transmission line connecting to an existing transmission line. The Applicant estimates an average annual energy production of 800,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $5,000. No new roads would be constructed or drilling conducted during the feasbility study.

k. Purpose of Project: The project power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

24a. Type of Application: Preliminary Permit.

b. Project No.: 8870-000.

c. Date Filed: January 7, 1985.

d. Applicant: G&G Associates.

e. Name of Project: Low Head 3 Water Power.

f. Location: East Low Canal lateral owned by the U.S. Bureau of Reclamation near Othello, in Adams County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ray L. Gunderson, Star Route, Box 60, Spirit Lake, Idaho 83869.

i. Comment Date: May 22, 1985.

j. Description of Project: The proposed project would consist of: (1) A 75-foot-long, 36-square foot-cross section conduit located at the existing flow control structure; (2) a powerhouse containing three generating units with a total installed capacity of 270 kW; and (3) a 50-foot-long transmission line connecting to an existing transmission line. The Applicant estimates an average annual energy production of 800,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks

issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $5,000. No new roads would be constructed or drilling conducted during the feasbility study.

k. Purpose of Project: The project power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later that 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the

particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) A preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Any one may submit comments, a protest, or a motion to invervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385. 210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statues. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Aplicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy opf an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 28, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–7805 Filed 4–1–85: 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7389–001]

Hydro-West, Inc.; Surrender of Preliminary Permit

March 27, 1985.

Take notice that Hydro-West, Inc., Permittee for the proposed Range Queen Power Station Project No. 7389, requested by letter dated February 18, 1985, that its preliminary permit be

terminated. The preliminary permit was issued on December 12, 1983 and would have expired on May 31, 1985. The project would have been located on the White River in Rio Bianco County, Colorado.

The Permittee filed the request on February 25, 1985, and the preliminary permit for Project No. 7389 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 § 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7802 Filed 4-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-43-000 and 001]

Northwest Central Pipeline Corp.; Proposed Changes in FERC Gas Tariff

March 28, 1985.

Take notice that Northwest Central Pipeline Corporation (Northwest Central) on March 22, 1985, tendered for filing Fourth Revised Sheet No. 6 and Fifth Revised Sheet Nos. 7 and 8 to its FERC Gas Tariff, Original Volume No. 1. Northwest Centeral states that pursuant to the Purchased Gas Adjustment in Article 21 and the Incremental Pricing Provisions in Article 24 of its FERC Gas Tariff, it proposes to decrease its rates effective April 23, 1985, to reflect:

(1) 45.13¢ per Mcf decrease in the Cumulative Adjustment due to a decrease in Northwest Central's projected gas purchase costs.

(2) A 5.48¢ per Mcf increase in the Surcharge Adjustment (to a negative 17.52¢ per Mcf from a negative 23.00¢ per Mcf) to Amortize the Deferred Purchased Gas Cost Subaccount balance.

(3) A .11¢ per Mcf decrease in the Advance Payment Rate Adjustment (to a negative 1.40¢ per Mcf from a negative 1.29¢ per Mcf) in compliance with the Stipulation and Agreement in Docket No. RP82-114-000, *et al.*

Northwest Central states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 925 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 4, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7803 Filed 4-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-34-000]

PacifiCorp Doing Business as Pacific Power & Light Co.; Notice of Application

March 27, 1985.

Take notice that on March 15, 1985, PacifiCorp doing business as Pacific Power & Light Company (Pacific) filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order authorizing it to issue and sell not more than 5,000,000 shares of Common Stock.

Any person desiring to be heard or to make any protest with reference to said Application should on or before April 15, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 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 the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7804 Filed 4-1-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Case Filed Week of February 22 Through March 1, 1985

During the week of February 22 through March 1, 1985, the appeals and 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 of 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, D.C. 20585.

Dated: March 25, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[Week of Feb. 22 through Mar. 1, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 14, 1985	Economic Regulatory Administration, Washington, D.C.	HRZ-0237	Interlocutory order. If granted: The July 27, 1984 Proposed Remedial Order issued to United Independent Oil Company (Case No. HRO-0247) would be amended to include the legal finding that the firm's conduct during May 1977, resulted in the circumvention or contravention of the Entitlements Program, in violation of 10 CFR Section 205.202.
Jan. 25, 1985	Economic Regulatory Administration, Washington, D.C.	HRZ-0236	Interlocutory order. If granted: The July 22, 1984 Proposed Remedial Order issued to United Independent Oil Company (Case No. HRO-0247) would be amended to join Mr. Peter L. Hirschburg as a party.

[Week of Feb. 22 through Mar. 1, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 25, 1985	Bayport Refining Company et al., Washington, D.C.	HRD-0270, HRH-0270	Motion for discovery and motion for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Bayport Refining Company, Robert H. House, Olene Crumpton, Malcolm M. Turner and Harry F. Mason in response to a Proposed Remedial Order (Case No. HRO-0255) issued to all of the above.
Do	Natural Resources Defense Council, Inc., Washington, D.C.	HFA-0278	Appeal of an information request denial. If granted: The January 14, 1985 Freedom of Information Request Denial issued by the Office of Nuclear Materials Production would be rescinded, and Natural Resources Defense Council, Inc. would receive access to documents relating to experimental production of plutonium isotopes in Richland, Washington.
Feb. 26, 1985	C & B Warehouse Distributing, Virginia, MN	HEE-0122	Exception to the reporting requirements. If granted: C & B Warehouse Distributing would no longer be required to file form EIA-782B "Reseller/Retailer's Monthly Petroleum Products Sales Report."
Do	Brownlie, Wallace, Armstrong & Bander, Washington, D.C.	HEF-0564	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the August 28, 1984, Consent Order entered into with Brownlie, Wallace, Armstrong & Bander.
Do	Cordele Operating Co., Washington, D.C.	HEF-0565	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 May 31, 1984, Consent Order entered into with Cordele Operating Company.
Do	L.B. White, Dallas, TX	HRD-0271	Motion for discovery. If granted: Discovery would be granted to L.B. White in connection with the Statement of Objections submitted in response to a Proposed Remedial Order (Case No. HRO-0266) issued to Brio Petroleum, Inc. and L.B. White.
Feb. 27, 1985	Government Accountability Project, Washington, D.C.	HFA-0279	Appeal of an information request denial. If granted: Government Accountability Project would receive access to all agency records relating to the Los Alamos Primer.
Feb. 28, 1985	Formby Oil Co., Pawhuska, OK	HEE-0123	Exception to the reporting requirements. If granted: Formby Oil Company would not be required to file form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report."

Refund Applications Received

[Week of Feb. 22 to Mar. 1, 1985]

Date	Name of refund proceeding/ name of refund applicant	Case No.
2/25/85	Hertz/Aluminum Company of America.	RF76-4
2/25/85	Amtel/Dooley Oil Co	RF46-32
2/25/85	Waller/Cambridge Rubber Co	RF78-5
2/25/85	Amoco/Elston-Kostner Standard	RF21-12384
2/25/85	Amoco/Glen Gibson	RF21-12385
2/25/85	Amoco/Cars-A-Washing	RF21-12386
2/25/85	Amoco/Johnson Standard Service.	RF21-12387
2/25/85	Hertz/Ashland Services Co	RF76-5
2/25/85	Hertz/Natural Gas Pipeline Co. of America.	RF76-6
2/25/85	Hertz/Paccar, Inc	RF76-7
2/25/85	Hertz/Interlake, Inc	RF76-8
2/25/85	Hertz/AMF, Inc	RF76-9
2/25/85	Hertz/The Marmon Group	RF76-10
2/25/85	Hertz/Armco, Inc	RF76-11
2/25/85	Hertz/A.L. Smith Corp	RF76-12
2/25/85	Hertz/Weyerhaeuser Co	RF76-13
2/25/85	Hertz/Brunswick Corp	RF76-14
2/26/85	Hertz/General Dynamics Corp	RF76-15
2/26/85	Hertz/Data Point	RF76-16
2/26/85	Hertz/United Technologies	RF76-17
2/26/85	Hertz/General Signal	RF76-18
2/26/85	Hertz/Figgie International	RF76-19
2/26/85	Hertz/The Singer Co	RF76-20
2/26/85	Hertz/U.S. Steel	RF76-21
2/26/85	Van Gas/John Fredericks	RF68-15
2/26/85	Palo Pinto/Kansas	RQ5-158
2/26/85	Belridge/Kansas	RQ8-159
2/26/85	Amoco/Kansas	RQ21-160
2/26/85	Vickers/Utah	RQ1-156
2/26/85	Belridge/Utah	RQ8-157
2/26/85	Amtel/Teague Oil Co	RF46-35
2/26/85	Amtel/U.S. Oil Co., Inc	RF46-34
2/26/85	Amtel/John R. McDonald	RF46-33
2/27/85	Alkek/Adams/Farmland Industries, Inc.	RF6-64
2/27/85	J.A.L./McManus Bros. Service Station.	RF71-5
2/27/85	Hertz/Abbott Laboratories	RF76-22
2/27/85	White/Lee Motor Lines, Inc	RF80-2
2/27/85	Hertz/Rapid-American Corp	RF76-23
2/27/85	Hertz/Phillips Petroleum Co	RF76-24
2/27/85	Consolidated Gas/Surburban Propane Gas.	RF77-2

Refund Applications Received—Continued

[Week of Feb. 22 to Mar. 1, 1985]

Date	Name of refund proceeding/ name of refund applicant	Case No.
2/27/85	Amtel/Imperial Refineries Corp	RF46-36
2/27/85	Amtel/Lere' Freeway	RF46-37
2/27/85	Hammers and Sons Service	RF46-38
2/27/85	Amtel/Harral's Auto Service	RF46-39
2/27/85	Amtel/Tom's Freeway	RF46-40
2/27/85	Amtel/Harper's Service Center	RF46-41
2/27/85	Amtel/J-B Freeway	RF46-42
2/27/85	Amtel/Larson's Freeway	RF46-43
2/27/85	Amtel/Miller Premier Service	RF46-44
2/27/85	Amtel/Alvarado Premier Service Station.	RF46-45
2/27/85	Amtel/Freeway Gas	RF46-46
2/27/85	Amtel/McCormick's Gas and Oil Co.	RF46-47
2/27/85	Amtel/Freeway Service Station	RF46-48
2/27/85	Diamond Shamrock/Farmland Industries.	RF93-2
2/27/85	National Cooperative Refinery/ Farmland Industries.	RF94-2
2/27/85	Superior/Farmland Industries	RF103-2
2/27/85	OKC/Farmland Industries	RF105-1
2/27/85	TOCO/Farmland Industries	RF106-1
2/27/85	TXO Oil/Farmland Industries	RF107-1
2/28/85	Windham/Hi-Lo Oil Co., Inc	RF43-10
2/28/85	Windham/Workingman's Friend Oil, Inc.	RF43-11
2/28/85	Amtel/Self Serve Oil of Tennessee.	RF46-49
2/28/85	Hertz/Gulf & Western Industries, Inc.	RF76-26
2/28/85	Hertz/Ingersoll-Rand Co	RF76-27
2/28/85	Hertz/Motorola, Inc	RF76-28
2/28/85	Hertz/Honeywell, Inc	RF76-29
2/28/85	Hertz/Fort Howard Paper Co	RF76-30
2/28/85	Hertz/Morrison-Knudsen Co., Inc	RF76-25
3/1/85	Hertz/Coopers & Lybrand	RF76-31
3/1/85	Hertz/Gould Electronics	RF76-32
3/1/85	Hertz/Stauffer Chemical Co	RF76-33
3/1/85	Hertz/I.B.M	RF76-34
3/1/85	Hertz/United Airlines	RF76-35
3/1/85	Hertz/Tenneco, Inc	RF76-36
2/25/85 thru 3/1/85.	Gulf Refund Applications	RF40-1733 thru 1761

[FR Doc. 85-7814 Filed 4-1-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of January 7 Through January 11, 1985

During the week of January 7 through January 11, 1985, the decisions and orders summarized below were issued with respect to applications for 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.

Request for Temporary Exception

Andi-Co Appliances, Inc., 1/10/85; HEL-0103

Andi-Co Appliances, Inc. filed an Application for Temporary Exception from the provisions of 10 CFR Part 430, Subpart B, Appendix C in which the firm sought temporary exception relief from the test procedures applicable to dishwashers. In considering the request, the DOE found that temporary exception relief was necessary to prevent the firm from suffering irreparable harm. The DOE also found that immediate relief would prevent DOE test procedures from inhibiting the introduction of a new dishwasher design and, therefore, that such relief was in the public interest. Accordingly, temporary exception relief was granted.

Motion for Discovery

Office of Special Counsel for Compliance, 1/10/85; HRD-0212

The Office of Special Counsel for Compliance (OSC) filed a Motion for Discovery in connection with a Proposed Remedial Order (PRO) which it issued to Texaco, Inc. In the PRO, it is alleged that Texaco overcharged the New York State Office of General Services (GS) in the sale of motor gasoline as a result of Texaco's

assignment of GS to an improper class of purchaser. In considering the OSC's motion, the DOE ruled that discovery was necessary in order to establish Texaco's historic pricing policy regarding customers like GS and to determine the class of purchaser to which GS should have been assigned. The DOE noted that discovery was warrented in view of apparently conflicting statements made by Texaco during the course of this proceeding. The DOE therefore granted OSC's discovery request and ordered Texaco to produce certain documents for OSC's inspection and to respond to OSC's written interrogatories.

Implementation of Special Refund Procedures

Apco Oil Corporation, 1/8/85; HEF-0008

The DOE issued a Decision and Order setting forth procedures to be used in filing applications for refund for a portion of the $1 million received as a result of a consent order entered into by the Apco Liquidating Trust and the DOE on August 12, 1981. The funds will be available to customers who purchased motor gasoline, middle distillates, or other covered products from Apco Oil Corporation. Those who purchased fuel from Apco service stations may apply for refunds based on purchases made between March 1, 1973, and October 16, 1978. Other applicants may claim refunds based on purchases made between March 1, 1973 and July 1, 1978. Applications for refund must be filed within 90 days of the publication of the decision in the **Federal Register**. Details regarding the information to be included in refund applications is discussed in the Decision and Order.

Waller Petroleum Company, Inc., 1/8/85; HEF-0191

The DOE issued a Decision and Order setting forth procedures to be used in filing applications for refund for a portion of the settlement funds obtained as the result of the consent order which the DOE entered into with Waller Petroleum Company, Inc. As of November 30, 1984, the Waller escrow account contained the $91,913 settlement amount plus accrued interest of $57,998.81. The funds will be available to customers which purchased No. 2 heating oil and Nos. 4, 5, and 6 fuel oils from Waller during the period November 1, 1973 through May 31, 1974. Applications for refund must be postmarked within 90 days of the publication of the decision in the **Federal Register**. Specific information to be included in refund applications is discussed in the decision.

Refund Applications

Conoco, Inc./ECO Petroluem Banco Properties, 1/11/85; RR34-1; RR34-2

The DOE issued a Decision and Order concerning Requests for Modification filed by two purchasers of Conoco motor gasoline. The firms had previously received refunds of the threshold amount based on the presumption of injury method. In the current filings, the applicants demonstrated that the prices they paid for motor gasoline were greater than those prevailing in their markets for several months of the consent order period, and the DOE concluded that the applicants should receive refunds based on the total amount of their purchases for that period. The refunds granted in this proceeding totaled $15,269.

Palo Pinto Oil & Gas/Georgia, 1/11/85; RM5-2

The DOE issued a Decision and Order granting the Motion for Modification submitted by the State of Georgia, in which the State proposed to modify its utilization plan for the refund received in the Palo Pinto proceeding. Georgia proposed to use part of the funds, with which it was installing solar projects on weatherized low-income homes, to install a solar project on a building that housed part of the agency carrying out the utilization plan. The solar project will be used to heat the building, and as a greenhouse to grow food for low-income residents.

Standard Oil Company (Indiana)/Ernest E. Ashley Enterprises, 1/11/85; RF21-10915

The DOE issued a Decision and Order concerning an Application for Refund filed by a retailer of Amoco motor gasoline. The firm elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering the Application, the DOE concluded that the firm should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refund granted in this proceeding totaled $697.

Standard Oil Co. (Indiana)/Gulf States Oil & Refining Co., 1/9/85; RF21-11184

The DOE issued a Decision and Order concerning an Application for Refund filed by a reseller of natural gas liquids (NGLs), Gulf States Oil & Refining Company, in connection with the Standard Oil Company (Indiana) (Amoco) refund proceeding. The DOE found that Gulf States experienced a competitive disadvantage as a result of its purchases of butane and natural gasoline from Amoco, yet the firm did not experience any competitive disadvantage as a result of its propane purchases. The DOE concluded therefore that the firm should receive a portion of its allocable share of the consent order funds based on the volumetric approach. The refund granted in this proceeding totaled $41,382.

Standard Oil Company (Indiana)/Kies Oil Company, et al., 1/9/85; RF21-8170 et al.

The DOE issued a Decision and Order concerning file Applications for Refund filed by a reseller of middle distillates and by wholesalers of Amoco motor gasoline who also sold a portion of their products through retail stations that they owned. All of these firms contended that they were injured by more than the presumptive levels of injury adopted in *Office of Special Counsel*, 10 DOE ¶ 84,048 (1982). In considering the Applications, the DOE rejected the firms' claim that their inability to sell gasoline at their maximum lawful selling prices established that they incurred greater injury than the presumptive levels. The DOE also rejected the firms' contention that refund monies remaining after payment of refunds to first-stage claimants should be allocated to first-stage claimants on a pro rata basis. Finally, the DOE rejected the wholesaler's contention that a presumption of injury level of 45 percent should be established for gallons of motor gasoline that they allegedly purchased from Amoco at wholesale prices and sold through retail stations that they owned. The DOE found that the applicants had not demonstrated that 45 percent was the appropriate presumptive level of injury for wholesaler/retailers, and further determined that their request for the establishment of a new presumption of injury was not made in timely fashion. Accordingly, the applicant's request for refunds greater than those produced by the presumption method was rejected. The DOE determined, however, that the applicants should be granted refunds based upon the presumption method. The refunds granted in this proceeding totalled $20,864.

Texas Oil & Gas Corp./Mobil Oil Corp., 1/7/85; RF42-7

The DOE issued a Decision and Order concerning an Application for Refund filed by Mobil Oil Corporation. The firm sought a portion of the funds remitted by Texas Oil & Gas Corporation pursuant to a consent order that TOGCO entered into with the DOE. In considering the request, the DOE found that Mobil was competitively injured as a result of the natural gas liquid product prices that TOGCO charged at above average market price levels. The DOE therefore granted Mobil a refund of $1,145,160 plus, which was equal to the portion of the TOGCO fund allocated to Mobil based on the volume of NGLPs that Mobil purchased from TOGCO during the consent order period.

Dismissals

The following submissions were dismissed:

Name	Case No.
Dept. of Interior	HEE-0070, HED-0195, HEH-0195
Parade Company	HRO-0137

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 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.

Dated: March 25, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-7812 Filed 4-1-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Period of January 28 Through February 15, 1985

During the period of January 28 through February 15, 1985, 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 Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: March 25, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Phillips Petroleum Co., Bartlesville, Oklahoma; BEE-1688, Crude Oil

Phillips Petroleum Company (Phillips) filed an Application for Exception from the provisions of 10 CFR § 211.69, the Entitlements Program clean-up regulations. The exception request, if granted, would permit Phillips to file amended ERA-49 forms for a period prior to the cut-off date established by the clean-up regulations. This would enable Phillips to correct for errors which it discovered in the original ERA-49 forms that it filed for the period November 1979 through September 1980.

On February 13, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR DOC. 85-7813 Filed 4-1-85; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Salt Lake City Area; Proposed Pre-1989 Salt Lake City Area Integrated Projects Firm Power Offer

AGENCY: Western Area Power Administration, DOE.

ACTION: Extension of Written Comment Period; Proposed Pre-1989 SLCA Integrated Projects Firm Power Offer.

SUMMARY: The Western Area Power Administration (Western) is in the process of developing a pre-1989 firm power offer of the Salt Lake City Area Integrated Projects resources. In the **Federal Register** issue of March 7, 1985 (50 FR 9321), Western's Salt Lake City Area Office published the proposed offer and requested written comments to be submitted to Western by March 20, 1985. Western has now determined that an extension of this deadline date is desirable.

DATE: The deadline date for written comments on the March 7, 1985, publication is now extended to 15 days from the publication of this notice.

ADDRESS: On or before this extended deadline date, written comments on the proposed firm power offer should be sent to: Mr. Mark N. Silverman, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, Utah 84147, telephone (801) 524-5494. Further information concerning the request for written comments or other information pertaining to the terms of the proposed offer should be addressed to Mr. Silverman.

Issued in Golden, Colorado, March 22, 1985.

William H. Clagget,

Administrator.

[FR Doc.85-7733 Filed 4-1-85; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 25, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collections should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

OMB Number: 3060-0134

Title: Application for Renewal of Radio Station License

Form No.: FCC 574-R

Action: Revision

Estimated Annual Burden: 66,000 Responses; 4,422 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-7755 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1505]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

March 25, 1985.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to § 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments. (MM Docket No. 84-231).

Filed by: Marvin J. Diamond and Katherine A. Schoff, Attorneys for Richard Foster and Dempsey Wilcox on 1-16-85. (Banner Elk, North Carolina).

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-7754 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 83-1145; Phase I and Phase II, Part I]

Investigation of Access and Divestiture Related Tariffs

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order; Correction

SUMMARY: This action finds that certain language at the middle of Paragraph 18 of the *Special Access Cost Order*, appearing on page 11442, in the issue of

March 21, 1985, has to be deleted, specifically, the two consecutive sentences beginning "The mismatch . . ." and ending with ". . . increased substantially." This action does not affect the validity of the Commission's conclusion in that Order.

This action is necessary to inform interested parties of the necessary deletions.

FOR FURTHER INFORMATION CONTACT: Dan Grosh, Tariff Division, 202–632–6387.

SUPPLEMENTARY INFORMATION: The Memorandum Opinion and Order in this proceeding (FCC 85–100) was published on March 21, 1985, 50 FR 11440.

Erratum

In the matter of Investigation of Access and Divestiture Related Tariffs; CC Docket No. 83–1145, Phase I and Phase II, Part I.

Released: March 20, 1985.

1. On March 8, 1985, the Commission released a Memorandum Opinion and Order in the above-captioned proceeding. At the middle of Paragraph 18 in that Order, delete the two consecutive sentences beginning "The mismatch . . ." and ending with ". . . increased substantially." The statement here that the OCC NRC rates have not changed over the past 10 years is incorrect, since the rates in issue were based upon AT&T Tariff F.C.C. No. 260 which has experienced a number of rate increases over that time period. This does not, however, affect the validity of the Commission's conclusion. Since these increases have all been across the board for both NRC and monthly charges, the relationship between the historically deficient NRCs and the monthly recurring charges within Tariff F.C.C. N. 260 has not changed. Thus, the traditional practice of setting relatively low NRC rates and recovering the difference in monthly rates has apparently continued, and been extended by the exchange carriers to the OCCs.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–7520 Filed 4–1–; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Bernuth Lines Ltd., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 202–010693–002.

Title: Florida/Caribbean Liner Association.

Parties:

Bernuth Lines Ltd.
Calypso Lines
West Indies Shipping Corp.
Tropical Shipping & Construction Co., Ltd.
Shipping Corporation of Trinidad and Tobago
Saguenay Shipping Ltd.
TEC Lines Ltd.
Sea-Land Service, Inc.
Concorde/Nopal Lines

Synopsis: The proposed amendment would expand the scope of the agreement to include ports and points in Suriname and Guyana and would restrict voting on matters relating to Suriname and Guyana to carriers serving those countries. The parties have requested a shortened review period.

Agreement No. 213–010719–001.

Title: EAC and MOSK Space Charter and Sailing Agreement.

Parties:

The East Asiatic Company, Ltd. A/S
Mitsui O.S.K. Lines, Ltd.

Synopsis: The proposed amendment would permit the parties to charter space on each other's vessels for the carriage of noncontainerized cargo.

By Order of the Federal Maritime Commission.

Dated: March 28, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–7851 Filed 4–1–85; 8:45 am]

BILLING CODE 6730–01–M

[Agreement No. 224–002647–004]

Agreement Between the Port of Long Beach and C. Brewer Terminals, Inc. (Formerly Nomal Co., Inc.); Erratum

The **Federal Register** Notice of March 20, 1985 (Vol. 50, No. 54, Page 11246) incorrectly identified Agreement No. 224–002647–004 as Los Angeles Terminal Agreement, whereas it should have read Long Beach Terminal Agreement.

By Order of the Federal Maritime Commission.

Dated: March 27, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–7832 Filed 4–1–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Denmark Bancshares, Inc., 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 or Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activites 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, indentifying 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 24, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Denmark Bancshares, Inc.*, Denmark, Wisconsin; to acquire McDonald Insurance Agency, Denmark, Wisconsin, thereby engaging in the sale of general insurance in a town with a population not exceeding 5,000. This activity would be conducted in Brown, Kewaunee and Manitowoc Counties in the State of Wisconsin.

2. *East Troy Bancshares, Inc.*, East Troy, Wisconsin; to acquire Wisconsin Discount Securities Corporation, Milwaukee, Wisconsin, thereby engaging in the activity of discount brokerage.

B. **Federal Reserve Bank of Kansas City**, (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Firstier, Inc.*, Omaha, Nebraska; to acquire Investors Mortgage Access Corp., Des Moines, Iowa. Applicant proposes to operate company as a branch office of applicant's mortgage subsidiary, Firstier Mortgage Co., Omaha, Nebraska. The branch office located in Des Moines, Iowa, will serve as an office for residential mortgage loans for sale to permanent investors. The loans will be primarily FHA or VA guaranteed. Conventional loans will also be processed. The office will process applications, issue commitments and close loans. Comments on this application must be received not later than April 16, 1985.

Board of Governors of the Federal Reserve System, March 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7773, Filed 4-1-85; 8:45 am]

BILLING CODE 6210-01-M

Irwin Union Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The 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 application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 22, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Irwin Union Corporation*, Columbus, Indiana; to engage *de novo* through its subsidiary, Irwin Union Capital Corporation, Columbus, Indiana, in providing portfolio investment advice, general economic information, and financial advice to clients; engaging in underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in; providing management consulting advice to nonaffiliated bank and nonbank depository institutions.

Board of Governors of the Federal Reserve System, March 7, 1985

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7774 Filed 4-1-85; 8:45 am]

BILLING CODE 6210-01-M

Pierson Bancorporation, 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 24, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Pierson Bancorporation, Inc.*, Pierson, Iowa; to become a bank holding company by acquiring 97.2 percent of the voting shares of Farmers Savings Bank, Pierson, Iowa.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers Capital Bank Corporation*, Frankfort, Kentucky; to acquire at least 96.0 percent of the voting shares of The Lawrenceburg National Bank, Lawrenceburg, Kentucky.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Community Bankers, Inc.*, Granbury, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Cleburne, Cleburne, Texas, and to acquire Granbury Bancshares, Inc., Granbury, Texas, thereby indirectly acquiring Granbury State Bank, Granbury, Texas, and to acquire Grandview Bancshares, Inc., Grandview, Texas, thereby indirectly acquiring First State Bank, Grandview, Texas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Central Bancorp, Inc.*, Phoenix, Arizona; to become a bank holding

company by acquiring 100 percent of the voting shares of First Central Bank, Phoenix, Arizona.

Board of Governors of the Federal Reserve System, March 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7775 Filed 4-1-85; 8:45 am]

BILLING CODE 6210-01-M

Valley Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The Company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) 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 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, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Valley Bancshares, Inc.*, Mapleton, Iowa; to become a bank holding company by acquiring 91 percent of the voting shares of Mapleton Trust & Savings Bank, Mapleton, Iowa, and 100 percent of the voting shares of Danco, Inc., Mapleton, Iowa, thereby indirectly acquiring Farmers Savings Bank, Danbury, Iowa. In addition, Valley Bancshares, Inc. has applied to acquire Danco's insurance business, thereby engaging in general insurance sales in a town with a population not exceeding 5,000.

Board of Governors of the Federal Reserve System, March 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7776 Filed 4-1-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective—
(1) 85-0141—Clark Equipment Company's proposed acquisition of voting securities of VBM International N.V., a joint venture.	Mar. 11, 1985.
(2) 85-0150—Aktiebolaget Volvo's proposed acquisition of voting securities of VBM International N.V., a joint venture.	Do.
(3) 85-0153—Clark Equipment Company's proposed acquisition of voting securities of Volvo BM AB, (Aktiebolaget Volvo, UPE).	Do.
(4) 85-0154—Aktiebolaget Volvo's proposed acquisition of voting securities of Clark Michigan Corporation, (Clark Equipment Company, UPE).	Do.
(5) 85-0158—Soparind Meat Packing Corporation, (Jean-Noel Bongrain, UPE) of voting securities of Sunnyland America, Inc., (L. Bryant Harvard, Sr., UPE).	Mar. 12, 1985.
(6) 85-0209—Bell Resources Ltd's proposed acquisition of voting securities of US Minerals, Inc., (General Electric Company, UPE).	Do.
(7) 85-0233—E. R. Ginn, III's proposed acquisition of voting securities of The Hilton Head Company, Inc., (United States Steel Corporation, UPE).	Do.
(8) 85-0221—The Lubrizol Corporation's proposed acquisition of voting securities of Merichem Company.	Mar. 13, 1985.
(9) 85-0202—Sandoz, Ltd.'s proposed acquisition of assets of Master Builders Division of Martin Marietta Corporation and voting securities of Set Products, Inc., MB II Corp. and Master Builders Company.	Mar. 15, 1985.
(10) 85-0210—Masuo Hosokawa's proposed acquisition voting securities of U.S. Filter Systems, Inc., (Ashland Oil, Inc., UPE).	Do.
(11) 85-0215—Macadamia Orchards of Kapua, Ltd.'s proposed acquisition of assets of Mac Farms of Hawaii, Inc., (CSR Limited, UPE).	Do.
(12) 85-0216—The Cordier Group, Inc.'s proposed acquisition of voting securities of The Olofsson Corporation, (John Brown, P.L.C.).	Do.
(13) 85-0219—Varian Associates, Inc.'s proposed acquisition of assets of Continental Electronics Mfg. Co., (Continental Electronics Mfg. Co. Shareholders Trust, (Interfirst Bank, Dallas, N.A. (Trustee).	Do.
(14) 85-0227—Ryder System, Inc.'s proposed acquisition of voting securities of International Customs Service, Inc., (Robert L. Waggoner, UPE).	Do.
(15) 85-0239—Greyhound Corporation's proposed acquisition of Purex Corporation and Ellio's Pizza, Inc., (Purex Industries, UPE).	Do.
(16) 85-0203—Ronald O. Perelman's proposed acquisition of voting securities of Pantry Pride, Incorporated.	Mar. 18, 1985.
(17) 85-0207—Perry Drug Stores, Inc.'s proposed acquisition of voting securities of Apex Drug Stores, Inc.	Do.
(18) 85-0223—Humana, Inc.'s proposed acquisition of assets of Med Central, Inc., (Kinder-Care Learning Centers, Inc., UPE).	Do.
(19) 85-0196—Brentwood Associates IV, L.P.'s proposed acquisition of voting securities of Chartpak, Chartpak, Ltd., Pickett Industries, Plan Hold Corporation and M. Grumbacher, Inc., (The Times Mirror Corporation, UPE).	Mar. 19, 1985.
(20) 85-0231—Time Incorporated's proposed acquisition of voting securities of Southern Progress Corporation.	Do.
(21) 85-0271—The Louisiana Land and Exploration Company's proposed acquisition of voting securities of Clam Petroleum Company.	Do.
(22) 85-0212—Reuters Holding PLC's proposed acquisition of voting securities of Rich Inc., (Anthony J. Rich, UPE).	Mar. 20, 1985.
(23) 85-0213—Jerome A. Rich's proposed acquisition of voting securities of Reuters Holding PLC.	Do.
(24) 85-0232—Care Enterprises' proposed acquisition of voting securities of First Ohio Investment Group, Inc.	Mar. 21, 1985.
(25) 85-0236—E. Trine Starnes, Jr.'s proposed acquisition of assets of the Orange Plus and Awake Brands of frozen concentrate, (General Foods Corporation, UPE).	Do.
(26) 85-0265—Carless, Capel Leonard PLC's proposed acquisition of assets of LTV Corporation.	Do.
(27) 85-0272—United States Steel Corporation's proposed acquisition of CLAM Petroleum Company.	Do.

Transaction	Waiting period terminated effective—
(28) 85-0204—Reichhold Chemicals Inc.'s proposed acquisition of voting securities of Eschem and Eschem Ltd. and the operating assets of Eschem Canada, Inc., (Beatrice Companies, Inc., UPE).	Do.
(29) 85-0228—Ingersoll-Rand Companies' proposed acquisition of voting securities of Newco, a newly formed joint venture.	Mar. 22, 1985.
(30) 85-0236—Dresser Industries, Inc.'s proposed acquisition of voting securities of Newco, a newly formed joint venture.	Do.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-7799 Filed 4-1-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TAB5-1-21-002]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 28, 1985.

Take notice that Columbia Gas Transmission Corporation (Columbia) on March 22, 1985 tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective on March 1, 1984:

Substitute Ninety-seventh Revised Sheet No. 16
Substitute Fifth Revised Sheets Nos. 16B & 16C
Substitute Thirty-fourth Revised Sheet No. 64

Columbia states that the foregoing tariff sheets are being filed in compliance with Ordering Paragraph (B) of the Commission's Order issued February 28, 1985, which directs Columbia to file revised tariff sheets to reflect the downward modification to the rates of its pipeline suppliers contained in its original filing of January 29, 1985.

The instant filing reflecting this revision provides for (1) an additional decrease of $701,012 to that reflected in the January 29, 1985 filing, which results in a revised decrease in current Purchased Gas Cost Applicable to Sales Rate Schedules in the amount of $61,699,480 and (2) an additional credit of $706 to that reflected in the January 29, 1985 filing, which results in a revised credit to the Purchased Gas Surcharge Applicable to Rate Schedule SGES in the amount of $193,751.

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, Union Center Plaza Building, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 4, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7800 Filed 4-1-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Symposium on the Prevention of the Leading Work-Related Diseases and Injuries; Open Meeting

A National Symposium on the Prevention of the Leading Work-Related Diseases and Injuries will be held May 1–3, 1985, at the Omni International Hotel, Atlanta, Georgia. This symposium is sponsored by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC). NIOSH has developed and published a suggested list of the Ten Leading Work-Related Diseases and Injuries and has proposed national strategies for the prevention of five of these. At this symposium, NIOSH will introduce these proposed strategies for discussion, revision, elaboration, and further development.

The symposium is scheduled to begin at 9:00 a.m., Wednesday, May 1, with an opening session and continue through 12:30 p.m., Friday, May 3. Beginning at 2:00 p.m., May 1, and continuing on May 2 until 5:00 p.m., there will be five concurrent workshops with a panel of experts on the proposed prevention strategies:

Workshop I: Prevention of Occupational Lung Diseases
Workshop II: Prevention of Musculoskeletal Injuries
Workshop III: Prevention of Occupational Cancers
Workshop IV: Prevention of Severe Occupational Traumatic Injuries
Workshop V: Prevention of Cardiovascular Diseases

On Friday, May 3, there will be summaries of the above five prevention strategies.

For further information, please contact: Roger W. Turenne, NIOSH, CDC, Building 1, Room 3040, 1600 Clifton Road, NE, Atlanta, Georgia 30333, Telephones: FTS: 236-3794, Commercial: 404/329-3794.

Dated: March 26, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers of Disease Control.

[FR Doc. 7806 Filed 4-1-85; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 85E-0098]

Determination of Regulatory Review Period for Purposes of Patent Extension; Fonar Beta 3000 Nuclear Magnetic Resonance Scanning System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the medical device, the Fonar Beta 3000 Nuclear Magnetic Resonance Scanning System, and is publishing this notice of the determination as required by law. This determination follows from the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESS: Writen 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: Frank Sasinowski, 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) (the act) 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 the 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 medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and contnues until permission to market the device is granted. 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 (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 medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has determined that the applicable regulatory review period for the Fonar 3000 Nuclear Magnetic Resonance Scanning System is 513 days. Of this time, 282 days occurred during the testing phase of the regulatory review period, while 251 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun: May 2, 1983.*

FDA did not verify May 2, 1983, which was claimed by the applicant for patent extension as the date on which a clinical trial of the device was begun. Because this device was judged to be other than a significant risk device under 21 CFR Part 812, the applicant was not required to submit and obtain approval of an application for an investigational device exemption before initiating a clinical investigation of the device. Accordingly, FDA cannot comment on the date that the applicant claims clinical testing of the device commenced.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act:* January 19, 1984.

The applicant claimed that the premarket approval application (PMA) for the device (PMA No. P830076) was initially submitted on October 31, 1983. FDA received the PMA on November 9, 1983. More important, FDA notified the applicant that the PMA was incomplete and could not be filed. On January 19, 1984, FDA received the additional information necessary to make the application sufficiently complete to permit agency action to begin.

3. *The date the application was approved:* September 26, 1984.

FDA has verified that PMA No. P830076 was approved on September 26, 1984, as stated by the applicant.

Anyone with knowledge that any of the dates published is in error may, on or before June 3, 1985, submit to the Dockets Management Branch written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 30, 1985, for a determination regarding whether the applicant acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an investigation by FDA. (See H. Rept. No. 98-857, Part 1, 98 Cong., 2d Sess., pp 41-42, 1984.) Petitions should be in the format described 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. Received comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 27, 1985.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 85-7766 Filed 4-1-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85E-0127]

Determination of Regulatory Review Period for Purposes of Patent Extension; Promit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the human drug product, Promit, and is publishing this notice of the determination as required by law. This determination follows from 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: Frank Sasinowski, 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) (the act) 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 the 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 investigation 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 permission to market the drug product is granted. 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 (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 has determined that the applicable regulatory review period for Promit (Dextran 1) is 468 days. None of this time occurred during the testing phase of the regulatory review period because the applicant never filed for an exemption to conduct clinical studies within the United States. All 468 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 involving this drug product became effective:* Not applicable.

Clinical studies supporting the safety and efficacy of Promit were performed outside the United States. No exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act involving the drug product was filed.

2. *The date an application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* July 20, 1983.

The applicant claimed that the new drug application for the drug (OB–NDA 83–715) was initially submitted on July 15, 1983; however, FDA did not receive the application until July 20, 1983.

3. *The date the application was approved:* October 30, 1984.

FDA has verified that OB–NDA 83–715 was approved on October 30, 1984, as stated by the applicant.

Anyone with knowledge that any of the dates published is in error may, on or before June 3, 1985, submit to the Dockets Management Branch written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 30, 1985, for a determination regarding whether the applicant acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an investigation by FDA. (See H. Rept. No. 98–857, Part 1, 98 Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format described 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. Received comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 27, 1985.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 85–7767 Filed 4–1–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85F–0092]

Squirt & Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Squirt & Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of aspartame (1-methyl *N*-L-α-aspartyl-L-phenylalanine) as a sweetener in ready-to-serve nonrefrigerated, pasteurized, aseptically packaged dilute fruit juice beverages.

FOR FURTHER INFORMATION CONTACT: Anthony P. Brunetti, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5A3829) has been filed by Squirt & Co., 777 Brooks Ave., Holland, MI 49423, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame (1-methyl *N*-L-α-aspartyl-Ll-phenylalanine) as a sweetener in ready-to-serve nonrefrigerated, pasteurized, aseptically packaged dilute fruit juice beverages.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: March 25, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–7765 Filed 4–1–85; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Information Requested by the Task Force on Organ Transplantation

The Task Force on Organ Transplantation announces that it is gathering information to assist it in its deliberations on a multitude of issues relating to organ procurement and transplantation. Interested individuals and organizations are invited to submit materials for consideration of the Task Force as it addresses the issues mandated by the National Organ Transplant Act (Pub. L. 98–507). The information being sought should address the following:

Immunosuppressive Medications

- The safety, effectiveness, and cost (including the cost-savings from improved success rates of transplantation) of different modalities of treatment;
- The extent of insurance reimbursement for long-term immunosuppressive drug therapy for organ transplant patients by private insurers and the public sector;
- Problems that patients encounter in obtaining immunosuppressive medications; and
- The comparative advantages of grants, coverage under existing Federal programs, or other means to assure that individuals who need such medications can obtain them.

Organ Procurement and Transplantation

- Public and private efforts to procure human organs for transplantation and factors that diminish the number of organs available for transplantation;
- Problems in coordinating the procurement of viable human organs including skin and bone;
- The education and training of health professionals, including physicians, nurses, and hospital and emergency care personnel, with respect to organ procurement;
- The education of the general public, the clergy, law enforcement officers, members of local fire departments, and other agencies and individuals that may be instrumental in effecting organ procurement;
- Assuring equitable access by patients to organ transplantation and assuring the equitable allocation of donated organs among patients medically qualified for an organ transplant;
- Barriers to the donation of organs to patients (with special emphasis upon pediatric patients), including barriers to the improved identification of organ donors and their families and organ recipients;
- The number of potential organ donors and their geographical distribution;
- Current health care services provided for patients who need organ transplantation, and organ procurement procedures, systems, and programs which affect such patients;
- Cultural factors affecting the family with respect to the donation of the organs;
- Ethical and economic issues relating to organ transplantation needed by chronically ill patients;
- The conduct and coordination of continuing research concerning all aspects of the transplantation of organs;
- The factors involved in insurance reimbursement for transplant procedures by private insurers and the public sector;
- The manner in which organ transplantation technology is diffused among and adopted by qualified medical centers;
- Whether the number of transplant centers using such technology is sufficient or excessive;
- Whether the public has sufficient access to medical procedures using such technology;

• The feasibility of establishing, and the likely effectiveness of a national registry of human organ donors.

The Task Force is to submit reports on these issues to the Secretary and the Congress on August 14, 1985 (on immunosuppressive therapies) and on January 14, 1986 (on all other issues).

Any person or group wishing to provide the Task Force with relevant information should do so no later than May 30, 1985. Written material should be submitted to Jon Gold, Office of Organ Transplantation, Office of the Administrator, HRSA, Room 17–60, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, 20857.

FOR FURTHER INFORMATION CONTACT: Linda D. Sheaffer, Acting Executive Director, Task Force on Organ Transplantation, Room 17–60, Parklawn Building, Rockville, Maryland 20857, (301) 443–7577.

Dated: March 27, 1985.

Robert Graham, M.D.,

Administrator, Assistant Surgeon General.

[FR Doc. 85–7770 Filed 4–1–85; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Realty Action C–38545; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Serial No. C–38545, Determination of land suitable for exchange under the authority of Sections 205, 206, 302(b), and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715, 1716, 1732, and 1740).

SUMMARY: Forty acres of public land under the jurisdiction of the Bureau of Land Management located near El Jebel, Colorado, in Eagle County have been determined suitable for exchange. The determination of suitability has been made in response to a Bureau-benefiting exchange proposal received from Mr. Gene A. Grange. In the proposal, Mr. Grange has offered to exchange forty acres also located near El Jebel, Colorado, in Eagle County. The exchange proposal has been made to facilitate the consolidation of both entity's land holdings and thus increase managerial efficiency and the public values of natural resources found on the land being considered for exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

The following lists the land determined suitable for exchange.

Offered Private Land

Legal Description	Acres
Sixth Principal Meridian T. 7 S., R. 87 W., Sec. 35: NE¼SW¼	40

Selected BLM Land

Legal Description	Acres
Sixth Principal Meridian T. 7 S., R. 87 W., Sec. 35: S½S½SW¼	40

Terms and Conditions: The following reservations for existing uses and users would be made in a patent issued for the public lands.

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The reservation for an existing power transmission line under authorization D–011779.

The publication of this notice in the **Federal Register** will segregate the public land described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant. This segregation will expire two years from the date of publication of this notice.

Those non-Federal lands described above subject to prior Federal reserved minerals are hereby segregated to the extent that such interests will not be subject to appropriation under the mining laws until a notice pursuant to 43 CFR 2200.3(a) is issued.

For Further Information and Public Comment: Additional information concerning this exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, Glenwood Springs, Colorado. For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Grand Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81501. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue his final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior.

Dated: March 22, 1985.

Wright Sheldon,

District Manager, Grand Junction District Office.

[FR Doc. 85–7824 Filed 4–1–85; 8:45 am]

BILLING CODE 4310–84–M

Reassessment of Wilderness Inventory Decision; Idaho and Oregon

Notice is hereby given that the Idaho and Oregon State Directors of the Bureau of Land Management will be reassessing the wilderness inventory decision as it relates to Inventory Unit ID–16–48a/OR–3–194A, Lookout Butte.

This unit, located in the Boise and Vale Districts, was declared as lacking in wilderness characteristics in the wilderness inventory decision of November 1981. That decision was appealed to the Interior Board of Land Appeals (IBLA).

On February 11, 1985, the IBLA ruled that the inventory decision was set aside and remanded. The Idaho and Oregon State Directors will review the wilderness inventory files and the IBLA decision, and will issue a revised final inventory decision on the unit by July 1985.

For further information, contact the Bureau of Land Management, Idaho State Office, 3380 Americana Terrace, Boise, ID 83706.

Harold H. Ramsbacher,

Deputy State Director for Renewable Resources.

[FR Doc. 85–7855 Filed 4–1–85; 8:45 am]

BILLING CODE 4310–GG–M

Proposed Classification of Lands; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed classification.

SUMMARY: The following described lands, classified for recreation under serial number U–016659, have been examined pursuant to application U–49798, filed by the Utah State Division of Parks and Recreation, under the Recreation and Public Purposes Act of June 14, 1926, as amended.

T. 26 S., R. 19 E., SLM
Sec. 25: all above 5,800 feet;
Sec. 28: E½ to canyon rim;
Sec. 35: NE¼NE¼ to rim, SE¼NE¼ to rim.

T. 26 S., R. 20 E., SLM
Sec. 20: SW¼, W½SE¼;
Sec. 28: E½E½, NW¼NE¼;
Sec. 29: NW¼NE¼, N½NW¼;
Sec. 30: N½N½;
Sec. 31: Lots 2–4 SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 33: E½SW¼, W½SE¼, SE¼SE¼.
T. 27 S., R. 20 E., SLM
Sec. 4: Lots 3, 6, SE¼NW¼, NE¼SW¼;
Sec. 8: NW¼.

The areas described aggregate 2,700 acres.

The following described lands have been examined pursuant to a petition for classification under the Recreation and Public Purposes Act of June 14, 1926, as amended.

T. 26 S., R. 20 E., SLM
Sec. 21: SE¼;
Sec. 27: S½NW¼, W½SW¼;
T. 26 S., R. 19 E., SLM
Sec. 36: W½ to rim, E½W½W½.
T. 26 S., R. 20 E., SLM
Sec. 20: W½NE¼, NW¼.

The areas described aggregate 705 acres.

The lands are hereby classified as unsuitable for Recreation and Public Purposes because they are more suitable for retention in Federal ownership for the development of multiple resources.

This determination is based on the following factors:

1. Of 56,220 acres of land classified for recreation, 2,700 acres remain classified after creation of Canyonlands National Park and Dead Horse Point State Park. The classification segregated the lands only from disposal, except under the recreation and public purposes act. Therefore, the land are being managed for multiple uses, including grazing, recreation and mineral exploration on the mesa tops and primarily for mineral exploration on the steep cliffs which contain the uranium-bearing Chinle formation. The lands should continue to be managed for multiple uses.

2. The State of Utah, Division of Parks and Recreation, applied for 2,169 acres of land when development is only planned on approximately 94 acres. In accordance with 43 CFR 2741.4(c), "No more public lands than are reasonably necessary shall be conveyed. . . ."

3. The mineral report on the subject lands indicates that they are prospectively valuable for the leasable minerals potash, oil and gas and that disposal of the surface on approximately 2,110 acres would unreasonably interfere with their development.

4. The mineral report indicates that the area has potential for the occurrence of locateable minerals and that the area is covered with mining claims. These claims, which the claimants will not relinquish, have the effect of granting a possessory right to the mining claimant in both the surface and sub-surface, thus precluding disposal of the surface.

From the date of this notice until May 24, 1985 interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, UT 84532.

Additional information is available for inspection at the Moab District Office, 82 E. Dogwood, P.O. Box 970, Moab, UT 84532 or the Grand Resource Area Office, Sand Flats Road, P.O. Box M, Moab, UT 84532.

Gene Nodine,
District Manager.
Dated: March 22, 1985.

[FR Doc. 85–7777 Filed 4–1–85; 8:45 am]
BILLING CODE 4310-DQ-M

Colorado; Filing of Plats of Survey

March 22, 1985.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., March 22, 1985.

The plat representing the dependent resurvey of a portion of the east and north boundaries, subdivisional lines, and Mineral Survey No. 15394, Spar Fissure lode, and the survey of the subdivision of section 1, T. 15 S., R. 72 S., Sixth Principal Meridian, Colorado, Group 776, was accepted March 14, 1985.

The supplemental plat prepared to show a subdivision of original lot 9, Section 24, T. 8 S., R. 87 W., Sixth Principal Meridian, Colorado, was accepted February 20, 1985.

The plat, in two sheets, representing the dependent resurvey of a portion of the First Standard Parallel South (south boundary T. 5 S., R. 102 W.), the east and west boundaries, and subdivisional lines, and the survey of the subdivision of certain sections, T. 6 S., R. 103 W., Sixth Principal Meridian, Colorado, Group 662, was accepted February 25, 1985.

The plat representing the dependent resurvey of the First Standard Parallel South through R. 103 W., and a portion of R. 104 W., a portion of the south boundary, the west boundary, and subdivisional lines, and the survey of the subdivision of certain sections, T. 6 S., R. 104 W., Sixth Principal Meridian, Colorado, Group 662, was accepted February 25, 1985.

These surveys were executed, and the supplemental plat was prepared for certain administrative needs of this Bureau.

The plat representing the metes-and-bounds of Tract 37, T. 3 N., R. 78 W., Sixth Principal Meridian, Colorado, Group 775, was accepted February 17, 1985.

The plat representing the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, and the dependent resurvey of H. E. S. No. 259, and the survey of the subdivision of sections 33 and 34, T. 4 N., R. 78 W., Sixth Principal Meridian, Colorado, Group 775, was accepted February 27, 1985.

The plat representing the dependent resurvey of a portion of the south boundary, of T. 34, N., R. 5 E., a portion of the east boundary, a portion of the subdivisional lines, and a portion of Homestead Entry Survey No. 97, and the survey of the subdivision of sections 1 and 2, T. 33 N., R. 5 E., New Mexico Principal Meridian, Colorado, Group 710, was accepted March 12, 1985.

The plat representing the dependent resurvey of a portion of the east boundary and the metes-and-bounds survey of certain tracts, T. 39, N., R. 2 E., New Mexico Principal Meridian, Colorado, Group 727, was accepted March 14, 1985.

The plat representing the dependent resurvey of a portion of the subdivisional lines and a portion of Tracts 41 and 43, and the metes-and-bounds survey of lot 18 in section 2 and lot 19 in section 3, T. 39, N., R. 3 E., New Mexico Principal Meridian, Colorado, Group 727, was accepted March 14, 1985.

The plat representing the dependent resurvey of a portion of the 10th Standard Parallel North on the south boundary of T. 41, N., Rs. 12 and 13 W., a portion of the south, east and west boundaries, a portion of the subdivisional lines, and the survey of the subdivision of certain sections, T. 40 N., R. 13 W., New Mexico Principal Meridian, Colorado, Group 723, was accepted March 14, 1985.

The plat representing the dependent resurvey of a portion of the east and west boundaries, the north boundary, and a portion of the subdivisional lines; the survey of the subdivision of certain sections, and the remonumentation of certain original corners, T. 46, N., R. 11 W., New Mexico Principal Meridian, Colorado, Groups 449 and 715, was accepted March 12, 1985.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020

Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 85-7829 Filed 4-1-85; 8:45 am]

BILLING CODE 4310-84-M

New Mexico; Availability of Draft Rio Puerco Resource Management Plan and Environment Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management announces the availability of the Draft Rio Puerco Resource Management Plan (RMP)/Environment Impact Statement (EIS) for public review and comment. This document analyzes land use planning options for approximately 896,490 acres of public land in central and north central New Mexico. The BLM also proposes nine Areas of Critical Environmental Concern (ACEC).

Public participation: Comments on the Draft RMP/EIS will be accepted until close of business July 1, 1985. There will be public hearings at the following locations:

Cuba, May 29, 1985, 7 p.m., Municipal Complex Meeting Room

Albuquerque, May 30, 1985, 7 p.m., Albuquerque Convention Center, 401 Second Street, NW

Estancia, June 3, 1985, 7 p.m., Catholic Center

Grants, June 4, 1985, 7 p.m., Holiday Inn, I-40 Exit 85

Oral testimony will be limited to 10 minutes. Written comments are encouraged even if an oral presentation is made.

A copy of the draft RMP/EIS will be sent to all individuals, government agencies, and groups who have expressed interest in the Rio Puerco planning process. In addition, review copies may be examined at the following locations:

Bureau of Land Management Offices

New Mexico State Office

Public Affairs Staff, Room 2016, U.S. Post Office and Federal Building, P.O. Box 1449, Sante Fe, New Mexico 87501, (505) 988-6316

Albuquerque District

505 Marquette SW, Western Bank Building, 8th Floor, P.O. Box 6770, Albuquerque, New Mexico 87109, (505) 766-2455

Rio Puerco Resource Area

3550 Pan American Freeway, NE, P.O. Box 6770, Albuquerque, New Mexico 87109, (505) 766-3114

SUPPLEMENTARY INFORMATION: Four alternatives for managing the public land in the Rio Puerco are analyzed in the Draft RMP/EIS.

The Current Management Alternative discusses a level of management similar to the current situation. This alternative corresponds to the No-Action alternative required by NEPA.

The Resource Conservation Alternative emphasizes the protection and enhancement of nonconsumptive natural resource values. The Resource Production Alternative emphasizes the development of resources that generate goods and services that contribute to the local and regional economy. The Balanced Management/Preferred Alternative emphasizes providing needed goods and services while protecting important and sensitive environmental values.

Areas of Critical Environmental Concern: Nine Areas of Critical Environmental Concern (ACEC) are recommended for designation. These areas are discussed briefly below.

1. The Torrejon Fossil Fauna Area is a paleontological area, covering 3,000 acres. The area will be protected for scientific study and off-road-vehicles will be limited to existing roads and trails.

2. The Jones Canyon Area (650 acres) has a prehistoric Pueblo II-III community and contains over 25 masonry sites. Non-public lands would be acquired, minerals would be withdrawn, vehicles would be limited to existing roads and trails, and no surface occupancy for oil and gas activities would be allowed in the area.

3. San Luis Mesa Raptor area has sandstone bluffs which provides excellent raptor habitat on 1,400 acres. This area also covers the Empedrado Watershed which is part of the Rio Puerco Hydrology Study.

There would be seasonal restriction on surface disturbing activities, and vehicle use would be limited to existing roads and trails in the area. All minerals would be withdrawn in the Empedrado Watershed Area, which includes 640 acres.

4. Cabezon Peak (5,800 acres) a volcanic plug, is a popular recreational area and local landmark. The area also contains two rare cactus species, a prehistoric shrine (possibly still in use) and raptor nesting areas. The non-public lands would be acquired and the area would be closed to vehicle use.

5. Canon Tapia (1,100 acres) has a large number of prehistoric rock art sites in both large panels and individuals glyphs as well as other site types. Non-public lands would be acquired, and no surface occupancy for oil and gas activities would be allowed in this area.

6. Elk Springs (10,300 acres) was designated a crucial winter range for elk and deer herds in the New Mexico Comprehensive Wildlife Plan. This area also contains a paleontological area which is a Geologic Reference Section for the Juana Lopez member of the Mancos Formation. The non-public lands would be acquired, there would be seasonal restrictions on oil and gas activities and vehicle use in this area. In addition, the reference section would be designated as a research natural area, and minerals would be withdrawn in the research natural area.

7. Tent Rocks (1,700 acres) is a popular recreation area that has unique volcanic tufts. These formations are steep cone formations up to 90 feet tall. Management agreements would be developed with private landowners, and vehicles would be limited to existing roads and trails.

8. Ojito (13,700 acres) has several rare plant species, and includes the Querencia Watershed Study Area which is part of the Rio Puerco Hydrology Study. The area also contains a substantial underground gas storage facility, which would be managed as a geologic hazard. There would be no surface disturbance, vehicles would be limited to existing roads and trails, a portion of the area would be closed to vehicle use, and the gas storage area and the Querencia Watershed would be withdrawn from locatable minerals.

9. Ball Rach (1,900 acres) has unique communities of rare plants and paleontological resources including Eocene mammal bones. Vehicles would be limited to existing roads and trails, no surface disturbance would be allowed, and the area would be withdrawn from minerals.

FOR FURTHER INFORMATION CONTACT: For more information or to obtain copies of the Draft RMP/EIS contact Herrick Hanks, Area Manager Rio Puerco Resource Area, P.O. Box 6770, Albuquerque, New Mexico 87109. Telephone (505) 766-3114.

Dated: March 14, 1985.

Monte G. Jordan,

Associate State Director.

[FR Doc. 85-7807 Filed 4-1-85; 8:45 am]

BILLING CODE 4310-FB-M

Filing of Plats of Survey; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the dates hereinafter stated:

Willamette Meridian

Oregon

T. 38 S., R. 3 W.;
T. 25 S., R. 4 W.;

Accepted February 22, 1985, and officially filed March 5, 1985.

The above-listed plats represent dependent resurveys, and subdivisions.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: March 25, 1985.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-7779 Filed 4-1-85; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

Title: Sandhill Crane Harvest Survey Questionnaire.

Abstract: Survey data aids the Service in properly managing the crane population. Data is gathered on the magnitude and distribution of such harvests; the results are coordinated with similar data gathered by the Canadian Wildlife Service, and used by Federal, State, and provincial managers in monitoring the crane population.

Service Form Number: 3-530

Frequency: Annually

Description of Respondents: Sandhill crane hunting permittees

Annual Responses: 6,890

Annual Burden Hours: 572

Service Clearance Officer: Arthur J. Ferguson, 202-653-7499

Dated: March 12, 1985.

Don W. Minnich,

Acting Associate Director—Wildlife Resources

[FR Doc. 85-7823 Filed 4-1-85; 8:45 am]

BILLING CODE 4310-5-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395-7313; with copies to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division, Mail Stop 646; Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: OCS Order No. 4, Submitted Under Plans, Programs Procedures, and Other Narrative Formats

Abstract: Respondents are required to submit information pertaining to each new well's capability of producing oil and gas in paying quantities. The information submitted will be used by the Minerals Management Service District Service District Supervisors of all Offshore Regions to determine the capability of a well to produce oil or gas and to demonstrate the diligence of the lessee in developing the lease.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Federal oil and gas lessees offshore performing operations under OCS Order No. 4, "Determination of Well Producibility."

Annual Responses: 118

Annual Burden Hours: 472

Bureau Clearance Officer: Dorothy Christopher, (703) 435-6214

Dated: February 25, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85-7837 Filed 4-1-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 23, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 16, 1985.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Coconino County

Sedona, *Taylor Cabin Line Camp*, Sycamore Canyon Wilderness Area

ARKANSAS

Phillips County

Helena, *Short, William A., House*, 317 Biscoe St.

Helena, *Straub, William Nicholas, House*, 531 Perry St.

White County

Searcy, *Hicks-Dungan-Deener House*, 306 E. Center

CALIFORNIA

Humboldt County

Hoopa vicinity, *De-No-To Cultural District*, Vicinity of N. Trinity Mtn. and Trinity Summit Six Rivers National Forest

GEORGIA

Barrow County

Winder, *Jackson-Johns House*, 116 Candler St.

Clarke County

Athens, *Bloomfield Street Historic District*, Roughly bounded by Bloomfield and Peabody Sts., U of G campus, Rutherford St. and Milledge Ave.

Athens, *Boulevard Historic District*, Roughly bounded by the Seaboard Coastline RR tracks, Pulaski St., Prince Ave., and Hiawassee St.

Athens, *Milledge Avenue Historic District*, Milledge Ave. from Broad St. to Five Points

Athens, *Milledge Circle Historic District*, Milledge Park, Lumpkin St., Milledge Circle and Milledge Ave.

Liberty County

Hinesville, *Bacon-Fraser House*, 208 E. Court St.

Lowndes County

Valdosta, *Dasher High School*, 900 S. Troup St.

McIntosh County

Ridgeville, *Ridge, The*, Old Shell Rd. GA 99

Mitchell County

Camilla, *Camilla Commercial Historic District*, Roughly bounded by Broad, S. Scott and N. Scott Sts.

Thomas County

Thomasville, *Fletcherville Historic District*, Roughly bounded by Siexas, Wright, S. College and W. Jackson St.
Thomasville, *Gordon Avenue Historic District*, Gordon Ave.

IOWA

Harrison County

Logan, *State Savings Bank*, 312 E. 7th St.

KENTUCKY

Muhlenberg County

Greenville, *Greenville City Hall (Greenville Kentucky MRA)*, Court St.
Greenville, *Greenville Commercial Historic District (Greenville Kentucky MRA)*, 100 blks. of N. Main and E. Main Cross Sts.
Greenville, *Martin House (Greenville Kentucky MRA)*, 144 E. Main Cross St.
Greenville, *North Main Street Historic District (Greenville Kentucky MRA)*, 100 and 200 blks. of N. Main St.
Greenville, *Old Muhlenberg County Jail (Greenville Kentucky MRA)*, Court Row
Greenville, *Rice Tobacco Factory (Greenville Kentucky MRA)*, 112 N. Cherry St.
Greenville, *South Cherry Street Historic District (Greenville Kentucky MRA)*, Rougly bounded by S. Cherry, Hopkinsville, W. Main Cross and N. Cherry Sts.

LOUISIANA

Jefferson David Parish

Jennings, *Sunny Meade*, 819 Cary Ave.

MICHIAGN

Bay County

Bay City, *Bay City Downtown Historic District*, Roughly bounded by Saginaw River, Second and Adams Sts. and Center Ave.

Calhoun County

Battle Creek, *Kellogg, W.K., House*, 256 W. Van Buren St.

Lenawee County

Adrian, *Adrian Union Hall-Croswell Opera House*

MISSOURI

Cape Girardeau County

Jackson, *Bennett-Tobler-Pace-Oliver House*, 224 E. Adams

NEW JERSEY

Morris County

Mendham Borough, *Mendham Historic District*, Roughly bounded by Halstead St. and Country Lane on W. and E. Main Sts., Mountain Ave. and Hilltop Rd., Prospect and New Sts.

NEW YORK

Niagara County

North Tonawanda, *Allan Herschell Carousel Factory*, 180 Thompson St.

OHIO

Cuyahoga County

Cleveland, *Gordon Square Building*, 6500–6616 Detroit Ave. and 1396–1490 W. 65th St.

Franklin County

Columbus, *New Indianola Historic District*, Roughly bounded by Chittenden and Grant Aves., Fifth St., Seventh Ave., and Fourth St.

Hardin County

Kenton, *North Main-North Detroit Street Historic District*, Roughly Main St. bounded by Marie, Cherry, Carroll and Detroit Sts.

Miami County

Casstown vicinity, *Plainview Farm*, 535–545 Weddle Rd.

Summit County

Northfield Center vicinity, *Wallace Farm*, 8239 Brandywine Rd.
Peninsula, *Tilden, Daniel, House*, 2325 Stine Rd.

TENNESSEE

Washington County

Jonesboro vicinity, *Plum Grove Archaeological Site (40WG17)*, Jackson Bridge Rd.

VERMONT

Bennington County

Dorset, *Dorset Village Historic District*, Roughly bounded by Main and Church Sts. and Dorset Hollow Rd.

[FR Doc. 85-7831 Filed 4-1-85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-254 (Preliminary)]

Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-254 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness not less than 0.156 inch, not threaded and not otherwise advanced, other than pipe conforming to American Petroleum Institute (A.P.I.) specifications for oil-well casing, provided for in item 610.39 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by May 9, 1985.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: March 25, 1985.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–523–1369) or Vera Libeau (202–523–0368), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on March 25, 1985, by:

Bull Moose Tube Co., St. Louis, MO;
Copperweld Tubing Group, Pittsburgh, PA;
Kaiser Steel Corp., Los Angeles, CA;
Maruichi American Corp., Santa Fe Springs, CA;
UNR-Leavitt, Chicago, IL; and
Welded Tube Co., of America, Chicago, IL.

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in

the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, Aug. 15, 1984), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on April 16, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Bonnie Noreen (202–523–1369) not later than April 12, 1985, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions

Any person may submit to the Commission on or before April 18, 1985, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12)

Issued: March 27, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–7772 Filed 4–1–85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 320 (Sub-3)]

Product and Geographic Competition

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed change in guidelines.

SUMMARY: The Commission is seeking public comment on the request by the Association of American Railroads, supported by the National Industrial Traffic League and the American Paper Institute, that we supplement the evidentiary guidelines adopted in *Market Dominance Determinations*, 365 I.C.C. 118 (1981). The proposed supplemental guidelines (*See* Appendix) cover product and geographic competition and the burden of proof for these factors. The Commission may make any new guidelines effective on short notice under 5 U.S.C. 553(d)(2).

DATES: Comments are due May 17, 1985. Replies are due June 1, 1985.

Interested parties must notify the Commission, in writing, of their intent to participate by April 17, 1985. A service list will be issued by May 2, 1985, and all comments must be served on parties on the service list.

ADDRESS: Send an original and 15 copies of comments referring to Ex Parte No. 320 (Sub-No. 3) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: The text of the proposed supplemental guidelines is reproduced in the Appendix. Additional information is contained in the Commission's decision. To obtain a copy of the full decision write to Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275–7428.

This action does not appear to affect the quality of the human environment, energy conservation, or small entities.

Authority: 49 U.S.C. 10321 and 10709, and 5 U.S.C. 553(b).)

Decided: March 26, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

Appendix.—Railroad Market Dominance Standards and Issues of Geographic or Product Competition

(1) In determining whether geographic competition provides effective competition for a particular rail service, the Commission shall consider, but not be limited to, any evidence with respect to the following criteria:

(a) The number of alternative geographical sources of supply or alternative destinations available to the producer or receiver for the product in question;

(b) The number of these alternative sources or destinations served by different carriers;

(c) The suitability of the product available from each source or required by each such destination;

(d) The operational and economic feasibility and relative costs of transportation services from alternative sources or to alternative destinations;

(e) The accessibility of each such transportation alternative;

(f) The capacity of each source to supply the product in question or the capacity of each such destination to absorb the product in question; and

(g) Evidence of long-term supply contracts made before October 1, 1980.

(2) In determining whether product competition provides effective competition for particular rail service, the Commission shall consider, but not be limited to, any evidence with respect to the following criteria:

(a) The substitutability and availability of the substitute products; and

(b) The relative costs of using the substitute products.

(3) The fact that a railroad faces geographic or product competition with respect to a receiver would not, in and of itself, establish the existence of effective geographic or product competition vis-a-vis a producer; and the fact that a railroad faces geographic or product competition vis-a-vis a producer would not, in and of itself,

establish the existence of effective geographic or product competition vis-a-vis a receiver. In any individual rate case, a railroad seeking to establish that receiver alternatives effectively restrain railroads vis-a-vis producers, or that producer alternatives effectively restrain railroads vis-a-vis receivers, would bear the burden of proof as to that issue.

(4) The burden of proving the existence of effective geographic or product competition shall in all cases be borne by the railroads.

[FR Doc. 85-7796 Filed 4-1-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water; Atlas Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 12, 1985 a proposed consent decree in *United States* v. *Atlas Minerals Division of Atlas Corporation*, Civil Action No. C-84-0601] was lodged with the United States District Court for the District of Utah. The consent decree concerns discharge of pollutants from an openpit copper mine owned and operated by Atlas Minerals Division.

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, D.C. 20530, and should refer to *United States* v. *Atlas Minerals Division of Atlas Corporation* D.J. Ref. 90-5-1-1-2156.

The proposed consent decree may be examined at the office of the United States Attorney, District of Utah, 466 U.S. Post Office and Courthouse, 350 South Main Street, Salt Lake City, Utah 84101 and at the Region VIII Office of the Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.10 (10 cents per page reproduction cost) payable to Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-7836 Filed 4-1-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment and Training Administration

UI Random Audit

1205-0218; ETA RC 63

Monthly, Quarterly

State or local governments

52 respondents; 179,712 burden hours; no forms.

Audit a sample of individual Unemployment Insurance benefit payments to assure they were made properly, and to assess operating effectiveness of State agencies. The Random Audit program will reduce errors, save money, and assure benefit payment integrity.

Reinstatement

Occupational Safety and Health Administration

Initial and Renewal Application for Training and Education Grant

1218-0020, OSHA 177

Annually

Non-profit institutions

100 respondents; 6,330 hours; 0 forms.

The application is submitted by nonprofit organizations interested in participating or countinuing in the New Directions grant program. It is used by OSHA staff to select organizations which can effectively carry out the objectives of the program. The application becomes part of the grant award document for successful applicants.

Signed at Washington, D.C., this 28th day of March 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85-7858 Filed 4-1-85; 8:45 am]

BILLING CODE 4510-30, 4510-26-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein present summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period March 18, 1985–March 22, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

In the following case the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–15,658; Weyerhaeuser Co., White River Saw Mill, Enumclaw, WA

In the following case the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–15,673; Oak Communications Systems, Elkhorn, WI

Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA–W–15,671; Western Block, Lockport, NY

Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA–W–15,656; State of Florida, Dept. of Citrus, Lakeland, FL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA–W–15,623; Westmoreland Glass Co., Grapeville, PA

A certification was issued covering all workers separated on or after November 30, 1983 and before September 30, 1984.

TA–W–15,647; Bata Shoe Co., Inc., Belcamp, MD

A certification was issued covering all workers separated on or after December 10, 1983.

TA–W–15,672; Westinghouse Electric Corp., Power Circuit Breaker Div., Trafford, PA

A certification was issued covering all workers separated on or after December 17, 1983.

TA–W–15,646; A & T Fashion Sportswear, Inc., Woonsocket, RI

A certification was issued covering all workers separated on or after June 1, 1984 and before December 31, 1984

TA–W–15,615; American Brush Co., Inc., Brockton, MA

A certification was issued covering all workers separated on or after November 20, 1983 and before February 3, 1985.

TA–W–15,670; U.S. Steel Corp., Gary Works, Tie Plate Div., Gary, IN

A certification was issued covering all workers separated on or after December 18, 1983 and before June 1, 1984.

TA–W–15,662; B–G Shoe Co., Lititz, PA

A certification was issued covering all workers separated on or after December 19, 1983.

TA–W–15,659; Zenith Electronics Corp., T.V. Modular Repair & Service Group, Plant #40, Franklin Park, IL

A certification was issued covering all workers separated on or after December 1, 1984.

TA–W–15,654; Pandora Industries, Inc., Pelham Fabrics Div., Pelham, NH

A certification was issued covering all workers separated on or after December 6, 1983 and before January 31, 1985.

TA–W–15,653; Lloyd Davis Shoe Co., Inc., Somersworth, NH

A certification was issued covering all workers separated on or after December 11, 1983 and before January 31, 1985.

TA–W–15,652; Junvenile Shoe Corp. of America, Sarcoxie, MO

A certification was issued covering all workers separated on or after July 1, 1984 and before December 31, 1984.

I hereby certify that the aforementioned determinations were issued during the period March 18, 1985–March 22, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 26, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment assistance.

[FR Doc. 85–7857 Filed 4–1–85; 8:45 am]

BILLING CODE 4510–30–M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85–63; Exemption Application No. D–4677 et al.]

Grant of Individual Exemptions; Kay-Bee Toy & Hobby Shops, Inc., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue

exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Kay-Bee Toy & Hobby Shops, Inc., Profit Sharing Plan (the Plan) Located in Lee, Massachusetts

[Prohibited Transaction Exemption 85–63; Exemption Application No. D–4677]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective July 1, 1981, to the extension of credit by the Plan to Melville Corporation (Melville), the parent corporation of Kay-Bee Toy & Hobby Shops, Inc. (Kay-Bee), the sponsor of the Plan, in connection with the sale by the Plan to Melville of all of its shares of stock of Kay-Bee, provided that the terms of the transaction were not less favorable to the Plan than those obtainable in an arm's-length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 29, 1985 at 50 FR 3993.

Effective Date:

This exemption is effective July 1, 1981.

Written Comments: The Department received one written comment with regard to the proposed exemption. The comment did not address any substantive issue involving the transaction which is the subject of the exemption.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Mitchell, Lewis & Staver Profit Sharing Plan (the Plan) Located in Portland, Oregon

[Prohibited Transaction Exemption 85–64; Exemption Application No. D–4728]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason by section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The continued lease (the New Lease) by the Plan from June 29, 1984 through October 31, 1984, of a parcel of improved real property (Parcel I) to Mitchell, Lewis & Staver Company, the Plan sponsor; (2) the proposed sale (the Sale) by the Plan of Parcel I and two parcels of unimproved real property to Hubert A. Brown, a trustee of the Plan, and Shirley L. Brown (the Browns) pursuant to an earnest money agreement between the Plan and the Browns; and (3) an extension of credit (the Loan) between the Plan and the Browns in connection with the Sale, provided that all the terms and conditions of the transactions are at least as favorable to the Plan as those obtainable in transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 29, 1985 at 50 FR 3995.

Effective Date: The effective date of this exemption is June 29, 1984, as to the New Lease and the date of the grant as to the Sale and the Loan.

For Further Information Contact: Mr. David Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Richard J. Cavell, M.D., Ltd. Money Purchase Pension Plan and Trust (the Plan) Located in Reno, Nevada

[Prohibited Transaction Exemption 85–65; Exemption Application No. D–5174]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the purchase by the Plan from Dr. Richard J. Cavell of a 17.273% interest (the Interest) in a certain royalty interest in a gold mine located in Hawthorne, Nevada, for $38,000 in cash, provided such amount is not greater than the fair market value of the Interest on the date of the acquisition.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 11, 1985 at 50 FR 5692.

For Further Information Contact: Mr. Gray H. Lefkowitz of the Department, telephone (202) 532–8881. (This is not a toll-free number.)

Floyd Browne Associates, Limited et al., Employees Profit Sharing Trust (the Plan) Located in Marion, Ohio

[Prohibited Transaction Exemption 85–66; Exemption Application No. D–5473]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of an improved parcel of real property by the Plan to either Floyd Browne Associates, Limited, the Plan sponsor, or Browne Investment Company, a party in interest with respect to the Plan, provided that the sales price is not less than the fair market value of the property on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 29, 1985 at 50 FR 3998.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

McCree, Gahagan, McLean & Ketterhagen, M.D., P.A. Amended and Restated Employee Money Purchase Pension Plan and Trust (the Plan) Located in Naples, Florida

[Prohibited Transaction Exemption 85–67; Exemption Application No. D–5884]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale of a certain parcel of real property (the Property) by the individually directed account of Thomas G. Gahagan, M.D. (Dr. Gahagan) in the Plan to Dr. Gahagan, a trustee of the Plan, for the appraised fair market value of the Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of

proposed exemption published on February 11, 1985 at 50 FR 5696.

For Further Information Contact: Mr. David Lurie of the Department, telephone (202) 523-8884. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 27th day of March 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-7819 Filed 4-1-85; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-5175] et al.

Proposed Exemptions; Penn United Technology, Inc., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Penn United Technology, Inc. Employee Stock Bonus Plan and Trust (the Plan) Located in Saxonburg, Pennsylvania

[Application No. D-5175]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b) (1) and (b) (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c) (1) (A) through (E) of the Code shall not apply to: 1) the lease (the 1984 Lease) by Selectronic Plating, Inc. (Selectronic) of a portion of a parcel of improved real property (the Leasehold Premises) from Carl E. and Kathryn Jones (Mr. and Mrs. Jones), parties in interest with respect to the Plan; and 2) the proposed addendum (the Addendum) to the 1984 Lease, provided that the terms of the transactions are no less favorable to the Plan than an arm's-length transaction with an unrelated party.

Effective Dates: The effective date of this proposed exemption, if granted, will be August 20, 1984, with respect to the 1984 Lease and the date of a final grant of this proposed exemption with respect to the Addendum.

Summary of Facts and Representations

1. The Plan is an employee stock bonus plan established in 1973 with 60 participants as of Febraury 4, 1985. Also as of that date, the Plan held 66.64% of the capital stock of Penn United Technology (the Employer). In addition, Carl E. Jones, John B. Campbell, Jr. and Robert F. Becker, the trustees of the Plan owned, in the aggregate, 14.26% of the capital stock of the Employer. As of March 31, 1983, the Plan's capital stock had a value of $2,211,585 and total Plan assets amounted to $2,558,727.

2. The Employer manufactures tungsten carbide, steel tolls and dies, gages, fixtures, necessary spares and stampings off of the tools and dies. The applicant represents that during 1982 the

Employer became aware of an opportunity to conduct a new type of a manufacturing operation which was potentially profitable but which required that a new corporation be created at a location geographically separate from the Employer due to industry and commercial restraints. Therefore, the Employer incorporated Selectronic to conduct this new business, the provision of specialized precious metal plating to components used in the electronics industry. The Employer owns 98% of the shares of Selectronics and the remaining 2% is owned by the operational manager of Selectronic.

3. On December 1, 1982, Selectronic entered into an agreement (the 1982 Lease) to lease the Leasehold Premises from Mr. and Mrs. Jones for $550 per month. The 1982 Lease was for a one year term and provided that Selectronic would pay for the gas and electricity used as well as all water and sewer rents assessed upon the Leasehold Premises. On December 2, 1983, Selectronic and Mr. and Mrs. Jones entered into a new lease (the 1983 Lease) for a ten year term with the same terms and conditions as the 1982 Lease. The applicant acknowledges that the assets of the Employer and Selectronic constitute plan assets and that in accordance with Interpretive Bulletin 75-2 (29 CFR 2509.75-2), the 1982 Lease and 1983 Lease (the Old Leases) constitute prohibited transactions as indirect leases between the Plan and parties in interest with respect to the Plan. The applicant represents that Mr. Jones will pay all applicable excise taxes with respect to the Old Leases within 60 days of the grant of the proposed exemption.

4. On August 30, 1984, Valley National Bank (the Bank) acting as agent for Selectronic, entered into the 1984 Lease with Mr. and Mrs. Jones, covering the Leasehold Premises. The 1984 Lease is for a term of 10 years and provides for a rental of $550 per month for the first two years of the term. Thereafter the rent shall be adjusted every two years based upon a determination by an independent real estate appraiser. The 1984 Lease provides that Mr. and Mrs. Jones shall pay all real estate taxes for the Leasehold Premises and all charges for gas, electricity, water, sewage and waste disposal.

5. On June 21, 1984, the Bank accepted appointment as independent fiduciary on behalf of the Plan. The Bank represents that it is independent of the parties to the 1984 Lease. The Bank further represents that total loans to the officers and management personnel of the Employer amount to less than one-tenth of one percent of the Bank's total loans and that the total deposits of the officers and management personnel of the Employer amount to less than one-tenth of one percent of the Bank's total deposits. In addition, the Bank represents that it agreed to approve, monitor and enforce the 1984 Lease on behalf of the Plan. In arriving at its decision to approve the 1984 Lease, the Bank represents that it reviewed the Plan's needs, the Plan's most recent financial statements and the appraisal of the fair market rental of the Leasehold Premises including the appraisal by David J. King, MAI. Mr. King determined that as of March 19, 1984, the fair market rent for the Leasehold Premises was $550 per month. The Bank represents that it concluded that the 1984 Lease was fair to the Plan and in the best interest of the Plan's participants and beneficiaries because (a) the rental rate is not more than the appraised fair market rental rate; (b) Mr. and Mrs. Jones pay the taxes, water, sewage and electric charges; (c) Selectronic cannot find more suitable quarters at comparable rent; and (d) the success of Selectronic will be benefit to all Plan participants.

6. On September 13, 1984, the Bank, acting as agent for Selectronic and Mr. and Mrs. Jones entered into the Addendum whereby Selectronic will rent more space (the Expanded Premises) in the parcel of improved real property owned by Mr. and Mrs. Jones in order to expand its operation. The Addendum shall not be effective and the rent due thereunder shall not be paid until this proposed exemption is granted. The Addendum provides for rent of $1300 per month for the Expanded Premises. On May 31, 1984, Mr. King determined that, as of that date, the fair market rent for the Expanded Premises was $1300 per month. In a letter dated November 5, 1984, Mr. King stated that he examined the industrial market in Butler County (where Selectronic is located) and determined that there was no similar type facilities available to be leased at that time. Mr. King further stated that there were some older industrial facilities in the area but they would require extensive modernization and rehabilitation to serve Selectronic's needs.

7. The Bank represents that the Addendum is in the best interest of the Plan because (a) if Selectronic moved it would lose the $30,000 worth of improvements it has made to the Leasehold Premises; (b) Selectronic would incur moving expenses and/or would have to devide its operations between two locations; and (c) Selectronic needs additional space and the logical location for its expansion is in other parts of a building in which it is already situated.

8. In summary, the applicant represents the 1984 Lease and the Addendum meet the statutory criteria of section 408(a) because (a) both the 1984 Lease and the Addendum were approved by the Bank, acting as independent fiduciary on behalf of the Plan; (b) the rents due under the 1984 Lease and the Addendum were determined by a qualified independent appraiser; and (c) the Bank, acting as independent fiduciary on behalf of the Plan, will monitor and enforce the terms of the 1984 Lease and the Addendum.

For Further Information Contact: Mr. David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

The Prudential Property Investment Separate Account (PRISA) Located in Newark, New Jersey

[Application No. D-5400]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to, effective August 31, 1981, (1) the continuation of a mortgage loan with respect to property owned by 745 Property Investments (the Trust), a real estate investment trust owned by PRISA, where the general account of the Prudential Insurance Company of America (Prudential) is the mortgagee; and (2) the continuation of a wraparound mortgage loan where the Trust is the mortgagee on the wraparound mortgage loan and Prudential's general account is the lender on the underlying or "wrapped" mortgage as described herein; provided that the terms and conditions of the transactions are not less favorable to the Trust than those available in an arm's length transaction with an unrelated party.

Effective date: If granted, this exemption will be effective August 31, 1981.

Summary of Facts and Representations

1. PRISA is a real estate pooled separate account which has more than

375 employee pension benefit plan participants. The plans participating in PRISA are either large Taft-Hartley pension plans or large corporate pension plans. As of September 30, 1983, PRISA had total assets of $5 billion, of which approximately $4 billion represented equity investments in real estate and $105.7 million represented mortgage loan investments. The remainder were represented primarily by cash and short-term investments and $105 million of common shares of beneficial interest in Corporate Property Investors, a real estate investment trust.

2. PRISA is maintained by Prudential, a mutual life insurance company with total assets, as of December 31, 1983, of approximately $72 billion. Prudential, among its other asset management services, maintains several pooled separate accounts in which employee benefit plans participate, including PRISA. Prudential has made substantial mortgage loan investments in real estate on behalf of its general account. As of December 31, 1983, Prudential's general account maintained a mortgage loan portfolio of more than $13.9 billion of which approximately $12.1 billion represented mortgage loans secured by income-producing real properties.

3. On August 31, 1981, PRISA acquired 97% of the outstanding shares of Connecticut General Mortgage and Realty Investments (CG Mortgage). CG Mortgage was managed by Congen Realty Advisory Company, an affiliate of the Connecticut General Life Insurance Company. By October 29, 1981, PRISA had acquired almost all of CG Mortgage's remaining outstanding shares. In this regard, of the 25 million shares outstanding as of October 29, 1981, only 123 shares are held by persons other than PRISA. Such shares are held by outside parties to enable CG Mortgage to maintain its status as a real estate investment trust. The total acquisition price of the shares of CG Mortgage was approximately $335.5 million. CG Mortgage is now known as the Trust.

4. At the time of PRISA's acquisition of the Trust, the real estate investment portfolio of the Trust included 80 equity investments. The Trust also held 46 mortgage loan investments with an outstanding aggregate principal balance of more than $138 million as of its acquisition date. As in the case of all of its real estate investments, Prudential's Real Estate Investment Department prepared an in-depth financial analysis of the Trust's investment portfolio prior to the acquisition of the Trust. This analysis included a review of financial, leasing and other information with respect to the investment properties and on-site inspections of the properties. Upon completion of its investment analysis, the Real Estate Investment Department recommended the acquisition of the shares of the Trust to Prudential's Board of Directors.

5. Because PRISA acquired the Trust's investment portfolio on an "all or nothing basis", the individual investments of the Trust were not separately available for acquisition. In this regard, Prudential determined that the investment portfolio as a whole represented an attractive investment opportunity for PRISA and that such investments were compatible, both in terms of the geographic location and the types of property involved, with investments already held by PRISA.

6. Two of the investments included in the portfolio of the Trust involve mortgage loan arrangements in which Prudential's general account is the holder of the first mortgage. One of these investments involves an equity property investment by the Trust, an office building known as the Southdale Office Building, which is subject to a first mortgage loan held by Prudential's general account (the Equity Investment). The other investment involves a wraparound mortgage loan investment in which the Trust is the lender on the wraparound mortgage loan and Prudential's general account is the lender on the underlying or "wrapped" first mortgage loan (the Mortgage Investment).

7. With respect to the Equity Investment, Prudential's general account holds a $5.8 million face amount 25-year first mortgage loan dated January 24, 1974. The Trust purchased the Southdale Office Building in 1976 subject to this mortgage loan. The interest rate on the loan is 8.75 percent and the loan matures February 1, 1999. As of October 31, 1983, the outstanding balance on the mortgage loan was $5,191,485. The original borrower was the Dayton Development Company, which is totally unrelated to Prudential.

8. Under the mortgage loan, after 15 years the borrower (the Trust) may make additional payments of principal if "prepayment consideration" is paid to the mortgagee (Prudential). If the prepayment occurs prior to the twentieth year, prepayment consideration will equal two percent of the amount of excess principal paid. After twenty years, prepayment consideration will equal one percent of the excess principal paid. No prepayments under the mortgage loan have been made. In this regard, Prudential has agreed that the Trust will not prepay the mortgage loan.

In addition, under the mortgage loan agreement if an event of a default under the mortgage loan occurs, Prudential, as mortgagee, may foreclose upon the mortgaged property. The mortgage loan is not, and to Prudential's knowledge has not previously been, in default. In this regard, Prudential will not foreclose on the property in the event of a default and will also not exercise any discretionary authority that it may have under the mortgage loan documents without first obtaining an administrative exemption or other necessary approval from the Department.

9. With respect to the Mortgage Investment, such investment consists of two loans, the wraparound (the Wraparound Mortgage Loan) and the wrapped mortgage loan. The Trust is the mortgagee or lender of the Wraparound Mortgage Loan and Prudential's general account is the mortgagee of the "wrapped" mortgage loan (the Prudential Mortgage Loan). The Wraparound Mortgage Loan encumbers a shopping mall located in Lima, Ohio (the Lima Mall).

The Wraparound Mortgage Loan is a $6,650,000 face amount mortgage loan dated December 26, 1972, between Lima Mall, Inc., as mortgagor, and the Trust, as mortgagee. The interest rate on the Wraparound Mortgage Loan is 7.625 percent and the monthly payment is $52,036.25. The outstanding balance on the Wraparound Mortgage Loan was $4,726,444.65 as of October 31, 1983. The loan will mature on December 26, 1987. At maturity, the remaining principal balance of the loan is expected to be $3,436,192.

The underlying or wrapped Prudential Mortgage Loan is a $6,000,000 face amount mortgage loan dated October 15, 1965, between Lima Mall, Inc., as mortgagor, and Society National Bank of Cleveland, as the original mortgagee. The mortgagee's interest was assigned to National City Bank of Cleveland on July 19, 1966, and to Prudential on December 8, 1966. The Prudential Mortgage Loan matures on March 15, 1986. The loan's interest rate is six percent and the monthly mortgage payment is $43,020. The outstanding balance on this loan was $1,145,010.24 as of October 31, 1983.

Pursuant to the terms of the Wraparound Mortgage Loan note, the mortgagor (Lima Mall, Inc.) is obligated to make the monthly wraparound mortgage payment ($52,036.25) to the wraparound mortgagee (the Trust). The Trust, in turn, is obligated to make the required mortgage payments to

Prudential's general account, as mortgagee of the Prudential Mortgage Loan. After the maturity of the Prudential Mortgage Loan, the Wraparound Mortgage Loan will be amortized in accordance with conventional mortgage loan procedures until it matures, at which time the remaining principal balance will become due and payable under a balloon payment.

10. As indicated above, the Trust is obligated to deliver to Prudential's general account the monthly mortgage loan payment received from Lima Mall, Inc. (the mortgagor). The Trust is not, however, obligated to make any payments to the general account under the Prudential Mortgage Loan in the event Lima Mall, Inc. fails to make its required monthly mortgage payments under the Wraparound Mortgage Loan. However, if Lima Mall, Inc. fails to make its required payments, the Wraparound Mortgage Loan note provides that the Trust, at its option, may make such payments on behalf of Lima Mall, Inc. in which case the amount of the payments and any costs incurred by the Trust in connection therewith would be added to the principal balance of the Wraparound Mortgage Loan. Prudential, on behalf of the Trust (PRISA), will not authorize the making of any such payments by the Trust on behalf of Lima Mall, Inc. as long as the Trust is the mortgagee of the Wraparound Mortgage Loan and Prudential is the holder of the first mortgage.

Both the Wraparound Mortgage Loan and the Prudential Mortgage Loan are secured by the Lima Mall property pursuant to the terms of the respective mortgage loan agreements. The agreements provide that in the event of a default the Trust must look solely to the mortgaged property for payment of the indebtedness secured by the Wraparound Mortgage and that neither Lima Mall, Inc. nor any other person will be personally liable upon default. In such case, the Wraparound Mortgage Loan agreement provides that the Trust may elect to foreclose against the mortgaged property. However, the Wraparound Mortgage Loan Agreement also provides that the mortgaged property is subject to the lien of the Prudential mortgage. Thus, Prudential's general account, as mortgagee of the Prudential Mortgage Loan, has a superior security interest in the mortgaged property in the event of default and foreclosure. In order to protect the interests of PRISA, Prudential, as long as it is the holder of the first mortgage and the Trust is the holder of the Wraparound Mortgage, will treat the Trust's security interest under the Wraparound Mortgage on an equal basis, rather than on an inferior basis, with that of the general account's security interest under the Prudential Mortgage Loan.

11. The applicant requests an exemption from section 406(a) of the Act for the continuation of the above mortgage loan arrangements. The applicant represents that the Equity Investment and the Mortgage investment were negotiated between Prudential, the Trust and unrelated parties on an arm's-length basis many years before PRISA acquired the Trust. The applicant represents that PRISA acquired the Trust on an "all or nothing basis" with respect to its entire investment portfolio and that the mortgage loan arrangements constitute only two of the then approximately 126 equity and mortgage loan investments of the Trust. The applicant further represents that the continuation of the mortgage loan arrangements allows PRISA to be obligated on debt instruments bearing a rate of interest substantially lower than current market rates. The applicant represents that Prudential's amendments to each mortgage arrangement providing that it will not exercise any discretionary authority with respect to the mortgage instruments will eliminate any potential self-dealing and conflicts of interest.

12. In summary, the applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act because (a) the mortgage arrangements were negotiated on an arm's-length basis between the Trust, Prudential and unrelated parties many years before PRISA acquired the Trust in 1981; (b) Prudential determined that the purchase of the entire investment portfolio of the Trust by PRISA was an appropriate investment for PRISA; and (c) the continuation of the mortgage loan arrangements will allow PRISA to be obligated on debt at a lower than current market interest rate.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Society of the New York Hospital Employees' Retirement Plan Trust (the Plan) Located in New York, New York

[Application No. 3-5586]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the continuation beyond June 30, 1984 of four mortgage loans (the Mortgages) by the Plan to the Society of the New York Hospital (the Employer), the sponsor of the Plan, provided that the terms of the Mortgages are at least as favorable to the Plan as those obtainable by the Plan in an arm's-length transaction with an unrelated party.

Effective Date: If the proposed exemption is granted, it will be effective July 1, 1984.

Summary of Facts and Representations

1. The Employer is a New York charitable corporation located in New York City engaged in the operation and maintenance of a general hospital and two psychiatric hospitals. The Plan was created as of January 1, 1947. United States Trust Company of New York (U.S. Trust) is currently the trustee, having assumed this responsibility as of November 15, 1978. As of January 31, 1984, the Plan's assets had a market value in excess of $66,000,000. The Plan had approximately 5,405 participants as of December 31, 1984.

2. On January 1, 1968, the Plan was assigned as mortgagee a mortgage loan (Loan One), which had originally been made to the Employer by Phipps Houses, an unrelated corporation. Loan One was originally in the amount of $1,902,644, and was secured by the premises located at 428-436 East 69th Street, New York City (Property One). When Loan One was assigned to the Plan, the annual rate of interest was increased from 3½% to 5½%. Loan One is self-liquidating and has a maturity date of November 1, 1991. As of June 30, 1984, the outstanding principal balance was $781,000.

3. On January 19, 1970, the Employer borrowed $2,500,000 from the Plan (Loan Two) at 8% interest. Loan Two was secured by the premises located at 445 East 68th Street, New York, New York (Property Two). As of June 30, 1984, Loan Two had an outstanding principal balance of $1,148,000, and the loan is due October 19, 1989.

4. On January 1, 1973, the Employer borrowed $600,000 from the Plan at an annual interest rate of 8% (Loan Three). Loan Three was secured by the premises located at 434 East 70th Street and 1303 York Avenue, New York, New York (Property Three). As of June 30, 1984, the

outstanding principal balance of Loan Three was $377,000 and the loan is due January 1, 1993.

5. On January 1, 1973, the Employer borrowed an additonal $689,700 from the Plan at an annual interest rate of 8% (Loan Four). Loan Four was also secured by Property Two. As of June 30, 1984, Loan Four had an outstanding principal balance of $433,000, and the loan is due January 1, 1993.

6. The applicants represent that all four Mortgages were statutorily exempt until June 30, 1984 from the prohibitions of section 406 of the Act and section 4975 of the Code by virtue of sections 414(c)(1) and 2003(c)(2)(A) of the Act.[1] The applicants recognized that the statutory exemption for the Mortgages would expire on June 30, 1984, and thus sought an exemption to continue the Mortgages beyond that date. The interest rate for all the Mortgages was adjusted upward to 15% as of July 1, 1984. The applicants represent that the Employer has been making Mortgage payments in accordance with the revised annual interest rate of 15% since July 1, 1984, and the Mortgages are current with no history of default. The interest rate for the Mortgages is to remain at 15% until June 30,1985, when it will be reviewed by U.S. Trust. The interest rate of 15% was selected by U.S. Trust based on Citibank, N.A.'s rate as of July 1, 1984 for such loans. U.S. Trust will review the rate of interest to be paid by the Employer as of July 1 of each subequent year based on the annual rate for such loans of Citibank, N.A., or such other comparable lending institution as U.S. Trust may determine.

7. Messrs. Eugene A. Hegy, Jr. and Kenneth H. Bowen of Brown, Harris, Stevens, Inc., independent real estate appraisers in New York, New York, have appraised the fair market value of the Properties as of February 4, 1985. They have represented that Property One has a fair market value of $10,000,000, Property Two has a fair market value of $23,000,000 and Property Three has a fair market value of $6,500,000. Thus, the Mortgages are secured by real property having a fair market value many times greater than the principal outstanding balances of the Mortgages.

8. U.S. Trust, the Plan's independent fiduciary, has represented that it reviewed the subject transactions and has determined that, as of June 30, 1984, the terms are equivalent to arm's-length transactions between unrelated parties. U.S. Trust has concluded that the Mortgages are fair, reasonable and in the best interests of the participants and beneficiaries of the Plan. U.S. Trust has based its conclusions on the following factors: (a) The interest rate will be modified each year to yield a market rate of interest for similar types of loans; (b) the Mortgages are fully protected in the event of default by the Employer as evidenced by the independent appraisal of the fair market values of the Properties; (c) the availability, as the result of the restructuring of the interest rates, of a ready market without loss to the Plan if the Mortgages were to be sold by the Plan to a third party; and (d) the Mortgages constitute less than 5% of the Plan's total assets. U.S. Trust further represents that it will monitor the Mortgages to ensure the Employer's compliance with the terms of the Mortgages.

9. In summary, the applicants represent that the subject transactions satisfy the criteria of section 408(a) of the Act because: (a) The Mortgages represent less than 5% of the Plan's assets; (b) the interest rate for the Mortgages is that which is currently charged by an unrelated bank for similar loans, and will be reviewed annually by the Plan's independent fiduciary and modified to yield a market rate of interest for similar loans; (c) an independent appraiser has appraised the Properties securing the Mortgages as having values many times in excess of the principal amounts of the Mortgages; (d) U.S. Trust, the Plan's independent fiduciary, has determined that the subject transactions are appropriate for the Plan and in the best interest of the Plan's participants and beneficiaries; and (e) U.S. Trust will monitor the Mortgages and take whatever action is necessary to enforce the Plan's rights under the Mortgages.

For futher information contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Electric Pension Trust (the Trust) Located in New York, New York

[Application No. D-5701]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

(a) *General Exemption.* The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transaction arising in connection with the acquisition, ownership, management, development, leasing, financing, or sale of real property (including the acquisition, ownership or sale of any joint venture or partnership interest in such property) or the borrowing or lending of money in connection therewith, between a parity in interest and the Trust, provided that the following conditions are satisfied:

(1) The decision to invest the assets of the Trust, directly or indirectly, in such transaction is made by the trustees of the Trust, as described herein,

(2) Any such party in interest is not—

(i) General Electric Company (GE), the sponsor of the Trust, any person directly or indirectly controlling, controlled by, or under common control with GE, any officer, director, or employee of GE or any of its subsidiary or affiliated companies, or any partnership in which GE is a 10 percent or more (directly or indirectly in capital or profits) partner; or

(ii) A person who exercises discretionary authority, responsibility or control or who provides investment advice with respect to the investment of Trust assets involved in the particular transaction.

(3) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the Trustees or any person to whom such responsibility has been delegated, the terms of the transaction are at least as favorable to the Trust as the terms generally available in arm's-length transactions between unrelated parties.

(4) GE shall maintain for a period of six years from the date of each transaction mentioned above the records necessary to enable the persons described in subparagraph (5) of this section (a) to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of GE, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subparagraph (5) below; and

[1] The Department expresses no opinion as to whether the Mortgages were statutorily exempt until June 30, 1984 from the prohibitions of section 406 of the Act and section 4975 of the Code by reason of sections 414(c)(1) and 2003(c)(2)(A) of the Act.

(5)(i) Except as provided in subdivision (ii) of this subparagraph (5) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in subparagraph (4) of this section (a) are unconditionally available at GE's headquarter's offices, or, upon prior arrangement with GE, at any other customary location for the maintenance and/or retention of such records, for examination during normal business hours by:

(A) Any duly authorized employee or representative or the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a plan which is funded, in whole or part, by the Trust with respect to which GE is a named fiduciary or any duly authorized employee or representative of such fiduciary,

(C) Any participant or beneficiary of any plan which is funded, in whole or part, by the Trust or any duly authorized representative of such participant or beneficiary.

(ii) None of the persons described in subdivisions (i)(B) and (i)(C) of this subparagraph (5) shall be authorized to examine GE's trade secrets or commercial or financial information which is privileged, confidential or of a proprietary nature.

(b) *Specific Exemption.* The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

Transactions Involving Places of Public Accommodation

The furnishing of services, facilities and any goods incidental thereto by a place of public accommodation which is or may be considered an asset of the Trust to a party in interest with respect to the Trust if the services, facilities or incidental goods are furnished on a comparable basis to the general public, and if the requirements of subparagraphs (a)(4) and (5) of this proposed exemption are met.

Summary of Facts and Representations

1. The Trust holds assets of the General Electric Company Pension Plan and the International General Electric Puerto Rico, Inc., Pension Plan (the Plans). As of December 31, 1983, there were approximately 243,769 active participants in the Plans, and the Plans had net assets of approximately $9.89 billion. Approximately 13% of the Trust's total portfolio is currently invested or committed for specific investment in real estate or real estate related investments.

2. The Trust is administered by the Benefit Plans Investment Committee (BPIC) and a group of five trustees (the Trustees). The BPIC is chaired by one of three internal members of the board of directors of GE and is composed of officers of GE. BPIC was created by the board of directors of GE and is charged with the responsibility for the direction and oversight of the Trust's investment policy. This responsibility is discharged by reviewing Trust allocation to various investment media (equities, fixed income, etc.) and reviewing investment strategies and overall performance. In addition, certain specific investment decisions are reviewed by BPIC and selected transactions are approved.

The Trustees are appointed by the BPIC and are currently five in number. The Trustees are all employees of GE and include two vice-presidents of GE. The Trustees maintain overall responsibility for investment of the Trust's assets. Mr. Francis X. Tansey, Manager—Fixed Income Investments, is the Trustee primarily responsible for the Trust's real estate investments. Mr. Tansey's functions include the identification and analysis of real estate investments within a framework endorsed by all of the Trustees. The Trustees are assisted in-house by a staff of 91 professionals and support staff of which approximately three-quarter are professional personnel whose sole function is the management and administration of Trust assets. Approximately one-half of these professional employees are involved in some manner in real estate investment.

3. The applicant requests an exemption to allow the Trust to engage in certain real property transactions which may otherwise be prohibited under the Act. GE represents that all prospective transactions will be effected on behalf of the Trust by the Trustees and will not involve parties in interest who have formal or actual authority over the investments. The applicant represents that due to the size and complexity of the sponsor of the Trust, GE, the normal operation of the Trust in real estate investments may involve party in interest transactions. The Department recognizes this situation and, to date, has proposed and granted various individual exemptions on behalf of the large trusts involving real estate investments where parties in interest who maintain no actual or formal authority over the investments have been involved.

4. The applicant represents that the Trust's investments in real estate are made in various forms. Such forms involve real estate partnerships, joint ventures, leases, and mortgages. As a result of such real property investment arrangements, prohibited transactions by and between the Trust and party in interest bank lenders, lessees, joint venturers, and partnership partners may occur. Such parties would maintain no authority with respect to the Trust's investment.

5. GE has described various examples of real estate transactions, sale-leasebacks, convertible mortgages, and direct equity investments, which may result in prohibited transactions. In a sale-leaseback transaction, the Trust would typically purchase the fee interest in the ground underlying the project in question. It would then lease the ground to the owner/operator pursuant to a long term ground lease. In most instances the owner/operator would continue to own the improvements in fee, but the ground lease would provide that, upon its expiration, title to any remaining improvements would pass to the Trust. The ground lease generally provides for a fixed rental together with an additional rental based on a percentage of revenues from the project. The Trust will typically provide additional financing for the project by extending the owner/operator a loan secured by a mortgage on the improvements and on the leasehold interest in the land. There are also several variations to this basic structure. For example, the Trust may purchase the improvements as well as the land and lease them all to the owner/operator, rather than financing the improvements with a mortgage. Or, alternatively, the entire financing may be in the form of mortgage debt with the Trust receiving a stated interest rate and an additional interest amount based on a percentage of the projects's revenues.

A convertible mortgage structure involves mortgage financing coupled with an option to purchase a percentage interest in the project. For example, the Trust would extend a mortgage loan to the owner/operator and obtain an option to purchase an interest in the project (*e.g.*, 50%) during a specified period in the future (*e.g.*, during the tenth year of the mortgage). The mortgage may provide that a portion of the interest will not be payable currently, but, instead, will accrue and compound. That accrual account will then be available as currency for the exercise of the option. If the option is not exercised, the accrual account amortizes over the remainder of the loan. The form of the investment after the exercise of the option may be either a tenancy in common with the owner/

operator or a partnership in which the Trust would be either a general or a limited partner of the owner/operator.

A direct equity investment involves a real estate project, made either by the Trust itself or by a specially formed title holding company subsidiary of the Trust. Here, too, the form of the investment may be a tenancy in common with the owner/operator or a partnership. Additional partnership interests may be sold to other investors, either publicly or by private placement.

With respect to each investment structure, the projects in question are typically office buildings or shopping centers but include hotels and other commercial or multi-family residential projects. The owners/operators/developers with whom the Trust invests are carefully chosen and are experienced in the evaluation, ownership, management, financing and (in the case of new projects) development of real estate.

6. The applicant states that it is possible that the investment by the Trust in places of public accommodation may result in the use of such facilities by parties in interest. Therefore, such transactions involving these places of public accommodation may constitute prohibited transactions as described in the Act.

7. All transactions which are the subject of this exemption request will be subject to the discretion and control of the Trustees and specifically the Trustee directly responsible for real estate investments. The applicant represents that regardless of the structure chosen, each real estate investment receives thorough and careful analysis by the Trustees and by its staff of professionals. The investment process operates as follows: Potential real estate investments are generally brought to the attention of one or more of the Trustees or members of the Trust's professional staff by real estate investors, brokers, or advisers. A staff of real estate professionals under the direction of Mr. Tansey and under the day-to-day direction of Joel R. Wilson, Manager—Real Estate Investments, then inspects and appraises prospective properties, considers existing and prospective tenants and evaluates numerous other financial and non-financial aspects such as size, location, actual and potential use, financing, taxes, insurance, title requirements and compliance with zoning and other applicable laws. Sophisticated computer models are utilized as a tool to assist the real estate professionals and to evaluate risk and reward criteria.

Upon completion of this analysis, the potential real estate investment is either rejected or, upon approval by Mr. Wilson, is submitted (together with a transaction proposal) in writing to Mr. Tansey. If Mr. Tansey approves the proposed transaction, it is then presented to the other Trustees. Approval by at least two additional Trustees is required before the investmant may be referred for further consideration. After approval by a majority of the Trustees, independent approval by the Trust's in-house legal staff is required both as to the substance of the transaction and its suitability under the Act. Before funds are actually disbursed, the mechanics of the approval process are independently verified by a staff financial professional, and the corporate audit staff of GE reviews the entire process annually for compliance. If the proposal receives a negative assessment at any one of the foregoing levels of analysis or approval, the transaction is not consummated.

8. GE represents that they have thus established rigorous financial standards and procedures to ensure sound real estate investments with appropriate rates of return. GE represents that any covered transactions will be on terms not less favorable to the Trust than those available between the Trust and unrelated parties. The applicant represents that given the size and scope of the Trust and their investments, and its relationship to numerous financial institutions, denial of the exemption would substantially inhibit the Trust from investing in many prime quality real estate projects of substantial size.

9. In summary, the applicant represents that the transactions meet the criteria for an exemption as provided in section 408(a) of the Act because (a) all investments will be subject to the discretion and control of the Trustees and its professional and support staff which has extensive experience in real property investments and makes complete analyses with respect to Trust investments; (b) the Trust will be able to enter into transactions which, although prohibited, are necessary for the prudent conduct of the Trust's operation; (c) all transactions will involve parties who are competely independent from GE and will have no discretion, authority or control with respect to the exercise of GE's fiduciary responsibility relating to the transactions; and (d) all transactions will be conducted on an arm's-length basis on terms not less favorable to the Trust than those available in arm's-length transactions with unrelated parties.

Notice to Interested Persons: Notice will be provided to interested persons within 20 days of the date of publication of this notice in the **Federal Register**. Comments and hearing requests are due within 50 days from the date of publication.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Electronic Data Systems Corporation Retirement Plan (Retirement Plan); Electronic Data Systems Corporation Deferred Compensation Plan (401(k) Plan; collectively, the Plans) Located in Dallas, Texas

[Application No. D-5790]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406(b)(1), (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective August 13, 1984, to the sale by the Plans of all of their shares of Electronic Data Systems (EDS) common stock to General Motors Corporation (GM) in exchange for cash and certain notes and stock issued by GM, provided that the terms of the transaction are at least as favorable to the Plans as those obtainable in a similar transaction with unrelated parties.

Effective Date: If granted, this exemption will be effective August 13, 1984.

Summary of Facts and Representatives

1. The Refirement Plan is a defined benefit plan with 9,484 participants as of August 15, 1984. As of January 1, 1984, the Retirement Plan had total assets of approximately $42 million. As of September 10, 1984, the Retirement Plan held approximately 142,100 shares of EDS stock constituting approximately .24% of the total outstanding EDS shares and approximately 10.7% of the Retirement Plan's total assets.

The 401(k) Plan is a defined contribution individual account savings plan. As of August 31, 1984, 5,274 employees were eligible to participate in the 401(k) Plan and 2,604 actually participated. All participants in the 401(k) Plan are also participants in the Retirement Plan. As of July 31, 1984, the 401(k) Plan held assets valued at $5,817,371. The 401(k) Plan held 52,277 shares of EDS stock as of August 31,

1984, amounting to approximately .09% of the total outstanding EDS shares and approximately 40% of the 401(k) Plan's assets. The 401(k) Plan provided each participant with three different investment options. Each participant could elect twice annually to invest or reinvest his account in Investment Fund 1, an equity fund; Investment Fund 2, a fixed income fund; or Investment Fund 3, which was invested in EDS stock.

EDS also sponsors a payroll stock ownership plan (the PAYSOP) which is a defined contribution plan qualified under section 409 of the Code. As of August 15, 1984, 5,132 persons were eligible to participate in the PAYSOP. As of that date, the PAYSOP held 7,499 shares of EDS stock, amounting to approximately .01% of the total outstanding EDS shares.[2]

2. The trustees (the Trustees) of each Plan are a group of three individuals, Messrs. William K. Gayden, J. Thomas Walter, and Anthony E. Weynand. Each Trustee is an officer and shareholder of EDS, the sponsor of the Plans. EDS and its affiliates and subsidiaries provide high-technology computer-based systems and related professional services to a variety of customers such as governmental agencies, finance, industrial and insurance companies, and health care institutions. As of September 10, 1984, the record date for purposes of voting on the merger, EDS had 59,106,733 shares of voting common stock outstanding. Approximately 50.3% of these shares were beneficially owned by officers and directors of EDS as a group, including approximately 28.0% beneficially owned by H. Ross Perot (Mr. Perot), the founder and chairman of the board of EDS, and approximately 16.9% held by Thomas J. Marquez, and EDS director, in his capacity as trustee of investment trusts established for the benefit of relatives of Mr. Perot (Perot Investment Trusts). The remaining 49.7% of the EDS shares were widely held. EDS shares were traded on the New York Stock Exchange (NYSE) and the Pacific Stock Exchange.

GM is incorporated under the laws of Delaware. As of September 21, 1984, GM had outstanding approximately 315,000,000 shares of voting GM common stock and also had outstanding two classes of non-voting preferred stock. GM common stock is widely held and is traded on the NYSE and on a number of other exchanges.

3. On August 13, 1984, an Agreement and Plan of Merger (Merger Agreement) were entered into between GM, EDS and EDS Acquisition Corporation (EDS Acquisition), a newly formed wholly-owned subsidiary of GM, whereby GM would acquire 100% of the outstanding stock of EDS through a merger in which EDS Acquisition will be merged into EDS. Pursuant to this arrangement EDS would become a wholly-owned subsidiary of GM.

4. As a condition to GM's entering into the Merger Agreement, GM simultaneously entered into stock purchase agreements (Stock Purchase Agreements) with Mr. Perot, Mr. Marquez, individually and as trustee for the Perot Investment Trusts, Morton H. Meyerson (President and a director of EDS), the Trustees in their individual capacities, and other officers of EDS, for the purpose of obtaining their agreement to sell their shares of EDS Stock to GM immediately prior to consummation of the Merger, as well as, in most instances, obtaining their proxy to vote their shares of EDS Stock. Pursuant to the Stock Purchase Agreements, GM purchased, immediately prior to consummation of the Merger, an aggregate of 28,904,274 EDS shares (approximately 48.9% of the shares outstanding as of September 10, 1984). The Stock Purchase Agreements signed by the above shareholders granted to nominees of GM irrevocable proxies to vote their shares of EDS Stock in favor of the Merger Agreement. As of the record date, the EDS stock described above and subject to proxies comprised approximately 47.1% of the outstanding EDS shares.

5. The Stock Purchase Agreements provide, as do the terms of the Merger Agreement, that each selling shareholder has a right to receive, at the election of the shareholder, either (i) $44.00 in cash (Option 1); or (ii) $35.20 in cash, two-tenths of a share of a new class of GM common stock known as GM Class E Stock (E Stock), and a two-tenths interest in notes issued by GM (the Contingent Notes) in connection with the merger (Option 2). The E Stock and Contingent Notes are described as follows.

6. The E Stock has been issued in an amount up to 13,650,000 shares in connection with the transactions. The E Stock has a ten cent ($.10) par value. The E Stock allows a holder a one-half vote per share and entitles a holder to share in liquidation proceeds in proportion to voting rights vis-a-vis other classes of GM stock. The E Stock has no divident preference. GM has agreed to issue at least an additional 22,600,000 shares of E Stock to the public within two years after the effective date of the merger. These new shares may be issued either in a public offering or as a stock dividend on existing GM common stock. The board of directors of GM reserves a limited right to recapitalize GM by converting the E Stock into GM common stock at any time after December 31, 1994. The E Stock will generally be freely transferable. However, if the E Stock is transferred (other than to certain "permitted transferees") within 180 days from the effective date of the merger, the holder of the E Stock will forfeit certain rights under the Contingent Note. The E Stock has been the subject of a registration statement filed with the Securities and Exchange Commission (SEC).

7. With regard to the Contingent Notes, Morgan Guaranty Trust Company in New York will act as trustee (the Indenture Trustee) under the Contingent Note Indenture. The maturity date of the Contingent Notes is October 18, 1991, the seventh anniversary date of the effective date of the merger. The Contingent Note will pay at maturity the difference, if any, between $125 and the value of each share of E Stock received in the merger. The Contingent Note is forfeitable to the extent the noteholder disposes of E Stock received in the merger within 180 days after the merger. The Contingent Note will be prepayable (in whole or in part) on request by the holder, on a date five years and ten days after the closing date of the merger, and at six-month intervals thereafter up to seven years after the merger. The amount payable under the Contingent Note is discounted prior to maturity. No stated annual interest is paid on the Contingent Note except in the case of a default by GM. However, "special interest" will be paid either at maturity or on prepayment of the note. The "special interest" is generally calculated to reimburse individual noteholders for any additional federal income tax incurred because all or a portion of the note payment is treated as ordinary income rather than long-term capital gain. The same amount of "special interest" will be paid to every holder of the note, regardless whether or not the holder is subject to tax.

The Contingent Note requires a mandatory additional payment two years after the closing date of the merger if no public market for the Class E Stock exists at that time. The Contingent Note is not transferable except to certain defined "permitted transferrees" and then only on advance notice to the Idenure Trustee. The EDS board of directors may approve any other transferee. Participants and beneficiaries of EDS's employee benefit plans are not expressly included as "permitted transferrees", but may be

[2] The sale of EDS stock by the PAYSOP is not the subject of this exemption request.

approved as such by the EDS board of directors. The Contingent Notes have been the subject of a registration statement filed with the SEC.

8. The merger was approved on October 18, 1984, as 86% of EDS shareholders voted in favor of the merger, .15% voted against, .19% voted to abstain, and 13.51% failed to register a vote. All of the shares granted to GM by the EDS officers and directors pursuant to the proxies (47.1% of the outstanding shares) were voted in favor of the merger. No shareholder exercised dissenters rights under Texas law. Shareholders who voted against the merger but did not exercise dissenters rights received consideration pursuant to either Option 1 or Option 2.

9. Shareholders subject to the Stock Purchase Agreements (the Sellers) received consideration that varied from the consideration received by shareholders under the Merger Agreement, which included the Plans. Pursuant to the Stock Purchase agreements, the Sellers were committed to take the Option (2) consideration (E Stock, Contingent Notes and cash) and further agreed that to the extent other EDS shareholders elect Option (1), the E Stock and Contingent Notes that otherwise would have been received by such other EDS shareholders would be received by the Sellers on a pro rata basis, and the amount of cash received by the Sellers will be correspondingly reduced. Under the Stock Purchase Agreements, if a Seller received cash in excess of $100,000 he or she could elect instead to receive an installment note from GM for the cash amount payable in full either in 1985 or 1995, paying interest at a fluctuating rate tied to the interest rate on 91-day Treasury obligations. The installment note is subject to substantial retrictions on transfer and is intended to qualify for installment reporting for federal income tax purposes. In addition, certain of the Stock Purchase Agreements provide indemnities to certain of the Sellers (including Mr. Walter and Mr. Gayden, individually) for potential liabilities in connection with the sale of their shares and give certain Sellers a right to cause registration of the E Stock. The Stock Purchase Agreements provide certain Sellers with an option to exchange the E Stock for GM common stock, based on then market values, during a six-month period immediately after the seventh anniversary of the effective date of the merger.

10. The Plans received consideration pursuant to the Merger Agreement. As with all other shareholders selling under the Merger Agreement, the Plans were free to sell their EDS shares on the open market up to the date of the Merger. The Plans, as with all other shareholders selling under the Merger Agreement, did not receive certain options, rights and indemnities which the Sellers received under the Stock Purchase Agreements.

11. The applicant represents that the terms of the acquisition were negotiated on an arms-length basis among EDS, GM and the parties to the Stock Purchase Agreements. EDS shares were trading on the NYSE at $30.87 on May 15, 1984, the last day prior to public announcement of merger discussions. Beginning on July 2, 1984, EDS and GM had one common director, Mr. Perot.

Lazard Freres (Lazard), an investment banking firm, rendered an opinion to the EDS board of directors to the effect that the consideration to be received by EDS shareholders in the merger is fair from a financial point of view. Lazard supplied appraisals of the E Stock and Contingent Notes as of the effective date of the merger. The EDS board of directors unanimously approved the merger and recommended approval of the merger to its shareholders.

12. Prior to the effective date of the merger, the Trustees turned over to an independent fiduciary, as described below, the decisons relative to the disposition or retetention of the EDS stock by the Plans. In this regard the independent fiduciary was empowered to make decisions relative to voting for or against the merger, exercising dissenters rights, and choosing which Option to receive as consideration for the shares. With respect to the decision relative to voting for or against the merger, the participants in the 401(k) Plan were given the right by proxy to direct voting of their shares in favor of or against the merger. In its regard, participants in the 401(k) Plan holding 36,371 shares directed their shares to be voted in favor of the merger, 2,115 shares wer directed to be voted against the merger, and 421 shares were directed to abstain. Such participants did not have the right to elect the form of consideraion (i.e. Option 1 or 2) to be received in the merger. The Trustees of the 401(k) Plan voted the shares of EDS Stock held by participants to the extent they did not execise their right to direct the voting of the shares (see paragraph 17, infra).

13. 401(k) Plan participants were also given the right to make a "special investment election" prior to October 4, 1984, so that assets held in their different Investment Funds could be transferred among the different Funds. Each participant in the 401(k) Plan received detailed information regarding the special one-time election and the merger in the form of letters of instruction, a copy of Form S–8, Registration Statement under the Securities Act of 1933 and a copy of a proxy statement/prospectus (Prospectus), which discusses the merger in greater detail. The applicant represents that pursuant to such election 188 participants in the 401(k) Plan elected to transfer out of Investment Fund 3 which was invested in EDS stock, and 620 participants elected to transfer into Investment Fund 3. The EDS stock of a participant who moved out of Investment Fund 3 was liquidated at the then current market price of the shares and such amount was invested in Investment Fund 2. The applicants represent that neither the Trustees of the 401(k) Plan nor the administrator of the 401(k) Plan exerted pressure, control or influence on 401(k) Plan participants to pursue any course of action with respect to the special election or with respect to the voting of the EDS shares allocated to such participant's account.

14. The applicant seeks an exemption for the Plans' participation in the merger and receipt of E Stock and Contingent Notes in connection with the merger. The applicant represents that the E Stock may not constitute "qualifying employer securities" as described in the Act and that the Contingent Notes may not qualify as "marketable obligations" or defined in section 407(e) of the Act because more than 50% of the Contingent Notes may be held by persons who are not considered independent of the issuer. Accordingly, the applicant represents that it is unable to conclude that the statutory exemptive relief provided in section 408(e) of the Act is applicable to the transactions.

15. The MBank Dallas N.A. (MNB) was appointed to serve as the independent fiduciary to the 401(k) Plan and the Retirement Plan with respect to the merger transactions. MNB is a national banking association which is a wholly-owned subsidiary of Mercantile Texas Corporation (MTC), a bank holding company. MNB is the second largest bank in Dallas in terms of domestic deposits and the 52d largest bank in the United States. MNB holds approximately $3 million of assets as trustee, custodian or in other fiduciary capacities. Approximately $1 million of these assets are funds of employee benefit plans. MNB has discretionary investment authority over approximately $600 million of employee benefit plan assets. In the conduct of its fiduciary duties, MNB is frequently assisted by the services of Mercantile Securities Corporation, another wholly-

owned subsidiary of MTC, which is a registered investment adviser under the Investment Advisers Act of 1940.

MNB currently has no outstanding deposits, loans or lines of credit with EDS, with Mr. Perot, with the Perot Investment Trusts, or with GM. MNB has certain commercial relationships with General Motors Acceptance Corporation (GMAC), a subsidiary of GM. Such relationships consist of GMAC deposits constituting approximately .04% of MNB's total assets; outstanding lines of credit which have not been drawn on, amounting to 1.17% of MNB's total outstanding undrawn lines of credit; and other assets of GMAC held in trust or in other fiduciary capacities representing approximately 1.7% of total assets held by MNB in trust or in other fiduciary capacities. Neither GM, EDS, Mr. Perot nor the Perot Investment Trusts own any MTC shares. Neither EDS nor GM has any directors who are also directors of MTC or MNB.

16. MNB, in arriving at its determinations as a fiduciary of each Plan, reveiwed EDS's and GM's audited financial statements for prior years, read and evaluated management discussions concerning the operations and future business prospects of both corporations, reviewed the financial terms of the merger and compared such terms to the financial terms of certain other friendly and unfriendly mergers, reviewed each Plan's documents and trust agreements, and studied the differences in consideration to be received by shareholders under the Stock Purchase Agreements and the Merger Agreement. MNB represents that they thoroughly examined the Prospectus which outlines in great detail all relevant facts concerning the transactions, and reviewed each Plan's funding policy and investment objections and compared those to investment returns possible under each Option available to each Plan under the Merger Agreement. This specific review took into consideration the current trading price range of EDS shares, the $44.00 cash offer available under Option 1, comparable yields available in current fixed income and equity markets, and reasonable estimates of future investment performances of alternative investment vehicles.

17. MNB determined, with respect to each Plan, prior to the consummation of the merger, that the consideration to be received by other EDS shareholders is not more favorable than the consideration available to each Plan. MNB determined that the receipt of consideration by each Plan pursuant to Option 2 under the Merger Agreement is in the best interests of each Plan and their participants. MNB determined therefore, prior to the consummation of the merger that it is in each Plan's best interest to vote its shares in favor of the merger and that the election of Option 2 and consequent receipt of E Stock and the Contingent Notes is appropriate and in the best interests of each Plan and its participants and beneficiaries. MNB therefore provided written directions to the Trustees of the Retirement Plan and the 401(k) Plan (to the extent participants did not direct the voting of their shares) to vote in favor of the merger, and instructed the Trustees with respect to each Plan in writing to elect Option 2 under the Merger Agreement. MNB acknowledged in writing that it is serving as a fiduciary with respect to each Plan.

18. MNB will continue to serve as each Plan's fiduciary with regard to holding of the Contingent Notes. MNB will monitor all future transactions involving the Contingent Notes, including exercise of any prepayment rights by each Plan and enforce each Plan's rights if GM defaults under the Contingent Notes. MNB will continue to serve as fiduciary for each Plan with regard to the holding of the E Stock until the expiration of the later of the 180 day period following the effective date of the merger or the date of the Trustees determine that the E Stock is a qualifying employer security as defined in the Act.

19. In summary, the applicant represents that the transactions satisfy the criteria of section 408(a) of the Act because (a) the sale of the EDS stock to GM, including the shares held by the Plans, was negotiated on an arm's-length basis between unrelated parties; (b) each Plan received consideration not less favorable for the shares than the consideration received by other shareholders under the Stock Purchase and Merger Agreements; (c) each Plan was represented by MNB, a qualified independent fiduciary, who determined that the voting in favor of the merger and election of the receipt of the E Stock and Contingent Notes was appropriate and in the best interests of each Plan; and (d) MNB will monitor all future transactions involving the Contingent Notes and enforce the rights of each Plan under the instruments.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Pension Plan of Wertheim & Co., Inc. (the Plan) Located in New York, New York

[Application No. D-5929]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed contribution of a certain zero coupon note (the Note) to the Plan by Wertheim & Co., Inc. (the Employer), provided that the Note is valued at its fair market value at the time it is contributed.

Summary of Facts and Representations

1. The Employer and its subsidiaries are engaged in financial and investment services, including but not limited to services as a broker, dealer, underwriter and distributor of securities and commodities. Also, the Employer renders investment advisory and managerial services to individuals, corporations and other organizations. All of the stock of the Employer is held by Wertheim & Co., a New York general partnership. As of September 30, 1984, the Employer had assets of $462,729,151 and stockholder's equity of $54,515,208.

2. The Plan is a qualified, non-contributory defined benefit plan with 480 participants and beneficiaries as of January 1, 1984. The administration of the Plan and the investment of its assets are the responsibility of the Administration Committee and the Investment Committee, respectively, who are appointed as fiduciaries of the Plan by the Employer from its officers and directors. The trustee of the Plan is Chase Manhattan Bank, N.A. The fair market value of Plan assets on November 30, 1984, was $7,205,544.

3. The Employer proposes to contribute the Note to the Plan. The value of the Note will be determined by the Plan's independent fiduciary appointed for this transaction (*See* representation 5., below). The value of the Note will be less than 2.35 percent of the Plan's total assets.

4. The Note is a zero coupon obligation issued by Johnston Associates (Johnston), a New York limited partnership, for the face amount of $400,000. The Note represents a 12.5

percent interest in a $3,200,000 obligation which arose with a sale and leaseback transaction between Johnston and Allendale Mutual Insurance Company (Allendale). Johnston purchased the headquarters building of Allendale in Johnston, Rhode Island and leased the building back to Allendale for an initial term of 25 years plus renewal options. The Note is secured by Allendale's lease obligation to Johnston and is subordinated to approximately $32 million in debt incurred in the sale and leaseback transaction. Allendale has no other long term debt and has a net worth of approximately $265 million with AA rating by Standard & Poor and A+ rating by Best. The Employer and its principals have no special relationship with Johnston or Allendale and a relationship only through the provision of financial services in the regular course of its business.

Total principal and interest payments over the life of the Note will be $4,761,028.58. The Note accrues interest at the rate of 10 percent compounded semiannually. Payments on the note will commence in February 2000 in semiannual cash payments of $46,875, increase to semiannual payments of $150,000 in February 2005, decrease to semiannual payments of $139,614 in February 2010, and the fully paid in August 2019.

5. Moore, Juran and Company, Inc. (Moore-Juran), an investment banker located in Minneapolis, Minnesota, has agreed to act as an independent fiduciary on behalf of the Plan in connection with the proposed contribution by the Employer of the Note. Moore-Juran is in the investment banking business with experience in the valuation of securities, including debt instruments such as the Note, and in recent years has annually traded between $500 million to $700 million of such instruments. Its business dealings with the Employer are limited to occasional contacts in the ordinary course of business, generating commissions of a few thousand dollars a year which are *de minimus* in comparison to its annual income.

Moore-Juran has examined the application for exemption and the exhibits. In valuing the Note, Moore-Juran has relied upon its experience with similar debt instruments and its knowledge of prevailing interest rates. After discounting the Note at a rate of 14 percent per annum, Moore-Juran concluded that as of January 24, 1985, the Note should have a fair market value of $175,500.

Moore-Juran believes that the acceptance of the Note is in the best interests of the Plan and its participants and beneficiaries because of the high return and quality of the Note and because it avoids the reinvestment risk inherent in non-zero coupon obligations. Moore-Juran considers it significant that the assets of the Plan are well diversified with the Note representing less than 2.35 percent of Plan assets. Also, Moore-Juran believes that the collateral securing the Note and the high credit rating and strong financial position of Allendale demonstrate that the Note is adequately secured and a prudent investment for the Plan. Although initially the lease is for 25 years with options to renew, Moore-Juran believes that Johnston could sell or lease the building to another to make payments to the Plan. Based upon its experience in the private placement of debt securities, Moore-Juran believes that there is a market for the Note at the value determined by Moore-Juran.

6. In summary, the applicant represents that the proposed transaction meets the criteria of section 408(a) of the Act because:

(a) Moore-Juran has determined that the proposed contribution will be in the best interests of the Plan and protective of the rights of the participants and beneficiaries of the Plan; and

(b) The Note will be valued at its fair market value on the date contributed by Moore-Juran

Written Comments and Hearing Requests: Notice will be provided to interested persons within 5 days of the date of publication of this notice in the **Federal Register**. Comments and hearing requests are due within 35 days of the date of publication of this notice. Comments and requests for hearing should state the reasons for the writer's interest in the pending exemption.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-7901. (This is not a toll-free number.)

Central Orthopaedic Clinic, P.A. Profit Sharing Plan and Trust (the P/S Plan)

Central Orthopaedic Clinic, P.A. Money Purchase Pension Plan and Trust (the M/P Plan) Located in Jackson, Mississippi

[Application Nos. D-5993 and D-5994]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed: (1) Purchase by the P/S Plan and the M/P Plan (together, the Plans) of certain real property (the Property) from The Central Orthopaedic Partnership (the Partnership), whose partners are officers and directors of the employer (the Employer) of the Plans' participants and beneficiaries, provided the purchase price is not more than the fair market value of the Property on the date of the purchase, (2) assumption by the Plans, in connection with the proposed purchase, of certain debt obligations of the Partnership, (3) extension of credit by the Partnership to the Plans, and (4) lease of the Property by the Plans to the Employer, provided the terms of transactions (2), (3), and (4) are at least as favorable to the Plans as those the Plans could obtain in similar transactions with an unrelated party.

Summary of Facts and Representations

1. Each of the Plans covered 24 participants as of September 30, 1983. As of June 6, 1984, the P/S Plan's total assets equalled $1,557,698 and its net assets totalled $1,444,218; on the same date the M/P Plan's total assets equalled $813,053.58, which also was the amount of its net assets. The trustees of the Plans are Thomas C. Turner, M.D. and James O. Manning, M.D. They and George D. Purvis, M.D., William B. Thompson, M.D., and George W. Truett, M.D. are the partners in the Partnership. The Partnership owns the Property and currently leases it to the Employer. The partners of the Partnership are all directors, officers and stockholders of the Employer. No partners of the Partnership or stockholders of the Employer own any property adjoining the Property.

2. On September 6, 1984, The Sunburst Bank (the Special Trustee), a member of the Grenada Bank, with its main office located in Jackson, Mississippi, was appointed by the Employer to serve as Special Trustee of the Plans with respect to the proposed transactions. After reviewing the proposed transactions and related documents, the special Trustee has accepted this appointment. The Special Trustee maintains retirement plans with total assets exceeding $100,000,000 and has been administering qualified retirement plans for over 20 years. It has a staff of trust officers, attorneys, and support staff who are versed in matters involving the Act. The Special Trustee states that it fully recognizes its responsibilities and duties regarding the Plans and their

participants and beneficiaries. No share holder, director, officer, or employee of the Special Trustee is in any way employed by the Employer or any corporation, partnership, or other entity affiliated therewith. The Special Trustee has no banking relationship of any kind with the Employer or any corporation, partnership, or other entity affiliated therewith. One officer of the Employer currently has a small demand deposit account with the Special Trustee, representing .00131% of the entire demand deposits of the Special Trustee. The Special Trustee has no banking relationships with any other officer of the Employer or any corporation, partnership, or other entity affiliated therewith.

3. The Property is comprised of the land, building, and parking area located at 421 S. Stadium Circle, Jackson, Mississippi. The building located on the Property is a two-story medical clinic occupying 10,634 square feet on a lot of 50,900 square feet. Mr. T. E. Tate, M.A.I., S.R.P.A., Vice President of Wortman & Mann, Inc., Real Estate Division, Appraisal Department, has determined that as of February 24, 1983, the fair market value of the Property, excluding furnishings and equipment, was $560,000 and the annual fair rental value of the Property was $96,350 gross and $52,300 net (after subtracting expenses), providing an annual net income at an overall rate of 11.6%. Mr. Tate states that he is not related to the Partnership, the Employer, or the Plans and that the highest and best use of the Property is its continued utilization as a medical facility. He notes, in this regard, that there are some 4,350 square feet of excess land not currently utilized that could accommodate additional improvements and is available for future expansion.

4. The Property is presently subject to three liens securing indebtedness represented by three promissory notes (the Existing Notes). The first of these had an outstanding balance due at October 31, 1984 of $2,721.91 and is payable to Deposit Guaranty National Bank, Jackson, Mississippi, in monthly installments of $1,375.80 each, including interest at 5½%, with the final payment due December 18, 1984. The second Existing Note had an outstanding balance due at October 31, 1984 of $175,678.90 and is payable to Deposit Guaranty National Bank in monthly installments of $2,393.67 each, including interest at 9%, with the final payment due September 18, 1993. The last Existing Note had an outstanding balance due at October 31, 1984 of $15,918.03 and is payable to the Employer in monthly installments of $839.40 each, including interest at 6%, with the final payment due June 10, 1986.

5. It is proposed that on July 1, 1985, the Partnership would sell the Property by warranty deed to the Plans for a total purchase price of $560,000. The P/S Plan would purchase a 36% interest in the Property, and the M/P Plan would purchase a 64% interest therein. These percentages would determine the portions each Plan would pay of the total purchase price and would receive of the net rental income or loss derived from the Property. Each Plan's interest in the Property would not exceed 25% of its net assets. The Plans would make an aggregate cash down payment of $200,000 and would assume responsibility for repaying the Existing Notes in accordance with their terms (see 4, above). The Plans would also deliver two promissory notes (the Proposed Notes) to the Partnership. The total principal amount of both Proposed Notes would equal the difference between (a) the proposed purchase price and (b) the sum of (i) the aggregate cash down payment of $200,000 and (ii) the total principal balance due under all three Existing Notes. Each Proposed Note would bear interest at the rate of 11% per annum, would require monthly payments of principal and interest for 120 months, and would be secured by a deed of trust on the Property. The continued payment of the Existing Notes would also be secured by deeds of trust on the Property.

6. It is also proposed that the Plans will lease the Property to the Employer effective July 1, 1985, under a written lease agreement (the Lease) requiring the Employer to pay a total annual rental of $58,928 initially, all ad valorem taxes assessed against the Property, all premiums for liability and casualty insurance on the Property, and all costs for repairs and maintenance of the Property. The applicants represent that to the extent the initial rent exceeds the fair rental value of the Property, such excess, if treated as Employer contributions to the Plans, will not disqualify them under the provisions of section 415 of the Code. The initial term of the Lease will be 10 years, and the Employer has two options to renew the Lease, each for a period of 5 years. However, no extension of the Lease beyond its initial term shall be allowed unless the Special Trustee determines before each proposed extension that such extension is in the best interest of the Plans, their participants and beneficiaries. For the first 5 years of the Lease, the Property will be leased at an annual rental of $58,928. For each subsequent 5 years of the Lease (including the renewal option periods), the Property will be leased at an annual rental equal to the greater of the annual rental for the preceding term or comparable market rentals for medical clinics in North Jackson, as determined by an independent appraiser. In the event the Employer should default on its obligations under the Lease, the Plans, in their sole discretion, may sell the Property and pay off the Existing Notes and the Proposed Notes without incurring any additional liability or may lease the Property to another party. Mr. Tate (see 3, above) has reviewed the Lease and found its rental, renewal options, and other terms and conditions to be most representative of the current market for similar type properties located in North Jackson, Mississippi.

7. The applicants represent that beginning in 1987 and thereafter the annual obligations of the Plans under the Existing Notes and the Proposed Notes will be fully amortizable from the rentals to be received under the Lease and that no Employer contributions will be needed to cover any of those payments. However, for the last six months of 1985 and for calendar year 1986, the applicant has projected negative cash flows of $3,629 and $3,060, respectively, resulting in a cumulative cash deficit of $6,689 at the end of 1986, which would be reduced by the projected positive cash flow of $2,817 for 1987, resulting in a cumulative cash deficit of $3,872 at the end of 1987. The applicant represents that the yearly cash available should remain constant until 1989. These projections do not include charges for unrelated business income tax because the applicant represents that the proposed transactions will not be subject to such tax. Nevertheless, the applicant represents that should such tax be assessed, the negative cash flows for 1985 and 1986 would be increased by approximately $675 and approximately $1,550, respectively, resulting in a cumulative cash deficit of approximately $8,914 by the end of 1986.

8. The applicants also state that all expenses incurred in the proposed transactions will be borne by parties other than the Plans. Finally, the applicants represent that if the proposed exemption is granted: An updated appraisal of the fair market value and the fair rental value of the Property will be made by a qualified appraiser unrelated to the Partnership, the Employer, or their principals; the Plans will pay no more than the fair market value of the Property as of the date of the purchase as determined by such appraiser; and the initial rent under the

Lease will not be less than the fair rental value of the Property as determined by such appraiser.

9. The Special Trustee has reviewed the documents involved in the proposed transactions, including the warranty deed, the Existing Notes, the Proposed Notes, the deeds of trust, the Lease, the appraisal, and a projection of cash flow and estimated appreciation resulting from the proposed transactions. The Special Trustee certifies that the terms of these documents are comparable with the terms of similar transactions in Jackson, Mississippi, and that the Special Trustee finds the terms of these transactions acceptable. Based upon its review of the terms and conditions of the proposed transactions, the Special Trustee asserts that these transactions are clearly in the best interest of the Plans and their participants and beneficiaries.

In conjunction with the proposed transactions, the Special Trustee states that it has considered the following matters, among others:

—The ages of the Plans' participants and their vested interests, account balances, and years of service with the Employer;

—The overall investment portfolio of the Plans, the existing degree of diversification of the Plans' assets, the liquidity requirements which would be necessary to satisfy the Plans' distribution requirements, and the Plans' investment objectives and policies;

—The safety of the proposed transactions, the probable income and gain to be derived therefrom, the regularity of income generated, the Property's marketability, the term and probable duration of the Lease, the probable market conditions with respect to (a) the value of the Property when the Plans terminate and (b) reinvestment at the time the prorposed investment is liquidated, the Employer's financial outlook, and the likelihood of inflation.

The Special Trustee concludes that the proposed transactions offer a fair return commensurate with prevailing rates when considering the small amount of risk involved and the potential for appreciation, that the Plans will keep sufficient liquidity to permit distributions, that Plan assets are sufficiently diversified to satisfy any reasonable liquidity requirements of the Plans, and that the proposed transactions would satisfy the Plans' investment objectives and policies. It asserts that the proposed transactions are reasonably designed to further the purpose of the Plans, taking into account the risk of loss and opportunity of gain. The Special Trustee also states that the proposed transactions are in the best interests of the Plans and their participants and beneficiaries notwithstanding the projected cash deficits because it has been the experience of the Special Trustee that the projected cash deficits under the proposed Lease are small in comparison to the size of the transaction and that seldom do investments of this nature have an immediate positive cash flow.

10. The Special Trustee has agreed to monitor the proposed transactions throughout their duration on behalf of the Plans, taking any and all appropriate actions necessary to safeguard the interest of the Plans on behalf of their participants and beneficiaries and to enforce their rights. It has been given authority to do so by amendment to each Plan as of September 6, 1984. In addition, the Special Trustee states that it will review financial statements and other documents required to be filed by the Plans.

11. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The proposed purchase price will not exceed the fair market value of the Property as of the date of the purchase, as determined by a qualified appraiser unrelated to the Partnership, the Employer, or their principals; (b) the initial rent under the proposed Lease will be no less than the fair rental value of the Property as of the effective date of the Lease as determined by such appraiser; (c) during the second 5 years of the Lease and for each 5-year renewal option exercised, the Property will be leased at an annual rental equal to the greater of the annual rental for the preceding term or comparable market rentals for medical clinics in North Jackson, as determined by an independent appraiser; (d) under the proposed Lease, the Employer will also pay all ad valorem taxes assessed against the Property, all premiums for liability and casualty insurance on the Property, and all costs for repairs and maintenance of the Property; (e) all other expenses incurred in the proposed transactions will be borne by parties other than the Plans; (f) the Special Trustee, who is unrelated to the Partnership, the Employer, and their principals, certifies that the terms of the proposed transaction are comparable with those of similar transactions in Jackson, Mississippi, and asserts that these transactions are clearly in the best interest of the Plans and their participants and beneficiaries and are administratively feasible; (g) the Special Trustee agrees to monitor the proposed transactions throughout their duration on behalf of the Plans, taking any and all appropriate actions necessary to safeguard the interests and enforce the rights of the Plans and their participants and beneficiaries; and (h) the Lease will not be extended after its initial term expires unless the Special Trustee determines before each extension that each such extension is in the best interests of the Plans and their participants and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404, and 415.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Richard J. Cavell, M.D., Ltd. Profit Sharing Plan and Trust (the Plan) Located in Reno, Nevada

[Application No. D–6032]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the purchase by the Plan from Dr. Richard J. Cavell (Dr. Cavell) of a 17.727% interest (the Interest) in a certain royalty interest (the Property) in a gold mine located in Hawthorne, Nevada, for $39,000 in cash, provided such amount is not greater than the fair market value of the Interest on the date of the acquisition.[3]

[3] Since Dr. Cavell is the sole shareholder of Richard J. Cavell, M.D., Ltd. (the Employer) and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with one participant, Dr. Cavell. As of February 12, 1985, the Plan had assets of approximately $157,000. Dr. Cavell, who is the sole shareholder of the Employer, is also the trustee of the Plan. The applicant represents that in the event any other eligible employee is subsequently retained by the Employer, a separate plan or segregated account will be created for such employee so that Dr. Cavell will be the only participant affected by the subject transaction.

2. In March, 1977, Dr. Cavell acquired the Property from unrelated parties for $50,000. The Property consists of a 1.275% undivided, overriding royalty interest in a gold mine known as the Borealis Mine, located in Hawthorne, Nevada. The mine is operated by Tenneco Minerals, a Tenneco Corporation subsidiary.

3. Dr. Cavell now wishes to sell an undivided 17.727% interest in the Property to the Plan. Dr. Cavell, as trustee for the Plan, wants to acquire the Interest in the Property because it is a good investment. Dr. Cavell, as trustee, believes the appreciation in value of the Property will be substantial. The Plan will hold its Interest in the Property for investment purposes.

4. Dr. John Whitney of Whitney & Whitney, Inc., independent management consultants for mining, industry and government, located in Reno, Nevada, has appraised the Property as having a fair market value of $220,000 as of November 28, 1984. Thus, the Interest would have a fair market value of $39,000.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(c)(2) of the Code because: (1) The transaction involves less than 25% of the Plan's assets; (2) the Plan will be paying the fair market value of the Interest as determined by an independent appraiser; and (3) Dr. Cavell is the only participant to be affected by this transaction, and as Plan trustee he has determined that it is appropriate for the Plan and in the Plan's best interest.

Notice to Interested Persons: Because Dr. Cavell is the sole stockholder of the Employer and the sole participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days after the publication of this notice in the **Federal Register.**

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to a an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 27th day of March, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-7818 Filed 4-85; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Economics; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, The National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics.

Date and time: April 18, 19, 20, 1985;

Thursday—9:00 am to 7:00 pm
Friday—9:00 am to 7:00 pm
Saturday—9:00 am to 1:00 pm

Place: Room 602, National Science Foundation, 2000 L Street, NW., Washington, DC 20550.

Type of meeting: Closed.

Contact Person: Daniel H. Newlon, Program Director for Economics, Room 312, National Science Foundation, Washington, DC 20550 Telephone (202) 357-9674.

Purpose of advisory panel: To provide advice and recommendations concerning support for research in the Economics Program.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a propietary 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.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, of July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

March 28, 1985.

[FR Doc. 85-7853 Filed 4-1-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Metabolic Biology Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Metabolic Biology.

Date and time: April 18, 19 and 20, 1985 9:00 a.m.-5:00 p.m.

Place: National Science Foundation, Room 1242A, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. William van B. Robertson, Program Director Metabolic

Biology Program, Room 325 National Science Foundation, Wash., DC 20550. Telephone (202) 357–7987.

Purpose of advisory panel: To provide advice and recommendations concerning support for researeh in metabolic biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of 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. 522b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

March 28, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–7854 Filed 4–1–85; 8:45 am]

BILLING CODE 7555-01-M

Materials Research Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Materials Research Advisory Committee.

Place: Room 1242–B, National Science Foundation, 1800 "G" Street, N.W. Washington, DC 20550.

Date: Thrusday, April 18; Friday, April 19; and Saturday, April 20, 1985.

Time: 9:00 a.m.–5:00 p.m., those days.

Type of meeting:

Part Open—April 18, 9–1 (Open);
April 18, 1–4:30 (Closed);
April 18, 4:30–5:00 (Open);
Part Open—April 19, 9–1 (Open);
April 19, 1–4:30 (Closed);
April 19, 4:30–5:00 (Open);
Part Open—April 20, 9–1 (Closed);
April 20, 1–4:30 (Open)

Contact person: Dr. Lewis H. Nosanow, Director, Division of Materials Research, Room 408, National Science Foundation, Washington, DC, 20550, Telephone: (202) 357–9794.

Summary minutes: May be obtained from the Contact Person, Dr. Lewis H. Nosanow at the above stated address.

Purpose of subcommittee: To provide advice and recommendations concerning support of materials research.

Agenda—*Thursday, April 18, 1985:*

9:00 a.m. Introductory remarks; Overviews of the NSF, the Mathematical and Physical Sciences Directorate, and the Division of Materials Research (DMR)
10:15 a.m. Status Report, Synchrotron Radiation Center (SRC)
11:15 a.m. Role of the Engineering Directorate in the Support of Materials
12:00 noon Lunch
1:00 p.m. Report and Discussion of the *ad hoc* Oversight Reports on the Metallurgy, the Ceramics and Electronic Materials, and the Polymer Programs (CLOSED)
4:30 p.m. Role of the Department of Energy in the Support of Materials
5:00 p.m. Adjourn

Friday, April 19, 1985:

9:00 a.m. Convene; Overview of NSF activities which impact DMR such as the "Support of Materials."
10:15 a.m. Status of Advanced Materials Initiative: Materials Chemistry, Materials Research Groups, Novel Materials.
12:00 noon Lunch.
1:00 p.m. Discussion of the *ad hoc* Oversight Reports on the Metallurgy, Polymers, and Ceramics (MPC) Section, Continued (CLOSED).
4:30 p.m. The Role of the Office of Advanced Scientific Computing in the Support of Materials.
5:00 p.m. Adjourn.

Saturday, April 20, 1985:

9:00 a.m. Convene; Completion of the Discussion of the *ad hoc* Oversight Reports on the MPC Section; Lunch (CLOSED).
1:00 p.m. Concluding Discussion.
4:30 p.m. Adjourn.

Reasons for closing: The Oversight Reports involve discussion of proposals containing 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.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

March 28, 1985.

[FR Doc. 85–7852 Filed 4–1–85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on State of Nuclear Power Safety; Time Change

The **Federal Register** published on Friday March 22, 1985 (50 FR 11604) contained notice of a meeting of the ACRS Subcommittee on State of Nuclear Power Safety, to be held on April 10, 1985, Room 1046, 1717 H Street, NW, Washington, DC. The starting time for this meeting has been *changed to 3:30 p.m.* All other items regarding this meeting remain the same as previously announced.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Anthony Cappucci (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 28, 1985.

Thomas G. McCreless,

Assistant Executive Director for Technical Activities.

[FR Doc. 85–7849 Filed 4–1–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–155]

Consumers Power Co. (Big Rock Point Plant); Exemption

I

The Consumers Power Company (CPC) (the licensee) is the holder of Facility Operating License No. DPR–6 which authorizes operation of the Big Rock Point Plant, located in Charlevoix County, Michigan, at a rated power level of 240 megawatts (thermal). This license provides, among other things, that it is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

II

Section III.G.2.f of Appendix R to 10 CFR Part 50 requires that cables of redundant trains of equipment needed to achieve safe shutdown and located inside noninerted containments be separated by a noncombustible radiant energy shield. By letter dated June 1, 1984, CPC requested an exemption from this requirement for the south face of the steam drum enclosure wall. The licensee's submittal stated that the south face of the steam drum enclosure wall is approximately 45 feet tall. Conduits that contain cables that actuate the reactor depressurization system (RDS) valves are located on the wall, as well as RDS discharge piping. Numerous level and pressure transmitters/indicators are located on the wall near floor level.

The new cables proposed to be installed as part of the alternate

shutdown system will be run in conduits up the left side of this wall. These conduits contain cables from the emergency condenser outlet valves and will, in some places, be less than 20 feet from the nearest RDS conduit. All cables on this wall are contained in conduit. There are no significant combustibles or fire hazards either on the wall or on the floor. As this location is in containment, transient combustible loading is kept at a minimum. This configuration does not meet the requirements of Section III.G.2 because redundant cables will not be separated by either a distance of 20 feet or by a noncombustible radiant heat shield.

The redundant cables identified in this exemption request are for the RDS and the emergency condenser (EC) and are needed for post-fire shutdown using on-site power. The licensee states that off-site power would remain available in the event of a fire in this area and that with off-site power available, the plant can be safely shut down without relying on either the RDS or the EC.

Due to the extremely low combustible load, the wide open area of the containment, and the fact that both sets of cables are contained in separate conduits, the NRC staff has concluded that a fire in this area is unlikely and if it occurred would not affect both sets of cables. Additionally, a fire in this area is not likely to cause a loss of off-site power because of the few faulted circuits involved and their small current carrying capability. Although a plant trip might possibly result from such a fire, loss of the small generating capacity of Big Rock Point compared to the overall grid capacity would not upset the grid and hence would not cause a grid-related loss of off-site power.

Based upon the above evaluation, the staff concludes that the installation of a noncombustible radiant energy shield between the RDS and the EC cables will not significantly increase the level of fire safety at Big Rock Point; therefore, the exemption should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR Part 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the following exemption:

An exemption to Section III.G.2 of Appendix R to allow the installation of reactor depressurization system and emergency condenser control cables on the south face of the steam drum enclosure wall with separation of less than 20 feet without the installation of noncombustible radiant energy shields.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (October 3, 1984, 49 FR 39124).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 26th day of March 1985.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-7850 Filed 4-1-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-339]

Virginia Electric and Power Company et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. NPF-7 issued to the Virginia Electric and Power Company and the Old Dominion Electric Cooperative (the licensee), for operation of the North Anna Power Station, Unit No. 2 (NA-2) located in Louisa County, Virginia.

The proposed amendment would make changes to the NA-2 Technical Specifications (TS) which address the NA-2 emergency diesel generators. The changes are necessary to redress immediate diesel reliability concerns identified by recent NA diesel failures. The licensee has proposed changes which represent the recommendations of the diesel generator manufacturer and are consistent with the appropriate recommendations provided in the Commission's Generic Letter (GL) 84-15, "Proposed Staff Actions to Improve And Maintain Diesel Generator Reliability," July 2, 1984.

The licensee's initial response to GL 84-15 was on August 16, 1984 which provided projected response dates in order to adequately address GL 84-15. The licensee's first response was dated September 28, 1984 and provided survey information. The licensee's second response, addressing diesel engine reliability data, was scheduled to be submitted on January 31, 1985. However, three diesel generator failures occurred at NA-2 during December 1984. In one case, both NA-2 diesels were concurrently inoperable which required the shutdown of NA-2 for eight days while repairs were made on the two diesels. The licensee initiated an investigation and expedited an ongoing diesel engine reliability study to determine whether the NA-2 test requirements were detrimental to sustained engine reliability. On January 10, 1985, a fourth diesel generator failure occurred at NA-2 which then required both NA-2 diesels be tested every three days as specified in the NA-2 TS. By the middle of January 1985, the licensee's investigation had then determined that the NA-2 TS diesel engine requirements for fast starts from ambient conditions, rapid electrical loading and frequency of surveillance testing were contributing factors in diesel engine degradation and diminished engine reliability. Therewith, the licensee in consultation with the diesel manufacturer, immediately began the preparation of draft NA-2 TS which followed the GL 84-15 guidelines. The draft submittal of the NA-2 TS by the licensee were reviewed by the NRC staff on January 22 and 26, 1985 at the request of the licensee to ensure the draft submittal met the intent of GL 84-15. The licensee's formal submittal for the proposed NA-2 TS changes regarding the emergency diesel generators was submitted on February 1, 1985.

Also, on February 1, 1985, NA-1 experienced its first diesel engine failure similar to the previous failures at NA-2. Therewith, the licensee initiated an additional review to determine if any other factor, not previously identified, could be a contributing cause to engine degradation and failure. This review identified diesel overload conditions as an additional possible root cause of engine degradation and failure. These matters were discussed with the licensee on February 8, 1985. On February 13, 1985, the NRC staff observed the licensee's proposed NA-2 diesel engine startup procedures on-site, and further discussed these matters with the licensee on February 14, 1985. The licensee was requested to document the NA-1 engine failure and subsequent investigation as well as the NA-1 & 2 engine maintenance records and the licensee's commitments to a diesel engine reliability program. This additional information was submitted on March 13, 1985 to support the licensee's February 1, 1985 proposed TS change request. On March 15, 1985, NA-2 experienced an additional diesel engine failure that necessitated major repairs and testing which exceeded the 72 hour limiting condition for operation and thus required the plant to commence shutdown on March 18, 1985. On March 20, 1985, operability testing was successfully completed and NA-2 commenced power operations.

Recent NA–2 diesel generator failures have been investigated by the licensee and the diesel manufacturer, Colt Industries. Findings of this investigation have identified three items in the NA–2 TS which are contributing factors to diesel failure. These items are: (1) Fast starts from ambient conditions, (2) rapid electrical loading, and (3) frequency of surveillance testing.

The presently specified NA–2 TS require the diesels to accelerate to synchronous speed within 10 seconds and be loaded to greater than or equal to 2750 Kilowatts (Kw) in less than 60 seconds for routine surveillance tests. This requirement routinely subjects critical parts of the diesel to severe thermal transients which, when repeated excessively, can lead in part to the type of failure recently experienced at NA–2. In addition, it is noted that the NA–1 TS do not have similar 60 second loading requirements or accelerated test frequency, and the NA–1 diesel engines had not experienced the type of failures recently occurring to the NA–2 diesel engines until February 1, 1985.

In addition, the NA–2 emergency diesels have been subjected in the past to more frequent starts than is the case for NA–1. The additional starts are due to the NA–2 TS which require an increased frequency of surveillance testing based on engine failures in the last 100 valid tests for both diesel engines. Finally, it is noted that the NA–2 TS require the diesel engines be fully loaded in 60 seconds for routine surveillance.

As noted above, the first NA–1 engine failure similar to the previous NA–2 engine failues occurred on February 1, 1985. Investigation by the licensee identified the possibility of diesel engine overload as a contributing cause to engine degradation or as a failure mode. It is noted that the present NA–2 TS require loading to greater than or equal to the continuous rating of 2750 KW for surveillance testing. This requirement, when combined with instrument error and reading inaccuracies, provides the potential for routine overloading during surveillance testing.

The proposed changes germane to the discussion above would revise the NA–2 TS 3.8.1.1 and associated action statements for performing Surveillance Requirement 4.8.1.1.2.a.4. In addition, Surveillance Requirement 4.8.1.1.2.a.4 would be revised as well as the NA–2 TS Table 4.8–2 which specifies the required testing frequency for the diesel engines. Specifically, NA–2 TS 3.8.1.1, Action Statement-a (demonstration of diesel operability when declaring one offsite circuit inoperable) would be revised to require the performance of Surveillance Requirement (SR) 4.8.1.1.2.a.4 once within 24 hours of declaring the offsite circuit inoperable unless previously tested in the last seven days. The present requirement is to demonstrate diesel operability within one hour and at least once per 8 hours thereafter regardless of the time at which the last test was performed. This proposed change is consistent with the Commission guidance provided in GL 84–15.

NA–2 TS 3.8.1.1, Action Statement-b (demonstration of diesel operability with one diesel declared inoperable) would be revised to require performance of SR 4.8.1.1.2.a.4 once within 24 hours of declaring the offsite circuit inoperable. The present requirement is to perform SR 4.8.1.1.2.a.4 within one hour and at least once per 8 hours thereafter. The proposed change is consistent with the Commission guidance provided in GL 84–15.

NA–2 TS 3.8.1.1, Action Statement-c (demonstration of diesel generator operability when declaring one offsite circuit and one diesel generator inoperable) would be revised to require performance of SR 4.8.1.1.2.a.4 once within 8 hours of declaring both sources inoperable. The present requirement is to demonstrate operability within one hour and at least once per 8 hours thereafter. The proposed change is consistent with Commission guidance provided in GL 84–15.

NA TS 3.8.1.1, Action Statement-d (demonstration of diesel operability when two offsite power circuits are declared inoperable) would be revised to require performance of SR 4.8.1.1.2.a.4 once within 8 hours of declaring the offsite circuits inoperable. The present requirement is to demonstrate operability within one hour and at least once per 8 hours thereafter. The proposed change is consistent with Commission guidance provided in GL 84–15.

Surveillance Requirement (SR) 4.8.1.1.2.a.4 (which covers the starting of the diesels and the parameters that must be met during startup testing) would be revised to include the following: (1) A two-three minute prelubrication period prior to starting; (2) a one-two minute gradual stair casing to synchronous speed (900 rpm); (3) a five minute warmup unloaded for preconditioning while synchronizing to the appropriate bus (4160±420 volts); (4) a five to ten minute gradual stair casing to fully rated load; (5) one to two hours at load, and (6) a five to ten minute gradual ramp down in load prior to terminating the test. The present requirement is to require the diesels to accelerate to at least 900 rpm per minute, 4160±420 volts and 60±1.2 Hertz (Hz) within 10 seconds. The proposed change is in accordance with the diesel generator manufacturer's recommendations and is consistent with Commission guidance provided in GL 84–15.

Surveillance Requirement (SR) 4.8.1.1.2.a.5 (which addresses the loading requirements of the diesel's during routine testing) would be revised by removing the time limit to reach rated load (2500–2600 Kw) and would be combined with SR 4.8.1.1.2.a.4 discussed immediately above. As noted above, the rated load would be specified as an operating band of 2500–2600 Kw versus the nameplate rating of 2750 Kw. The present requirement requires loading the diesel to greater than or equal to 2750 Kw in at least 60 seconds. The proposed change is consistent with the Commission's GL 84–15.

The licensee has proposed a new Surveillance Requirement (SR) 4.8.1.1.2.c which covers the semiannual requirement to perform a 10-second start (900 rpm, 4160±420 volts, 60±1.2 Hz) from ambient conditions and a 60-second loading from 2500 to 2600 Kw. This requirement has been added to verify diesel capability to perform during the worst case Design Base Accident (DBA) conditions (Loss-Of-Coolant Accident concurrent with loss-of-offsite power). The proposed new change is consistent with the Commission's GL 84–15. Also, the licensee has proposed that the eighteen month shutdown Surveillance Requirement (SR) 4.8.1.2.d.7 for verifying worst case DBA be assigned similar operating bands for required loads.

The licensee has proposed to the NA–2 TS Table 4.8.2. which addresses diesel generator surveillance testing frequency. The existing TS test frequency is based on the number of valid diesel failures experienced in the last 100 tests on a per nuclear unit basis. The test frequency proceeds from 31 days for one failure to 3 days for four or more failures. The proposed change would revise Tables 4.8.2 reflect the Generic Letter 84–15 concept of reliability goals. Specifically, five failures or more in the last 100 tests would require increased surveillance at least once per seven days to ensure a minimum desired confidence level of 95% for diesel realiability. Otherwise, monthly testing would be specified. Finally, the proposed test frequency would be based on a per diesel generator basis rather than the per nuclear unit as presently specified. The proposed change is consistent with the Commission's Generic Letter 84–15.

The proposed revisions to the NA–2 TS would be made in response to the

licensee's application for amendment dated February 1, 1985, as revised March 13, 1985.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated is not increased by the proposed changes. Reducing the test frequency and modifying starting and loading requirements consistent with the diesel manufacturer and Generic Letter 84–15 recommendations will enhance diesel reliability by minimizing severe test conditions which can lead to premature failures. Also, the possibility for an accident or malfunction of a type different than previously evaluated is not created since the proposed change affects only testing frequency, starting and loading practices and has no actual impact on any previously analyzed accident in the Final Safety Analysis Report. Finally, the margin of safety as defined in the basis for any Technical Specification is not reduced. The changes in the testing requirements do not affect the capability of the diesels to perform their function. Rather, the purpose of the changes is to increase overall diesel generator reliability. Therefore, based on these considerations and the criteria given above, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission has determined that failure to act in a timely way would result in additional diesel engine degradation at NA–2. Furthermore, failure to process the proposed change in an expedited manner will be detrimental to sustained engine reliability and increases the likelihood of additional engine failures and possible plant shutdown. Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

If the proposed determination becomes final, an opportunity for a hearing will be published in the **Federal Register** at a later date and any hearing request will not delay the effective date of the amendment.

It the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the **Federal Register** and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to James R. Miller, Chief of Operating Reactors Branch No. 3, by collect call to 301–492–4559 or submitted in writing to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch. All comments received by April 17, 1985 will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia and the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia.

Dated at Bethesda, Maryland, this 29th day of March 1985.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 85–7951 Filed 4–1–85; 8:45 am]

BILLING CODE 7590–01–M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Members of Performance Review Board

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice.

SUMMARY: The document gives notice of a list of Performance Review Board members.

EFFECTIVE DATE: April 2, 1985.

FOR FURTHER INFORMATION CONTACT: Paul M. Lyons, Executive Director, Occupational Safety and Health Review Commission, 1825 K Street NW., Washington, D.C. 20006, (202) 634–7940.

OSHRC Performance Review Board Members

Thomas B. Flynn
Joan M. Hollenbach
Paul M. Lyons
Earl R. Ohman, Jr.

Dated: March 27, 1985.

E. Ross Buckley,

Chairman.

[FR Doc. 85–7820 Filed 4–1–85; 8:45 am]

BILLINNG CODE 7600–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding the Application of Certain International Agreements

This notice modifies the determination published in the **Federal Register** of January 4, 1980 (45 FR 1181), as amended by determinations published at 45 FR 18547, 45 FR 36569, 45 FR 63402, 45 FR 85239, 46 FR 24059, 46 FR 40624, 46 FR 46263, 46 FR 48391, 47 FR 16697, 49 FR 47467, 50 FR 8428, 50 FR 9342 and 50 FR 11741.

Under Section 1–103(b) of Executive Order 12188 of January 2, 1980, the functions of the President under section 2(b) of the Trade Agreements Act of 1979 (the Act) and section 701(b) of the tariff Act of 1930 as amended, are delegated to the United States Trade Representative (the Trade Representative), who shall exercise such authority with the advice of the Trade Policy Committee.

Now, the therefore, I, William E. Brock, United States Trade Representative, in conformance with the provisions of section 2(b) of the Act, section 701(b) of the tariff Act of 1930 as amended, and section 1–103(b) of Executive Order 12188, hereby determine that:

With repect to the Agreement on Interpretation and Application of articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code), the United States having notified the Director General of the GATT that the United States does not consent to the application of the Subsidies Code between the United States and New Zealand, the obligations of the Agreement will not apply between New Zealand and the United States effective April 1, 1985, until such time as the United States otherwise notifies the Director General.

In accordance with section 701(b)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1671(b)(1)), as of April 1, 1985, and until further notice, New Zealand is not a "country under the Agreement." This notice supersedes my prior determination of September 16, 1981 with regard to New Zealand (46 FR 46263).

William E. Brock,

United States Trade Representative.

March 27, 1985.

[FR Doc. 85-7780 Filed 4-1-85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Order Updating International Cargo Rate Flexibility Level

The Civil Aeronautics Board, by Policy Statement PS-109, effective February 22, 1983, adopted a policy of not suspending international cargo rate changes within a specified zone, except in extraordinary circumstances. That policy, implemented by Regulation ER-1322, effective February 27, 1983 (14 CFR Part 221), eliminates the requirement of economic justification for international cargo rates which are within Board-established zones of flexibility. As stated in ER-1322, the Board took this action to allow air carriers to respond more quickly to changing costs and competitive conditions. Effective January 1, 1985, the Board was abolished and the Department now has jurisdiction over this subject.

In establishing the SFRL for the two-month period starting February 1, 1985, we have projected nonfuel costs based on the year ended September 30, 1984, and have determined fuel prices on the basis of experienced monthly fuel cost levels as reported to the Board.

By Order 85-3-75 cargo rates may be increased by the followng adjustment factors over the April 1, 1982, level:

Atlantic	1.0487
Western Hemisphere	1.0307
Pacific	.9694

Copies of the Department's order are available from the Distribution Section. Persons outside the metropolitan area may send a postcard request.

For Further Information Contact: John D. Coakley, (202) 472-5492.

By the Department of Transportation:

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-7865 Filed 4-1-85; 8:45 am]

BILLING CODE 4910-62-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that the objects to be included in the exhibit, "The Age of Suleiman the Magnificent" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, D.C., beginning on or about February 1, 1987, to on or about May 17, 1987; The Art Institute of Chicago, Chicago, Illinois, beginning on or about June 14, 1987, to on or about September 7, 1987; and The Metropolitan Museum of Art, New York New York, beginning on or about October 4, 1988, to on or about January 17, 1988, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Thomas E. Harvey,

General Counsel and Congressional Liaison.

Dated: March 27, 1985.

[FR Doc. 85-7786 Filed 4-1-85; 8:45 am]

BILLING CODE 8230-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that the objects to be included in the exhibit, "Elba to Damascus: Art and Archeology of Ancient Syria" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the Department of Antiquities, Arab Republic of Syria, and the Smithsonian Institution. I also determine that the temporary exhibition or display of the listed exhibit objects at the Walters Art Gallery, Baltimore, Maryland, beginning on or about September 4, 1985, to on or about October 27, 1985; the Museum of Natural History, Denver, Colorado, beginning on or about November 20, 1985, to on or about February 16, 1985; the Natural History Museum, Los Angeles, California, beginning on or about March 15, 1986, to on or about June 1, 1986; the Cincinnati Art Museum, Cincinnati, Ohio, beginning on or about October 11, 1986, to on or about December 28, 1986; the Detroit Institute of Arts, Detroit, Michigan, beginning on or about January 24, 1987, to on or about April 12, 1987; and the National Museum of Natural History, Washington, D.C., beginning on or about May 9, 1987, to on or about September 8, 1987, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: March 27, 1985.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 85-7787 Filed 4-1-85; 8:45 am]

BILLING CODE 8230-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Sunshine Act Meetings

Federal Register
Vol. 50, No. 63
Tuesday, April 2, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, April 4, 1985.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed (Pursuant to 5 U.S.C. § 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. United Mine Workers of America on behalf of Rowe, etc. v. Peabody Coal Company, Docket Nos. KENT 82-103-D, etc., and Secretary of Labor on behalf of Williams v. Peabody Coal Company, Docket No. LAKE 83-69-D. (Consideration of allegations of judicial misconduct.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85-7888 Filed 3-29-85; 11:56 am]

BILLING CODE 6735-01-M

2

NATIONAL CREDIT UNION ADMINISTRATION

NOTICE OF PREVIOUSLY HELD EMERGENCY MEETING.

TIME AND DATE: 2:10 p.m., Tuesday, March 26, 1985.

PLACE: 1776 G Street, N.W., Washington, D.C., 6th Floor.

STATUS: CLOSED.

MATTER CONSIDERED:

1. Order of Conservatorship.

The Board unanimously voted that the Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board voted to close the meeting under exemptions (8), and (9)(B). The Director, Department of Legal Services, certified that the meeting could be closed under these exemptions.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85-7889 Filed 3-29-85; 11:56 am]

BILLING CODE 7535-01-M

3

NUCLEAR REGULATORY COMMISSION:

DATE: Weeks of April 1, 8, 15, and 22, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 1

Tuesday, April 2

2:00 p.m.
Discussion of Indian Point Order (Public Meeting).

Wednesday, April 3

9:30 a.m.
Briefing on Source Term (Public Meeting).
2:00 p.m.
Continuation of Briefing on Source Term (Public Meeting) (if needed).
3:00 p.m.
Briefing by IDCOR on Evaluation of Nuclear Power Plant Accident Risk (Public Meeting).

Thursday, April 4

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6).
2:00 p.m.
Discussion of Environmental Qualification of Electrical Equipment—Status of Compliance with Rule (Public Meeting) (postponed from March 28).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting).
a. Director's Decision on TMIA 10 CFR 2.206 Petition on GPU Nuclear's Character.
b. TMI-1—Aamodt Motion for Reconsideration and Reopening of the Record (tentative).
c. Motions to Disqualify Judge Smith in TMI-1 Restart Proceeding (tentative).

Week of April 8—Tenatative

Thursday, April 11

2:00 p.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting).
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed).

Week of April 15—Tentative

Tuesday, April 16

10:00 a.m.
Periodic Briefing on NTOLs (Open/Portion may be Closed—Ex. 5 & 7).

Friday, April 19

9:30 a.m.
Briefing on TMI-1 Steam Generator and Other Plant Matters (Public Meeting).
11:15 a.m.
Affirmation/Discussion and Vote (Public Meeting).
a. Indian Point Order (tentative).

Week of April 22—Tentative

Tuesday, April 23

10:00 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7).
11:00 a.m.
Discussion of Diablo Canyon-2 Contested Issued (Closed—Ex. 10) (tentative).
2:00 p.m.
Discussion/Possible Vote on Diablo Canyon-2 Low Power License (Public Meeting).

Thursday, April 25

2:00 p.m.
Affirmation Meeting (Public Meeting (if needed).

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

March 28, 1985.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 85-7992 Filed 3-29-85; 3:55 am]

BILLING CODE 7590-01-M

federal register

Tuesday
April 2, 1985

Part II

Environmental Protection Agency

40 CFR Part 80

Regulation of Fuels and Fuel Additives; Banking of Lead Rights; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[OAR-FRL-2805-1]

Regulation of Fuels and Fuel Additives; Banking of Lead Rights

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Agency is today taking final action to allow the banking of lead usage rights in connection with its recently promulgated regulations significantly reducing the allowable lead content of gasoline. See 50 FR 9386 (March 7, 1985). Under the banking mechanism, refiners who use less lead in gasoline in certain calendar quarters than is allowed under the regulations will be allowed to use additional lead in gasoline in certain future quarters in an amount equal to the lead previously not used. The Agency is taking this action because it believes banking will provide an efficient method of achieving reduced total lead levels in gasoline while allowing the affected industry greater flexibility in meeting the more stringent lead in gasoline standards. The banking portion of this regulation is being made effective beginning the first quarter of 1985 and continuing through the last quarter of 1985. Withdrawal and usage of banked lead rights will be allowed starting in the second quarter of 1985 and ending in the last quarter of 1987.

EFFECTIVE DATE: The final actions taken in this notice are effective March 25, 1985.

ADDRESS: Written comments and other information relevant to this rulemaking are maintained in Docket No. EN–84–05, Central Docket Section (LE–131), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The docket is located in the West Tower Lobby of EPA at the above street address, and may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying. This is the same docket as that of the revisions to the gasoline lead content regulations.

FOR FURTHER INFORMATION CONTACT: Richard G. Kozlowski, Director, Field Operations and Support Division (EN–397F), EPA, 401 M Street, SW., Washington, D.C. 20460. Telephone (202) 382–2633.

SUPPLEMENTARY INFORMATION:

I. Background

On August 2, 1984, EPA proposed to reduce the gasoline lead content standard from 1.10 grams of lead per leaded gallon (gplg) to 0.10 gplg, effective January 1, 1986. 49 FR 31032. The Agency also proposed to eliminate the inter-refinery averaging mechanism, effective January 1, 1986. This mechanism allows a refinery whose lead usage in a calendar quarter exceeds the applicable standard to average with another refinery whose lead usage is less, in order to demonstrate compliance. The Agency also indicated that it was considering a total ban on lead in gasoline by approximately 1995.

On January 4, 1985, EPA proposed a regulatory provision that would allow refiners to "bank" lead usage rights for future use in conjunction with more stringent lead content standards. 50 FR 718. Under the proposed mechanism, refiners (importers would be treated like refiners) would be allowed to bank lead usage rights during any calendar quarter in 1985 in an amount equal to that by which their lead usage during that quarter was lower than the applicable standard. Such banked lead usage rights could then be used (or transferred for use by another refiner) during any quarter from the second quarter of 1985 through the last quarter of 1987. Actual lead usage in such a quarter could exceed the applicable standard, so long as subtraction of the banked lead rights used in the quarter from the actual lead usage would result in compliance with the standard. The proposed banking mechanism was designed to provide greater flexibility to refiners in meeting the more stringent standards that the Agency expected to promulgate, resulting in significant cost savings without affecting the total reductions in lead usage that would otherwise be required during the 1985–1987 period. A public hearing was held concerning this proposal on January 15, 1985, and the comment period for written comments ended on February 19, 1985.

On March 7, 1985, the Agency promulgated an interim gasoline lead content standard of 0.50 gplg, effective July 1 to December 3, 1985, and a permanent standard of 0.10 gplg, effective January 1, 1986. 50 FR 9386. At the same time the Agency took final action to revoke the inter-refinery averaging mechanism, effective January 1, 1986. In another notice the same day, the Agency asked for public comments on new information that may support a total ban on lead in gasoline by as early as January 1, 1988. 50 FR 9400.

II. Statutory Authority

Section 211(c)(1) of the Clean Air Act, 42 U.S.C. 7545(c)(1), confers broad authority on the Administrator to "control or prohibit the manufacture . . . or sale" of any fuel or fuel additive whose emission products cause, or contribute to, "air pollution which may be reasonably anticipated to endanger the public health or welfare" or which "will impair to a significant degree the performance of any emission control device or system . . . in general use. . . ." EPA's authority to control usage of lead as an additive in gasoline under section 211(c)(1)(A) to protect public health is well-established, and prior regulations significantly curtailing lead additive usage have been upheld in court. *Ethyl Corp.* v. *EPA*, 541 F.2d 1 (D.C. Cir. (en banc)), cert. denied, 426 U.S. 941 (1976); *Small Refiner Lead Phase-Down Task Force* v. *EPA*, 705 F.2d 506 (D.C. Cir. 1983).

Section 301(a)(1) of the Clean Air Act authorizes the Administrator to prescribe such regulations as are necessary to carry out the functions of the Act.

III. Final Action

EPA is today promulgating a banking mechanism for use in 1985, 1986, and 1987 that will provide additional flexibility for refiners and importers in meeting the more stringent lead standards promulgated by the Agency on March 7, 1985.

The Agency received oral testimony at the January 15, 1985, public hearing or written comments by the February 19, 1985, close of the public comment period (or both) from 46 organizations or individuals, including refiners, environmental groups, California legislators, petroleum industry trade groups, a union representing refinery workers, an industry consulant, and an antique car owners association. The majority of these commenters supported the banking proposal, either in combination with whatever gasoline lead phasedown schedule the Agency promulgated or in conjunction with the specific schedule discussed in the banking NPRM and promulgated on March 7. These commenters generally agreed with the Agency that this mechanism would provide greater flexibility to refiners in meeting more stringent standards. Some commenters noted that banking would enable the refining industry to meet the 0.50 and 0.10 gplg standards by assisting those refineries that are deficient in octane capacity. Some refiners said promulgation of banking is mandatory if

these standards are promulgated. Some noted that banking would enable the industry to make the best use of available octane capacity. Since the last few tenths of a gram of lead added to a gallon of gasoline provide less octane boost than the first few tenths, the octane value of lead saved at a 1.10 gplg standard will be greater later when the standard is lower. Several refiners stated their belief that lead rights would be freely traded. Others noted that banking would be helpful in providing them with flexibility in the event of equipment breakdowns or other unexpected events.

One or more commenters (generally refiners) also noted that banking would have the following effects:

(1) It would permit a more efficient use of lead without increased lead usage;

(2) The value of lead rights would be stabilized (such rights are currently lost at the end of a quarter under the inter-refinery averaging mechanism);

(3) The concentration of lead in gasoline throughout a compliance period would be more consistent;

(4) It would provide small refiners a greater opportunity to compete in the marketplace; and

(5) It would result in cost savings for refiners and benefits for consumers.

The Agency agrees that the major benefits identified by commenters will result from a banking mechanism. In particular, EPA believes that this mechanism will significantly assist those refiners whose equipment may need to be upgraded to meet the 0.10 gplg standard by allowing them to use banked lead usage rights while such equipment is being constructed. It will also assist all refiners by providing additional flexibility in planning for, and meeting, gasoline lead content standards during the 1985–7 period and in meeting unexpected problems (e.g., equipment breakdowns).

Because the savings from using extra lead under a 0.10 gplg standard are greater than the cost of reducing lead usage by the same amount under a 1.10 or 0.50 gplg standard, the Agency also anticipates that refiners will realize significant savings from banking. In the final regulatory impact analysis (RIA) that accompanied the final regulations promulgated on March 7, 1985, the Agency estimated the amount of such savings. Assuming that banking begins in the first quarter of 1985, the Agency estimates that about 9.1 billion grams would be banked and that such banking would save refiners approximately $226 million. A further discussion of these estimates is contained in Chapter II of that final RIA. As discussed more fully in Part IV of this notice, the Agency does not expect that these regulations will have a significant adverse impact, if any, on the public health or the environment.

Responses to coments that opposed the banking mechanism or that recommended revisions thereto are discussed in Part IV of this notice. The following is an explanation of the provisions of the regulation promulgated today.

The banking mechanism promulgated today allows a refiner or importer to bank lead usage rights during any calendar quarter of 1985 in an amount equal to the difference between the number of grams of lead allowed to be used under the applicable standard and the number of grams of lead actually used in the calendar quarter (or the number of grams constructively used in the quarter, if the inter-refinery averaging provisions of 40 CFR 80.20(d) are utilized during the quarter). As proposed, no lead usage rights may be banked for actual lead usage during this period of less than 0.10 gplg, so that production of leaded gasoline containing less than that amount of lead will not be encouraged. For example, assume that during the second quarter of 1985 a refinery produced 100,000 gallons of leaded gasoline with an average lead content of 0.60 gplg. Since the standard in that quarter is 1.10 gplg, the refinery could legally have used 110,000 grams of lead in its leaded gasoline during that period (100,000 gallons × 1.10 gplg). Because its actual lead usage was only 60,000 grams (100,000 gallons × 0.60 gplg), it can bank 50,000 grams of lead usage rights. If, pursuant to the inter-refinery averaging provisions, the refinery received a constructive allocation of 10,000 grams of lead usage from another refinery during this quarter (i.e., sold lead rights to another refinery), its constructive lead usage of 70,000 grams (60,000 actual plus 10,000 allocated) would be subtracted from the allowable lead usage of 110,000 grams to result in 40,000 grams of bankable lead usage rights.

Banked lead usage rights may be withdrawn and used during any calendar quarter from the second quarter of 1985 through the last quarter of 1987. As explained in Part IV of this notice, the Agency will not allow the use of banked lead usage rights beyond the latter date. Such rights may be used by the refinery at which they were banked, or they may be transferred to another refinery for its use. The Agency expects that "banked" lead usage rights will be freely transferred (i.e., bought and sold) in the same manner that inter-refinery averaging now takes place. A refinery will be in compliance with the regulations if its actual lead usage (or its constructive lead usage during 1985, if inter-refinery averaging is used) during a calendar quarter minus the amount of withdrawn lead usage rights used during the quarter, divided by its leaded gasoline production during the quarter, does not exceed the applicable standard in that quarter. For example, assume that during the second quarter of 1986 a refinery produces 200,000 gallons of leaded gasoline with an average lead content of 0.30 gplg (or a total lead usage of 60,000 grams). Since under the applicable standard of 0.10 gplg only 20,000 grams of lead may legally be used in that amount of leaded gasoline (200,000 gallons × 0.10 gplg), the refiner would have to use 40,000 grams of banked lead usage rights (60,000 − 20,000) to demonstrate compliance with the standard. Such rights could be withdrawn from the refinery's lead rights "bank" or transferred from that of another refinery.

The regulations contain additional reporting requirements necessary to track and verify the banking, withdrawal, transfer, and use of lead usage rights. In response to public comments and to better allow monitoring of banking transactions, these requirements have been somewhat modified from those proposed, as discussed below and in Part IV of this notice. A refinery for which the banking mechanism is utilized will be considered to have a lead usage rights "bank account." Lead usage rights will be considered "banked" or "deposited" in this account when either: (1) Lead usage (in a calendar quarter in which banking is permitted) is lower than that allowed by the applicable standard and the amount of lead usage rights banked during that quarter is reported to EPA; or (2) lead usage rights are transferred from the account of another refinery to that of the "banking" refinery. Lead usage rights will be considered "withdrawn" from a refinery's bank account when either: (1) They are used to demonstrate compliance by that refinery with the applicable standard for a quarter and such use is reported to EPA; or (2) they are transferred to the account of another refinery. An importer will be considered to have one lead usage rights bank account for all of its importation activities. Refiners and importers will be required to report all transactions involving the lead usage rights banking accounts of their refineries and importation activities during a calendar quarter, including the banking, withdrawal, use and transfer of lead usage rights. In addition, they must

report the "balance" of their account as of the beginning and end of each quarter.

The regulations also contain other provisions comparable to those contained in the inter-refinery averaging regulations, including provisions restricting the banking or use of lead usage rights where a state gasoline lead content standard is in effect under section 211(c)(4) of the Clean Air Act. The restriction on banking, which has been made more explicit to avoid any potential confusion, will allow California refiners to bank lead usage rights only up to the California standard of 0.80 gplg in the first two quarters of 1985, instead of the federal 1.10 gplg standard. The Agency's responses to comments on this issue are set forth in Part IV of this notice.

In addition, an agreement for the transfer of lead usage rights between the accounts of different refineries or importers would have to be made by the end of the calendar quarter in which the rights are used to demonstrate compliance with a standard. The regulations would permit banking or "saving" of unused lead for future quarters. They would not permit "borrowing" of lead to be paid back in future quarters. Thus the average lead content of gasoline produced at a refinery must be in compliance with the applicable standard in each quarter, after taking into account transactions permitted under the inter-refinery averaging and banking mechanisms. There are no other limitations on transfers of banked lead usage rights, so long as all transfers during a calendar quarter are properly reported to EPA (with supporting documentation as required by the regulations). Lead usage rights may be used only once, of course.

IV. Responses to Significant Comments

(1) *Comment:* Several commenters (California refiners and a union) opposed the proposal because it would limit the amount of lead rights that can be banked to the difference between any applicable state gasoline lead content standard (if lower than the federal standard) and the lead usage of the refiner or importer. California currently has a standard of 0.80 gplg. A number of other commenters (including other California and non-California refiners, California Congressmen and state legislators, and petroleum industry trade groups) also opposed this restriction, but not the proposal as a whole. Commenters argued that such a restriction would be discriminatory and inequitable toward California refiners and importers, and would place them at a competitive disadvantage to those located elsewhere. The restriction was viewed by some as a penalty for California's environmental leadership. It was also argued that it would be just as difficult and costly (and would take as much time) for refiners in that State to go from 0.80 gplg to 0.10 gplg as it would be for others to go from 1.10 gplg to 0.10 gplg, and therefore the same amount of flexibility would be needed. One commenter said that removal of this restriction would allow 8% more lead rights to be banked in 1985 and 4 million fewer barrels of crude oil imported, as well as lower the risk of gasoline shortages in the summer of 1986. Several commenters noted that the restriction would allow California refiners who could reduce lead use to 0.50 gplg in the first half of 1985 to bank only 50% of what other refiners could bank (0.3 gplg instead of 0.6 gplg). Some commenters also argued that the restriction would place a serious burden on California refiners competing in interstate commerce, and may be a violation of the Commerce Clause of the U.S. Constitution. The same commenters stated that irreparable harm could result to California refiners (both major and small) and the entire West Coast gasoline market. One refiner who opposed the restriction noted that although total lead use would increase (if the restriction were removed) compared to a 0.10 gplg standard in January 1986, it would be less than under the alternative phasedown schedule listed as an example in the August 2, 1984, notice of proposed rulemaking. A non-California refiner stated that banking of the 0.30 gplg difference between the federal and state standards should be allowed only if the ultimate lead usage is confined to California. A trade group claimed that EPA's analyses of lead usage did not take into account the more stringent California standard. A California refiner argued that there was not the same justification for the California restriction in the banking mechanism as there had been for a similar provision in the current inter-refinery averaging mechanism (i.e., to prevent greater lead usage outside California), since lead rights banked by California refiners would be used in their own refineries. Another California refiner stated that the California standard places a cap of 0.80 gplg on each gallon and that banking would not cause this to be exceeded. Further, a uniform banking rule would be easier to enforce and would not provide an incentive to "transport leaded gasoline production activities for banking purposes."

Response: The Agency is retaining the restriction on banking by California refineries. This restriction is intended to assure that the banking mechanism per se does not result in increased lead usage. If this restriction were dropped, the Agency estimates that national lead usage would increase by about 600 metric tons, or 4% of total national lead usage, during the 1986–1987 period. This extra lead usage would not be confined to California, since lead usage rights will be fully transferrable throughout the country. In monetary terms (excluding any blood pressure-related benefits), deletion of the proposed California restriction would result in a net loss of $15 million since it would reduce national monetized benefits (including health benefits) by about $20 million at a savings to California refiners of about $5 million. In addition, allowing California refineries to bank lead usage rights above the California standard of 0.80 gplg would result in a windfall financial gain because they would be granted credit for reductions already required by State regulations.

In light of these adverse impacts, the Agency does not find the above comments persuasive. Any potential competitive disadvantage is outweighed by such impacts. In terms of flexibility, the Agency notes that, even with the California restriction, refineries in that State will have significantly more flexibility than they would in the absence of banking. The Agency does not believe that such a restriction will place a serious burden on State refineries competing in interstate commerce nor cause irreparable harm to them or the West Coast gasoline market. Obviously such a restriction does not violate the Commerce Clause of the Constitution, since this provision merely authorizes the federal government to regulate interstate commerce and does not prohibit restrictions of this type.

Contrary to one of the comments, the rationale for the restriction on banking and use of lead usage rights is the same as that for the inter-refinery averaging portion of the current gasoline lead content regulations: to assure that the mechanism does not result in additional lead usage. As noted above, there is no guarantee that banked lead usage rights will be used in California and so the increase in lead usage that would result from not promulgating such a restriction is a national, not just a California, problem. The Agency does not believe that the existence of a California "per gallon" cap is relevant, since the concern is not actual violations of the 0.80 gplg standard. The Agency has not experienced any difficulties in enforcing

the current restriction in the inter-refinery averaging mechanism, and does not expect any in regard to banking.

If the State changes its standard to allow more lead usage, California refiners will of course be able to bank up to that level (so long as it is not higher than the federal standard) starting in the quarter in which the new State standard takes effect.

(2) *Comment:* Three refiners (including two who own refineries in California) supported the proposed California restriction. They argued that it is consistent with EPA's intent to reduce overall lead usage, and that removal would result in a financial windfall for California refiners and importers. One refiner argued that the primary purpose of banking is to help industry adjust to a faster phasedown than anticipated, and that California refiners have had time to plan for a 0.80 gplg standard and no time for that adjustment is needed. Another noted that the current inter-refinery averaging provisions do not allow California refiners to generate lead rights up to the federal standard.

Response: The Agency generally agrees with these comments, and as explained in the Response to Comment (1), above, is promulgating this restriction.

(3) *Comment:* Several commenters (including refiners, an environmental group, and a union) opposed the proposal on the basis that refiners and importers would maximize banked lead rights by increasing leaded gasoline production in 1985, and thus there would be greater lead use than would otherwise occur during the period in which the banking mechanism is in place. Other related adverse consequences were predicted by one or more of these commenters, including: (1) A widening of the price differential between leaded and unleaded gasoline in 1985, increasing the amount of misfueling in that year; (2) a decrease in production of unleaded gasoline in 1985, as higher octane blending components are used to produce "low-lead" leaded gasoline, with possible shortages and supply disruptions cited by some commenters. An environmental group recommended that if banking were adopted, EPA restrict the volume of gasoline on which lead rights could be earned to a refiner's (or importer's) reported 1984 leaded gasoline production scaled down to take into account the projected decline in 1985 of demand for this product. One refiner noted that the proposal itself has already resulted in many of these adverse impacts, including diversion of higher octane unleaded components to the leaded pool and increased demand for, and price of, high octane blending components (e.g., toluene), as well as higher costs to refiners that will be passed on to consumers.

Response: EPA agrees that the banking rule may generate some additional production of leaded gasoline during 1985, but believes that any net increase will be small, for two reasons. First, it is likely that even in the absence of banking, refiners would increase their production of leaded gasoline shortly before a tighter new standard takes effect, because lower costs under the less stringent standard would justify the storage costs. For example, even without banking, some refiners might find it profitable to produce extra leaded gasoline in late 1985 (at 0.50 gplg) for sale in early 1986.

Second, if refiners increase production of leaded gasoline beyond what they would have produced in the absence of banking, they will have to either store the excess production for later sale or lower the price to induce higher sales. Either action is self-limiting, as the first raises costs (due to additional handling and the time value of money) and the second lowers revenues per gallon.

Based on both of these considerations, the Agency does not expect the banking rule to significantly increase leaded gasoline production. As a result, it does not believe that banking will have a significant impact on total lead usage, misfueling, or the production of unleaded gasoline.

Moreover, any limit on lead usage rights based on historic production would be extremely difficult to draft and enforce, and may create more problems than it solves. Designing a lead usage rights cap is made particularly difficult because both inter-refinery averaging and banking will be in effect in 1985. For example, a refiner that desired to bank more lead usage rights than its cap allowed might transfer these excess rights to another refiner under the inter-refinery averaging provisions in 1985. The second refiner could bank these rights (assuming it did not exceed its own cap) and return them to the first refiner in 1986 or 1987. These actions would circumvent the intent of a cap. While some complex rules could be developed to prevent such a circumvention, EPA believes that the small possibility of a significant increase in lead usage does not warrant more complexity in the banking mechanism.

(4) *Comment:* Several refiners who opposed the proposal (as well as some who supported it) argued that few banked leaded rights would be sold or traded. They argued that those who could bank would be likely to save the banked rights for use in the case of equipment breakdowns and upsets, fires, and other events that could result in extra lead usage. One refiner said it would use all lead rights it banked, and that most other refiners would do so also. Another refiner said lead rights would also be saved to offset highly leaded imports. Others claimed that what lead rights would be available for sale would likely be at very high prices—one commenter noted that the price of lead rights currently has jumped dramatically to 3 cents/gram, and that one major refiner had pegged the "breakeven" price for a banked lead right at 7 cents/gram. Another refiner noted that those who need lead rights could be faced with trying to buy lead rights from competitors.

Response: As noted in Part III of this notice, several other refiners stated their belief that banked lead rights will be freely traded. The Agency agrees and believes that enough trading will take place to significantly aid those refiners who may need to add additional processing equipment to meet more stringent standards. While it can be expected that some banked lead rights will be saved for emergencies and other events that could result in extra lead usage, the Agency believes that the majority of such rights will be used or sold for the general purpose of meeting the 0.10 gplg standard. The Agency has not made predictions concerning the price at which lead rights will be sold, but anticipates that it will be lower than the cost of complying with the applicable standard by other means (e.g., purchasing new equipment). Because potential bankers include hundreds of refiners and importers throughout the country, it is unlikely that a direct competitor will be the sole seller available to a refiner. Finally, the Agency notes that while a great deal of skepticism was expressed in 1982 as to whether lead rights would be traded under the inter-refinery averaging mechanism promulgated at that time, in actual practice such rights have been heavily traded (e.g., 13.8% of all lead usage in the third quarter of 1984 was traded).

(5) *Comment:* Several smaller-sized refiners opposed the proposal because they believe it would adversely affect small refiners who currently rely on the inter-refinery averaging mechanism to demonstrate compliance with the 1.10 gplg standard. One refiner also opposed elimination of the inter-refinery averaging mechanism after 1985, arguing that this mechanism has benefited all refiners through requiring the use of lead rights by the end of a calendar quarter. Banking would allow such rights to have

value beyond the end of a quarter, and major refiners would have no incentive to sell them during the quarter generated. Since lead rights would no longer be available, those who now relied on such rights to comply with the standard would no longer be able to produce leaded gasoline (and, if unable to produce unleaded, would be driven out of business). Another refiner noted that banking would restrict the sale of lead rights at a time when it would most need them, i.e., under a 0.50 gplg standard. The same refiner claimed that those rights that could be bought would be "extraordinarily expensive" (see Comment (4), above). A third refiner strongly objected to banking on the grounds that it would impose significant costs on small refiners while enabling large refiners to reap an economic windfall. The same refiner claimed that even if a small refiner could make modifications needed to meet stringent standards, banking would threaten its vaibility by preventing it from obtaining lead rights that would otherwise be available to deal with emergencies, thus causing the refinery to shut down. This commenter viewed the combination of a strict phasedown schedule and the effect of banking in severely restricting the ability to purchase lead rights as regulatory actions designed to hurt small refiners the most.

Response: The Agency took final action to eliminate the inter-refinery averaging mechanism in its March 7, 1985, NFRM, effective on January 1, 1986. As explained more fully in Part II.D of that notice and in Part IV of the accompanying "Responses to Comments" document, EPA believed it prudent to take that action in order to assure that engines originally designed to run on leaded gasoline will receive approximately 0.10 gram of lead in each gallon of gasoline to minimize the risk of valve-seat recession. The Agency recognizes that promulgation of a banking mechanism may have the effect in 1985 (while the inter-refinery averaging mechanism is still available) of making lead rights more expensive and/or more difficult to obtain. However, the Agency believes that the flexibility and cost savings ($226 million) that banking will provide refiners in the 1985–1987 period, particularly small refiners and others who might otherwise find it difficult to comply with a 0.10 gplg standard in 1986 and 1987, more than offset any short-term disadvantages. The Agency also notes that banking is not intended to provide a permanent solution to those refiners who are unable to produce gasoline under the more stringent standards. As discussed in Chapter IX of the "Responses to Comments" document that accompanied the March 7, 1985, NFRM, EPA recognizes that some individual companies may not remain in the gasoline production business. Those who cannot remain in this business with the additional flexibility provided by banking will definitely not be able to do so without the assistance of this mechanism. The Agency also notes that, without banking, refiners (including small refiners) would not have as much flexibility starting in 1986 to deal with emergencies.

(6) *Comment:* Several commenters (refiners and a union) opposed the proposal because they claimed it discriminates in favor of importers and against refiners, and could lead to refinery closings. One refiner argued that refiners have a finite ability to generate lead rights, while importers don't have to invest in equipment and can generate virtually unlimited lead rights by importing more gasoline in 1985. The same commenter predicted that U.S. refining capacity would be exported overseas and many U.S. refiners would close in 1986 (assuming a refiner could only meet a 0.50 gplg standard and that lead rights trading would not take place, the commenter predicted that a California refiner would shut down on May 15, 1986, and one located elsewhere on October 1, 1986). It also claimed the balance of payments deficit would increase and the U.S. would be more dependent on foreign finished products. Another refiner who opposed the proposal argued that importers could have an unfair advantage through cheating (i.e., underreporting lead content and generating more lead rights).

In addition to those commenters opposing banking on these bases, a number of commenters who generally supported the proposal called for the exclusion of importers from those allowed to bank lead rights. Many also called for the exclusion of blenders. These commenters cited many of the arguments listed above. Many also noted that these entities do not need to install additional processing equipment or make capital investments to meet more stringent standards, and thus don't need the flexibility that banking is intended to provide. One refiner noted that blended and imported gasoline sold out of bulk plants and deep water terminals doesn't have the quality assurance provided by pipeline fungibility tests. Because it believed this creates a greater opportunity for illegality, EPA needs to strengthen its enforcement concerning imports. Others echoed this call for more enforcement, some noting that the Agency should work more closely with other government agencies (e.g., Customs) in this effort. Another refiner noted that importers have the option of marketing leaded gasoline in other countries, and thus do not need banking. Another refiner argued that exploration of subquality gasoline to the U.S. may be encouraged, although why this would result was not explained. Another refiner argued that importers could flood the market with low-lead leaded gasoline just prior to the effective dates of tougher standards to earn lead rights.

Another refiner filed extensive comments on this issue. In addition to citing some of the reasons for exclusion discussed above, this commenter argued: (1) Imports of leaded blending components are growing rapidly, as are the number of importers and blenders; (2) if these entities can bank, there will be more competition for lead rights and some domestic refiners may suffer; (3) banking by these entities will result in more lead in the environment, citing a New York City survey indicating a relationship between imports and mislabeling; (4) imported leaded gasoline is generally priced below domestic, and thus more likely to be used as a loss leader and encourage misfueling; (5) importers will be able to bring in even more leaded gasoline at lower prices in 1985 due to foreign government subsidies or because it is a "byproduct," while domestic refiners can only generate lead rights by producing lower lead content gasoline at a higher price.

Response: The Agency does not agree that the banking mechanism favors importers to the detriment of refiners. The additional flexibility provided by the banking proposal can be useful to both, and it is unclear how the banking proposal in and of itself can cause refinery closings. While it is true that importers do not require additional equipment, foreign refiners that supply importers would need such equipment to produce gasoline under more stringent standards. Moreover, any refiner who would close because it could not afford to purchase lead usage rights (whose price should reflect industry average costs) clearly could not afford to comply in the long run anyway, since nothing is likely to bring its costs below the average cost to the industry.

The comment on refinery closings implies that the industry does not have the capability to meet the 0.10 gplg standard. EPA extensively analyzed the ability of the industry to meet the 0.10

gplg standard on January 1, 1986, and found that it could, under all but the most pessimistic assumptions. For a more detailed discussion of EPA's analyses, see Part I.A of the "Responses to Comments" document and the final RIA.

The possibility of abuse exists here as it does in every regulatory action. However, it would be unfair to say that "cheating" will be limited to importers and blenders, or that banking will induce more "cheating" by these groups than by others. The Agency is aware of the potential for abuse and fully intends to monitor the banking mechanism closely and to enforce against any abusers. EPA has already taken steps to work with other government agencies to ensure compliance.

The comment that importers will flood the market to earn lead usage rights is at odds with the comment that there will be more competition for lead rights. If in fact importers have the ability to earn unlimited lead usage rights, it seems logical to assume that those rights will be sold, thereby offering a large pool of banked lead usage rights that can be used by those refiners who are unable to produce leaded gasoline at the 0.10 gplg standard in the short run. In any case, the claim that importers will flood the market is purely speculative and not supported by any concrete information.

Finally, with regard to the general comment that importers and blenders should be excluded from the banking lead rights, such exclusion may violate obligations of the United States under the General Agreement on Tariffs and Trade (GATT). Pursuant to GATT, the U.S. has agreed that regulations, taxes and other requirements affecting the internal sale of products should not be applied to imported or domestic products so as to afford protection to domestic production. Further, the supplementary Tokyo Round of Multilateral Trade Negotiations (MTN) Agreement on Technical Barriers to trade, codified in the Trade Agreement Act of 1979, prohibits a federal agency from engaging in standard-related activities that create unnecessary obstacles to foreign commerce with the United States. Thus, importers should remain on the same footing as domestic refiners.

(7) *Comment:* One refiner who opposed the proposal argued that it would not result in savings, saying the alternatives to lead not used in 1985 are more expensive. The result will be increased costs "to buy time to operate a little longer in the future."

Response: The commenter did not provide any analyses or specific cost estimates in support of its comment. The Agency has prepared such cost estimates, which indicate that banking will result in significant cost savings over the 1985–1987 period. Assuming that banking begins in the first quarter of 1985, as promulgated today, EPA estimates that approximately 9.1 billion grams of lead rights will be banked in 1985, resulting in savings of about $226 million over the 1985–1987 period. While refiners who choose to bank lead rights will have greater costs during the "banking" period than they otherwise would, these costs will be more than offset by savings during the "withdrawal" period because of the greater octane value of lead at lower levels. A detailed discussion of EPA's analysis is contained in Chapter II.E of the final RIA that accompanied the March 7, 1985, final rulemaking.

(8) *Comment:* Several commenters (both those who opposed and supported the proposal) argued that it provides the most benefits to those who need it the least, large refiners with the ability to reduce lead usage in 1985 to generate lead rights. Conversely, those who need flexibility the most to meet more stringent standards will be those least able to reduce lead usage in 1985 and generate lead rights. One refiner argued that banking in combination with standards that a majority of refiners can't meet will create enormous advantages for those few refiners who overbuilt their downstream refining capacity (i.e., by allowing them to increase their market share while others add new equipment and, through use of banked rights, to sell gasoline with a higher lead content than 0.10 gplg until 1988). Another said banking would generate "windfall" profits for those few who can make 100% unleaded gasoline, while it is doubtful those who can't make gasoline without lead would stay in business and that few, if any, of these would be saved by banking.

Response: This comment assumes that only those refiners that can generate lead rights can reap the benefits of this proposal, which is not the case. The Agency expects that "banked" lead rights will be freely transferred between refiners and importers. Thus, a refiner who can produce at the lower lead level can sell the unused lead rights to a refiner whose costs of meeting the applicable standard are higher. In such transactions, both buyers and sellers benefit. The seller benefits because the revenues from the sale of the rights exceed the cost of producing them (by using less lead). The buyer benefits because the cost of buying the rights is lower than the savings from being able to use more lead. If both parties do not benefit, the transaction will not occur because it is purely voluntary and neither is compelled to participate. Thus EPA believes that banking will lower net costs for refiners with both above and below-average costs of producing octane. There is no reason to believe that any class of refiners will be disadvantaged by the Agency's adoption of a mechanism that allows refiners to spread out their lead usage through the banking and use of lead rights.

EPA also acknowledges, however, that while banking will reduce overall costs and will increase the flexibility of individual refineries in meeting the new standards, some poorly equipped refineries are still likely to find themselves unable to compete at law lead levels, and may cease producing gasoline even with the availability of banking.

(9) *Comment:* A refiner and an environmental group that opposed the proposal claimed that it is inconsistent with the Agency's goal of reducing lead usage to the maximum extent possible. If industry can meet a more stringent standard in 1985 than those promulgated, that should be the standard.

Response: The Agency has promulgated stringent but feasible standards, an interim standard of 0.50 gplg during the last half of 1985 and a permanent standard of 0.10 gplg starting in January 1986. In addition, EPA has requested public comments on whether a total ban on lead in gasoline should be promulgated as early as January 1988. These actions demonstrate the Agency's commitment to reducing lead usage as quickly and as much as feasible. The banking mechanism is consistent with this goal, and it will further it by providing incentives to refiners to reduce lead usage earlier (i.e., in 1985) than they otherwise would. While some refiners can and will reduce lead usage earlier, that does not mean that the industry as a whole could.

(10) *Comment:* A small refiner who opposed the proposal argued that banking thwarts the purpose of lowering the gasoline lead standard by allowing major refiners with banked lead rights to "overlead" in later years or to import "extremely" leaded gasoline. The commenter also noted that banking may have adverse regional impacts in areas where gasoline can be imported. An environmental group that also opposed the proposal argued that it could add to the production of gasoline with extremely high lead contents and to geographical lead hot spots, which could result in further exposure of already high risk groups. Arguing that the proposal fails to take into account future

declines in leaded gasoline demand, the same group argued that the average lead content of leaded gasoline would be even higher in the future as the result of banking than it otherwise would be, frustrating anti-misfueling efforts and reducing the benefits of lead phasedown. This group recommended that EPA promulgate a maximum lead content for each gallon of leaded gasoline (e.g., 1.10 gplg).

Response: Analysis done by EPA in connection with the final rule promulgated on March 7, 1985, indicates that there are probably no significant geographical differences in the value and uses of lead. Therefore, geographic distributions of lead concentrations in gasoline are likely to be very similar regardless of whether banking is or is not permitted. At the average levels of lead usage anticipated with banking in 1985 (about 0.60 gplg), the likelihood of a severe hot spot is remote. This level is about half the currently permissible level of 1.10 gplg, so even an unexpected hot spot is unlikely to exceed current levels. Such a hot spot is even less likely in 1986 and 1987.

As to the suggestion that a maximum lead content per gallon standard be adopted, the Agency considered such a standard during its first lead phasedown rulemaking in 1973. At that time, refiners argued that a per gallon standard was unduly restrictive in the production of leaded gasoline since the quantity of lead to be added to a specific blend of gasoline varied with the quality of the blending stocks and their susceptibility to octane boosts from lead additives. With the 0.10 gplg and 0.50 gplg standards, refiner flexibility in producing leaded gasoline is still important. Moreover, with such low standards, it is unlikely that large deviations from a fairly uniform level will occur. For these reasons, the Agency sees no compelling reason to establish a per gallon maximum standard.

(11) *Comment:* An environmental group opposed the proposal partially on the basis that banking is unnecessary for an accelerated lead phasedown schedule, based on EPA's own analysis showing the industry capable of meeting tight standards without this mechanism. This group also argued that inter-refinery averaging provides enough flexibility for refiners who need it.

Response: This commenter fails to differentiate between the ability of the industry as a whole to meet standards and that of individual refiners to do so. As discussed more fully in Part II.A of the March 7, 1985, NFRM and in the accompanying final RIA, EPA agrees that the industry as a whole is capable of meeting the 0.50 and 0.10 gplg standards without the banking mechanism, except in the extremely unlikely event of a number of pessimistic conditions occurring at the same time. The banking mechanism is intended to alleviate or eliminate any problems that individual refiners might have in meeting these standards, as well as alleviate any feasibility problems that the industry as a whole might have in even the most extreme cases. The Agency also notes that the inter-refinery averaging mechanism will not be available to provide flexibility in 1986 and 1987, for the reasons discussed in the Response to Comment (5), above.

(12) *Comment:* Many refiners and trade groups argued that banking is not an adequate substitute for a less rapid phasedown schedule than those proposed or promulgated by EPA. While most of these commenters agreed that banking would provide greater flexibility, it would not be enough to allow refiners to meet an accelerated phasedown schedule. Some refiners noted the schedule that they could meet or referred to earlier comments on this issue, and noted problems with more rapid schedules (e.g., lower gasoline production, supply problems, reduced gasoline quality, increased use of alcohols, increased finished product imports). One small refiner who opposed the proposal called banking a "sham" designed to justify adoption of the most restrictive schedule suggested in the August 2, 1984, NPRM. Another noted that banking doesn't create lead reduction capability and therefore is no help if a refiner can't reduce lead content below the level of the standard.

Response: EPA did not propose the banking of lead usage rights as a substitute for other regulatory action. Instead, the Agency proposed the banking mechanism to provide additional flexibility for refiners and importers in conjunction with reductions in the total lead levels in gasoline.

Part II.A of the March 7, 1985, NFRM sets forth the Agency's reasoning for adopting the 0.50 gplg and 0.10 gplg standards effective on July 1, 1985, and January 1, 1986, respectively, noting that EPA was not persuaded by those who said this "accelerated" schedule was infeasible. In addition, the "Responses to Comments" document and the final RIA that accompanied that NFRM contained the Agency's analysis of, and responses to, the problems that these commenters believed would occur under a rapid phasedown schedule.

Finally, the Agency agrees with the comment that banking does not create lead reduction capability; it was not meant to do so. However, the refiner who cannot reduce the lead content of the gasoline it produces may still be able to meet the applicable standard by purchasing lead usage rights, and thus obtaining the benefits that banking was meant to achieve.

(13) *Comment:* A lead manufacturer argued that banking and an accelerated phasedown schedule of 0.50 gplg on July 1, 1985, and 0.10 gplg on January 1, 1986, are "unwarranted and unnecessary" in light of data showing significant reductions in lead usage and leaded gasoline market share in 1984. This commenter predicted that lead usage would be below EPA's 1982 goal by mid-1986 or early 1989 without additional regulations, and that it makes little sense to lower the standard and upset the availability of leaded gasoline for the remaining vehicles that need it. In addition, as the unleaded market share increases, the price differential between leaded and unleaded gasoline will narrow, negating a major incentive for fuel switching.

Response: This comment is not reallly directed at the banking proposal. In any case, the August 2, 1984 NPRM extensively reviewed the need for further regulation of lead, as well as estimates of current lead usage. The total gasoline demand during 1983 was found to exceed the 1982 projections by 10.4 percent. Moreover, the total demand for leaded gasoline failed to decline as quickly as the Agency expected. Although it may be true that natural attrition could eventually eliminate lead usage, it would take too long, thus unnecessarily exacerbating the health effects from exposure to gasoline lead in the environment.

EPA reevaluated its estimate of total lead usage for the period 1985–94 in Part III.A of the March 7, 1985 NFRM. As stated there, even if the 0.10 gplg standard and the 0.50 gplg interim standard only reduce the amount of lead in leaded gasoline without affecting leaded gasoline demand or eliminating fuel switching, lead usage would be reduced more than 80 percent from what if would be if the current standard was not changed.

Further, the Agency agrees that attrition could also eventually take care of the fuel switching problem, as this commenter suggests. However, any use of leaded gasoline, whether by a legitimate user or by a misfueler, poses a serious threat to the health and environment of the nation. Thus, the Agency believes it is justified in the actions taken.

(14) *Comment:* A small refiner opposed banking in conjunction with a 0.50 gplg interim standard on July 1,

1985, because this would severely penalize it even though it had made good faith efforts to comply with a 0.10 gplg standard and could do so by January 1, 1986. If such an interim standard is adopted, there should be an exemption for refiners who have made a good faith effort to meet the strict final standard. A large refiner also opposed adding a 0.50 gplg interim standard, saying that industry would not be able to generate enough lead rights to make banking effective unless a 1.10 gplg standard is applicable throughout 1985. This commenter stated that industry would not be able to meet both dates. Two other refiners and three petroleum industry trade associations also recommended a 1.10 gplg standard for all of 1985 in conjunction with banking. One large refiner predicted that with a 0.50 gplg standard in the second half of 1985, refiners could bank enough lead rights to last through the first 6–9 months of 1986, not enough time to construct new facilities and get permits for them. Another refiner predicted that once the 0.50 gplg standard goes into effect, many refiners won't be able to bank and some will start withdrawing banked lead rights. Several trade associations said banking in conjunction with a 1.10 gplg standard in 1985 would ease the transition to a 0.10 gplg standard in 1986. One refiner supported a 0.80 gplg standard for the last half of 1985 in conjunction with banking, in order to generate additional needed lead rights.

Response: Part II.A.2 of the March 7, 1985, NFRM states the rationale for the Agency's adoption of a 0.50 gplg standard for the last half of 1985. In addition, the accompanying "Responses to Comments" document contains detailed responses to comments opposing an interim 1985 standard. Allowing the banking of lead usage rights up to a 1.10 gplg standard during the last half of 1985 would be completely inconsistent with the adoption of a 0.50 gplg standard for that period. While the Agency does not expect as many lead usage rights to be banked under a 0.50 gplg standard as will be banked under a 1.10 gplg standard, it believes that the total amount of lead rights banked in 1985 will be adequate to provide significant flexibility and cost savings to the industry through 1987. Because the Agency believes that the industry as a whole is capable of meeting a 0.50 gplg standard in July 1985 and that banking will alleviate compliance problems of individual refiners, an exemption process is not needed.

(15) *Comment:* A union representing refinery workers opposed banking because it "doesn't meet the criteria that this Administration supposedly supports, and that is a reduction of government programs, not the creation of new ones." This commenter said that the Administration is supposed to be a friend of the business community and to oppose government programs that will shut business down or hurt them financially (citing a study estimating that new phasedown regulations will shut down ⅓ of U.S. refiners and eliminate thousands of jobs).

Response: The banking mechanism is not a new government program, but rather an alternative means by which refiners can comply with a regulatory program first promulgated over a decade ago. Refiners are free to choose whether or not to use this mechanism, which imposes only a few additional reporting requirements on those who voluntarily choose to use it. As many commenters noted, the flexibility and cost savings provided by this mechanism will benefit the refining industry.

(16) *Comment:* Two refiners and an environmental group supported the banking proposal only in conjunction with a phasedown schedule of 0.50 gplg in July 1985 and 0.10 gplg in January 1986. Another refiner supported the proposal only in conjunction with this schedule or with a 0.10 gplg standard in January 1986. The environmental group stated that otherwise an unjustifiably lax regulatory framework would be created and "double-dipping" by refiners would be allowed (i.e., additional time to meet a 0.10 gplg standard and an extended opportunity to bank lead rights). One refiner said that banking is a short-term tool to allow refiners more time to make needed changes, and shouldn't be used by companies to escape making needed adjustments.

Response: On March 7, 1985, the Agency promulgated a phasedown schedule of 0.50 gplg starting on July 1, 1985, and 0.10 gplg starting on January 1, 1985. See 50 FR 9386.

(17) *Comment:* An antique car group supported the banking proposal only if the Agency requires retail gasoline stations to post the lead and methanol content of gasoline at the pump. This group argued that the public should have a right to know what it is buying, especially since some engines need more lead and methanol has adverse effects on certain engine components.

Response: Requiring the posting of the lead and methanol content of gasoline at service station pumps is outside the limited scope of this rulemaking. The Agency responded to a similar comment in the rulemaking action that culminated in the March 7, 1985, NFRM, noting in Part XIV of the accompanying "Responses to Comments" document that most state and local governments have the authority to regulate the labelling of gasoline and in many cases have done (or will do) so. The Agency believes at this time that action on those levels of government is more appropriate, if they believe there is a need for such labelling.

(18) *Comment:* One large refiner supported the proposal only if: (1) A 1.10 gplg standard applied throughout 1985; (2) refiners in all states could bank up to the same standard; (3) lead banks must be "fully transferable between refineries"; and (4) "drawdown of the banks" be allowed at least through the end of 1987.

Response: Issues related to the standard applicable during 1985 are discussed in the Response to Comment (14), above. Issues related to whether refiners in all states should be allowed to bank to the same standard are discussed in the Responses to Comments (1) and (2), above. Under the regulations promulgated today, there are no restrictions on the transferability of lead usage rights and such rights may be used through the end of 1987.

(19) *Comment:* Seven refiners supported extension of the period during which banked lead rights could be withdrawn and used beyond the proposed end date of December 31, 1987. Three supported a one-year extension of this period, one a four-year extension, and three did not propose a specific end date. Two other refiners said EPA should strongly consider such an extension, or that there would be some merit to it (although its use would likely be small). One refiner stated that this would reduce imports of crude oil by 1.5 million barrels, due to the relative efficiency of lead at different gplg levels. The same commenter (and others) noted that no more lead would be used, and that there may be health benefits from dropping the lower lead levels earlier. Others argued that construction of octane enhancement facilities would take longer than January 1, 1988. Another refiner noted that refiner flexibility would be increased and a longer period would be provided for farm equipment phaseout/alteration. Another refiner argued that such an extension would be more efficient alternative to maintaining large inventories of high octane components or using other costly octane enhancers (e.g., toluene, xylene, MTBE) in case of shutdowns and emergencies.

Response: The Agency believes that the period of time between now and the

end of 1987 will be adequate for the construction of any new processing equipment needed at a refinery to meet the 0.10 gplg standard. While banking should be helpful to refiners in the case of shutdowns and emergencies, its principal purpose is to provide flexibility for those individual refiners that may need additional time to construct new equipment or take additional actions to comply with the 0.10 gplg standard on a regular basis. EPA notes that nine commenters (including seven refiners) supported the proposed end date of the withdrawal period, agreeing that this would provide enough time for planning and construction of new refinery equipment.

(20) *Comment:* An environmental group argued that making the proposal "retroactive" to January 1, 1985, is arbitrary and irrational. It claimed that the only impact of a "retroactive" banking rule would be an increase in allowable lead usage in the future by the amount of lowered lead use between January 1, 1985, and the date of final rulemaking. Such a provision is entirely inconsistent with the goal of reducing lead use to protect public health.

Response: The Agency believes that it is desirable to allow the banking of lead usage rights during the first quarter of 1985 because of the limited period before the 0.10 gplg standard becomes effective. Obviously, allowing banking during the first quarter of 1985 will potentially allow the generation of a greater number of lead usage rights than if banking during this period were not allowed, since banking is easiest under a 1.10 gplg standard. This, in turn, will further EPA's purpose of allowing additional flexibility to the industry in meeting the recently-promulgated, more stringent lead content standards. The January 4, 1985, NPRM indicated the Agency's intent to make the rule applicable to this period, regardless of when final action is taken. 50 FR 519. The Agency is not persuaded by the comment that this provision should be changed, and does not believe this provision, as an important part of the banking mechanism, is inconsistent with the goal of reducing lead use.

In addition, EPA notes that three refiners specifically supported this provision. One refiner noted that there is no disadvantage to other refiners or the environment, even if only a few companies bank during this period. This commenter also stated that it began to reduce its lead usage in order to generate lead usage rights when banking was proposed, and that it would be difficult to meet the 0.50 gplg and 0.10 gplg standards without such banking. Another refiner supported this provision because of the extremely limited time available for banking, and because it believes that it would be a greater injustice not to finalize this portion of the proposal because many refiners have already committed resources to generate lead usage rights.

In any case, this rule is not "retroactive" in the legal sense since it imposes no burdens and creates no new obligations as a result of any person's past conduct.

(21) *Comment:* One refiner opposed the proposed provision that would not allow the banking of lead rights below 0.10 gplg. Instead, this commenter suggested that "leaded gasoline" be defined as having no less than 0.10 gplg. In addition, the Agency should allow the banking and sale of lead rights (to zero) by refiners who switch from making leaded to all unleaded gasoline (and such banking should be permitted beyond the end of 1985).

Response: The Agency believes that this provision is necessary to discourage the production of leaded gasoline containing less than 0.10 gplg, in order to assure that engines originally designed to run on leaded gasoline receive approximately this amount of lead in each gallon of such gasoline (an amount that was selected to minimize the risk of engine damage). This is the same rationale as that for eliminating the inter-refinery averaging mechanism when the 0.10 gplg standard goes into effect. While the commenter's recommendation would also likely have this effect, it would necessitate promulgation of a complex set of regulations to allocate lead usage rights to refiners claiming to go out of the leaded gasoline business, and is therefore less enforceable and desirable than the promulgated provision.

The Agency also notes that eight refiners supported the proposed provision. One refiner opposed the suggestion to allow credit below 0.10 gplg to encourage unleaded production, saying the regulation should be simple, straightforward, and avoid opportunities for inequities. The Agency agrees that such a regulation is desirable and that the commenter's proposed alternative is more likely to result in inequities than the provision adopted by the Agency.

(22) *Comment:* A small refiner and a union noted that the proposal has no variance procedures. Even with banking, they said, a refiner would have to be located outside California and be able to meet a 0.30 gplg standard starting on January 1, 1985 (which very few refiners can do) in order to be able to have a new facility on stream by July 1988.

Response: The Agency believes that an adequate amount of lead usage rights will be available to alleviate or eliminate any problems that individual refiners might have in meeting the 0.10 gplg standard. A refiner need not rely on lead usage rights banked at its own refinery(ies), but can also purchase such rights from other refiners. In any case, EPA believes that all refiners can have processing equipment on stream by January 1988, as discussed more fully in the Response to Comment (19), above. The Agency has considered the issue of variance procedures in conjunction with the overall gasoline lead regulatory program, and its rationale for not adopting such procedures is discussed fully in Part I.C of the "Responses to Comments" document that accompanied the March 7, 1985, NFRM.

(23) *Comment:* Three refiners recommended changes to reporting requirements. One refiner believed that the requirement for submittal of supporting documentation evidencing an agreement to transfer lead rights would be overly burdensome. Two refiners believed reporting of the quarter in which withdrawn lead rights were banked would be unnecessary. Instead, one said total accumulated lead rights should be reported each quarter, as well as amounts withdrawn when used or transferred.

Response: Supporting documentation is necessary to insure that reported transactions between different refiners have in fact taken place. Elimination of this requirement would significantly weaken EPA's ability to monitor compliance with the regulations. However, EPA has dropped the reporting requirement concerning the quarter in which withdrawn lead usage rights were banked, as well as that requiring reporting on the refinery at which such rights were banked. As explained fully in Part III of this notice, the final reporting requirements now call for submittal of information concerning transactions during a reporting period, as well as the opening and closing lead usage rights "bank account" balances.

(24) *Comment:* One industry consultant suggested several modifications to the regulations. This commenter generally supported the proposal, but believed that it would not sufficiently address the needs of smaller refiners since large refiners would be likely to retain lead rights. As a solution, EPA should extend the period for banking of lead rights through 1987 and impose penalties on refiners who retain banked lead rights for long periods of time. This commenter also submitted comments to the effect that there is no

analytical basis for a 0.10 gplg standard (from the standpoint of engine valve protection) and that instead the Agency should: (1) Adopt an interim standard of 0.50 gplg; (2) adopt a sunset provision whereby EPA must reevaluate and repropose a standard after 50% of banked lead rights have been used; and (3) in order to reduce crude oil imports, encourage automakers to warrant cars for increased use of alcohol via CAFE credits.

Response: The Agency will respond to these comments in the order raised:

A. As discussed earlier, the Agency expects that banked lead usage rights will be freely transferred, in the same manner that now occurs under the inter-refinery averaging mechanism.

B. Allowing banking of lead usage rights to continue beyond December 31, 1985, would encourage refiners to produce leaded gasoline with less than 0.10 gplg, which may increase the risk of valve damage for some engines designed for leaded gasoline. This is the same reason that inter-refinery averaging will not be permitted after December 31, 1985, and that banking of lead usage rights below 0.10 gplg is not being allowed.

C. The banking mechanism is a voluntary mechanism, and there is no requirement that lead rights be banked. As such, imposing penalties on refiners for not using or trading their lead rights is unreasonable and would limit the flexibility that this mechanism is intended to provide.

D. The basis for EPA's conclusion that a 0.10 gplg standard is adequate to protect engine valves is discussed in detail in the final RIA and the "Responses to Comments" document that accompanied the March 7, 1985 NFRM. While an interim 0.50 gplg standard has been established, this is only for a short period prior to the date that a 0.10 gplg standard takes effect.

E. With regard to the "sunset" provision suggested in this comment, there is no need for such a provision since the Agency has adopted the 0.10 gplg standard on a permanent basis starting on January 1, 1986. Such a provision would only make sense if the Agency had doubts about the feasibility of such a standard and had promulgated it only on a temporary or interim basis. The commenter submitted no rationale for why the use of 50% of banked lead usage rights should trigger a reevaluation of the standard. In addition, the Agency notes that one refiner specifically opposed this "sunset" provision on the basis that it would only prolong uncertainties associated with lead phasedown, thereby causing "unnecessary difficulties and misallocation of resources in making investments or other plans . . . ." The Agency agrees with this refiner.

F. The additional crude oil imports that the Agency predicts will result from the March 7, 1985, NFRM are relatively small. Its does not appear reasonable to amend CAFE or warranty rules solely in an attempt to reduce such imports. In any case, this recommendation is outside the limited scope of this rulemaking.

(25) *Comment:* One refiner recommended that "all unused lead usage rights be banked until the 0.1 gplg standard is in place."

Response: The Agency believes it more appropriate to also allow the use of banked lead usage rights under a 0.50 gplg or even a 1.10 gplg standard, and thus the final regulations allow withdrawal and use of lead usage rights in the second, third, or fourth quarters of 1985. Although it is likely that most banked lead usage rights will be used in 1986 and 1987, allowing their use in 1985 will provide greater flexibility to those that may need it earlier.

(26) *Comment:* One small refiner said that since banking would in effect eliminate the current mechanism of transferring lead rights and would therefore directly impact small refiners (see Comment (5)), a regulatory flexibility analysis (RFA) must be prepared. Another small refiner said that EPA must carefully analyze the economic impact of the proposal on small refiners before taking final action.

Response: The Response to Comment (5), above, discusses the Agency's analysis of the impact of the banking mechanism on small refiners. In summary, while banking may have some indirect, short-term, adverse impacts on such refiners, the Agency believes that the benefits of this mechanism during the 1985–1987 period for small refiners will far outweigh any such adverse impacts. In addition, the Agency notes that comments about adverse impacts on small refiners were submitted by only a few of the 46 organizations and individuals that submitted timely comments on the proposed rule. On this basis, the Agency does not believe that a substantial number of small refiners will be adversely affected by the banking rule even in the near-term. Therefore, the Agency has concluded that the banking rule will not have a significant adverse impact on a substantial number of small entities and an RFA is not required.

(27) *Comment:* An environmental group said that the proposal would not prevent a refiner from selling unleaded gasoline as low-lead leaded gasoline in order to generate lead rights. The only apparent way to prevent this would be to specify a minimum lead content of leaded gasoline, which it believes would be environmentally undesirable. A refiner argued that abuse is possible in the opposite direction, namely that gasoline with a lead content of 0.10 gplg could be imported (and earn 1.0 gram of lead rights), blended with unleaded gasoline to lower its lead content to below .05 gplg and then sold as unleaded gasoline (thus increasing total lead usage).

Response: EPA sees no reason to believe that refiners would sell unleaded gasoline as leaded to obtain lead rights, because at any given octane level it is less expensive to make leaded than unleaded gasoline. In any event, such action by a refiner would actually lower total lead use, as such mislabeled gasoline would displace sales of leaded gasoline.

EPA is aware of the potential for the second type of problem (i.e., that leaded gasoline might be blended with unleaded to reach a concentration below 0.05 gplg, and then sold as unleaded). Current regulations, however, specify that gasoline to which any lead has been added intentionally is classified as leaded, regardless of the concentration, so such a sale would be illegal. Moreover, the potential for such abuse also exists with the current inter-refinery averaging mechanism, but none appears to occur.

(28) *Comment:* A refiner warned that EPA must exercise caution in the wording of the final regulation to prohibit "possible pyramiding of lead rights," by which a "daisy chain blending scheme" could earn lead rights for each participant in the chain on the basis of the same blending components.

Response: The commenter is apparently referring to the possibility of double accounting. Under such a scheme, one blender might claim lead usage rights based on leaded gasoline produced, while another blender adds a small amount of lead or alcohol to this gasoline and again claims credit for the same volume. This is strictly prohibited. Lead usage rights earned by the second party may only be based on the volume of leaded gasoline that party actually produces and he may not count the original volume. EPA will continue to vigorously enforce against any double accounting or similar scheme designed to circumvent the regulations.

(29) *Comment:* An industry trade group believed that the first banking period should be longer than a calendar quarter, stating that a half-year would be more appropriate.

Response: Because the banking rule is being made effective for the first quarter, EPA sees no advantage in lengthening the initial averaging period for banking; any reductions made during the first quarter will be bankable. In addition, a change in the initial banking period would necessitate a similar change in the initial compliance period in 1985. With banking, the definition of the compliance period becomes less important, except for purposes of enforcement and administration. On both of those grounds, EPA believes that maintenance of the current definition of compliance periods is desirable.

(30) *Comment:* One refiner states that refiners, blenders and importers should all have the same rule, and that there should be no "created" lead banks or "special accounts" outside the rules. These would lead to disruptive market distortions.

Response: The regulation promulgated today provides the same rules governing banking by refineries, blenders and importers. There are no provisions that allow created lead banks or special accounts outside the rules.

(31) *Comment:* One refiner said that importers should not be allowed to use quarterly averaging, but should be required to meet the regulatory standard on a cargo-by-cargo basis. Another refiner said there is a need for a method of certifying the lead content of imported and blended gasoline equivalent to that used for refining gasoline.

Response: Prior to the lead phasedown rule promulgated on October 29, 1982, the lead content of gasoline imported into the United States was unregulated. The August 27, 1982, proposal for that rulemaking recognized the need for regulating imported leaded gasoline and discussed various schemes for bringing such imported gasoline within the scope of the regulations. One scheme considered was holding importers to a cargo-by-cargo standard.

At that time the Agency decided that a cargo-by-cargo standard would be unreasonably burdensome since it would be very costly to require U.S. Customs Service and EPA personnel to certify every shipment of imported gasoline, it would be relatively ineffective to involve more than one federal agency in enforcement, and it would be an unequal burden on importers vis-a-vis domestic refiners. None of these elements have changed substantially since the October 29, 1982, rulemaking, and the Agency intends to maintain the quarter compliance period for importers.

As to the comment regarding a method of certifying lead content, such a method is currently in effect. Since domestic refiners must buy lead additives from domestic lead manufacturers EPA requires these manufacturers to report quarterly sales, which can be cross-checked with refinery reports. Such a system is impossible to implement with imported leaded gasoline, since the Agency cannot require lead reports from lead additive manufacturers or refiners in foreign countries. For the purpose of verifying the lead content of imported leaded gasoline, therefore, EPA requires each shipment of imported leaded gasoline sold in the U.S. to be tested by the atomic absorption spectrometry test. See 40 CFR 80.20(c)(2)(i). This test must be performed on a representative sample of the shipment.

Thus, although the method of verification of lead content differs between refiners and importers, equivalent tests do exist. EPA enforces lead phasedown regulations vigorously for both refiners and importers.

(32) *Comment:* One refiner believed that inter-refinery averaging should be retained after December 31, 1985, and "include actual lead used, banked lead and exchanged amounts of lead." Another argued that elimination of inter-refinery averaging would have the opposite effect of that intended concerning valve-seat recession by encouraging the production of low-lead leaded gasoline. There is currently no incentive to produce below 0.05 gplg because of consumer protection laws and the low value of lead rights (½—1 cent per gram). With banking, a refiner can do so and save lead rights for future use when their value is likely to be greater. EPA should address the problem of valve-seat recession directly by requiring that leaded gasoline contain a minimum of 0.05 gplg and a maximum of 1.10 gplg, along with the continuation of inter-refinery averaging. A third refiner also supported inter-refinery averaging, as well as the quarterly averaging period, in conjunction with banking.

Response: The rationale for elimination of the inter-refinery averaging mechanism after 1985 is discussed in the Response to Comment (5), above. The Agency's rationale for not promulgating a maximum lead content standard is discussed in the Response to Comment (10), above. The Agency does not believe that a minimum lead content standard is necessary because there will not be a significant economic incentive to produce leaded gasoline that contains less lead than allowed by the regulations, particularly since no banked lead rights can be earned for reductions in lead content below 0.10 gplg. The Agency is retaining the quarterly averaging period. See also the Response to Comment (21), above.

(33) *Comment:* An industry trade association stated that the banking period may be inadequate to prevent octane shortages and supply disruptions. This commenter also noted that banking does not shorten the lead time for plant construction and permitting, and that it should be implemented as soon as possible to reduce the uncertainties of phasedown.

Response: The Agency has analyzed the issue of whether octane shortages and supply disruptions are likely to occur in conjunction with the promulgation of the 0.50 and 0.10 gplg standards and has concluded that, even without banking, the likelihood of such events occuring is extremely remote. Banking should alleviate any such problems for the industry as a whole under even the most pessimistic conditions. This issue is discussed in detail in Part II.A.1 of the March 7, 1985, final rule, in Chapter II of the final RIA that accompanies that final rule, and in Part I.A of the "Responses to Comments" document that accompanies that rule. The Agency realizes that banking does not reduce the lead time for plant construction and permitting. However, it does provide additional flexibility for refiners that need to take such steps to meet the 0.10 gplg standard. Banking is being made effective starting in the first quarter of 1985, as proposed.

(34) *Comment:* An environmental group that opposed banking said that, if adopted, it should be coupled with a ban on all lead use not later than January 1, 1988.

Response: On March 7, 1985, the Agency published a supplemental notice of proposed rulemaking requesting comments on such a ban as early as January 1, 1988. This notice requests comments on new health studies suggesting substantial additional health benefits of a total ban, as well as on information suggesting that engines may not need lead to prevent valve damage.

(35) *Comment:* A small refiner that opposed the proposal argued that banking would increase the competition for lead rights, since even those producing gasoline with a lower lead content than allowed would want to purchase more rights for future use.

Response: Such an increase in competition is possible. However, the Agency does not believe that banking should be discarded for this reason. Even with such competition, the cost of lead rights should be lower than the cost

of complying with the standards through other means.

(36) *Comment:* Several commenters argued that banked lead rights should be freely transferrable between refiners.

Response: The final regulations place no restrictions on the transfer of lead rights, once lawfully banked, among refiners and importers. Transfers of lead rights may occur between any willing buyer and seller. Those using this mechanism must, of course, comply with all reporting requirements, as well as with applicable lead content standards.

(37) *Comment:* An antique car group stated its opposition to any lead content standard below 0.50 gplg, saying that if a lower standard is adopted it is critically important that there be a provision in such a ruling (including any ruling on banking) allowing the manufacture of a lead additive.

Response: The Agency's response to comments opposing a standard below 0.50 glpg is contained in Part I of the "Responses to Comments" document that accompanied the March 7, 1985, final rule. In addition, Part III.F of that final rulemaking notice stated that leaded gasoline sold as a consumer additive would not require a prior waiver from EPA under section 211(f)(4) of the Clean Air Act and that such an additive could be used by consumers to provide engine valve lubrication.

(38) *Comment:* A refiner that opposed the proposal also opposed the concept of a national gasoline lead content standard (arguing that lead is a regional problem). This commenter also opposed a schedule of 0.5. gplg in July 1985 and 0.10 gplg in January 1986, saying that EPA must stick to one timetable. Although it called lead banking "hollow at best," this commenter agreed that lead rights "are best structured maximizing transferability" but are not a solution to the dilemma of constantly changing final regulations.

Response: In the August 2, 1984 NPRM, EPA discussed the basis for its conclusion that there is a continuing national health problem associated with exposure to environmental lead. 49 FR 31032. Further, the reasons for a 0.10 gplg standard effective January 1, 1986, and an interim standard of 0.50 gplg effective July 1, 1985, are discussed in the March 7, 1985, NPRM. 50 FR 9386. The regulations provide that banked lead rights can be freely transferred, thereby facilitating the transition to more stringent standards. While EPA recognizes that regulatory changes may create planning problems for refiners, its statutory mandate to protect the environment and the public health must take precedence.

V. Additional Information

A. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis (RIA) for major rules, defined by the Order as those likely to result in:

(1) An annual adverse 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.

EPA has determined that this final regulation does not meet the definition of a major rule under E.O. 12291. The final rule is expected to have a beneficial effect on the economy, refiner costs, consumer prices, and competition. Therefore an RIA is not required. However, the impact of the banking mechanism was analyzed by the Agency in the final RIA that was prepared in conjunction with the final regulations adopted on March 7, 1985 (see Chapter II.E).

This notice of final rulemaking has been submitted to the Office of Management and Budget (OMB) for review under E.O. 12291. Any written comments from OMB and any EPA responses to such comments are available for public inspection at the Central Docket Section, at the address listed above.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), when an agency promulgates a final rule, after being required to publish a general notice of proposed rulemaking, it must prepare a final regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b). For the reasons discussed in the Response to Comment (26) in Part IV of this notice, I certify that this rule will not have a significant adverse impact on a substantial number of small entities. On the basis of this certification, a final RFA has not been prepared.

C. National Academy of Sciences Recommendations

Section 307(d)(3) of the Clean Air Act, 42 U.S.C. 7607(d)(3), requires that rulemaking proceedings under section 211 of the Act, 42 U.S.C. 7545, take into account any pertinent findings, comments, and recommendations by the National Academy of Sciences. The Academy has made no such pertinent findings, comments and recommendations concerning "banking" of lead rights.

D. Paperwork Reduction Act

The information collection requirements contained in the regulations promulgated by the Agency on March 7, 1985, were cleared by OMB under control number 2060–0066 on October 18, 1984, pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The changes to the information requirements finalized in this notice will increase slightly the reporting requirements, but they will apply only to refiners and importers who voluntarily choose to use the banking mechanism. These charges were submitted to OMB for review under the Paperwork Reduction Act, and were cleared by that office under the same control number on January 16, 1985.

E. Judicial Review

The final actions described in this notice are made under the authority of sections 211 and 301 of the Clean Air Act and are nationally applicable. Under section 307(b)(1) of the Clean Air Act, judicial review may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for judicial review must be filed on or before June 3, 1985. Judicial review may not be obtained in subsequent enforcement proceedings.

F. Effective Date

EPA finds that there is "good cause" to make this rule effective immediately in order to avoid confusion as to the status of banking for the first quarter of 1985. Also, it would serve no purpose to postpone the technical effective date of this rule since the rule itself provides that refiners and importers may bank lead usage rights for reductions in lead usage during the January 1 to March 31, 1985 period.

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

(Secs. 211 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7545 and 7601(a))

Dated: March 25, 1985.

Lee M. Thomas,

Administrator.

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

For the reasons set forth in the preamble, § 80.20 of Title 40 of the Code of Federal Regulations is amended by adding a new paragraph (e) to read as follows:

§ 80.20 Controls applicable to gasoline refiners and importers.

* * * * *

(e) *Banking and withdrawal of lead usage rights.*—(1) *Banking of lead usage rights.* (i) During any calendar quarter beginning on or after January 1, 1985, and ending prior to January 1, 1988, a refiner may bank lead usage rights in an amount equal to the amount of lead usage allowed at a refinery in the calendar quarter minus the amount of lead actually or constructively used in the same calendar quarter at the refinery, as determined under paragraphs (e)(1) (ii) and (iii) of this section.

(ii) The amount of lead usage rights that may be banked by a refiner at a refinery pursuant to paragraph (e)(1)(i) of this section shall be equal to the number of grams of lead determined by:

(A) Multiplying the number of gallons of leaded gasoline reported by the refinery for the calendar quarter pursuant to paragraph (a)(3)(v) or (c)(2)(v) of this section by the Federal lead content standard applicable to the refinery during the calender quarter (as set forth in paragraph (a)(1)(i), (a)(1)(ii), (c)(1)(i), or (c)(1)(ii) of this section) or any applicable state lead content standard prescribed pursuant to section 211(c) (4) (B) or (C) of the Clean Air Act, whichever allows less lead usage; and

(B) Subtracting from the result in paragraph (e)(1)(ii)(A) the total grams of lead reported pursuant to paragraph (a)(3)(vii) or (c)(2)(iv) of this section.

(iii) When compliance with the requirements fo paragraph (a)(1)(i), (a)(1)(ii), (c)(1)(i) or (c)(1)(ii) is demonstrated pursuant to the inter-refinery averaging provisions of paragraph (d) of this section, the total grams of lead reported pursuant to paragraph (d)(2)(iii) of this section shall be used instead of the total grams of lead reported pursuant to paragraph (a)(3)(vii) or (c)(2)(iv) of this section, for purposes of paragraph (e)(1)(ii)(B) of this section.

(iv) the total grams of lead used for purposes of paragraph (e)(1)(ii)(B) of this Section may not be less than the amount calculated by multiplying the number of gallons of leaded gasoline reported by the refinery for the calendar quarter pursuant to paragraph (a)(3)(v) or (c)(2)(v) of this section by 0.10 gram of lead of such gasoline.

(v) A refiner who banks lead usage rights pursuant to this sub-section shall submit to the Administrator, as an additional part of the report required by paragraph (a)(3) or (c)(3) of this section, the information described in paragraph (e)(1)(ii) and (e)(1)(iii) of this section.

(2) *Withdrawal of lead usage Rights.* (i) During any calendar quarter beginning on or after April 1, 1985, and ending prior to January 1, 1988, a refiner may withdraw lead usage rights banked pursuant to paragraph (e)(1) of this section. Such rights may be used by the refiner to demonstrate compliance with the requirements of paragraph (a)(1)(ii) or (c)(1)(ii), or may be transferred by the refiner for such use by another refiner. A lead usage right shall be considered to be withdrawn when it is so used or transferred by the banking refinery.

(ii) Compliance with the requirements of paragraph (a)(1)(ii) or (c)(1)(ii) through the use of lead usage rights shall be determined by:

(A) Subtracting the lead usage rights used by the reporting refinery from the total grams of lead reported pursuant to paragraph (a)(3)(vii) or (c)(2)(iv) of this section (or, if compliance is also demonstrated pursuant to the inter-refinery averaging provisions of paragraph (d) of this section, subtracting the lead usage rights used by the reporting refinery from the total grams of lead reported pursuant to paragraph (d)(2)(iii) of this section); and

(B) Dividing the result in paragraph (e)(2)(ii)(A) by the number of gallons of leaded gasoline reported pursuant to paragraph (a)(3)(v) or (c)(2)(v) of this section.

(iii) A refiner who deposits, withdraws, transfers, or uses lead usage rights during a calendar quarter shall submit to the Administrator, as an additional part of the report required by paragraph (a)(3) or (c)(3) of this section, the following information:

(A) The amount of lead usage rights withdrawn from the reporting refinery's account and used to demonstrate compliance with the requirements of paragraph (a)(1)(ii) or (c)(1)(ii) for the calendar quarter;

(B) The amount of lead usage rights withdrawn from the reporting refinery's account and transferred to the account of another refinery during the calendar quarter;

(C) The amount of lead usage rights transferred from the account of another refinery to that of the reporting refinery and used to demonstrate compliance with the requirements of paragraph (a)(1)(ii) or (c)(1)(ii) for the calendar quarter;

(D) The amount of lead usage rights transferred from the account of another refinery in the calendar quarter and deposited in the account of the reporting refinery during the calendar quarter;

(E) The banked average lead content of leaded gasoline produced in the calendar quarter, as determined pursuant to paragraph (e)(2)(ii) of this section;

(F) If the other refinery to or from which the lead usage rights reported in paragraph (e)(2)(iii)(B), (e)(2)(iii)(C) or (e)(2)(iii)(D) were transferred is owned or controlled by another refiner, supporting documentation adequate to show the agreement by such refiner to the transfer of the lead usage rights.

(3) *Other requirements.* (i) For purposes of paragraph (e) of this section, the total amount of imported leaded gasoline sold during a calendar quarter by each importer shall be treated as the output of a single refinery, and each importer shall be treated as a refiner.

(ii) The banked average lead content of leaded gasoline produced at a refinery during a calendar quarter, as determined pursuant to paragraph (e)(2)(ii) of this section, may not exceed any state gasoline lead content standard prescribed pursuant to section 211(c)(4) (B) or (C) of the Clean Air Act.

(iii) An agreement between two (or more) refiners to transfer lead usage rights may be made no later than the final day of the calendar quarter in which the lead usage rights are used.

(iv) Any refiner who has lead usage rights on deposit in a lead usage rights bank account at the end of a calendar quarter or who makes deposits to or withdrawals from a lead usage rights banking account under the provisions of paragraph (e) of this section during a calendar quarter shall submit to the Administrator, as an additional part of the report required by paragraph (a)(3) or (c)(3) of this section, the following information:

(A) The number of grams of lead usage rights in the refinery's lead usage rights bank account at the beginning of the calendar quarter for which the report is submitted;

(B) The number of grams of lead usage rights in the refinery's lead usage rights bank account at the close of the calendar quarter which the report is submitted (after all deposits and withdrawals in such account during the calendar quarter have been taken into account).

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April 2, 1985

Part III

Environmental Protection Agency

40 CFR Parts 50, 51, 52, 53, 58, and 81
Regulations for Implementing Revised Particulate Matter Standards; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 51, 52, 53, 58, and 81

[FRL-2600-5]

Regulations for Implementing Revised Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).
ACTION: Proposed rule.

SUMMARY: EPA proposes to revise its regulations governing State implementation plan (SIP) programs under the Clean Air Act to account for revisions to the national ambient air quality standards (NAAQS) for particulate matter that EPA proposed in the Federal Register on March 20, 1984 (49 FR 10408). In particular, EPA proposes: (1) Amendments to significant harm and air pollution episode levels associated with particulate matter, (2) new definitions related to particulate matter, and (3) amendments to the various requirements for the preconstruction review of new stationary sources and modifications in nonattainment new source review (NSR) regulations and in prevention of significant deterioration (PSD) regulations.

This notice also sets forth EPA's proposed policy on the course of action States are to follow in revising their State implementation plans to account for the revised standards. EPA is particularly interested in receiving public comment on this policy.

Finally, this notice announces the closing date for public comment on EPA's proposed revisions to the national ambient air quality standards for particulate matter in 40 CFR part 50 (49 FR 10408), for EPA's proposed retention of total suspended particulates (TSP) as the definition of particulate matter for PSD purposes (49 FR 10421), for EPA's proposed regulations concerning ambient air quality surveillance in 40 CFR Part 58 (49 FR 10435), and for EPA's proposed regulations regarding ambient air monitoring reference and equivalent methods in 40 CFR Part 53 (49 FR 10454).

DATES: All comments, including those pertaining to Parts 50, 53 and 58, must be submitted on or before June 3, 1985.

ADDRESSES: Comments on the regulations, policy and guidance proposed in today's action should be submitted (in triplicate if possible) to: Central Docket Section (LE-131), EPA, Attention: Docket Number A-82-38, 401 M Street, SW., Washington, D.C. 20460. Comments on the proposed revisions to the particulate matter standards in 40 CFR Part 50 (49 FR 10408) should be sent to the same address, Attention: Docket Number A-82-37. Comments on the proposed revisions to the ambient air monitoring reference and equivalent methods in 40 CFR Part 53 (49 FR 10454) should be sent to the same address, Attention: Docket Number A-82-43. Comments on the proposed revisions to EPA's regulations on ambient air quality surveillance for particulate matter in 40 CFR Part 58 (49 FR 10435) should be sent to the same address, Attention: Docket A-83-13. Comments on the proposed retention of TSP for PSD purposes (49 FR 10421) should be sent to the same address, Attention: Docket No. A-83-48. The Central Docket Section is located in the West Tower Lobby, Gallery I, 401 M Street, SW., Washington, DC. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays, and a reasonable fee may be charged for copying.

If anyone contacts EPA requesting to speak at a public hearing on the regulations, policy and guidance proposed in today's action, it will be held at EPA's Office at 401 M Street, SW., Washington, D.C. Persons wishing to present oral testimony should notify Joseph Sableski, Standards Implementation Branch (MD-15), Environmental Protection Agency, Research Triangle Park, NC 27711 within two weeks of publication of this document in the Federal Register.

Availability of Related Information

EPA has prepared and hereby solicits comments on the following two draft documents relating to the proposals in this notice:

- *PM_{10} SIP Development Guideline.*
- *Procedures for Estimating Probability of Nonattainment of a PM_{10} NAAQS Using Total Suspended Particulate or Inhalable Particulate Data.*

In addition, EPA has made draft revisions to *Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD).* These draft revisions are also available for public comment.

These documents are available for inspection and copying at:

- The Central Docket Section.
- State Air Programs Branch, EPA, Region I, JFK Federal Building, Boston, MA 02203.
- Air Programs Branch, EPA, Region II, 26 Federal Plaza, New York, NY 10278.
- Air Management Branch, EPA, Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106.
- Air Management Branch, EPA, Region IV, 345 Courtland Street, NE, Atlanta, GA, 30365.
- Air Programs Branch, EPA, Region V, 230 S. Dearborn Street, Chicago, IL 60604.
- Air Programs Branch, EPA, Region VI, First International Building, 1201 Elm Street, Dallas, TX 75270.
- Air, Noise and Radiation Branch, EPA, Region VII, 324 East 11th Street, Kansas City, MO 64106.
- Air Programs Branch, EPA, Region VIII, 1800 Lincoln Street, Denver, CO 80295.
- Air Programs Branch, EPA, Region IX, 215 Fremont Street, San Francisco, CA 94105.
- Air Programs Branch, EPA, Region X, 1200 6th Avenue, Seattle, WA 98101.

A limited number of copies can be obtained from the EPA Library (MD-35), Research Triangle Park, NC 27711, telephone (919) 541-2777 (FTS 629-2777). In addition, EPA is making copies available to State and local agencies.

FOR FURTHER INFORMATION CONTACT: Roger Powell or Joseph Sableski regarding the SIP program, or Michael Trutna regarding PSD/NSR questions, Standards Implementation Branch (MD-15), Environmental Protection Agency, Research Triangle Park, NC 27711. John H. Haines regarding the proposed particulate matter standards and proposed air quality surveillance regulations, Ambient Standards Branch (MD-12) Environmental Protection Agency, Research Triangle Park, NC 27711. Phones: [Mr. Powell or Mr. Sableski: (919) 541-5697 or (FTS) 629-5697]; [Mr. Trutna: (919) 541-5591 or (FTS) 629-5591]; [Mr. Haines, (919) 541-5531 or (FTS) 629-5531].

SUPPLEMENTARY INFORMATION:

I. Background

A. NAAQS Review

On April 30, 1971, EPA promulgated primary and secondary NAAQS for particulate matter under sections 108 and 109 of the Clean Air Act (36 FR 8186). The reference method for measuring attainment of these standards is the "high-volume" sampler (40 CFR Part 50, Appendix B) which effectively collects particulate matter up to a nominal size of 25 to 45 micrometers (um) (so called "total suspended particulate," or "TSP"). Thus, TSP is the current indicator for the particulate matter standards. The existing primary standards for particulate matter (measured as TSP) are 260 $\mu g/m^3$, averaged over a period of 24 hours and not to be exceeded more than once per year, and 75 $\mu g/m^3$ annual geometric

mean. The secondary standard (measured as TSP) is 150 $\mu g/m^3$, averaged over a period of 24 hours, and not to be exceeded more than once per year. The scientific and technical bases for these standards are contained in the original criteria document, *Air Quality Criteria for Particulate Matter* DHEW, 1969).

On August 7, 1977, Congress added to the Act a new section 109(d) [42 U.S.C. section 7409(d)] directing the Administrator to periodically review the NAAQS and the criteria upon which they are based and revise both as appropriate. Accordingly, EPA has reviewed and revised the criteria upon which the existing primary and secondary particulate matter standards are based. As a result of its review and revision of the health and welfare criteria, EPA proposed on March 20, 1984 (49 FR 10408), the following revisions to the particulate matter standards:

(1) That TSP as an indicator for particulate matter be replaced for both of the primary standards by a new indicator that includes only those particles with an aerodynamic diameter smaller than or equal to a nominal 10 micrometers (PM_{10});

(2) That the level of the 24-hour primary standard be changed to a value to be selected from a range of 150 to 250 $\mu g/m^3$, and that the current deterministic form of the standard be replaced with a statistical form that permits one expected exceedance of the standard level per year;

(3) That the level and form of the annual primary standard be changed to a value to be selected from a range of 50 to 65 $\mu g/m^3$, expressed as an expected annual arithmetic mean; and

(4) That the current 24-hour secondary TSP standard be replaced by an annual TSP standard selected from a range of 70 to 90 $\mu g/m^3$, expected annual arithmetic mean.

Because no scientific consensus exists on specific levels of the standards, and the analytical and policy basis for making these decisions under the statute are limited and difficult to implement, the Administrator did not propose specific standard levels within the above ranges. Rather, he solicited additional comment and information from the public to be considered in promulgating the final regulation, which will specify a specific level for each of the standards. Given the precautionary nature of the Act, the Administrator indicated that he was inclined to select the levels of primary standards from the lower portions of the proposed ranges. He also indicated that he was inclined to continue the level of protection provided by the current annual TSP standard and select a level for the revised secondary standard from the upper portion of the proposed range.

Simultaneously with the above actions, a new Federal Reference Method (Appendix J to Part 50) was proposed to provide for measuring PM_{10} in the ambient air. EPA also proposed to add a new Appendix K to Part 50, which would provide guidance on the statistical nature of the proposed revisions to the standards. Related notices also published on March 20, 1984, set out proposed revisions to EPA's regulations concerning Ambient Air Monitoring Reference and Equivalent Methods (40 CFR Part 53), and Ambient Air Quality Surveillance (40 CFR Part 58). The reader should consult the March 20, 1984, **Federal Register** notices for more details on these proposals.

B. New State Implementation Plan Programs

1. Basis of Proposal

Upon EPA adoption of revised primary and secondary NAAQS, the States will have to adjust their State implementation plans (SIP's) accordingly. This notice proposes necessary regulatory revisions and EPA's policy for making those adjustments. The program proposed herein assumes the levels of the annual and 24-hour primary PM_{10} NAAQS will be selected from the lower portions of the proposed ranges and the level of the annual secondary TSP NAAQS will be selected from the upper portion of the proposed range as Administrator Ruckelshaus indicated in the March 20, 1984, notice. The final standards, however, could depart significantly from those assumed for the purposes of developing the implementation program proposed herein. Thus, it may be necessary to modify the program to conform to the final standards adopted, possibly through reproposal.

2. Applicable Act Requirements

The Act currently contains two major sets of SIP requirements. The first set, found in section 110 and Part D of Title I, requires States to adopt and implement plans that provide for attainment and maintenance of the NAAQS. This notice addresses the need for revising these SIP's and the timing and content of SIP revisions as they apply to existing and new sources. It also addresses the consequences of failing to submit revisions.

The second major set of requirements is intended to prevent significant deterioration (PSD) of air quality in areas that have attained the NAAQS. The PSD program focuses on the review of new sources and the protection of maximum allowable pollution increases known as "increments." This notice presents EPA's proposed action on increments, determination of applicability, and a transition program.

C. Preamble Structure

The remainder of this notice first describes in detail the statutory and regulatory background for implementing the revised NAAQS, then presents the rationale for EPA's interpretation of the Act. It then compares the proposed NAAQS to the current NAAQS because such comparisons are germane to interpreting the various portions of the Act. Following that is a discussion of the program for revising SIP's to provide for attainment and maintenance of the NAAQS. This is followed by a discussion of the PSD program and nonattainment new source review (NSR) requirements. Finally, this notice discusses and presents specific regulatory revisions designated to implement the program.

D. Public Comment

The regulations in this notice deal with the implementation of the revised particulate matter standards. Comments sent to Docket Number A–82–38, therefore, should concern only (1) the regulations being proposed at the end of this notice, (2) the related draft documents previously noted under Availability of Related Information, and (3) the EPA policy contained herein.

On November 21, 1984 (49 FR 45871) EPA extended the period for public comment on the Part 50, Part 53 and Part 58 proposals, on the proposed retention of TSP for PSD purposes, and on the public hearing until the 60th day after EPA proposes the Part 51 and Part 52 requirements for particulate matter. With today's action, comments on the Part 50, Part 53, Part 58, and PSD proposals, including any comments on the implications thereon of the Part 51 and Part 52 proposals, must be submitted on or before June 3, 1985. [Comments on the Part 50 proposal should be submitted to Docket Number A–82–37, comments on the Part 53 proposal should be submitted to Docket Number A–82–43, comments on the Part 58 proposal should be sent to Docket Number A–83–13, and comments on the PSD proposal should be submitted to Docket Number A–83–48, all at the address provided above.]

II. Statutory and Regulatory Requirements

A. Statutory Background

1. State Implementation Plan

In 1970 Congress comprehensively amended the Clean Air Act to establish a joint State and Federal program to control air pollution. Under Sections 108 and 109, EPA is responsible for the program's first step, the promulgation of national ambient air quality standards (NAAQS). The States then have primary responsibility for implementing the NAAQS. In broad outline, each State must develop and submit to EPA a plan that provides for attainment and maintenance of each NAAQS as expeditiously as practicable within certain time limits. EPA must review each plan, termed the State implementation plan (SIP), and approve or disapprove its provisions. If a State fails to submit a plan, or submits a plan which EPA finds inadequate, EPA may, and in some cases must, promulgate whatever measures are necessary to fill the gap.

a. Section 110

(1) *Timing.* Under section 110(a)(1), each State must adopt and submit a SIP ". . . within 9 months after the promulgation of a national primary ambient air quality standard (or any revision thereof). . . ." Section 110(a)(1) also sets a 9-month deadline for submittal of SIP's for new and revised secondary NAAQS; however, section 110(b) authorizes the Administrator to extend that deadline for up to 18 months where "necessary."

Under section 110(a)(2)(A), SIP's must provide for attainment of any primary NAAQS ". . . as expeditiously as practicable but [subject to subsection (e)] in no case later than 3 years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard). . . ." SIP's for secondary NAAQS must provide for attainment within a "reasonable time."

Section 110(e) allows the Administrator to extend the attainment date for the primary NAAQS for up to 2 years, if he finds that sources will not be able to comply with their emission limitations within the 3-year deadline because needed technology will not be available. The plan, however, must provide for interim control of the noncomplying sources and controls on all other sources of the same pollutant in the same air quality control region.

(2) *Content of SIP's.* A core requirement of section 110 is that each SIP must include:

> . . . emission limitations, schedules and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard . . . . [Section 110(a)(2)(B)]

The remaining subsections of section 110(a)(2) elaborate on this general framework. Specific to today's proposal:

- Section 110(a)(2)(C) requires the plan to provide for operation of a system that collects and analyzes air quality data.
- Section 110(a)(2)(D) states that each SIP must provide a preconstruction review program consisting of ". . . a permit or equivalent program for any major emitting facility, within such region as necessary to assure (i) that the national ambient air quality standards are achieved and maintained . . . ."
- Section 110(a)(2)(F) provides that plans must require owners or operators of stationary sources to monitor and report on emissions from their sources.
- Section 110(a)(2)(H) requires each plan to contain a self-correction mechanism in case the plan proves unsatisfactory. The plan must contain provisions that the State will revise the plan:

> . . . from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious means of achieving such primary or secondary standard; or . . . whenever the Administrator finds on the basis of information available to him that the plan is substantially inadequate to achieve the national ambient air quality primary or secondary standard which it implements or to otherwise comply with any additional requirements established under the Clean Air Act Amendments of 1977. . . .

- Section 110(c)(1)(C) authorizes the Administrator to notify a State that it needs to revise its plan in accordance with the section 110(a)(2)(H) requirements for self-correction and to set a deadline for submitting the revision. The deadline is within 60 days after the notification, but may be later at the Administrator's discretion.
- Section 110(a)(2)(F)(v) provides that SIP's must contain contingency plans for immediate emission reductions where pollution levels increase to the point of presenting an imminent and substantial endangerment to public health.

(3) *Consequences of failing to submit a SIP.* Section 110 provides for Federal intervention if a State fails to submit an adequate SIP. Under section 110(c)(1), EPA must promulgate plan provisions for a State if the State fails to submit a plan at all, submits a plan that does not meet the section 110 requirements, or fails to revise its plan in response to the "notification" referred to in section 110(c)(1)(C), i.e., a call for a plan revision under the provisions of section 110(a)(2)(H). EPA must promulgate a substitute plan unless the State in the interim adopts and submits a plan that EPA finds adequate.

Other sections of the Act provide financial incentive for State participation in the SIP development process such as section 105(b), which gives EPA general authority to impose conditions on its grants to air pollution control agencies. Thus, EPA may condition grants on the submittal of satisfactory SIP's or SIP revisions. Beyond that, section 176(b) prohibits EPA from making any grants in any area where the responsible State or local authority ". . . is not implementing any requirement of an approved or promulgated plan under section 110 . . . ." This prohibition would apply if a State failed to implement the SIP provision that requires the State to revise its plan under the circumstances stipulated in sections 110(a)(2)(H) and 110(c)(1)(C).

b. Part D and Associated Amendments

In many areas of the country, the original SIP's that were approved and promulgated in the early 1970's failed to bring about attainment within the statutory deadlines. When Congress revised the Act in August 1977, it added a new Part D and amendments to sections 107 and 110 to address this nonattainment problem.

(1) *Identification of air quality problems.* Congress first instructed the States and EPA to identify all areas of the country that were experiencing violations of the NAAQS. A new section 107(d) required each State to list for EPA by early December 1977 those areas that were experiencing violations (nonattainment areas), those areas that were meeting the standards (attainment areas), and those areas that could not be classified for lack of air quality data (unclassifiable areas). It then required EPA to review the lists, make necessary modifications, and promulgate them all by early February 1978. Section 107(d)(5) allows States to modify a list even after promulgation:

> . . . [a] State may from time to time review, and as appropriate revise and resubmit, the list required under this subsection. The Administrator shall consider and promulgate such revised list in accordance with this subsection.

(2) *Content and timing of plan revisions.* Congress then added section 110(a)(2)(I) which required each SIP to contain a provision that would ban the

construction or modification after June 30, 1979, of any major stationary source:

> . . . in any nonattainment area [as defined in Section 171(2)] to which such plan applies, if the emissions from such facility will cause or contribute to concentrations of any pollutant for which a national ambient air quality standard is exceeded in such area, unless, as of the time of application for a permit for such construction or modification, such plan meets the requirements of Part D (relating to nonattainment areas).

Congress then specified other new requirements for SIP content in Part D. In essence, Part D relaxed attainment dates but tightened control requirements for both new and existing sources.

In section 172(a)(1), Congress directed the States to adopt plans that provided for attainment of all of the primary standards as expeditiously as practicable, and, except for ozone and carbon monoxide, no later than December 31, 1982. Plans were also to provide for all emission reductions available from applying "reasonably available control technology" (RACT). Each plan also had to establish a permit program under section 173 for the construction and modification of major stationary sources.

Congress directed each State to adopt whatever provisions would be necessary to meet these Part D requirements, and submit them to EPA, by January 1, 1979. [See Pub. L. 95-95, section 129(c).] Congress required the States to follow EPA's 1976 interpretive ruling on new source construction and modification in the period before the new plans were to come into effect. [See Pub. L. 95-95, section 129(a) (uncodified).]

(3) *Consequences of failing to submit a plan.* All of the consequences of failing to submit a SIP described above under section 110 potentially apply to States that fail to submit Part D SIP's. In addition, after July 1, 1979, the mandatory construction ban required by section 110(a)(2)(I) was to apply in any nonattainment area that lacked a revised plan that met the Part D requirements. Further, if a State failed to implement its SIP in a nonattainment area, which includes not complying with a call for a SIP revision under section 110(c)(1)(C), the nonattainment area would be subject to a construction ban required by section 173(4).

c. *Part C and Associated Amendments*

The 1977 amendments also added to the Act as Part C to Title I a third set of SIP requirements aimed at the prevention of significant deterioration (PSD) of air quality in attainment and unclassifiable areas. New section 110(a)(2)(J) generally requires each SIP to satisfy the requirements of Part C. Revised section 110(a)(2)(D) specifically requires each SIP to meet Part C's requirements for a preconstruction review program for major new sources and major modifications. Section 161 of the new Part C requires that:

> . . . each applicable implementation plan contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality in each region (or portion thereof) identified pursuant to Section 107(d)(1) (D) or (E) of this title . . . [i.e., the attainment and unclassifiable areas].

The remaining Part C provisions limit deterioration by establishing maximum allowable increases in pollution, commonly called "increments," and by requiring preconstruction review of major new stationary sources and major modifications.

(1) *The increment system.* For sulfur dioxide and "particulate matter," section 163(a) requires that each plan ". . . contain measures assuring that maximum allowable increases over baseline concentrations of, and maximum allowable concentrations of, such pollutant shall not be exceeded . . ." Section 163(b) establishes three sets of "maximum allowable increases" for these two pollutants. The most restrictive increments apply in Class I areas, while larger increments apply in areas designated as Class II or Class III. No provision in the Act, however, defines "particulate matter" as used in section 163.

Section 162(a) designates as Class I areas all international parks and then all national parks, national wilderness areas, and national memorial parks exceeding certain sizes and existing on the effective date of the 1977 amendments. Section 162(a) prohibits the States from changing this designation. Other areas that may have been designated as Class I under earlier EPA regulations for the prevention of significant deterioration retain their Class I designations, but may be redesignated under procedures described in section 164. Section 162(b) provides that all other areas ". . . identified pursuant to section 107(d)(1) (D) or (E) which are not established as Class I . . . shall be Class II areas . . . ." States may, however, redesignate such areas as Class I or Class III under section 164.

While Part C does not contain an increment system for the NAAQS pollutants other than sulfur dioxide and particulate matter, it directs EPA to create such a system or an equivalent one for those pollutants. Thus, for carbon monoxide, ozone, nitrogen oxides, and ". . . pollutants for which national ambient air quality standards are promulgated after the date of enactment of this part . . . ," sections 166 (a) and (d) require EPA to promulgate ". . . specific measures at least as effective as the increments established in section 163 . . ."

(2) *The preconstruction review program.* The key element of the preconstruction review program required by Part C is the requirement that a company obtain a PSD permit before constructing virtually [1] any new major stationary source or making any major modification in an attainment or unclassifiable area [Section 165(a); 40 CFR 51.24(i) (1983)]. A major stationary source is any plant that has the potential to emit 100 tons per year (tpy), or 250 tpy, depending on plant type, of any pollutant regulated under the Act, including the NAAQS pollutants. A major modification is, in general, any change to a plant that would result in a significant net increase in emissions of a regulated pollutant [Section 169; 40 CFR 51.24(b) (1983)].

To obtain a permit, an applicant must show that the source or modification would be subject to "best available control technology" for each regulated pollutant it would emit in significant amounts [Section 165(a)(3); 40 CFR 51.24(j) (1983)]. In addition, an applicant must show that:

> . . . emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, (B) national ambient air quality standard in any air quality control region, or (C) any other applicable emission standard . . . [Section 164(a)(3)].

Finally, an applicant must provide, for each regulated pollutant emitted by the project, an analysis of (1) existing air quality in the project area; (2) the effect the project would have on soils, vegetation and visibility; and (3) the effect growth associated with the project would have on air quality. For NAAQS pollutants, the analysis of existing air quality generally must include a year's worth of monitoring data [Section 165

[1] Under EPA's current regulations, a project that emits some regulated pollutant can escape PSD review only if it locates in an area that is designated nonattainment for all pollutants to which Section 107(d) applies or if it emits only those pollutants for which the area is designated nonattainment (45 FR 52676, 52710-52712, August 7, 1980).

(a)(2), (a)(b), and (e); 40 CFR 51.24(k)–(o) (1983)].[2]

2. New Source Performance Standards

The 1970 amendments also require EPA to establish standards of performance (NSPS) for major new air pollution sources. Under Section 111, EPA must promulgate such a standard for any category of sources that:

> . . . in [the Administrator's] judgment . . . causes or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare . . . [Section 111(b)(1)(A)].

The standards apply to "new sources," which include both new and modified stationary sources [Section 111(e), 111(a)(2)]. The standards must:

> . . . reflect the degree of emission limitation and the percentage reduction achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. . . [Section 111(a)(1].

B. Regulatory Background

1. Implementation of PM Standards

a. *Section 110 SIP's*

Since 1971 EPA has promulgated, in Part 51, regulations covering the entire range of planning requirements set forth by section 110.

b. *Part D SIP's*

(1) *Section 107(d) designations.* EPA promulgated attainment status designations for particulate matter and four other NAAQS on March 3, 1978, in 40 CFR Part 81 (43 FR 8962).

In the preamble of this action, EPA pointed out that it had designated some rural areas as "attainment" or "unclassifiable" for particulate matter despite data showing that these areas were experiencing violations of the particulate matter NAAQS (43 FR 8963). Under its Fugitive Dust Policy (Tuerk, 1977), EPA defined as "rural" any area with low population that lacked major industrial development or major industrial particulate emissions. In the absence of evidence to the contrary, EPA presumed rural dust to be less harmful than urban dust because it consisted primarily of natural materials not contaminated by industrial products.

EPA also promulgated a rule explaining that it could redesignate areas when air quality data showed that a change was warranted (40 CFR 81.300).[3]

(2) *Guidance for Part D SIP revision: "RACT plus studies" policy.* EPA published most of its guidance for SIP's for nonattainment areas in the form of a "general preamble" interpreting the Part D planning requirements (44 FR 20372, April 4, 1979). EPA generally required States to apply reasonably available control technology (RACT) to all stationary sources unless the State could show that controls on a particular source or group of sources would not bring about attainment any faster. Moreover, the States had to submit all needed control measures in fully enforceable form (43 FR 20375). For particulate matter, however, EPA allowed States to postpone the adoption of control measures for "nontraditional" sources until the States had an opportunity to study what control measures would be efficacious (43 FR 20378). "Nontraditional" sources included area or background sources such as vehicle traffic and construction activities. All emissions from industrial processes at stationary sources were subject to the requirement for enforceable RACT measures.

Later, as EPA reviewed specific plan revisions, it expanded this policy to allow States to postpone the submittal of attainment demonstrations for the particulate matter standards until the States had a chance to quantify the effects of controlling nontraditional sources. However, the demonstrations, when submitted, still had to provide for attainment of the primary standards by the end of 1982. Also, EPA required areas that postponed demonstrations to impose RACT measures on all traditional sources, since they would be unable to show that they could attain with less stringent controls.

(3) *New source review rules.* EPA originally issued guidance on the new source review requirements of Section 173 in the general preamble. However, in 1980 EPA promulgated detailed regulations on the content of approvable State programs (45 FR 31304, May 13, 1980 and 45 FR 52678, August 7, 1980), codified at 40 CFR 51.18(j) (1983). Part D and these regulations provide, among other things, that State plans must require major stationary sources and major modifications to offset their proposed emissions and achieve the "lowest achievable emission rate" (LAER).[4]

(4) *EPA action on Part D plans: construction bans, conditional approvals, and policy for correcting deficient Part D plans.* By July 1, 1979, no nonattainment areas had fully approved SIP's, and very few had SIP provisions in effect that limited construction as required by sections 110(a)(2)(I) and 173(4). Consequently, on July 2, 1979, EPA published a regulation that inserted the section 110(a)(2)(I) and Section 173(4) construction bans into all SIP's that lacked them (44 FR 39471). In the same notice, EPA announced that the section 110(a)(2)(I) ban had become effective in each nonattainment area that lacked an approved or promulgated Part D plan revision. EPA explained that it would remove these bans when it took final action approving or promulgating a plan that met all relevant Part D requirements.

EPA, however, concluded that the section 110(a)(2)(I) construction ban would not apply if a State lacked a Part D revision for a secondary NAAQS, since section 110(b) allows States to obtain extensions for submitting secondary plans and the legislative history of Part D shows Congress' chief concern was the protection of human health (47 FR 44729, October 12, 1982). For many nonattainment areas, States failed to attain the primary standards by the end of 1982. EPA has interpreted the Act, however, as not requiring the Agency to impose the full array of available sanctions immediately in all of these areas. Instead, on November 2, 1983, EPA announced that it would find plans for areas that failed to attain to be "inadequate" under section 110(a)(2)(H) and 110(c)(1)(C) (48 FR 50686). EPA would require these areas to submit

[2] Part C gives special protection to Federal Class I areas. It places an "affirmative responsibility" on each Federal land manager (FLM) to protect the air quality related values (AQRV's) of its Federal Class I areas. It then forbids the issuance of a PSD permit in any case where the FLM of a Class I area shows to the satisfaction of the permitting authority that the project in question would affect the AQRV's of the area adversely, even if the applicant shows that the project would not cause or contribute to a violation of an increment over the area [Section 165(d)(2) (B), (C)].

On the other hand, Part C provides certain variances from the Class I increments. For instance, even if a project would cause or contribute to an increment violation over a Federal Class I area, the permitting authority may issue a permit if the FLM certifies that the project would not affect an AQRV adversely and the project would not violate certain special increments. For particulate matter, these special increments are equal to the normal Class II increments [Section 165(d)(2)(c)].

[3] One court has ruled that section 107(d) does not authorize EPA to redesignate areas to nonattainment unless a State concurs in the redesignation. See *Bethlehem Steel Corp.* v. *EPA*, 723 F.2d 1303 (7th Cir. 1983). No other court has yet decided this issue.

[4] Under regulations recently upheld by the Supreme Court, *Chevron, Inc.* v. *NRDC*, NO. 82-1005 (U.S. June 25, 1984), EPA defines "major stationary source" for purposes of the nonattainment area NSR program as essentially an entire plant.

revisions; and, if any area failed to comply, EPA would find that the area was not implementing the portion of its SIP that requires revisions in response to a notice under section 110(c)(1)(C). This finding would trigger a construction ban under section 173(4) and funding restrictions under section 176(b).

EPA acknowledged in its November 1983 notice that it was considering a revision to the particulate matter standard (48 FR 50697). Consequently, EPA deferred, and is continuing to defer, the issuance of notices of inadequacy for particulate matter plans.

2. Implementation of PSD Requirements

Prior to the enactment of Part C in 1977, EPA had promulgated Federal PSD regulations as § 52.21 in response to court rulings that the 1970 Clean Air Act required SIP's to include PSD measures. [See *Sierra Club* v. *Ruckelshaus*, 344 F. Supp. 253 (D.C. 1972), *aff'd per curiam*, 4 ERC 1815 (D.C. Cir. 1972), *aff'd by an equally divided court, sub. nom. Fri* v. *Sierra Club*, 412 U.S. 541 (1973).] EPA inserted the Federal PSD regulations directly into each SIP pursuant to section 110(c) (39 FR 42510, December 5, 1974). In 1978 EPA substantially amended its Federal PSD regulations to conform them to the detailed PSD requirements contained in the 1977 amendments (43 FR 25380), now codified, as amended, at 40 CFR 52.21 (1983). At the same time EPA inserted the amended Federal PSD regulations into each SIP.

Pursuant to the statutory requirements, the amended PSD regulations established a Federal permitting system for preconstruction review of new major projects and authorized the Administrator to approve construction only of those facilities that would employ best available control technology (BACT) and would not cause or contribute to ambient air quality in excess of any NAAQS or applicable PSD increment [40 CFR 52.21 (j), (k) (1983)]. The regulations explicitly refer to the statutory increments for sulfur dioxide and "particulate matter" [40 CFR 52.21(c) (1983)].

In 1978 EPA also promulgated a second set of PSD regulations outlining the requirements for an approvable State PSD program (43 FR 26380), now codified, as amended, at 40 CFR 51.24 (1983). These regulations mirrored the Federal PSD program for the most part.

Numerous industry and environmental groups challenged the amended PSD regulations, which were subsequently affirmed in part and remanded in part in *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1979). The court in *Alabama Power* took the position, which was not essential to any of its ultimate dispositions, that EPA had discretion to define "particulate matter" to exclude particles of a size or composition determined not to present substantial health or welfare concerns, not only for purposes of the NAAQS, but also for purposes of the PSD increments (*Id.* at 370, footnote 134).

In 1980 EPA again amended its PSD regulations, this time to make them conform to the *Alabama Power* decision (45 FR 52676, August 7, 1980). EPA amended both the Federal PSD program at 40 CFR 52.21 and the requirements for approvable State programs at 40 CFR 51.24. EPA again inserted the amended Federal regulations into the SIP for each State that had not previously submitted an approvable PSD program.

3. *Implementation of NSPS*

EPA has promulgated NSPS in 40 CFR Part 60 that limit particulate matter emissions from 22 categories of stationary sources. EPA determined that the sources in these categories emit significant amounts of particulate matter. For NSPS, EPA defined "particulate matter" in § 60.2 of Part 60 as ". . . any finely divided solid or liquid material, other than uncombined water, as measured by reference methods specified under each applicable subpart, or an equivalent method. . . ."

4. *Regulatory Precedents: EPA Actions on NAAQS Since 1977*

EPA has promulgated two major rules concerning NAAQS since Congress revised the Clean Air Act in 1977. In 1978, EPA for the first time promulgated NAAQS for lead (43 FR 46246, October 5, 1978). In a related action addressing implementation issues, EPA directed States to submit plans controlling new and existing sources under section 110, as opposed to Part D (43 FR 46264, October 5, 1978). Thus, there are no formal designations of attainment status under section 107(d) for the lead NAAQS.

Any new major lead source or modification must undergo the PSD review that section 165 requires of all regulated pollutants, unless the source or modification locates in an area that is not designated attainment or unclassifiable for any NAAQS pollutant. [Since EPA has not promulgated any section 107 designations for lead, no source can escape PSD review because it locates in an area designated as nonattainment for lead (see footnote 1)]. Such a source or modification must also undergo the review outlined in § 51.18 (a)–(i) to ensure that the project will meet applicable SIP limits and not cause or contribute to a NAAQS violation.

In 1979 EPA renamed the NAAQS for "photochemical oxidants" so they applied to "ozone" and raised the numerical level of the primary and secondary standards (44 FR 8202, February 8, 1979). In this case EPA instructed the States to follow Part D. EPA concluded that, since the revised standard represented a relaxation, States would have no difficulty meeting the Part D deadlines for submitting plans and attaining standards (43 FR 26962, 26963, June 22, 1983 (proposed rule); 44 FR 8202, 8203).

III. Interpretation of Act Requirements

As indicated above, the Act suggests different methods of implementing revised NAAQS. These pathways fall under two general categories which for ease of discussion are referred to as (1) the section 110 core and (2) Part D. EPA has concluded preliminarily that only section 110 would govern the implementation of the revised primary PM standards that EPA has proposed. EPA has not, however, decided whether Part D or section 110 would govern the implementation of a revised secondary TSP standard. In the following sections of this notice, EPA discusses alternative legal interpretations of the Act that affect the choice between Part D and section 110, summarizes the regulatory consequences of the choice for the primary and secondary particulate matter standards, and solicits comment on its analysis.

A. Legal Interpretation

1. Conflict in the Literal Language of the Act

A literal reading of sections 110 (a)(1) and (a)(2)(A) yields a general rule for implementing revised standards and a partial exception. Section 110(a)(1) requires each State to submit ". . . within nine months after the promulgation of a national . . . ambient air quality standard (or *any revision* thereof) . . ." a SIP that implements the new standard in all regions of the State [5] (emphasis added). Section 110(a)(2)(A), which applies to all plans submitted under paragraph (1), then stipulates that a plan, to be approvable by the Administrator, must provide for attainment and maintenance within certain specified periods except as may be provided in subparagraph (a)(2)(I). Section 110(a)(2)(A)(i), for example, requires each SIP implementing a primary standard to provide for attainment as expeditiously as

[5] Section 110(b) allows EPA to extend this submittal deadline an additional 18 months for revised secondary NAAQS.

practicable but ". . . in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard) . . . ." section 110(a)(2)(I) requires the SIP to contain a construction ban that applies after June 30, 1979, ". . . in any nonattainment area (as defined in section 171(2) . . . unless, . . . such plan meets the requirements of Part D . . . ." section 171(2) defines "nonattainment area" as any area that ". . . is shown . . . to exceed *any* national ambient air quality standard . . ." (emphasis added).

Since the term "any revision" in section 110(a)(1) appears to encompass any revised standard, sections 110(a) (1) and (2) appear to set a general rule that States must submit SIP revisions for all areas to account for NAAQS revisions generally within nine months after promulgation of the revised NAAQS and that the SIP revisions must provide for attainment within the periods specified in section 110(a)(2)(A)—for example, three years from plan approval for a primary standard.

However, since the reference to "any national ambient air quality standard" in section 171(2) also appears to encompass any revised standard, section 172(2) together with section 110(a)(2)(I) seem to state an exception to section 110(a)(2)(A) for areas that are "nonattainment" for any standard, new or revised—namely, that SIP revisions for all such "nonattainment areas" must include a construction ban that can be avoided by satisfying Part D instead of providing for attainment within the periods of section 110(a)(2)(A).

Thus, the Act appears to contain two different and conflicting blueprints, one in section 110 and the other in Part D, for SIP's for areas that are "nonattainment" under a revised primary or secondary standard.

2. Two Ways of Reconciling the Conflict

EPA sees primarily two ways of reconciling the conflict between Section 110 and Part D as to "nonattainment areas." First, EPA could read the relevant Part D provisions as governing no revised standards at all. Section 171(2) defines "nonattainment areas" as areas exceeding "any national ambient air quality standard", without reference to revised standards. In contrast, section 110(a)(1) expressly applies its nine-month SIP submittal deadline, and section 110(a)(2)(A) its three-year attainment deadline for primary standards, to "revisions." Congress clearly could have included a similar reference to revised standards in section 171(2) if it had intended Part D to apply to revised standards. This indicates that Congress may have intended the general section 110 scheme to govern the implementation of all revised standards. This reading, however, would produce the result that a relaxation of a pre-1977 NAAQS would automatically shield areas exceeding the revised standard from the strict Part D requirements, even though the revision made it easier for them to attain. It is unclear whether Congress would have intended this result. Hence, EPA could also read the section 110(a)(2)(A) exception, and thus Part D, as applying only to the nonattainment problems that Congress faced when it enacted Part D in 1977 and to only those revised NAAQS that result in no significant increase in those problems.

It seems clear in any event that Congress did not intend Part D to govern implementation of any revised standard that requires a significantly greater degree of control than its predecessor. In particular, the fixed attainment deadline of December 31, 1982, could produce unreasonable results if applied to such a revised NAAQS. Since that date has already passed, an area arguably would become subject to Part D sanctions immediately after a finding that the area exceeds the revised, more stringent NAAQS. Thus, the area could be penalized for having failed to attain by December 31, 1982, through a degree of control that was never required until sometime after that date.

EPA might attempt to ease this burden by interpreting the 1982 attainment deadline as a dead letter so that the residual Part D requirement for attainment "as expeditiously as practicable" would apply to areas shown to exceed a revised standard. However, this approach would drain section 110(a)(2)(A)'s 3-year deadline as it relates to revised standards of most of its meaning.[6] It would also mean that an area exceeding a revised standard that imposes significant new planning burdens would not be subject to section 110(a)(2)(A)'s 3-year attainment deadline, while areas exceeding an entirely new standard would be. This would treat these two areas differently, and would treat revised standards more flexibly, even though they would face essentially the same type of planning requirements, which would in all probability be more challenging for new than for revised standards. It is unlikely that Congress would have intended these inconsistent results.

The legislative history of section 110 and Part D supports the view that revised standards requiring a greater degree of control should not be implemented under Part D. Congress in 1970 created a SIP development scheme that until 1977 clearly applied to all revised NAAQS. When Congress added Part D in 1977, it did not repeal the requirements either for SIP submittal in section 110(a)(1) or for attainment and maintenance in section 110(a)(2)(A). Moreover, the conflicts between section 110 and Part D (e.g., their different attainment deadlines) show that a single revised standard could not have been intended to be subject to both schemes at one time. Congress, therefore, must have intended section 110 to remain effective for areas that are not attaining at least some revised NAAQS.

Many areas failed to plan adequately to attain the standards EPA promulgated in the early 1970's. The legislative materials behind Part D strongly indicate that Congress' main purpose in enacting Part D was to address the nonattainment problems that persisted because of those planning failures. Congress chose to solve those problems by giving States one last planning opportunity before imposing the sanctions authorized in Part D. In contrast, the history reveals no evidence that Congress intended these tougher measures to apply also where EPA revises a NAAQS so as to impose planning burdens significantly beyond what the Act imposed under the pre-1977 standards. Stated simply, areas that exceed such a revised, more stringent standard are unlike those for which Part D was plainly intended—namely, areas that had already failed to plan adequately in the first SIP round.

Moreover, inferring congressional intent that these measures apply to such revisions would conflict with the pattern of legislation in this area. Congress reserved substantial power to the States when it enacted the 1970 Clean Air Act. The tough Part D measures, by providing for a significant Federal intrusion on what had previously been the States' domain, represented an exception to the Act's general scheme of cooperative State and Federal regulation. Interpreting ambiguity in the Act's language so as to authorize the most intrusive implementation of Part D would be inconsistent with the basic thrust of the Act.

In sum, EPA sees two ways of reconciling the conflict between Section 110 and Part D. On the one hand, EPA could apply section 110 to any revised

[6] EPA might attempt to avoid this result by continuing to apply the 3-year deadline to areas that are out of attainment with entirely *new* rather than for revised standards. This, however, appears inconsistent with the express applicability of section 110(a)(2)(A)'s 3-year deadline to any primary standard plan and any revision thereof to take account of a revised primary standard.

NAAQS on the theory that Part D refers only to the NAAQS in existence in 1977. On the other hand, it could apply section 110 only to revised NAAQS that require significantly greater control and Part D to revised NAAQS that allow SIP relaxation, on the theory that the latter NAAQS present the same sort of planning problems that Congress sought to solve by means of Part D. In any event, EPA would apply section 110 to revised NAAQS that require significantly greater control.[7]

3. Other Approaches

EPA considered three additional methods suggested by the statute for implementing revised standards. The basic premise for each of these alternatives is that the revised NAAQS would merely refine or "fine-tune" the existing particulate matter standards and hence should be implemented essentially as if they were the standards Congress faced when it enacted Part D, or, stated another way, as if they address the same air quality problems Congress sought to remedy with Part D.

Under the first alternative, EPA would apply the Part D deadlines for plan submittal and attainment figuratively. For example, Part D SIP's for implementing the revised primary standards would have to provide for attainment as expeditiously as practicable but within a period equal to the 5½-year period between the date Congress enacted Part D and the December 31, 1982, attainment date in section 172(a).

Under the second alternative, EPA would use section 110(c)(1)(C), 110(a)(2)(H)(ii) and Part D to implement the revised standards. Section 110(a)(2)(H)(ii) requires each SIP to provide that a State will revise its SIP whenever EPA determines that the plan is substantially inadequate to achieve "the standard which it implements." Using the SIP provisions that section 110(a)(2)(H)(ii) has spawned and section 110(c)(1)(C), EPA would issue notices of deficiency to areas found to be in nonattainment of revised standards, give States reasonable deadlines for revising their current TSP SIP's to implement the revised standards, require those SIP's to provide for attainment as expeditiously as practicable, but not by a specific deadline, and impose the section 173(4) construction ban on areas that fail to revise their SIP's accordingly. [See EPA's post-1982 nonattainment policy for more information (48 FR 50686, November 2, 1983).]

A review of section 110, however, suggests that Congress would not have intended either of these alternatives to govern implementation of any revised standard which represents a significant tightening. Under both approaches, EPA could set SIP submittal deadlines without regard to section 110(a)(1)'s 9-month deadline, even though that date plainly applies to at least those NAAQS that result in significantly greater controls. This would read that provision out of the Act for revised standards altogether. If Congress had intended that result, it would have repealed section 110(a)(1)'s reference to "revisions." Because it did not, EPA has preliminarily rejected these two potentially useful approaches as being plainly inconsistent with the statutory language.[8]

Moreover, it appears that Congress would not have intended EPA to implement revised standards under section 110(a)(2)(H)(ii). Its literal language contemplates the case where the relevant planning entities created a SIP that they judged to be adequate to attain and maintain a particular NAAQS, but that over time proved to be inadequate. Section 110(a)(2)(H)(ii) deals with the need for repair of an old plan in relation to a continuing goal, not with the need for creation of a new plan in relation to a new goal.

Finally, EPA considered a third alternative that would also utilize the section 110(a)(2)(I), Part D exception. Under this option, EPA would treat sections 110(a)(2)(H)(i), 110(a)(2)(I), and 110(c) as governing the implementation of all revisions of NAAQS that were in existence when Congress enacted Part D, including the revisions to the primary particulate matter standards.

Section 110(a)(2)(H)(i) requires each SIP to contain provisions that in turn require the State to revise the SIP ". . . as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard. . . ." Section 110(c)(i)(C) then appears to set the schedule for these revisions, allowing the State ". . . 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H)." Under this alternative, EPA would interpret the term "any national ambient air quality standard" in section 171(2) and the term "revision" in section 110(a)(2)(H)(i) to include revisions of those NAAQS that were in existence in 1977. This in turn would permit EPA to give notice of those revisions, designate areas as nonattainment, establish an appropriate SIP submittal period under section 110(c) [just as the Agency would for substantially inadequate plans under section 110(a)(2)(H)(ii)], and apply Part D as interpreted in EPA's post-1982 nonattainment policy (48 FR 50696, November 2, 1983). Under the policy, EPA would require the timely submittal of SIP's providing for attainment as expeditiously as practicable, under penalty of a construction ban.

EPA has tentatively rejected this third option because the legislative history shows that Congress did not intend section 110(a)(2)(H)(i) to be implemented selectively for revisions to NAAQS in existence in 1977. Congress did not add section 110(a)(2)(H)(i) when it enacted Part D; rather, it had already included that provision in the Clean Air Act enacted in 1970. Hence, it obviously intended section 110(a)(2)(H)(i)'s SIP revision requirement to work in conjunction with section 110(a)(1) as the general scheme for implementing all NAAQS revisions. Nothing in the language or history of Part D suggests that in 1977 Congress injected into section 110(a)(2)(H)(i) a new meaning under which it would operate independently of section 110(a)(1) to govern SIP submittals under a particular subset of NAAQS revisions.[9]

[7] A fundamental assumption of the proceeding analysis is that, for implementation purposes, the proposed NAAQS would be "revisions" to the current particulate matter standards. A different approach would be to treat them not as "revisions" but instead as entirely new standards. Even in that case, however, EPA would still need to choose between the section 110 core and the Part D implementation pathways, because each standard would still fall within the plain meaning of both the phrases "a national . . . ambient air quality standard" in section 110(a)(1) and the phrase "any national ambient air quality standard" in the Part D definition of "nonattainment area" [Section 171(2)]. Plainly, though, EPA would resolve this conflict by implementing the new primary and secondary NAAQS under section 110, because EPA has never interpreted Part D to govern entirely new standards promulgated after Congress enacted Part D. EPA solicits comment on whether, in light of the resulting application of section 110, the Agency should view the proposed standards as new standards rather than "revisions" for implementation purposes.

[8] It seems doubtful that the 9-month deadline would still have force under these alternatives for revisions that do not require significantly greater controls. The 9-month deadline is plainly intended to govern new planning efforts. A standard revision that requires no greater control, however, presents no new planning effort.

[9] The decision in *Bethlehem Steel* v. *EPA*, 723 F.2d 1303 (7th Cir. 1983), bears on EPA'S authority to use Part D to implement revised standards. In that case, the Court held that EPA may not initiate redesignations of areas pursuant to section 107 and that the provisions of Part D, therefore, cannot be applied to additional areas unless the State concurs in the nonattainment designation. EPA is currently

Continued

B. Comparison of Proposed and Existing PM NAAQS

Since, under the second approach discussed in Section III.A.2. of this notice, the relative stringencies of the current and revised particulate matter standards would determine whether Section 110 or Part D applies, the Agency compared the different sets of standards (Powell, 1984).

1. Comparison for the Proposed Primary NAAQS

EPA has performed a rough assessment of the impact of revised primary NAAQS by examining the nonattainment probabilities for ambient monitoring sites for which TSP data indicate attainment of current TSP NAAQS. The number of these sites with probabilities above 50 percent is an estimate of the number of areas which would need additional control measures above those required to attain the current primary NAAQS.

EPA has performed this analysis for three different levels of the primary standards from the ranges of values proposed for the PM_{10} NAAQS. The analysis performed for the lowest end of the ranges proposed for the PM_{10} primary standards (that is 50 $\mu g/m^3$ for the annual and 150 $\mu g/m^3$ for the 24-hour), indicate approximately 150 areas may need stricter emission controls than those necessary for current NAAQS. When performed for higher NAAQS levels, but still within the lower portion of the ranges proposed (55 $\mu g/m^3$, annual and 180 $\mu g/m^3$, 24-hour),[10] the analysis indicates approximately 48 sites which show the potential need for additional controls. At the upper end of the ranges proposed (65 $\mu g/m^3$, annual and 250 $\mu g/m^3$, 24-hour), the estimated number of sites for which additional controls could be needed falls to 12.

EPA concludes on the basis of this analysis that if PM_{10} NAAQS are adopted from the lower portions of the proposed ranges, there is a potential for States to be required to implement additional control requirements for a significant number of areas above those required under existing primary standards.

It should be emphasized that these results are preliminary and only approximate since (1) they are based not on actual PM_{10} monitoring data, but on probability estimates of PM_{10} violations derived from TSP data; and (2) they exclude areas that are currently nonattainment for TSP and for which still more SIP measures may be required to avoid violations of the revised NAAQS.

The data that appear in Table V.1 of the addendum to the *Regulatory Impact Analysis on the National Ambient Air Quality Standards for Particulate Matter* (RIA) (EPA, 1983) indicate that, even at the lowest values in the proposed ranges for the PM_{10} NAAQS, there would be overall fewer nonattaining sites for PM_{10} than for the current primary TSP NAAQS. Additional analysis indicates, however, that these sites are not the same in all cases. That is, a site may be in attainment of current primary NAAQS but projected to be in nonattainment of primary PM_{10} NAAQS selected from the lower ends of the proposed ranges; or, a current nonattainment site may be projected to be in attainment of PM_{10} NAAQS. Whereas it is possible that revised primary NAAQS within the proposed ranges could represent overall less stringent requirements for emission controls nationwide, EPA's analysis indicates that at a significant number of individual sites, control requirements more stringent than those now required may be necessary.

The proposed change in the indicator for the primary NAAQS from TSP to PM_{10} could create regulatory burdens even where it did not shift an area from attainment to nonattainment. This could result in the need for control strategies to refocus on sources emitting small particles. States may also need to develop PM_{10} emission inventories and perform modeling based upon PM_{10}. Thus, the change in indicators alone could cause significant impacts which would be a factor to consider in interpreting the Act.

2. Comparison for the Proposed Secondary NAAQS

The comparison analysis performed for the proposed secondary standard consisted of examining ambient TSP data with respect to existing and proposed TSP NAAQS. The intent of the analysis was to determine the number of sites for which data indicated current NAAQS are being attained, but where a proposed NAAQS would not be attained. The results would be an indication of potential new control requirements above those necessary for existing TSP NAAQS. For a revised secondary standard at the lower end of the proposed range (70 $\mu g/m^3$), it was evident that there would be well over 100 sites (the actual number was not calculated) that would become nonattainment due to a revised secondary NAAQS. However, for a revised standard from the upper portion of the proposed range,[11] there are no sites now in attainment of all existing TSP NAAQS which would become nonattainment under a revised secondary TSP NAAQS, except for four sites if the revised NAAQS were set at 80 $\mu g/m^3$.[12] EPA thus concludes preliminarily that more stringent controls will not be required at a significant number of sites for a revised secondary NAAQS from the upper portion of the proposed range.

C. The Act's Applicability to the Proposed NAAQS

As stated earlier, EPA has concluded preliminarily that section 110 governs the implementation of either (1) all revised standards or (2) just those that would impose significant new control requirements beyond what the pre-1977 standards required. For the reasons just described, EPA believes that the expected PM_{10} standards will likely impose new control requirements in a significant number of areas. Hence, under either view of the Act, section 110 will govern nonattainment problems arising from the revised primary standards.

The policies and rules that EPA proposes in the remainder of this notice would implement the Agency's basic

contesting the correctness of the *Bethlehem Steel* decision in the First Circuit. If other courts choose to follow *Bethlehem Steel's* reasoning, States could deprive EPA of the power to compel SIP revisions for PM_{10} that comply with Part D, or to impose a construction ban against areas that fail to submit SIPs that meet part D's requirements, merely by declining to designate areas as nonattainment.

The Agency would have few if any remedies for this. It could require a SIP revision pursuant to section 110(a)(2)(H) without requiring designations; but this would put EPA in the same position as if it had opted against the use of Part D from the start because it is the nonattainment area designation that triggers Part D's applicability. Alternatively, EPA could use its section 301 authority to designate nonattainment areas without reference to section 107(d) and to apply Part D-like requirements in those areas; but this might stretch the Agency's section 301 authority beyond its limits. EPA therefore invites comment on the implications of *Bethlehem Steel* for the possible use of Part D.

[10] As previously discussed, for purposes of deriving a SIP development policy, EPA is assuming that the Administrator will promulgate PM_{10} primary NAAQS from the lower portions of the proposed ranges.

[11] For purposes of deriving a SIP development policy, EPA is assuming that the Administrator will promulgate a secondary TSP NAAQS from the upper portion of the proposed range.

[12] This analysis assumes that if any current TSP NAAQS, either primary or secondary, is not being attained, the measures necessary to attain the existing NAAQS will bring about attainment of the revised secondary NAAQS. This assumption is based on EPA's finding that a secondary standard from the upper portion of the proposed range would be roughly comparable in stringency to the current annual primary standard.

conclusion that Section 110, and not Part D, applies to implementation of the PM_{10} primary standards. Throughout this notice, however, EPA has attempted to account for the possibility that the Agency could conclude after considering public comment that Part D is appropriate for implementing those primary standards.

By contrast, the expected secondary TSP standard might not impose more stringent control requirements in any area. If this is the case, section 110 would govern the implementation of that standard under only the first of the two interpretations described above; Part D would govern under the second interpretation. EPA has decided that, rather than select one interpretation for purposes of this proposal, it will summarize the policy and the regulatory consequences of applying Part D and section 110, respectively, to a revised TSP secondary standard, and solicit comment on these two alternatives.

D. Solicitation of Comment

EPA recognizes that one important consequence of implementing the PM_{10} primary standards under section 110 is that the Agency would be unable to use such implementation tools as the section 173(4) construction ban, which would be available under the alternative approaches described earlier. Also, one consequence of applying Part D to the revised TSP secondary standard is that areas that are exceeding that standard would be required to meet Part D's strict RACT, LAER, and statewide compliance requirements even when they have already attained the health-based primary PM_{10} standard. Furthermore, for the reasons explained at length in the discussion of PSD increments (see Section V.1.d. of this notice), the choice of section 110 to implement both the primary and secondary NAAQS could relieve new and modified particulate matter sources of the requirement to demonstrate protection of the PSD increments for Class II and III areas.

EPA solicits comment on its legal analysis and conclusions, and whether it has properly concluded that these consequences would result from selection of different alternative schemes for implementing the revised standards and whether these consequences should affect the Agency's choice of a legal pathway.

IV. State Implementation Plan Transition Program

A. General

This portion of the preamble sets forth EPA's proposed policy for actions that States must take to meet the planning requirements of the Act, focusing on the preparation and submission of appropriate SIP revisions for existing sources. The next portion of this preamble focuses on the SIP program for the preconstruction review of new sources, including the PSD permit program.

B. Primary NAAQS

1. Transition Policy

Because the existing control strategies serve to reduce ambient levels of both TSP and PM_{10}, States must not dismantle existing particulate matter control programs until they can demonstrate that the existing SIP's can be altered without jeopardizing timely attainment or maintenance of the primary PM_{10} NAAQS (or the revised secondary NAAQS). All requirements of existing SIP's will remain in effect until SIP revisions modifying existing emission limitations are approved by the Agency. [See Section 110(i), 42 U.S.C. section 7410(i).] The existing limitations will remain fully enforceable for purposes of Federal and State enforcement and citizen suits. The Agency will work closely with State and local agencies to assure a vigorous enforcement program throughout the transition period.

This policy is not only in conformance with the Clean Air Act but also is appropriate for environmental and equitable reasons. Compliance dates for particulate sources have long since passed. Further delays in compliance based merely on a possibility of a future change in ambient standards would adversely affect air quality and could be unfair to sources that have complied. Moreover, it is unlikely that many sources could demonstrate with certainty that the current level of required control goes well beyond the level that would be required at the most stringent combination of ambient levels contained in the proposal.

2. Ambient Data Base

In establishing the PM_{10} SIP development policy, a major concern is the lack of ambient PM_{10} data with which to ascertain the extent of NAAQS violations or to develop an attainment and maintenance strategy. This section discusses the scarcity of ambient PM_{10} data and the background of procedures for using TSP data where PM_{10} data are not available. The program for SIP development discussed in the next section has been especially tailored to account for the lack of ambient PM_{10} data.

Ambient samplers with inlets designed to collect PM_{10} have recently become available but are not yet in widespread use. EPA has been operating thirty-nine PM_{10} samplers since mid-1983. These 39 samplers, together with any samplers that State or local air pollution control agencies or industry may have in operation, will not provide sufficient ambient PM_{10} data to allow States to comprehensively evaluate the PM_{10} attainment status for all areas. To make such a determination, States will have to use all available ambient data. This includes TSP data as well as data and statistical relationships derived from EPA's "inhalable particulate" (IP) network.

In 1979 EPA began operating ambient samplers in the IP network which consisted of ambient air monitoring stations containing high volume samplers (hi-vols) collocated with dichotomous samplers having inlets designed to measure particles nominally 15 micrometers and less (PM_{15}) and fine particulates (less than 2.5 micrometers). The stations in the network were located in urban and suburban areas throughout the U.S. to reflect maximum concentration and population exposure due to urban and industrial sources, and also in nonurban areas to provide information on background levels. The 39 ambient samplers measuring PM_{10} noted above were added to existing stations in this network.

Analysis of data from the IP network, including nine PM_{10} samplers operated since early 1982, reveals that the PM_{10} portion of TSP varies widely. It would, therefore, not be appropriate to establish a single nationwide conversion factor to simply convert ambient TSP values to ambient PM_{10} values. EPA has used the IP network data, however, to develop a statistical approach for estimating from ambient TSP data the probability that PM_{10} NAAQS are being violated in the area represented by the ambient sampler. This probability has been termed the "nonattainment probability."

Procedures for using statistical probabilities in the absence of ambient PM_{10} data are explained in a draft document, *PM_{10} SIP Preparation Guideline*. A companion document, *Procedures for Estimating Probability of Nonattainment of a PM_{10} NAAQS Using Total Suspended Particulate or Inhalable Particulate Data* (referred to herein as the "probability guideline") explains in detail the methods for estimating PM_{10} levels using ambient PM_{15} data, or for estimating the probability of PM_{10} nonattainment using TSP data. EPA solicits comments on both documents. The probability guideline also contains guidance on

determining the spatial extent of PM_{10} nonattainment problems, i.e., the "area" represented by an ambient PM_{10} sampler for purposes of control strategy development and implementation. EPA solicits comments on using the criteria to define PM_{10} areas, specifically, the appropriateness of the criteria, any other criteria that could be used, and how to assure nationwide consistency.

3. SIP Development Policy

a. *General Background*

For the reasons described earlier, EPA is proposing to require implementation of the primary PM_{10} standards under section 110 of the Act. Section 110(a)(1) provides that each State shall adopt and submit, within 9 months after revision of a NAAQS, a plan (SIP) providing for attainment and maintenance of the revised NAAQS everywhere in the State as expeditiously as practicable but no later than 3 years from the date EPA approves the SIP. Section 110(a)(2) requires that a SIP contain emission limits, schedules and timetables and such other measures as may be necessary to assure expeditious attainment and maintenance. EPA regulations in 40 CFR 51.13, adopted under section 110(a)(2) of the Act, require that States demonstrate through modeling or an adequate alternative that this control strategy will indeed assure timely attainment and maintenance.

EPA has considered different ways of implementing this control strategy demonstration requirement under the 9-month SIP submittal schedule in section 110(a)(1). There is a great deal of merit in awaiting ambient PM_{10} data to specifically define the extent and degree of PM_{10} nonattainment situations before developing control strategies. However, due to applicable Act requirements, and the environmental risk in areas with severe air quality problems, the Administrator cannot permit delay in the development of PM_{10} control programs simply because ambient PM_{10} data are unavailable.

Another approach would be simply to call upon States to develop and submit a full PM_{10} attainment demonstration and control strategy for every area of the country within the 9-month period. EPA believes, however, that such a requirement would be unreasonable for certain areas. An analysis of the latest ambient TSP data in conjunction with the methodology in the probability guidelines indicates that there could be from around 60 to 200 counties in which the PM_{10} NAAQS will not be attained. While these numbers are the best indication at this time of the potential nonattainment situation for PM_{10}, they are only estimates and, furthermore, will probably change as new ambient TSP and PM_{10} data become available. The estimates are, however, useful as an indication of the degree of PM_{10} SIP that may eventually be necessary. The key point is that many of the 3,141 counties in the nation will need additional particulate matter SIP provisions due to the revised NAAQS. Thus, for many areas, the existing TSP SIP's already provide for timely attainment and/or maintenance of the primary PM_{10} NAAQS, even if EPA were to set the standards at the low ends of the ranges it has proposed. To call upon areas that almost certainly have adequate SIP's to resubmit those SIP's along with full attainment demonstrations would be unnecessary and therefore wasteful of limited State resources.[13]

Furthermore, there will be areas that have a significant likelihood of attaining and maintaining PM_{10} NAAQS, with only minor SIP changes. States may be able to gather ambient PM_{10} data in these areas, adopt any additional measures that a review of both the ambient data and the current SIP's may show to be necessary, implement those measures, and still meet the 3-year attainment deadline in section 110(a)(2)(A). Of course, modeling could reveal the need for major SIP adjustments in some of these areas; therefore, immediate modeling and adoption of necessary control measures could bring about attainment more expeditiously than would result if States delayed these actions until after receipt of ambient PM_{10} data. However, because these areas may well need only minor SIP adjustments and because PM_{10} monitoring may show this to be true well before the 3-year attainment deadline, EPA believes that a demand for immediate submissions of attainment demonstrations and control strategies for these areas would extract an impracticable price for this more expeditious attainment.

b. *SIP Policy Description*

For the reasons given immediately above, EPA is proposing the following approach. At the time EPA promulgates the final PM_{10} primary NAAQS, EPA will divide all areas of the country into three categories: (1) Areas with a strong likelihood of violating the PM_{10} NAAQS and therefore of needing substantial SIP adjustment (Group I), (2) areas where existing SIP's probably need only minor adjustment (Group II), and (3) areas with a strong likelihood of attaining the PM_{10} NAAQS and therefore of needing no SIP adjustments at all (Group III). For purposes of this program, "areas" are conceptually the same as "areas" for which classifications are designated in Part 81, although there will be no area designations in Part 81 for PM_{10}. Furthermore, the spatial extent of a PM_{10} attainment or nonattainment situation may differ from TSP area boundaries. As discussed previously, guidance is provided in the probability guideline for determining area boundaries for PM_{10}.

The requirements for SIP's which follow pertain only to SIP's for attainment and maintenance of PM_{10} standards. Requirements for SIP's for preconstruction review of new or modified sources are discussed in the next major section of this notice.

(1) *Requirements for Group I Areas.* States will be required to submit SIP's for all areas in Group I within 9 months of promulgation of the primary PM_{10} NAAQS. These SIP's will have to contain full PM_{10} control strategies including a demonstration of attainment as expeditiously as practicable, but no later than 3 years from approval of the SIP, and provisions for maintenance.

As provided in section 110(e) of the Act, the Governor may apply, at the time the SIP is submitted, for up to 2 additional years for attainment. The Administrator may grant an extension if he determines that:

> . . . (A) one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such 3-year period, and
>
> (B) the State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the 3 years cannot be achieved.

and that the plan provides for:

> . . . (A) application of the requirements of the plan which implement such primary standard to all emission sources in such region other than the sources (or classes) described in paragraph (A) [above] within the 3-year period, and
>
> (B) such interim measures of control of the sources (or classes) described in paragraph

[13] Developing a sound attainment demonstration is generally resource intensive. It requires an in-depth study of the emission characteristics of specific sources in the demonstration area and a thorough evaluation of the anticipated effects of various emission levels from those sources. Although States have gained substantial expertise developing attainment demonstrations for other standards, including the current TSP standards, such factors as the new PM_{10} data requirements and the change from a deterministic to a statistical form of NAAQS will require the States to conduct new types of analyses. While EPA will provide guidance in this area (e.g., the PM_{10} SIP guideline), the States will bear the primary responsibility for producing these new demonstrations.

(A) [above] as the Administrator determines to be reasonable under the circumstances.

(2) *Requirements for Group II Areas.* States will also be required to submit SIP's for all areas in Group II within 9 months of NAAQS promulgation, but those SIP's need *not* contain full control strategies and demonstrations of attainment and maintenance. Instead, States may submit "committal" SIP's that supplement the existing SIP's with enforceable commitments to:

(a) Gather ambient PM_{10} data, at least to an extent consistent with minimum EPA requirements and guidance.[14]

(b) Analyze and verify the ambient PM_{10} data and report 24-hour PM_{10} NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

(c) When the appropriate number of verifiable 24-hour NAAQS exceedances becomes available (see Section 2.0 of the PM_{10} SIP Development Guideline) or when an AAM above the level of the manual PM_{10} NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office.

(d) Within 30 days of the notification referred to in (c) above, or by the date 18 months after approval of the committal SIP, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM_{10} standards, and immediately notify the appropriate Regional Office.

(e) Within 6 months of the notification referred to in (d) above adopt and submit (if necessary) to EPA as PM_{10} control strategy that assures attainment as expeditiously as practicable but no later than 3 year from approval of this committal SIP.

The committal SIP must include an enforceable schedule with appropriate milestones or checkpoints. EPA will review and act on both the committal SIP's and on control strategies submitted under step (e). For Group II areas States may, if they wish, submit full PM_{10} attainment demonstrations required for Group I areas in lieu of the committal SIP.

(3) *Requirements of Group III Areas.* For Group III, EPA will administratively determine that the existing SIP is adequate to demonstrate attainment and maintenance of the PM_{10} standards. States will, therefore, not be required to make any SIP submission for Group III areas at this time other than as required under the preconstruction review and air quality monitoring programs.

(4) *Area Grouping Procedures.* For those areas where there are sufficient ambient PM_{10} data to define PM_{10} NAAQS attainment or nonattainment, the need for SIP revision can be determined relatively easily. For these areas, EPA will determine the appropriate group based upon PM_{10} data. For other areas with insufficient PM_{10} data, EPA will use a 3-step process to categorize areas. First, where ambient TSP data are available, EPA Headquarters staff, in cooperation with the EPA Regional Offices, will use those data and the probability guideline to classify areas preliminarily as Group I, II, or III.[15] Even though there is some uncertainty in inferring PM_{10} levels from TSP data, the ambient TSP data now available and the probability guideline can be used for this purpose.

The Agency will presume that (1) areas with a probability of at least 95 percent fit into Group I, (2) areas with a probability of between 20 and 95 percent fit into Group II, and (3) areas with a probability of less than 20 percent fit into Group III. Second, the Agency's Regional Offices, after consulting with the appropriate State and local agencies, will evaluate the existing TSP SIP's and other relevant information for each area in their jurisdiction (1) to see whether information other than the probability of nonattainment justifies changing the group for an area, and (2) to determine the appropriate group for areas that the Agency could not classify under the first step because ambient TSP data were unavailable. Third, when a Regional Office suggests such a change, a review group consisting of representatives of EPA's Headquarters and all Regional Offices will be the final arbiter.[16]

This process will assure that the decisions regarding grouping are nationally consistent.

Examples of information that may warrant moving an area from Group III to Group II, or from Group II to Group I, are:

- facts showing that the current air quality is attributable to an economic slowdown or some other temporary phenomenon rather than the stringency of the area's TSP SIP requirements,
- facts suggesting that there are few enforceable measures in existing SIP's yet to be implemented that would reduce emissions that significantly affect air quality,
- site-specific ambient PM_{10} data showing that the area will have a greater probability of violating the PM_{10} NAAQS than initially presumed, and
- evidence that the area has an unusually high proportion of sources in categories whose emissions typically have a high ratio of PM_{10} to total particulate matter.

Examples of information that may warrant moving an area from Group I to Group II, or from Group II to Group III, are:

- facts suggesting that sources are not yet in compliance with SIP measures that, if enforced, would reduce emissions that significantly affect the area's air quality;
- site-specific ambient PM_{10} data showing that the area will have a lower probability of violating the PM_{10} NAAQS than initially presumed; and
- evidence that the area has an unusually high proportion of sources in categories whose emissions typically have a low ratio of PM_{10} to total particulate matter.

Examples of information that may affect EPA's classification of an area not preliminarily classified using a nonattainment probability are:

- the amount and density of industrial activity that would likely result in significant ambient PM_{10} concentrations in the area;
- the number and density of roadways in the area that are near activities likely to generate significant particulate emissions and that are subject to moderate and heavy vehicle traffic;
- the degree to which the existing TSP SIP will likely limit PM_{10} emissions from these traditional and nontraditional sources.

(5) *Failure to Submit SIP.* Where a State fails to submit a PM_{10} committal SIP for a Group II area within 9 months of EPA's promulgation of primary PM_{10} NAAQS, EPA will treat that area instead as a Group I area. Section 110(c)

[14] Section 58.13(c) of Part 58, which EPA proposed on March 20, 1984, would require States, within 1 year after PM_{10} NAAQS are promulgated, to begin sampling for PM_{10} everyday (at at least one site) in areas with a PM_{10} nonattainment probablity of 95 percent or greater, and every other day (at at least one site) in areas with a nonattainment probability between 20 and 95 percent.

[15] EPA has computerized the procedures described in the probability guideline and will make the computer software available to States to calculate nonattainment probabilities. EPA will also make the results of its own calculations available to the States.

[16] Preliminarily, the number of areas in Group I, based on a 95-percent nonattainment probability cutoff, will be from around 40 to 50 percent of the number of projected nonattaining area, depending on the levels set for the PM_{10} NAAQS. Dropping the probability cutoff in 5 percent increments would add roughly an additional 5 percent of the number of projected nonattaining areas to Group I. For the 95-percent cutoff, the number of areas initially in Group I could vary from approximately 25 to 100 for the upper and lower ends of the proposed NAAQS ranges, respectively. It must be emphasized, however, that the number of areas ultimately assigned to each of the three groupings will change as more recent ambient data become available and when the Regional Offices conduct the remainder of the group categorization process.

of the Act which provides for EPA promulgation would then apply. Section 110(c) would also apply where a State fails to submit a SIP for an area that EPA initially categorized in Group I.[17]

(6) *Ambient Data Collection.* The Agency encourages States to begin measuring ambient PM_{10} in all areas as soon as possible regardless of how they expect EPA to group particular areas under the system just described. EPA will not designate ambient reference or equivalent method samplers until sometime after promulgation of the revised NAAQS and of the accompanying Part 50 and Part 53 reference and equivalent method requirements. Data from nondesignated samplers, however, may be used prior to such designation (see Section 3.3.2 of the PM_{10} SIP guideline). Measured data that may be used for directly determining PM_{10} NAAQS attainment or nonattainment (instead of a probability based on ambient TSP data) are those data collected with samplers fitted with inlets designed to collect PM_{15} or PM_{10}. The samplers include dichotomous samplers, high-vols utilizing quartz fiber filters, and the relatively new medium-flow samplers now being marketed. The States must also have utilized proper quality assurance procedures when collecting the data. States should consult with the appropriate Regional Office to determine if certain data can be used for PM_{10} attainment/nonattainment determinations.

(7) *Technical Guidance.* The PM_{10} SIP guideline contains technical information on the PM_{10} NAAQS and on preparing control strategies for them. Topics discussed include monitoring PM_{10} air quality, determining from ambient data when nonattainment problems are apparent, using PM_{10} emission factors, dispersion and receptor modeling, interpreting model results, writing emission regulations, and measuring PM_{10} emissions. It is meant to cover all aspects of SIP development where additional guidance is needed due to the new focus on a PM_{10} size range. References to other sources of information are included where more detail may be required. The guideline is now in draft form and the public is invited to examine it and submit comments on it.

Following the final promulgation action on these proposals, EPA's Office of Air Quality Planning and Standards will conduct workshops in selected cities to provide further guidance on developing SIP revisions to account for PM_{10} NAAQS. The workshops will also address the secondary NAAQS and the preconstruction review program. These workshops will be open to State and local air pollution control agency personnel and other interested parties. A schedule of the workshops will be provided in the final promulgation notice.

C. Secondary NAAQS

1. Transition Policy

There are ample ambient TSP data available for determining the extent and degree of the TSP nonattainment problem for the revised secondary NAAQS. States also have a great deal of experience in modeling TSP and applying controls to resolve ambient TSP problems. Since a revised NAAQS at the upper end of the proposed range for the secondary NAAQS would be roughly equivalent to the current annual primary NAAQS, most States may already have SIP's sufficient for the revised secondary NAAQS.

Until SIP's are revised to account for the revised secondary NAAQS, which will in some cases entail only verifying the adequacy of existing provisions, the same transition policy applies as described for the revised primary NAAQS. That is, a State's existing SIP regulations are still in effect until the State revises them and EPA approves them.

2. SIP Development Policy

As stated earlier, EPA has decided not to select for the purpose of this proposal a legal interpretation that would determine whether Part D or Section 110 governs nonattainment problems arising under the expected secondary TSP standard. Instead the Agency summarizes below the implementation policies and rules that it would apply under each alternative.

a. *The Part D Alternative*

Since under this alternative Part D and section 107 of the Act would still apply for the revised secondary NAAQS, the area designations for secondary TSP NAAQS would be retained in Part 81. If the revised NAAQS affected an area's attainment/nonattainment classification, the area would be redesignated as appropriate in Part 81.

Part D requirements would apply for purposes of the revised secondary standard in all areas designated as nonattainment for the current secondary particulate matter standard. This includes all areas designated nonattainment for the current primary standards. Not all of these areas have approved SIP's and not all approved SIP's for these areas appear to be adequate to provide for attainment of both the current and proposed TSP standards. Consequently, where appropriate EPA would issue notices of deficiency and call for SIP revisions under section 110(a)(2)(H) either at the same time or soon after it promulgates the revised secondary standard. The Agency would use the discretion provided under section 110(c)(1)(C) to require States to submit revised SIP's within 9 months of the notice of inadequacy.[18] EPA is proposing a 9-month deadline for SIP submittal to allow States to coordinate planning for both the revised primary and secondary standards.

Under this alternative, the revised SIP's for these nonattainment areas would have to provide for attainment as expeditiously as practicable and would have to meet other Part D requirements. States would have to impose RACT on existing sources, at least to the extent necessary to provide for attainment. EPA would expect States to submit plans containing complete attainment demonstrations and adopted control requirements. Under some circumstances, however, EPA might accept schedules for the adoption of identified control measures. The previous approach of applying RACT to traditional sources in conjunction with studies of nontraditional sources, with later determination of the nontraditional control measures that would be needed (44 FR 20372, April 4, 1979), would no longer be acceptable. States would also have to establish nonattainment new source review programs as described in the next portion of this preamble on new source review.

If a State failed to submit a SIP revision in response to a notice of inadequacy, EPA would propose (1) to find that the area had failed to implement the portion of its SIP that requires it to respond to a notice of inadequacy, and (2) to withhold Clean Air Act funding under section 176(b).

Different requirements would apply in all areas that are not designated nonattainment under section 107(d). As

[17] In the event EPA concludes that Part D applies to the primary PM_{10} standards, EPA's PM_{10} development policy would be quite different from that just described. As discussed earlier, those alternatives generally would provide for more flexible SIP submittal and attainment deadlines and allow EPA to use such measures as the Section 173(4) construction ban to address a State's failure to submit an adequate PM_{10} SIP revision.

[18] Thus, under this alternative EPA would construe section 110(a)(1)'s 9-month SIP submittal deadline not to apply to less stringent standards, but only to those revised standards that would require significantly greater controls.

previously discussed, some States might choose not to redesignate as nonattainment some attainment and unclassifiable areas that would be violating the revised secondary standard. Under this alternative, following promulgation of the revised standards, EPA would review the air quality data from all attainment and unclassifiable areas. Where the Agency found violations of the revised secondary standard in these areas, it would issue a notice of inadequacy and call for a SIP revision under section 110(a)(2)(H). To promote coordination, EPA would use its discretion under section 110(c)(1)(C) to set a 9-month deadline for submission of the revised plans. (Where appropriate, EPA would also redesignate areas to nonattainment.)

In those areas not designated nonattainment, Part D would not apply and the revised plans would have to meet only section 110 requirements. Section 110(a)(2)(A) requires plans to provide for attainment of secondary NAAQS within a reasonable time. EPA would review attainment dates for these areas on a case-by-case basis. As part of this review, EPA would take into account an existing regulation in § 51.13(b) of Part 51 which states that:

> . . . Where the degree of emission reduction necessary for attainment and maintenance of a secondary standard . . . can be achieved through the application of reasonably available control technology, "reasonable time" for attainment . . . shall be not more than 3 years unless the State shows that good cause exists for postponing application of such control technology.
>
> . . . In any region where application of reasonably available control technology will not be sufficient for attainment and maintenance of such secondary standard, or where the State shows that good cause exists for postponing the application of such control technology, "reasonable time" shall depend on the degree of emission reduction needed for attainment of such secondary standard and on the social, economic, and technological problems involved in carrying out a control strategy adequate for attainment and maintenance of such secondary standard.

As this passage indicates, § 51.13 requires States to attain the secondary NAAQS in all secondary nonattainment areas within three years of secondary plan approval if the application of reasonably available control technology (RACT) will bring about attainment within that time. Even though attainment may be postponed in these areas in such cases when the State shows good cause to do so, EPA solicits comment on whether it is appropriate to presume that attainment of the revised secondary standard within three years using RACT constitutes attainment within a "reasonable time" and, in particular, on whether EPA should amend § 51.13 to delete that presumption.

Requirements for preconstruction review of major new or modified sources appear subsequently in this notice.

If any area failed to respond to a notice of inadequacy, EPA could propose and implement funding restrictions under section 176(b) as it would do as described above for Part D plan revisions.

b. *The Section 110 Alternative*

As indicated earlier, if EPA were to choose section 110 over Part D for purposes of implementing the revised secondary TSP standard, it would be interpreting the phrase "a national ambient air quality standard" as it appears in sections 171(2) and 107(d)(1) as referring only to the NAAQS in existence in 1977 and hence as excluding any revision, whether a tightening or a relaxation—of those NAAQS. Thus, EPA would have no choice but to rescind the current designations for particulate matter for an area if a State under section 107(d)(5) asked EPA to do so. For that reason, the remainder of this discussion describes substantive SIP development requirements that would apply under the section 110 alternative in areas *not* designated "nonattainment" for the revised secondary standard. (Subsequent sections of this notice discuss new source review requirements that would apply if EPA implemented the secondary TSP standard under section 110.)

Under this alternative, EPA would construe the SIP submittal deadline in section 110(A)(1) to apply to *all* NAAQS revisions. States would therefore have 9 months from NAAQS promulgation to submit SIPs to attain the revised secondary standard. States could petition the Administrator under Section 110(b), however, to extend this deadline up to 18 months beyond the end of the initial 9-month SIP submittal period.

Under section 110(a)(2)(A), these secondary plans would have to provide for attainment of the secondary TSP standard within a "reasonable" time. As stated earlier, EPA would review the attainment dates for these areas case by case and would apply the § 51.13(b) requirements discussed earlier. The SIP's for these areas would not need either to require sources to apply reasonably available control technology (RACT) or to provide for "reasonable further progress" toward attainment.

It a State either failed to submit a secondary standard SIP for a particular area before the applicable submittal deadline, or submitted a SIP that did not meet the Act's requirements, EPA could promulgate a SIP for the area under section 110(c) or withhold Clean Air Act funding under Section 176(b).

D. Associated Issues

1. Fugitive Dust Policy

The Administrator intends to continue the fugitive dust policy (Tuerk, 1977; Hawkins, 1977). Comment on this proposed course of action is solicited.

2. Emissions Trading (Bubble) Policy

Revision of the particulate matter NAAQS will affect alternative emission reduction options (bubbles) that were approved for existing particulate matter SIP's. In the initial bubble policy, as published on December 1, 1979, in the **Federal Register** (44 FR 71780), sources were warned that EPA was considering revising its particulate matter NAAQS and that if such size-specific standards were promulgated, some alternative approaches, initially approved by EPA, might no longer be adequate under the revised NAAQS. The policy indicated that sources that used a bubble approach to meet SIP emission limitations could be treated no differently from sources that did not; i.e., emissions from sources using bubbles could not cause any violations of the ambient air quality standards. States should, therefore, consider bubbles that were approved after the publication of the policy but prior to development of SIP's for revised primary NAAQS as any other existing SIP provision and may or may not revise them in lieu of controlling PM_{10} from other sources in the same affected area. The determination of which additional emission control measures are most effective in providing for attainment remains at the discretion of the State.

Even though the Emissions Trading Policy Statement, which was proposed on April 7, 1982 (47 FR 15076) as a revision to the 1979 bubble policy, is silent with respect to size-specific particulate matter NAAQS, the intent is the same. In general, bubbles cannot interfere with a State's efforts to attain and maintain NAAQS even if those NAAQS are revised.

V. Impact on NSR/PSD Program

A. Overview

EPA's proposal to revise the NAAQS for particulate matter necessitates proposal of a number of significant changes to the existing preconstruction review requirements for new and

modified major stationary sources. The proposed NAAQS revisions would potentially affect six existing sets of Federal preconstruction review regulations in Parts 51 and 52, and would lead to substantial revisions to existing SIP's for nonattainment NSR and PSD (NSR/PSD). The affected regulations include PSD requirements in §51.24 and 52.21, regulations in §51.18(j) and (k), and Appendix S (The Offset Ruling) of Part 51, which govern how States are to develop approvable nonattainment NSR rules, and the construction moratorium codified in §52.24.

The purpose of this portion of the preamble is to describe the anticipated impact of revised NAAQS for particulate matter on the applicability and content of the NSR/PSD regulations and to propose a transition program that would enable EPA and the States to make the necessary changes within their preconstruction review programs.

Changes to the existing NSR/PSD program would result from any of the following factors: (1) A finding that Part D would not govern implementation of the primary PM_{10} standards;[19] (2) a finding that Part D also would not govern implementation of the secondary TSP standard;[20] and (3) the establishment of a new, additional indicator for particulate matter, i.e., PM_{10}. For instance, the application of only section 110 to either the primary or secondary NAAQS would significantly affect the geographic applicability of NSR/PSD rules. Also, the creation of a second regulated form of particulate matter acts to create a dual PM_{10}/TSP system for the control of particulate matter in the PSD regulations.

B. PSD Program

1. Program Jurisdiction

Section 51.24 sets forth minimum PSD requirements that SIP's must contain in order to warrant EPA approval. States with EPA-approved PSD requirements in their SIP's can implement their PSD preconstruction review program without direct EPA intervention. Until EPA approves a State PSD SIP program, however, EPA must ensure that a PSD program is conducted according to procedures under §52.21 (hereinafter, the "Part 52 PSD Regulations"). Under the Part 52 PSD Regulations, EPA may delegate all or a portion of its implementation and enforcement authority for the Federal PSD program to a State.[21] States with delegated PSD responsibility are required to carry out the PSD preconstruction review process in accordance with EPA policies and procedures.

Most States either administer their own approved PSD programs, having received SIP approval under § 51.24, or administer the Federal PSD program through a delegation of authority by EPA under §52.21(u). For less than ten States, EPA implements the Federal PSD program as part of the SIP as required by section 110(c) of the Act.

The Administrator is inclined to make the changes to the Part 52 PSD regulations that are proposed below effective immediately upon promulgation of the revised PM_{10} standard. States, on the other hand, will have 9 months to adopt new PDS rules for PM_{10} and submit them to EPA for approval. Thus, the new requirements for PM_{10} would be effective immediately not only where the Administrator is directly responsible for the program, but also where he has delegated the Agency's PSD authority to a State or local agency. Consequently, prospective sources applying for a PSD permit in areas where EPA's Part 52 PSD Regulations are in effect would have to take PM_{10} into account.

Each delegation (including any supporting State regulations and the terms of the delegation itself) should be carefully evaluated by the affected agency to determine whether it would be the intent of that agency, and within its legal authority, to begin implementing the PSD program in accordance with the amendments being proposed. Many PSD delegations were possible only after PSD requirements were developed at the State level. This regulatory language, while not formally submitted as part of the SIP, was determined by many States to be a necessary step to enable them to issue federally enforceable PSD permits under a delegated program. Even in the case of State delegations which did not require the development of parallel State PSD rules, the language of the delegation agreement may not be open to an immediate transition to PM_{10}. In some cases, the delegation agreement made between EPA and the State or local agency may not require that the agency request or implement enforcement authority for future standards and requirements. EPA encourages any agency with delegated PSD responsibility to continue implementing and enforcing the program and will work with each applicable agency to ensure that the transition to a dual PM_{10}/TSP system will be completed as smoothly as possible.

Similarly, States with approved PSD programs in their SIP's should carefully evaluate their regulatory and statutory language to determine whether such programs could inevitably expand to cover PM_{10}. For example, some State PSD regulations may refer to the "national ambient air quality standards" without any subsequent reference tying such "standards" to a particular version of the NAAQS. Consequently, States having an "open-ended" reference to the NAAQS may determine that the State regulations automatically incorporate any subsequent revision of these national standards. Similarly, EPA believes that references throughout a State's PSD regulation to the term "particulate matter" can sometimes be interpreted to refer to the specific size fraction of particulate matter regulated by EPA and an amendment specifying PM_{10} would not be necessary.

EPA will also work closely with those agencies having an approved PSD program in their SIP, who may wish to accept delegated authority to implement the amendments proposed today, while any necessary changes are being made to their existing SIP's in order to accommodate PM_{10}.

Today's proposal assumes that PSD rule conversions to PM_{10} can take place without serious problems. However, since a considerable number of States now have responsibility for implementing the PSD program, this assumption needs to be carefully evaluated to see if an alternative approach for phasing in the new Part 52 requirements would be more appropriate. The alternative being considered most seriously by the Administrator is to delay amendment of the Part 52 PSD regulations (as described in this notice) until the time when all States are required to have approved preconstruction review procedures in their SIP's. Delay of the Part 52 PSD amendments is being considered since significant program changes are expected under any of the

[19] While EPA now believes that section 110, rather than Part D, should entirely govern implementation of the proposed primary PM_{10} standards, the Agency is open to the possibility that Part D may actually apply. As noted throughout today's notice, EPA is soliciting comment on the issue of which legal pathway is appropriate to direct SIP development pursuant to the proposed NAAQS changes for particulate matter.

[20] As indicated earlier, EPA has not decided whether Part D or Section 110 would apply under the revised TSP secondary standard. The NSR/PSD discussion, therefore, describes the consequences of choosing each scheme.

[21] Full delegation represents a complete transfer of EPA responsibility for implementing and enforcing the PSD regulations. A partial delegation means that EPA retains some program responsibility. Often, under a partial delegation, the State or local agency will carry out the "processing" activities, including review applicability, permit completeness, BACT, air quality, and other impact analyses, while EPA retains responsibility to issue and deny PSD permits.

implementation alternatives described in this notice. As will be discussed in more detail, however, EPA acknowledges that the changes will be especially extensive, particularly in the area of geographic applicability, in the event that EPA chooses to apply section 110 to the new standards.

During the public comment period, EPA expects to gain a much better understanding of the immediate adaptability of existing PSD programs to address PM_{10}. In the event that most States are unable to make an immediate conversion needed to cause a PM_{10} review, then the Administrator would consider delaying the implementation of the PM_{10} changes in the areas where EPA has direct PSD permit responsibility, including areas where States implement PSD review under delegated authority.

Thus, the Administrator solicits comments on the merit of a delay in the implementation of the Federal PSD program, including whether an immediate conversion is necessary to provide adequate environmental protection in the interim. That is, does the TSP review under PSD represent a reasonable program for particulate matter during the time of PM_{10} development, or must EPA insist on an immediate conversion within its Part 52 rules even before States are given an opportunity to revise their own rules?

2. Proposed Part 52 PSD Regulations

PSD regulations in § 52.21 govern the way that EPA and its delegated State representatives carry out PSD reviews. EPA is proposing to add several new PM_{10} requirements to its Part 52 PSD regulations, which would establish a dual system for the preconstruction review of particulate matter, i.e., TSP and PM_{10}. As mentioned above, EPA intends to make the new rule requirements effective immediately on the date the final notice appears in the Federal Register, using its authority under section 301(a)(1) of the Act. However, under section 301, EPA also has authority to fashion a transition program to avoid any unreasonable hardship associated with applying new PM_{10} requirements within the rule changes too quickly. As proposed, each new provision governing PSD review for particulate matter would apply to any proposed major stationary source or major modification that has not filed a complete PSD application on or before the effective date of the new requirements. In addition grandfather provisions granting varying degrees of relief from the PM_{10} ambient monitoring requirements are also being proposed in today's action as described below.

a. *Source Applicability*

PSD review applies to new major stationary sources and major modifications of existing major stationary sources. A "major stationary source" for PSD purposes is (1) any source type belonging to a list of 28 source categories that emits or has the potential to emit 100 tons per year (TPY) or more of *any* pollutant regulated under the Act, or (2) any other source that emits or has the potential to emit any pollutant regulated under the Act in an amount equal to or greater than 250 TPY. The PSD review requirements apply to any regulated pollutant which the new or modified major stationary source would emit in significant amounts. Thus, a source may be "major" for only one pollutant, but PSD review would apply to other pollutants emitted in "significant" amounts but for which the source is not a major emitter.

To date, implementation of PSD regulations with respect to particulate matter has been principally guided by the definition of particulate matter contained in § 60.2 of 40 CFR Part 60 which refers to emissions of particulate matter that can affect ambient concentrations of TSP. While this linkage to ambient TSP is somewhat by design, the definition of particulate matter principally enables enforcement authorities to determine if the applicable control technology is effective in its operation. In order to make the necessary distinction between emissions that contribute to ambient amounts of TSP versus ambient amounts of PM_{10}, EPA is proposing two new definitions. First, a definition of "particulate matter emissions" is being proposed in § 51.100(gg) to have essentially the same meaning as the definition of "particulate matter" in § 60.2, and would apply to particles affecting the ambient concentrations of TSP. Second, EPA is proposing a definition of "PM_{10} emissions" in § 51.100(ii), which focuses on emissions of particles affecting ambient concentrations of PM_{10}.

While these two definitions would serve to distinguish between emissions of the two regulated forms of particulate matter being proposed, it should also be apparent that "PM_{10} emissions" are included in "particulate matter emissions." Thus, amounts of PM_{10} being emitted by a source would count toward the amount of "particulate matter emissions" (TSP) that a source would emit regardless of whether the PM_{10} contribution was significant in itself.

EPA is also proposing a new emissions rate within § 52.21(b)(23)(i) that would define the term "significant" for PM_{10}. The new rate would establish formally that PM_{10} is a "regulated" pollutant for the purposes of the Part 52 PSD regulations. This rate would be used to determine when emissions of PM_{10} from a major new or modified source would require PSD review. An emissions rate lower than the significant emissions rate would allow such source to be excluded from PSD review with respect to PM_{10} on the grounds that such lower emissions would be insignificant, i.e., *de minimis*.

In selecting a value which is being proposed to be used to define "significant" for PM_{10}, the Administrator has applied the methodology used to select the original particulate matter significant emissions rate promulgated on August 7, 1980. That methodology used four percent of the 24-hour primary standard as a design value which was then converted to an emissions rate in accordance with EPA modeling procedures and rounded to the nearest 5 tons.[22] This resulted in a significant emissions rate for particulate matter of 25 TPY. Applying this approach to PM_{10}, based on a 24-hour primary standard of $150\mu g/m^3$ for PM_{10}, yields an emissions rate of 15 TPY.

While the Administrator is proposing today a significant emissions rate of 15 TPY for PM_{10}, he wishes to emphasize two points. First, the proposed value is based on the Administrator's preliminary inclination to select a 24-hour PM_{10} NAAQS from the lower portion of the range of PM_{10} concentrations that he has proposed. Should he select a different value for the NAAQS, the significance level for PM_{10} would be adjusted accordingly.

Second, EPA is currently undertaking a study which will use a permit data base of approximately 300 major and nonmajor sources to analyze alternative significance thresholds. The study will examine the impact of a range of emissions rates, including the 15 TPY value, in terms of environmental benefits (as quantified by emissions reductions achieved) versus administrative burden (as quantified, for example, by number of PM_{10} permit reviews). The results of this analysis will be considered in the final selection of the significance value for PM_{10}. In addition, the completed evaluation will be placed in the rulemaking docket as soon as possible but no later than 30

[22] A detailed description of how and why EPA selected the particular approach referred to here to define the significant emissions rates is presented in the preamble to the August 7, 1980, PSD amendments (45 FR 52676). This discussion is contained in *Section XI. De Minimis Exemptions*, pp. 52705–52710.

days after the date of this proposal. This will allow for at least 30 days of public inspection of the contents of the study so that the appropriate public comment may be formulated. The Administrator intends to take into consideration all relevant comments before making his final selection.

A "major modification" is generally a physical change to, or change in the method of operation of, a major stationary source resulting in a significant net increase in the emissions of any pollutant subject to regulation under the Act. As proposed, the PSD review requirements would apply to particulate matter if a significant net increase in the amount of either particulate matter emissions (25 TPY) or PM_{10} emissions (15 TPY occurs at a stationary source that had already been established as "major" before the proposed modification.

The determination of whether a proposed modification would exceed the PM_{10} significance threshold would be based only on PM_{10} emissions changes which include actual emissions changes from a particular modification and other creditable increases or decreases in actural emissions that are contemporaneously associated with the modification. That portion of the contemporaneous particulate matter emissions changes with a particulate size larger than PM_{10} would *not* be creditable as an emissions reduction or increase with respect to PM_{10} emissions. Consequently, projects that could avoid PSD review for TSP by demonstrating that no significant net emissions increase would occur with respect to TSP might still be subject to review for PM_{10}.

b. PSD Geographic Applicability

If a proposed source of modification qualifies as major, its existing or prospective location must be in a PSD area in order for a PSD review to apply. A PSD area is one designated as attainment or unclassifiable under Section 107 or *any* pollutant for which a NAAQS exists, regardless of what pollutant emissions cause the source to be major. In general, once it is determined that a proposed major source or major modification would occur in a PSD area, the PSD review appplies to significant emissions increases of *each* regulated air pollutant, unless the area is designated nonattainment under section 107 for that pollutant. For the nonattainment pollutant(s), certain nonattainment NSR rules in § 51.18 and Part 51 Appendix S would apply instead.

With respect to PM_{10}, EPA anticipates that under a section 110 pathway, the PM_{10} preconstruction review would be covered under the PSD requirements in all locations for two reasons.[23] First, States would not be designating PM_{10} nonattainment areas pursuant to section 107 of the Act. Second, since PSD would apply to major construction in any area designated as attainment or unclassifiable pursuant to secton 107 for *any* pollutant, then the PSD requirements would apply in all areas unless an area were designated as nonattainment for *all* of the pollutants for which section 107 designations apply. This pervasive nonattainment situation does not now exist for any area in the nation, so there is no basis for exempting a major source from PSD review with respect to PM_{10}. However, in the event that this should occur and PM_{10} sources are allowed to escape major source preconstruction review, the Administrator would consider imposing a new applicability requirement for PM_{10} sources that would bring PM_{10} sources under PSD review regardless of the section 107 area status for other pollutants. The Administrator believes that he has authority to promulgate a new applicability requirement for PM_{10} under section 166 of the Act, but has no compelling need to do so at this time.

The PSD review for TSP would apply in many areas regardless of whether Part D or section 110 would govern implementation of a revised secondary TSP standard. Under the Part D option, the PSD review for TSP would continue to apply to new major sources or major modifications that emit significant amounts of particulate matter emissions (TSP) in areas designated pursuant to section 107 as attainment or unclassifiable for a revised TSP secondary, NAAQS. Only in cases where the area is designated as nonattainment for the TSP standard would the nonattainment NSR rules instead of the PSD requirements apply to that regulated form of particulate matter. If section 110 applied instead of Part D, PSD review for TSP would occur in all areas for the same reasons that the review for PM_{10} would apply in all locations.

[23] These reasons would not apply should the Administrator reverse his preliminary conclusion and decide that the PM_{10} NAAQS is governed in part by Part D of the Act. Under a Part D approach, PSD review for PM_{10} would occur only in areas which are designated unclassified or attainment for PM_{10}. In nonattainment areas, preconstruction review requirements developed pursuant to Part D of the Act would apply.

c. *Best Available Control Technology (BACT)*

Any major stationary source or major modification subject to PSD must conduct an analysis to ensure application of BACT for each pollutant regulated under the Act that the source or modification would emit in a significant amount (except a pollutant for which the area is nonattainment). Today's proposal to make PM_{10} a regulated form of particulate matter is not expected to cause significant changes in the way that BACT determinations are made for particulate matter, at least for the near term.

Technology presently applied for particulate matter appears generally to be effective for controlling both TSP and PM_{10}. No compelling reason now exists to emphasize one form of control over another. The Agency is in the process of assessing the effectiveness of various existing NSPS in controlling PM_{10} emissions (see Section VI, IMPACT ON NSPS PROGRAM) and will later make any necessary adjustments in BACT policy.

The addition of PM_{10} requirements could cause PM_{10} emissions to trigger the BACT requirement for particulate matter independently from TSP. In addition, the triggering of BACT by PM_{10} emissions may necessitate a change in the way the BACT emissions rates in the permit for particulate matter are to be be expressed.

The Administrator envisions two possible approaches for setting and enforcing BACT for PM_{10}. He would, as a matter of policy, allow the use of either approach, provided that the selected limit is enforceable. First, the permitting authority could write an emissions limitation expressly for PM_{10} by using available PM_{10} emissions factors. This approach would also use PM_{10} emissions estimates reflecting source operation under application of the best control technology achieved in practice, taking into account energy, environmental and economic impacts, and other costs.

Alternatively, once the control technology for meeting BACT with respect to PM_{10} has been determined, the permitting authority could express the emissions limitation in terms of particulate matter emissions rather than PM_{10} emissions. This alternative approach may be more desirable initially for States finding that the existing particulate matter emissions limits in their SIP's are sufficient to prevent PM_{10} NAAQS violations and therefore will not be revised and expressed in terms of PM_{10} emissions.

and a control strategy based on particulate matter controls is to be retained for some period of time. Similarly, this approach may be advisable where the SIP does not contain an enforceable means to ensure compliance with PM_{10} emission limits. The use of such a surrogate BACT emissions limit may also appear useful when the selected BACT equates to NSPS since it is not likely that there will be any immediate changes made to the existing NSPS emissions limits for particulate matter as established under Part 60.

d. *NAAQS Analysis/Increment Consumption*

Section 165(a)(3) of the Act provides that no PSD source can be approved for construction if it would cause or contribute to ambient concentrations of a pollutant that would exceed the applicable NAAQS. For any PSD application submitted to EPA on or after the effective date of these proposed Part 52 amendments, such demonstrations for particulate matter would be based on PM_{10} and TSP, as applicable. (See Section e, *PSD Monitoring*, of this notice for further discussion pertaining to interim impact analyses for PM_{10} NAAQS.

As described earlier, the PSD program for PM_{10} under the section 110 pathway would apply to both attainment and nonattainment situations. This means that the PSD NAAQS analysis and all other applicable PSD requirements would affect the ability of new and modified PM_{10} sources to construct in an area where PM_{10} NAAQS violations already exist or could result from the proposed source. The applicable criteria for determining when a source or modification would be causing or contributing to a NAAQS violation for PSD purposes are those set forth under § 51.18(k), which the Administrator is proposing to revise today to accomodate PM_{10}.[24] (See also the discussion in Section C., *Nonattainment NSR Requirements*, of this notice.)

The Administrator, under the Part 52 PSD regulations, intends to require, at a minimum, that sources found to cause or contribute to a PM_{10} NAAQS violation must obtain sufficient offset so as to provide a net air quality benefit in the affected area, thus satisfying the "cause or contribute to" language under section 165(a)(3) of the Act. The Administrator is also considering whether the "cause or contribute to" language may require additional conditions beyond the type of emissions offset program just described, and he solicits comments as to what additional conditions should be considered.

As described earlier, if EPA chooses to implement the revised secondary TSP standard under section 110, the PSD program for TSP would, like the program for PM_{10}, govern in all areas regardless of their attainment status. This means that EPA would apply the requirements of § 51.18(k), including the additional requirements suggested in the previous paragraph, to assure that new and modified TSP sources do not cause or contribute to TSP NAAQS violations. If EPA implements the revised secondary TSP standard under Part D, however, the PSD program for TSP and the requirements of § 51.18(k) would apply only to new and modified sources locating outside areas designated nonattainment for TSP under section 107.

Under section 165(a)(3) of the Act, each PSD application must also contain a demonstration that the proposed source or modification would not cause or contribute to air quality concentrations which exceed the maximum allowable increases (PSD increments) for particulate matter or sulfur dioxide (SO_2) for at least those areas designated as Class I areas under Part C of the Act.

The choice between section 110 and Part D to govern implementation of a relaxation of the secondary NAAQS for particulate matter, however, arguably would affect the applicability of the PSD increments for Class II areas for that pollutant.

In general, to be a Class II area and hence subject to the Class II increments, an area must be designated "attainment" or "unclassifiable" under section 107(d). [See sections 162(b) and 163(b) of the Act.] To be subject to the Class II increments for particulate matter, an area arguably must bear such a designation for a NAAQS for particulate matter, not just for any NAAQS.[25]

If EPA were to choose section 110 over Part D for purpose of implementing the secondary TSP standard, it would be interpreting the phrase "a national ambient air quality standard" as it appears in section 171(2) and 107(d)(1) as referring only to the NAAQS in existence in 1977 and hence as excluding any relaxation to those NAAQS. Under the interpretation, and assuming EPA also retains its preliminary conclusion that section 110 governs the primary PM_{10} NAAQS, EPA would have no choice but to rescind the current designations for particulate matter for an area, if a State under section 107(d)(5) asked EPA to do so. If EPA rescinded those designations, the area would no longer be a Class II area for particulate matter and therefore no longer subject to the Class II increments for that pollutant.

If EPA were to choose Part D over section 110 for the secondary TSP standard, on the other hand, it would be interpreting the phrase "a national ambient air quality standard" as encompassing relaxations to the NAAQS in existence in 1977. Under that interpretation, EPA would retain its current powers to redesignate areas and to accept or reject changes that States submit under section 107(d)(5). Hence, EPA could retain "attainment" or "unclassifiable" designations for the new particulate matter NAAQS, and the Class II increments for particulate matter would remain in effect for areas with these designations.

The remaining discussion of the requirements for new and modified particulate matter sources to demonstrate protection of the Class II increments for particulate matter, therefore, arguably will be relevant only if EPA implements one of the revised particulate standards under Part D rather than section 110. For illustration only, the discussion assumes that EPA implements the secondary TSP standard under Part D.

The Administrator ultimately envisions a dual increment system for particulate matter. That is, separate PSD increments for TSP and PM_{10} would be in effect. The existing increments for particulate matter, i.e., TSP, are defined by statue and cannot be changed, given

[24] The § 51.18(k) program, as proposed, would continue to apply under a Part D pathway for the primary PM_{10} standards but would then apply only in areas designated as attainment or unclassified for PM_{10}. Preconstruction review requirements developed pursuant to Part D of the Act would apply to major new or modified sources that would construct in designated PM_{10} nonattainment areas.

[25] Specifically, section 165 applies only to major construction located ". . . in any area to which this part applies . . ." Section 163 states that the maximum allowable concentration of any air pollutant in any area to which Part C applies shall not exceed any increment of air quality for sulfur dioxide and particulate matter. Section 162(b) clarifies that "All areas in such State identified pursuant to section 107(d)(1) (D) or (E) which are not established as class I under subsection (a) shall be class II areas. . . ." Thus, taken collectively, the PSD increments for each pollutant are strongly linked to the section 107 designation process for that pollutant. To conclude otherwise (i.e., that all of the PSD increments apply in any area designated as attainment or unclassifiable under section 107(d)(1)(D) of (E) for any pollutant) would suggest that major construction locating in an area that is clean under section 107 for *any* pollutant would face an increment review for all pollutants, even if the area were nonattainment for both SO_2 and particulate matter.

the factual record available to date.[26]

Under today's proposal, these increments will be clarified so as to apply to ambient TSP concentrations. The proposed revisions to the particulate matter NAAQS, when finalized, would trigger a requirement under section 166 of the Act to promulgate, within two years after the NAAQS revision, additional regulations to prevent significant air quality deterioration with respect to the primary PM_{10} NAAQS. Section 166(c) requires that "Such regulations shall provide specific numerical measures against which permit applications may be evaluated, a framework for stimulating improved control technology, protection of air quality values, and fulfill the goals and purposes set forth in section 101 and section 160." Section 166(d) further provides that the measures established be at least as effective as the existing section 163 increments.

This discussion is intended to raise issues associated with PM_{10} Section 166 rulemaking and place EPA in a position to complete rulemaking as expeditiously as practicable. In addition, it should serve to aid States now in their comprehensive design of PM_{10} PSD programs.

One of the first considerations must be the rationale for setting the PM_{10} increments in light of the primary NAAQS and the existing TSP increments. The approach used by Congress to establish the existing increments for SO_2 and particulate matter involved the use of specific percentages of the lowest NAAQS concentration in each measurement period.[27] Given the likely event that the Administrator selects NAAQS concentrations for PM_{10} from the lower portions of the proposed ranges, then PM_{10} increments (annual and 24-hour) as small as 3 $\mu g/m^3$ and 10 $\mu g/m^3$ (Class I), 13 $\mu g/m^3$ and 37 $\mu g/m^3$ (Class II), and 25 $\mu g/m^3$ and 75 $\mu g/m^3$ (Class III) could result. Increments for Class I variances, as defined in § 52.21(p)(4), would be similarly proportioned and established. The Administrator will consider using this approach to establish PM_{10} increments. It should be noted, however, that its use would result in PM_{10} increments less stringent than the existing TSP increments if the Administrator selects PM_{10} NAAQS concentrations from the upper portions of the proposed ranges. The Administrator will also appraise the consequences of that potential outcome in establishing PM_{10} increments.

Once established, PM_{10} increments in many respects could be implemented in a similar fashion to those now in effect for TSP. As such, only one exceedance would be allowed per year for the short-term increment. Also, each PM_{10} increment would apply over a baseline concentration consisting of PM_{10} emissions representative of sources in existence on the applicable baseline date. In addition, major construction commencing after January 6, 1975, would affect available PM_{10} increment.

Several differences from the current TSP increment system would also be apparent if the Administrator implements the PM_{10} program pursuant only to a section 110 pathway. The concepts of baseline date and baseline area would have to be altered to accommodate the PM_{10} system. Baseline area now refers to all areas that are designated attainment or unclassifiable under section 107 for particulate matter or SO_2 and in which a PSD source triggering the baseline date would construct or have a significant air quality impact. An alternative to the area designation process would have to be established in order to define PM_{10} baseline areas.[28] Readily identifiable boundaries, such as the county, AQCR, or entire State, would be subject to consideration as an alternative baseline area for PM_{10}. Similarly, the definition of baseline date would have to be amended to accommodate the revised definition of baseline area.

Another related problem concerns where the new Class I PM_{10} increments would apply. It appears that the mandatory Class I areas identified in Section 162 would not automatically be relevant to any new increments established under Section 166 for PM_{10}. If there are no automatic Class I areas for PM_{10}, then EPA is inclined to establish under the authority of Sections 166 and 301 that Class I areas defined under section 162 are mandatory Class I areas for the PM_{10} increments as well.

The Administrator solicits comments as to the extent to which new regulations pertaining to PM_{10} increments are needed and the details that should be considered in light of the preceding discussion. The Administrator believes that the system to be used should provide States with sufficient flexibility for them to implement the new requirements in harmony with their existing PSD programs.

e. PSD Monitoring

PSD applicants generally must provide continuous ambient monitoring data representing the relevant air quality around the proposed source or modification during a 1-year period preceding the PSD application. The need for monitoring data is determined in part by the source's projected ambient impacts in the affected area, and the existing air pollution in that area. Usually, a source may be exempted from the preapplication monitoring requirement if the projected impact of the source or modification on the existing air quality is *de minimis* for the pollutant of concern.

EPA has defined the existing significant ambient concentration for particulate matter as 10 $\mu g/m^3$ (24-hr average), expressed as "total suspended particulate," for *monitoring* purposes. This concentration would be retained due to the Administrator's proposal to have a secondary TSP NAAQS. Establishing a PM_{10} primary NAAQS would necessitate that EPA define a new significance level for *monitoring* purposes, which reflects ambient PM_{10} concentrations.

The significance level that EPA originally defined for TSP represents 5 times the lowest detectable concentration in ambient air that can be measured by the available instrumentation, i.e., a high-volume sampler (hi-vol) August 7, 1980 (45 FR 52710). Because the sensitivity of the PM_{10} sampling methodology is

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[26] Pursuant to a settlement with petitioners in *Chemical Manufacturers Association v. EPA*, D.C. Cir. No. 79-1112, EPA agreed to propose revisions to certain PSD requirements, if appropriate, at the time it proposed revisions to the particulate matter standards on public health or welfare. In relevant part, the settlement stated that "[w]hen EPA proposes a new size cutoff for purposes of the NAAQS, it shall also propose (a) a new size cutoff for PSD purposes that would remain in effect indefinitely (i.e., the 'permanent PSD cutoff'), and (b) an interim size cutoff for PSD purpose that would remain in effect until EPA takes final action on the permanent PSD cutoff. The interim cutoff will exclude only those particles which clearly appear not to pose substantial health and welfare risks and therefore are highly likely to be excluded permanently."

As discussed in the rationale for the primary and secondary standards, in the March 20, 1984, proposal notice, although the Agency's review of the data suggests that particles larger than 10 micrometers might be safely excluded from the primary standard, such particles can contribute to soiling and nuisance and therefore may have substantial welfare effects. The Administrator therefore proposed to retain TSP as the indicator for the secondary standard. Thus, by the terms of the CMA agreement itself, there appears to be no appropriate cutoff below that for TSP, and the contemplated interim and permanent relief is not available. Therefore, EPA proposed in the March 20, 1984, notice not to change how "particulate matter" is defined for purposes of the PSD increments (49 FR 10408).

[27] HR Rep No. 95-294, 95th Congress, 1st Sess. (1977), p. 153ff.

[28] This would not be the case if a Part D pathway governed the implementation of the PM_{10} NAAQS revision instead of Section 110. The present area designation process could be used for both TSP and PM_{10} in defining those areas where baseline dates are triggered.

essentially identical to the TSP methodology, EPA finds no basis for establishing a different significance level for ambient concentrations of PM_{10}. Thus, EPA is today proposing to establish a PM_{10} significant ambient concentration of 10 $\mu g/m^3$, 24-hour average, to be used to determine when a prospective source may be exempted from the ambient monitoring data requirements for PM_{10}. See the proposed amendment to § 52.21(i)(8)(i).[29]

Under the provisions proposed in § 52.21(i)(11) (i) and (ii), EPA intends to allow the use of ambient data collected from ambient samplers not designated as PM_{10} reference or equivalent methods until PM_{10} reference or equivalent method samplers are designated and commercially available. These alternative samplers would include measurement of the following particulate matter size fractions: (1) PM_{10}, (2) PM_{15}, or (3) TSP. While EPA intends temporarily to allow applicants to use data from certain alternative monitoring methods, the data would be used to support an air quality impact analysis demonstrating compliance with the PM_{10} primary NAAQS. Accordingly, EPA is proposing a new provision requiring the PSD applicant to use only ambient data collected by alternative samplers approved by the Administrator, and requiring conversion of the data using estimating procedures approved by the Administrator. See proposed § 52.21(m)(1)(viii).

The above provisions would apply during the monitoring transition period until all PSD applicants are required to use ambient PM_{10} monitoring data collected by approved PM_{10} reference or equivalent methods. EPA intends to use procedures, which are set forth in the draft revisions to the EPA document entitled *Ambient Monitoring Guidelines for Prevention of Significant Deterioration* (PSD), to implement such provisions. The draft document is available for public comment in the docket for today's proposed rulemaking. [See AVAILABILITY OF RELATED INFORMATION.]

f. *Transition Provisions*

Because today's proposal could subject additional sources to PSD review for particulate matter, some transition provisions are necessary in the PSD regulations to phase in this new regulatory coverage. Two grandfather provisions would be necessary to address the phase-in of any new PSD requirements (excluding ambient monitoring) resulting from a revised particulate matter NAAQS.

First, under the amendments being proposed, EPA does not intend to cause the retroactive review of sources that were not previously subject to PSD review, provided that the sources (a) obtained all the necessary approvals under the SIP before the effective date of the new requirements, and (b) commenced physical construction within 18 months of the effective date of the new requirements (or any earlier time required under the SIP). See proposed § 52.21(i)(4)(ix).

Second, EPA is proposing a grandfather provision to exclude from PSD review under the proposed regulations any sources that have submitted a complete application (including those for which a final determination has not yet been made) to EPA or its delegated representative on or before the promulgation of the Part 52 PSD regulations being proposed today. Such sources would be required to comply only with the existing PSD requirements. See proposed § 52.21(i)(4)(x).

EPA also believes that it is necessary to provide some additional relief to applicants who would otherwise be expected to begin collecting ambient monitoring data for PM_{10} as of the promulgation date of the amendments being proposed today.[30] One year of preapplication monitoring data is generally required to be submitted as part of a complete PSD application package. Thus, the grandfathering provisions mentioned above, which cover complete applications submitted before promulgation of the new PSD regulations, would be insufficient to provide adequate relief for applicants whose ongoing application preparation and on-site monitoring efforts did not take into account any PM_{10} monitoring. EPA intends to allow those applicants to use, where available, TSP monitoring data or data from certain nondesignated samplers to estimate ambient PM_{10} levels.

In addition to the problem of existing monitoring efforts which did not consider PM_{10}, EPA believes that other important time factors need to be considered. First, the commercial availability of ambient PM_{10} samplers suitable for designation as reference or equivalent method samplers could be delayed up to almost one year from the promulgation date of the revised NAAQS for particulate matter. Then, once the samplers are available and designated, additional time would be needed for applicants to install and calibrate the samplers on site before a PM_{10} sampling network could begin to operate. Taking into account the extended period before which PM_{10} sampling with reference or equivalent methods could begin, as well as the fact that a minimum of 4 months of data must be collected from any site [See § 52.21(m)(1)(iv)], EPA is proposing that certain nondesignated methods be allowed as an interim alternative in the specific situations outlined below. See Section e., *PSD Monitoring*, of this preamble for further discussion of the interim alternatives to PM_{10} reference or equivalent method monitoring.

EPA is proposing three transition provisions which relate to preapplication monitoring requirements for PM_{10}. The first of the three transition provisions, related to ensuring the availability of PM_{10} instrumentation, would give the Administrator discretionary authority to exempt from PM_{10} monitoring requirements certain applicants who would become subject to PM_{10} monitoring requirements under the newly proposed requirements, provided they submit complete applications within 10 months after promulgation of the proposed PSD amendments for PM_{10}. See proposed § 52.21(i)(11)(i). EPA generally tends to grant the exemption unless the Administrator determines that representative ambient monitoring data [31] would be available and

[29] The Administrator is taking this opportunity to correct several errors that have existed in the table of significant ambient concentrations since the time the table was first published on August 7, 1980. First, the averaging period for lead is being revised to a 3-month average. This would conform to the 3-month averaging period specified for the lead NAAQS. The averaging period for each criteria pollutant was intended to conform to the shortest averaging period for which a NAAQS was defined for that particular pollutant.

Second, the Administrator is revising the significant concentrations for beryllium and hydrogen sulfide because these concentrations were listed incorrectly. The beryllium concentration was promulgated as 0.0005, which was low by a factor of two. It should have been 0.001 $\mu g/m^3$. The hydrogen sulfide concentration was promulgated as 0.04 $\mu g/m^3$, which is the minimum detectable concentration and did not reflect the factor of five as used to establish each of the other significant ambient concentrations. The correct value for hydrogen sulfide should therefore be 0.2 $\mu g/m^3$. The Administrator does not intend to take comments on these specific revisions because he regards them to be technical and clarifying amendments.

[30] As mentioned above, the Administrator is considering the need to delay the effect of the PM_{10} amendments in 40 CFR Part 52 until after States have had the normal opportunity to revise their SIP's. If such delay is determined to be appropriate, then a monitoring transition scheme reduced in scope will be promulgated. Using the same rationale as identified later in this section, the length of transition will be discounted by the amount of time allowed for in making the 40 CFR Part 52 regulations effective.

[31] EPA allows PSD applicants to meet the PSD preapplication monitoring data requirements

Continued

sufficient time would exist before submission of an otherwise complete application to collect and analyze such representative data and to estimate PM_{10} concentrations from it.

The next provision applies to those sources that submit an application that is complete, except for the monitoring data requirements for PM_{10}, between 10 and 16 months after the date of promulgated PSD amendments. This provision would allow certain applicants to monitor PM_{10} or other particulate size fractions during the interim period when they would be unable to acquire and make operational a PM_{10} monitoring network utilizing designated samplers. In particular, the proposed rule would provide that data based on TSP sampling or on a nondesignated method for PM_{10} or PM_{15}, as approved by the Administrator, shall be gathered over a period at least equal to a period extending from the date 6 months after promulgation to the date when the application would otherwise become complete. [See proposed § 52.21(i)(11)(ii).]

Finally, the third transition provision related to PM_{10} monitoring equipment phase-in would address all PSD applications that would become complete, except for the PM_{10} monitoring requirements, between 16 and 24 months after promulgation. This phase-in provision would require that for certain sources the reference method PM_{10} monitoring data shall be gathered with designated methods over at least the period extending from the date 12 months from the date of promulgation to the date when the application becomes otherwise complete with respect to the other monitoring requirements [See proposed § 52.21(m)(1)(vii)].

3. Proposed Part 51 PSD Regulations

EPA is also proposing amendments to the PSD requirements in Part 51. Section 51.24 sets forth the minimum SIP requirements for an approvable PSD program. States must adopt procedures that follow these requirements when developing new or revised portions of a SIP. The proposed amendments generally parallel the changes to the Part 52 PSD Regulations establishing a dual PM_{10}/TSP review system for particular matter. The amendments include the addition of the PM_{10} size fraction and an emissions rate of 15 TPY to the definition of "significant" under Section 51.24(b)(23)(i), and the addition of PM_{10} and an ambient value of 10 $\mu g/m^3$, 24-hour average, to the list of significance values pertaining to ambient monitoring under § 51.24(i)(8)(i). The reasons for EPA's selection of these particular values associated with PM_{10} were described in the previous discussion of the Part 52 PSD amendments.

A new § 51.24(i)(10) is also being added so that States could adopt transition provisions, including those dealing with grandfathering provisions and a PM_{10} monitoring phase-in program, that are compatible with the intent of the Federal transition provisions proposed in the Part 52 PSD regulations.

C. Nonattainment NSR Requirements

1. Applicability

Sources seeking to construct in areas designated as nonattainment for particulate matter (TSP) under section 107 of the Act for any (primary or secondary) NAAQS are currently subject to one of three sets of nonattainment NSR regulations depending on the specified circumstances. A fourth NSR regulation applies to sources that would not locate in a designated nonattainment area but would cause or contribute to a NAAQS violation. In all cases, the requirements are applied to major stationary sources or major modifications. A "major stationary source" for nonattainment purposes is any source that emits or has the potential to emit 100–TPY of any pollutant. A "major modification" is defined in the same manner as for PSD, using significance values to determine whether a significant net emissions increase at a major stationary source would occur.

Under the first set of regulations, after June 30, 1979, State plans that satisfy the NSR requirements of Part D of the Act are to be in effect in any Section 107 area designated as nonattainment for TSP. Pursuant to Part D and EPA's NSR regulations in § 51.18(j), States are to develop plans requiring major stationary sources and major modifications of particulate matter to offset their proposed emissions and to apply the "lowest achievable emission rate" (LAER). All offsets must be secured in a manner consistent with the plan's requirement to show reasonable further progress while attaining the primary ambient air quality standards no later than the prescribed statutory attainment deadlines. Part D also requires that each major source that has common ownership with the proposed project within the same State must be in compliance with the applicable SIP requirements.

Second, before July 1, 1979, and in other situations, such as where a Part D plan was not due by July 1, 1979, EPA's Emissions Offset Interpretative Rule (Offset Rule) is to apply. The Offset Rule requirements are similar to those of § 51.18(j) and are contained in Appendix S to Part 51.

Third, for areas where a Part D plan is due but a plan satisfying the Part D requirements has not been submitted or is not being carried out in accordance with such requirements, a ban on major construction is to be imposed. Section 110(a)(2)(I) bans construction of major stationary sources and major modifications of the applicable nonattainment pollutant until EPA approves a Part D SIP, including adequate NSR provisions. Under section 173 of the Act, major construction involving the nonattainment pollutant is to be prevented in any nonattainment area where a State or local government fails to properly carry out its approved Part D SIP. Regulations governing implementation of the growth moratorium are codified at 40 CFR 52.24.

Finally, on May 13, 1980, EPA promulgated additional NSR requirements in § 51.18(k) to provide a procedure that would allow States to meet the statutory requirements contained in sections 110(a)(2)(D) and 165(a)(3)(B) of the Act. When taken together, these statutory provisions require that States review all major sources that would not locate in designated nonattainment areas but would cause or contribute to violations of national standards, to reduce their impact on air quality so as to assure attainment and maintenance of ambient air quality standards.

General criteria for evaluating each State's program under § 51.18(k) were provided in the preamble at the time of promulgation (45 FR 31312, May 13, 1980). Under those criteria, States must submit a program that: (1) Applies to all major sources significantly causing or contributing to a violation of a standard under the significance criteria used by Section III.A. of the Offset Rule, and (2) assures that ambient air quality standards are attained and maintained. EPA also indicated in the preamble that, until a State plan meeting § 51.18(k) requirements is approved by EPA, the permit program under § 51.18(j) (if such requirements were already in place and applicable) or EPA's Offset Rule would apply to sources causing or contributing to a violation and not locating in a designated nonattainment area.

through the use of existing representative air quality monitoring data. Before EPA will approve the use of representative data, however, certain criteria which consider the monitor location, quality of the data, and currentness of the data must be met. These criteria are discussed in detail in the EPA guideline entitled *Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD).*

The impact of implementing the proposed revisions to the particulate matter NAAQS under a section 110 pathway would be significant in terms of which nonattainment NSR requirements would apply with respect to the two regulated forms of particulate matter. Implementing the revised secondary TSP standard under Section 110 rather than Part D would significantly change current NSR requirements for TSP sources. A discussion of the proposed applicability of NSR to each form follows.

a. *Primary Standards (PM_{10})*

As proposed today, PSD programs in conjunction with the nonattainment NSR requirements in § 51.18(k) would apply in all areas to sources whose emissions cause or contribute to violations of the PM_{10} primary NAAQS. The Adminstrator's preliminary finding that Part D of the Act does not apply in implementing the PM_{10} SIP requirements determines that a Part D NSR program does not apply to any PM_{10} nonattainment situations.[32] Accordingly, in the absence of a formal area designation process for PM_{10} nonattainment areas, the State § 51.18(k) program will have to address a potentially broad range of nonattainment situations. In light of this vast and varied coverage, the Administrator is concerned as to what collection of preconstruction review requirements would represent an adequate § 51.18(k) program for PM_{10}.

The Administrator interprets section 110(a)(2)(D) of the Act to require States, as a minimum, to implement an emissions offset program as part of the preconstruction review of any major new source or major modification whose prospective construction in a PSD area would cause or significantly contribute to an existing violation of any NAAQS. Under that program, any such source would have to obtain emissions offsets sufficient to provide a positive net air quality benefit in the area(s) of significant impact. Moreover, EPA would approve the emissions offset program under § 51.18(k) only if creditability criteria at least as strigent as the criteria set forth under § 51.18(j) are required to be applied to the offsets.

EPA interprets this offset requirement, in conjunction with the mentioned criteria for applying offsets, as the minimum condition to be applied to a major source or modification locating outside a designated nonattainment area but causing or contributing to a NAAQS violation with respect to the nonattainment pollution. EPA believes that this is necessary to require sources to reduce their impact so as not to interfere with the attainment and maintenance of national standards. The Administrator is concerned, however, that an emissions offset program as described may not always be sufficient to assure attainment and maintenance of the PM_{10} § NAAQS. For this reason, the Administrator is soliciting comments regarding the need to impose, under § 51.18(k), additional requirements, such as the requirements for LAER and Statewide compliance under Part D of the Act, upon all or certain sources with respect to their PM_{10} emissions causing or contributing to a PM_{10} § NAAQS violation.

As stated earlier in this preamble, the Agency intends to require an offsets program under the Part 52 PSD regulations and has solicited comments as to what additional conditions should be considered. The Administrator intends to be consistent in terms of the minimum conditions that would be applied by EPA when issuing a PSD permit under the Part 52 PSD regulations and the minimum conditions that EPA would ultimately require from States under an approved § 51.18(k) program. The Administrator will consider carefully all relevant comments in order to establish such criteria for PM_{10}.

With respect to an emissions offset program for PM_{10}, the Administrator believes that States should be given considerable flexibility in designing their own programs. They can opt for a case-by-case offset system or they can choose to meet § 51.18(k) by developing a PM_{10} growth allowance to account for new and modified sources. An acceptable NSR program using a growth allowance system must ensure that usable PM_{10} emissions reductions are: (1) Specifically defined as surplus in the relevant attainment demonstration, (2) Federally enforceable at the time of source construction approval, (3) sufficient to offset the new emissions of the subject source (using the § 51.18(j) criteria regarding emissions offset baseline), and (4) permanent and have occurred on or before the operation date of the new or modified source. See § 51.18(j)(3)(ii)(c). States opting to use a growth allowance account may also want to implement a case-by-case offset program as an alternate program should the account become inadequate to approve further growth at any particular time.

Until States revise their SIP's under § 51.18(k) with respect to PM_{10}, EPA is proposing that certain interim measures be implemented which satisfy section 110(a)(2)(D)(i) to ensure the protection of the PM_{10} standards by State preconstruction review programs. In the May 18, 1980, **Federal Register**, in which EPA promulgated § 51.18(k) requirements, the Administrator indicated that the EPA Offset Rule would remain in effect until States submitted and received approval of their program under § 51.18(k). The Administrator is today proposing to amend Section III of the Offset Rule to address major sources or major modifications constructing in an attainment or unclassifiable area, i.e., a PSD area, and causing or contributing to a PM_{10} NAAQS violation. The rule would then become effective for PM_{10} on the date of final notice, which will occur simultaneously with promulgation of revised NAAQS for particulate matter. The Offset Rule would continue in effect with respect to PM_{10} until a State's own § 51.18(k) program is approved by EPA.

Under Section III of EPA's Offset Rule, any affected major construction project must apply LAER, obtain emissions offsets which provide a positive net air quality benefit in the affected area, and certify Statewide source compliance. In harmony with the approach being proposed for determining BACT, the Administrator believes that either of two methods for setting and enforcing the LAER requirements could be followed. First, where the techniques are available to estimate and enforce levels of PM_{10} stack emissions from the proposed source, LAER could be expressed directly as a PM_{10} emissions limitation. However, where sufficient uncertainty in the related techniques would exist or where inadequate data would prevent meaningful estimates of PM_{10} stack emissions, the emissions limitation could continue to be expressed in terms of particulate matter emissions, provided this procedure ensures application of the best control technology for PM_{10}. The Administrator solicits comment on these and any

[32] If the proposed PM_{10} primary NAAQS is determined to be implemented in part under a Part D approach, then the Part D nonattainment preconstruction review system would also apply for PM_{10}. In addition, the area classification system as it would pertain directly to PM_{10} (e.g., attainment, nonattainment) would be used to determine which particular preconstruction review requirements would apply. In areas designated as nonattainment for PM_{10}, EPA would require that a Part D new source review program (including requirements for LAER, emissions offsets consistent with reasonable further progress, Statewide compliance, and construction ban) be implemented pursuant to requirements under § 51.18(j), as these requirements would be revised to include PM_{10}.

Section 51.18(k) would continue to apply as proposed but would be limited in its applicability (in the same manner as would the PSD program for PM_{10} to areas not designated as nonattainment for PM_{10}. ▸

alternative means to ensure LAER for PM_{10}.

The requirement to procure sufficient offsetting emissions reductions would be fulfilled in a manner consistent with netting requirements under today's PSD proposal. That is, just as reductions of large particles are not creditable against increases in PM_{10} emissions in deciding whether a source has undergone a major modification, neither are such reductions appropriate for fulfilling the emissions reduction requirement under condition 3 of the Offset Rule. Finally, with respect to intrastate compliance, the requirement would continue to apply to major sources under common ownership with the proposed project.

With respect to applications of the construction ban in § 52.24, no growth ban for reasons related to the nonattainment area status of the existing TSP primary NAAQS would be continued or imposed under today's proposal. Since nonattainment designations under section 107 of the Act would not apply with respect to the PM_{10} primary standards under a section 110 legal pathway, no construction ban under either section 110(a)(2)(I) or section 173(4) of the Act would immediately apply either, and bans already in effect for particulate matter would be lifted upon promulgation of the PM_{10} NAAQS.[33]

EPA is considering whether imposition of the construction ban for PM_{10} would be appropriate under authority of section 301 when a State fails to meet its obligation to develop and submit an acceptable PM_{10} plan revision within the 9-month period following EPA's promulgation, or fails to implement a plan after it has been approved. Section 301(a)(1) of the Act authorizes the Administrator to prescribe regulations that are *necessary* to carry out his functions under the Act. Without the imposition of a PM_{10} construction ban, the Agency would retain the ability to encourage expeditious SIP development, but only through potential section 176(b) funding sanctions or the promulgation of Federal rules to ensure attainment. Incentives for PM_{10} SIP development essentially would be limited to the same types of incentives used for lead, visibility, and PSD SIP's (i.e., SIP's not stemming from Part D requirements) that were not submitted in a timely manner. EPA believes that additional sanctions may be necessary where PM_{10} NAAQS violations are occurring.

On the other hand, the Administrator recognizes the clear intent of Congress that States be given considerable flexibility in carrying out their planning responsibilities under the Act. Comments are therefore solicited on the real value of the construction ban as an air quality planning tool and the specific need to establish it for PM_{10} SIP development purposes. Comments are also requested on the planning circumstances under which such a ban should be imposed.

b. *Secondary Standards*

The new source review requirements that would apply to new and modified TSP sources under the revised secondary TSP standard will depend on whether EPA implements that standard under Part D or section 110. Under the Part D alternative, all current efforts to develop NSR requirements would remain appropriate. During the period when additional requirements are being added or existing requirements are being modified, the NSR rules approved under § 51.18(j) would remain in effect for TSP. States with nonattainment areas for which adequate TSP plans, including NSR requirements, were not developed, or with areas that are newly classified as nonattainment for TSP, would implement the Offset Rule to govern the approval process for major construction until SIP development work to accommodate the new TSP secondary NAAQS is completed.[34]

Under the Part D approach, newly designated TSP nonattainment areas could include some TSP areas earlier classified as attainment under EPA's fugitive dust policy, should applicable portions of that policy be no longer available. Whether areas would be redesignated as new nonattainment areas for TSP is not certain at this time, however (see footnote 3). In the event that any area does remain designated as attainment or unclassifiable for the TSP secondary NAAQS under Section 107, States would be required to implement the PSD program in conjunction with the program requirements for offsets under § 51.18(k).

No TSP construction bans would be imposed, in any event since EPA would continue its existing policy relative to the secondary standards. As explained above, the Agency believes that it is inappropriate to impose the ban if a State fails to achieve a secondary standard, including the one proposed for TSP on March 20, 1984. EPA continues to believe that a penalty such as the construction ban was intended by the Congress to be used in areas where it could catalyze more rapid development of suitable SIP's where needed to protect public health.

If EPA chooses to implement the revised secondary TSP standard under section 110 instead of Part D, the nonattainment NSR program that would apply for purposes of the primary PM_{10} NAAQS (described above) would apply in essentially the same way to new and modified TSP sources. Thus, The PSD requirements in conjunction with the § 51.18(k) requirements described above would replace the Part D NSR rules and apply to sources in all areas whose emissions would cause or contribute to violations of the secondary TSP NAAQS. Those States that had not revised their SIP's to apply the § 51.18 (k) program would, under today's proposal, be subject to the requirements of the Offset Rule until they adopted and received EPA approval of such a program. For the reasons discussed earlier, EPA would not apply any construction ban to areas exceeding the revised secondary TSP standard. EPA could, however, use its section 176(b) authority to restrict funding to States that did not revise their SIP's to include the new NSR requirements.

2. Proposed Changes Within the Nonattainment NSR Regulations

The following sections of this notice describe the changes EPA will make in its nonattainment NSR regulations if it implements the primary PM_{10} standards under section 110 and the secondary TSP standards under Part D. This description serves as an illustration of the regulatory consequences that accompany one particular choice of implementation schemes. Choice of a different scheme (e.g., implementation of the primary and secondary NAAQS under section 110) would result in additional changes as described in this notice.

a. *Construction Ban (Section 52.24)*

No changes are being proposed within § 52.24 to reflect PM_{10} applicability under the section 110 legal pathway. As mentioned, this regulation would not be triggered automatically by the failure of

[33] Under a Part D legal pathway, the Agency believes that the construction ban, particularly the ban arising from section 173(4), would remain available for failures to implement PM_{10} revisions in designated PM_{10} nonattainment areas. Bans currently in effect for particulate matter would not be lifted unless the area is redesignated to attainment for the primary NAAQS or a PM_{10} SIP is approved EPA.

[34] Section 129 of the Act states that the EPA Offset Rule applies in nonattainment areas until either the growth ban is imposed or a State rule meeting the applicable Part D requirements is approved. In the case of the secondary standards, the Offset Rule can only be superseded by an approved State NSR rule due to EPA's longstanding policy not to apply the construction ban with respect to secondary standards.

an area to develop or implement a PM_{10} SIP since the Administrator has made a preliminary determination that Part D does not apply to the primary NAAQS being proposed. However, as discussed above, the Administrator is soliciting comments as to whether he can and should: (1) Use his rulemaking discretion under section 301 of the Act to reestablish a construction ban to stimulate the timely development and implementation of PM_{10} plans, and (2) implement the particulate matter NAAQS changes under a Part D pathway instead of the proposed section 110 pathway so as to retain Part D authority to retain and/or impose the construction ban.

b. *Offset Rule (Appendix S of Part 51)*

If EPA chooses to implement the PM_{10} standards under section 110 and the secondary TSP standard under Part D, EPA's Offset Rule would continue to apply for situations involving particulate matter in the form of TSP, and EPA would amend the rule to address PM_{10} during the period preceding EPA approval of a State's § 51.18(k) program for PM_{10}. In order to enable the distinction between the two forms of particulate matter, EPA is proposing to amend the significant emissions rate for "particulate matter" so that the existing emissions rate of 25 TPY would apply to "particulate matter emissions." This term is being proposed to define that portion of particulate matter measured as ambient TSP. A new significant emissions rate of 15 TPY for "PM_{10} emissions" is also being proposed. [See proposed revision to Section II.A.10.(i). of Appendix S to Part 51.]

Section III of the Rule is proposed to be amended by adding "PM_{10}" to the table containing significant ambient concentrations for different averaging periods. Annual and 24-hour concentrations of 1.0 $\mu g/m^3$ and 5 $\mu g/m^3$, respectively, are to be added. These concentrations would be used to determine whether a PM_{10} source would have significant ambient impact and thereby cause or contribute to a NAAQS violation. Because EPA has proposed to set a secondary TSP NAAQS only in terms of an annual averaging period, deletion of the 24-hr significant ambient concentration currently in effect is proposed. [See proposed Section III.A. of Appendix S to Part 51.]

c. *Part D NSR Requirements [Section 51.18(j)]*

EPA is proposing to amend the existing significant emissions rate for "particulate matter" (TSP) in paragraph (j)(1)(x) in the same manner as was described above for the Offset Rule.

While EPA is not proposing any revisions to the Part D NSR requirements with respect to PM_{10} because of the preliminary selection of a section 110 pathway, the Agency does recognize that States may want to cover PM_{10} within their existing nonattainment rule structure and to incorporate the revisions into a maintenance strategy. This would be appropriate in existing nonattainment areas with respect to TSP, which become "clean" areas with respect to PM_{10}, but would have air quality only marginally better than that dictated by the revised NAAQS. In such cases, the State may want to incorporate into its PM_{10} plan some of the requirements associated with the current Offset Rule or § 51.18(j). Such requirements would then be added to the existing PSD requirements as criteria for new source approval when PM_{10} emissions are being reviewed.

d. *Section 51.18(k)*

EPA is proposing certain amendments to § 51.18(k) which are necessary to reflect the proposed changes to the particulate matter NAAQS, and to clarify the existing requirements. With respect to particulate matter, EPA is proposing to add "PM_{10}" as a regulated pollutant and to establish annual and 24-hour significant ambient impact levels (expressed as ambient concentrations of PM_{10}). The significant ambient impact levels are to be used to enable a source to determine whether its emissions would cause or contribute to a NAAQS violation at any location. EPA is also proposing to delete the 24-hour significance level for TSP in light of the fact that only an annual TSP secondary NAAQS is being considered under the Administrator's proposal. See proposed § 51.18(k)(2).

EPA is proposing to clarify that the requirements apply to any major stationary source as defined by section 302(j) of the Act, i.e., 100 TPY or more of any pollutant. See proposed § 51.18(k)(1). The Act uses this definition of major source for the purposes of section 110(a)(2)(D). Thus, as proposed, the major source definition in § 51.18(k) would cover all PSD sources as well as certain non-PSD sources. Such non-PSD sources would include sources that have the potential to emit 100 TPY or more (but less than 250 tons per year) and are not included on the 28-source category listing for PSD.

For PSD sources, the requirements under § 51.18(k) would be applied in addition to all applicable PSD requirements. With regard to non-PSD major sources, § 51.18(k) requirements would be applied in addition to whatever existing permit requirements for major sources remain in the approved SIP. In either case, the requirements would apply to significant PM_{10} emissions (proposed as 15 TPY or more) if the resulting impact from the source is at least 5 $\mu g/m^3$ (24-hour) or 1 $\mu g/m^3$ (annual).

D. Solicitation of Comments on an Alternative Approach

While proposing to retain a TSP secondary standard, the Administrator, as noted in his proposal on March 20, 1984, solicited public comment on the possibility of making the secondary NAAQS equivalent in all respects, including particle size, to the proposed primary standards for PM_{10}, such an action could well have profound implications for the NSR/PSD program.

With respect to geographic applicability of NSR/PSD rules, the program outlined previously for the PM_{10} primary standards would generally apply for the secondary NAAQS as well, assuming that the results of the level selected for the secondary standard would be viewed as requiring additional plan requirements above the current secondary NAAQS. That is, the PSD rules would apply to both attainment and nonattainment preconstruction reviews of the PM_{10} primary and secondary NAAQS until nonattainment problems are addressed in an approved SIP rule ensuring sufficient PM_{10} offsets.

Also possible is the prospect that the selected level for the secondary standard, expressed as PM_{10}, would require less stringent plan requirements than the existing secondary NAAQS. As such, the applicable requirements would depend on whether EPA decides that Part D governs relaxations of the pre-1977 NAAQS or, instead, that section 110 governs all NAAQS revisions. If EPA decides that Part D would govern the implementation of the revised secondary NAAQS, then a new Part D program for secondary PM_{10} NAAQS, similar in every way to the present one for TSP, would be established. PSD review would apply to PM_{10} for purposes of the secondary standard in areas designated attainment or unclassifiable under section 107 for the PM_{10} secondary standard.

Under PM_{10} primary and secondary NAAQS, PM_{10} would clearly be regulated under the Act. A proposed project would be subject to the appropriate NSR/PSD preconstruction review for PM_{10}, if sufficient quantities of new PM_{10} emissions would result from its construction. However, it is not clear whether TSP would continue to be regulated under the Act. If it were, the

dual PSD system for PM_{10} and TSP outlined in preceding parts of this section would also be expected to apply. Potential reasons for the continued regulation of TSP include the fact that the many NSPS under their existing design for TSP continue to restrict particulate matter.

In addition, PSD increments, although phrased in terms of particulate matter, were designed assuming TSP as the regulated pollutant. Since some adverse effects are expected from particles larger than PM_{10}, it appears plausible that this statutorily defined allowance could continue to operate in terms of TSP if the section 163 increments remain geographically applicable (see discussion below). If so, TSP might still be viewed as being regulated under the Act and, as such, would remain subject to PSD review.

The possible impact on the existing PSD increments for particulate matter could be more severe if a PM_{10} secondary NAAQS were interpreted as being more stringent than the current TSP secondary standard. If this were so, section 107 designations would not be established for either the primary or secondary PM_{10} NAAQS. In that case, the particulate matter PSD increments might not apply in any area because they arguably apply only in areas designated as attainment or unclassifiable pursuant to section 107(d)(1) (D) or (E) for particulate matter. [See footnote 27 and accompanying text.]

EPA believes that Congress intended the PSD increments to be a budgeting mechanism for controlling air quality increases before the NAAQS level would be reached. Consequently, serious questions arise as to whether the section 163 increments for particulate matter would continue to apply in areas [35] based on their previous section 107 designations for TSP or whether these increments (or some substitute ones based on PM_{10}) must be reestablished under section 166 of the Act in order to apply. See the preceding discussion on section 166 rulemaking for PM_{10} increments.

The Administrator solicits comment as to the impact on the TSP-based increments contained in section 163 should the section 107 designation process no longer apply to particulate matter, i.e., if both the secondary and primary NAAQS revisions, whether in terms of PM_{10} or TSP, are implemented using only section 110 of the Act without Part D. This may lead to the nonapplicability of current Class II and III increments for particulate matter, since section 162(a)(3) limits the Class II increments to areas identified pursuant to section 107. If the current particulate matter increments would not apply in areas other than the mandatory Class I areas, then EPA also solicits specific comment on the need to reinstate, through its section 301 rulemaking powers, the section 163 increments for TSP. Such increments would be in addition to section 166 increments for PM_{10}.

The Administrator requests comment on all the probable impacts to the NSR/PSD program if a PM_{10} standard is chosen to define both the primary and secondary NAAQS. This information will be valuable should the Agency promulgate any standards that are different from the proposed PM_{10} primary and TSP secondary NAAQS combination.

VI. Impact on NSPS Program

Section 111(b)(1)(A) of the Clean Air Act requires that standards of performance for new sources (NSPS) be established for any category of stationary sources that ". . . causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare . . . ." Under section 111(a)(1), the standards must reflect ". . . application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated . . . ." This level of control technology required by NSPS is often referred to as "best demonstrated technology" or "BDT." Currently, there are 22 NSPS that regulate particulate matter.

The current NSPS also have the effect of controlling PM_{10} pollution. For example, most NSPS are based on either fabric filters or electrostatic precipitators, and these technologies control PM_{10} that is emitted in the particulate phase. Depending on the source, PM_{10} fractions in these controlled gas streams may range from 60 percent to almost 100 percent.

If EPA promulgates NAAQS for PM_{10}, it intends to take the following actions on NSPS:

(1) The Agency would complete an assessment already underway to determine whether or not to revise NSPS because of PM_{10} considerations. The NSPS assessment would identify the source categories that are significant emitters of PM_{10} and the effectiveness of the controls required by the NSPS in controlling PM_{10}. The analysis would address not only primarily emitted particulates, but also condensible gases that form PM_{10} in the ambient air after release from the stack. The study would produce a list of source categories for which NSPS should be revised to reflect BDT for PM_{10}. The Agency would then proceed to revise NSPS giving highest priority to the most significant emitters of PM_{10}.

(2) Each NSPS is reviewed every 4 years as required by section 111(b)(1)(B) of the Act. All NSPS would be assessed for effectiveness in controlling PM_{10} when they were reviewed. This approach would ensure that all NSPS for particulate matter would be evaluated regardless of whether or not identified as high priority in the source assessment screening.

(3) EPA would consider PM_{10} in developing any future NSPS.

VII. Revisions to Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans [36]

A. Regulatory Reform

EPA proposed on October 11, 1983 (48 FR 46152), to streamline Part 51 by deleting obsolete provisions, removing unnecessary requirements, reducing reporting burdens on the States, and restructuring the entire part into a new format that will be easier to use than the existing format. Restructuring of Part 51 is a separate action independent from today's action concerning revised particulate matter standards. In keeping with that effort, however, some of the revisions to Part 51 being proposed today are in the new format. Specifically, the revisions (discussed below) to §§ 51.1 and 51.16 are the new section numbers 51.100 and 51.151, respectively, in the restructured Part 51 format.

Once completely restructured, Part 51 will reflect the act requirements pertaining to SIP's in general terms rather than specifying requirements by pollutant. This action will simplify formerly detailed regulations and provide for more flexibility. Since most references to specific pollutants will have been removed from Part 51, only a small number of changes, aside from the NSR/PSD changes, are needed in this

[35] The questions regarding continued increment applicability do not extend to the mandatory Federal Class I areas and increments, since they are directly established by the Act and are not linked to the section 107 area designation process. See sections 162(a) and 163(b)(1) of the Act.

[36] The revisions described in this section and proposed at the end of this notice are illustrative of the regulatory consequences of one of several choices of implementing the revised NAAQS.

action to revise Part 51 in response to the revised particulate matter standards.

B. Basic SIP Requirements

Part 51 will still contain requirements that must be met by control strategies in order to be approvable. The new Subpart G, Control Strategy, of the restructured format will contain these requirements. All of these requirements are applicable to SIP's for primary and secondary particulate matter NAAQS. The Administrator will judge the SIP's against these requirements to determine their approvability. Where SIP's already contain certain provisions, such as a description of administrative procedures, these need not be repeated in the SIP revision submitted for the revised particulate matter NAAQS.

C. Section 51.18, Review of New Sources and Modifications

In this section the significance level for particulate matter is being revised to indicate that the emission rate is in terms of "particulate matter emissions" as opposed to "particulate matter." This conforms to proposed definitions of these terms. In paragraph (k)(1) reference is added to paragraphs (j)(1)(iv) and (v) of § 51.18 which contain definitions of "new major stationary source" and "major modification." Also in paragraph (k)(1) a change is proposed to replace "40 CFR 81.300 *et seq.*" with "Section 107 of the Act" where reference is made to area classifications. A table (now in Appendix S) is proposed to be added to § 51.18(k) to indicate significant ambient impact concentrations. Within this table the 24-hour concentration is proposed to be deleted for TSP, since there would no longer be a 24-hour TSP NAAQS; significant concentrations for the annual and 24-hour averaging times are proposed to be added for PM_{10}. Finally, paragraph (k)(3) is proposed to be added which would exclude a source from the requirements of paragraph (k) with respect to any pollutant for which the location of the source is designated as nonattainment.

D. Section 51.24, Prevention of Significant Deterioration of Air Quality

Various amendments to the requirements for the prevention of significant deterioration are being proposed to be added to § 51.24 to address PM_{10}. Paragraph (a)(6)(i) is proposed to be changed to allow States 9 months from the date of promulgation of PM_{10} NAAQS to adopt and submit the appropriate SIP revisions. In paragraph (b)(23)(i), the existing significant emissions rate for particulate matter is proposed to be changed so as to clarify that it is to be measured in terms of "particulate matter emissions." A new significant emissions rate for particulate matter is also proposed to be added which would be expressed in terms of "PM_{10} emissions." Thus, for particulate matter there would be significant emissions rates for both regulated forms, i.e. TSP and PM_{10}. The increments for particulate matter in paragraphs (c) and (p) are proposed to be changed to indicate that the specified concentrations apply to ambient TSP. In paragraph (i) the significant ambient concentration for particulate matter is proposed to be changed to indicate that the specified value applies to either TSP or PM_{10}. Also in paragraph (i), technical and clarifying amendments are being made to lead, beryllium, and hydrogen sulfide to correct for previous typographical errors. Finally, an amendment is being proposed that would allow States to adopt PM_{10} transition provisions that parallel the proposed transition provisions in § 52.21.

E. Section 51.100, Definitions

EPA proposes to add clarifying definitions to Part 51. A generic definition of "particulate matter" is added which parallels the use of the term in the revised criteria document for particulate matter. Definitions of "particulate matter emissions" and "PM_{10} emissions" are proposed which would distinguish between the two. A definition of "PM_{10}" is proposed which would define PM_{10} as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 um as mesured by a reference method based on Appendix J of Part 50. Finally, a definition of "total suspended particulate" is proposed which would define it as particulate matter measured by the method described in Appendix B of Part 50.

F. Section 51.151, Significant Harm Levels

The review and revision of health and welfare criteria for particulate matter and sulfur oxides and the proposed revisions to the NAAQS for particulate matter necessitate certain changes to the significant harm levels. To conform with the proposed revisions to the primary (health based) NAAQS for particulate matter, the Administrator proposes that the indicator for the particulate matter significant harm level be changed from TSP to PM_{10}.

It is also proposed that the significant harm concentration level for particulate matter be revised. The criteria document indicates that increases in daily total mortality during the London winters of 1958/59 to 1971/72 occurred when particle levels, measured as British Smoke (BS),[37] and sulfur dioxide (SO_2) levels where both above 500 $\mu g/m^3$ (p. 14–51). While the relative importance of SO_2 cannot be specified unequivocally, the conservative assumption (with respect to particles) is that similar responses might have occurred without substantial amounts of SO_2 present as discussed in the EPA staff paper for particulate matter (EPA 1982, p. 98). In addition to potential SO_2 interaction, consideration must also be given to comparing BS and PM_{10}. Because the smoke reading responds to darkness instead of mass, the relationship between BS and a mass index such as PM_{10} is particularly uncertain. To account for this, the staff paper (p. 99) derives general boundary relationships comparing BS and PM_{10} units from the available aerometric data. The lower bound assumes a BS reading equals a PM_{10} mass reading while the upper bound assumes PM_{10} mass = BS reading + 100 $\mu g/m^3$. The lower bound includes a margin of safety compared with the upper bound of the range. In light of the previous assumption regarding SO_2 interaction, it would be reasonable when expressing BS results in PM_{10} units to use the upper and less conservative portion of the range identified in the staff paper. Therefore, based on the available evidence, EPA proposes to change the significant harm level for particulate matter from 100 $\mu g/m^3$ measured as TSP to 600 $\mu g/m^3$ measured as PM_{10}.

The Administrator also proposes that the significant harm level for the combined levels of particulate matter (measured as TSP) and sulfur dioxide be deleted. As noted in the staff paper (p. 71), it is not clear from the relevant scientific evidence that such a combined particulate matter-sulfur dioxide index provides any improvement in protecting against significant harm from particulate matter over a single significant harm level for particulate matter that is chosen with due consideration of the potential interactive effects. As discussed above, the proposed significant harm level for particulate matter does take into account, in a conservative fashion, potential SO_2 interaction. Continuation of the current combined TSP-SO_2 index is, therefore, no longer appropriate nor needed from the standpoint of particulate matter. The

[37] British Smoke (BS) is a pseudo-mass indicator related to small particle (size less than a nominal 4.5 micrometers) darkness. This particulate matter indicator was widely used in British and other European studies.

possibility of new combined significant harm level from the standpoint of SO_2 will be considered in the review of the SO_2 standards and significant harm level.

More detailed discussion of the information supporting these proposed revisions can be found in the criteria document and staff paper which are available for inspection at the Central Docket Section (Docket No. A–82–37). The address of the Central Docket Section is given at the beginning of this notice.

G. Section 51.322, Sources Subject to Emission Reporting

Since the proposed revisions to the NAAQS for particulate matter would retain a secondary standard for TSP, the Agency foresees a continuing need to obtain annual reports on particulate matter emissions [as proposed to be defined in § 51.100 (gg)] in order to perform various types of national analyses and to prepare national emissions trends reports. No change is proposed to the existing definition of sources of particulate matter subject to reporting. The reporting of emissions data to the National Emissions Data System (NEDS) for facilities and emission points of particulate matter would continue as required by the existing regulations.

The new proposed provisions would establish annual reporting of PM_{10} emissions data from facilities and emission points located within areas for which a PM_{10} control strategy is prepared. Facility-specific PM_{10} emissions would be used by the Agency to prepare analyses for its environmental management reports, for analyzing progress toward attainment and air quality-emissions relationships and for special analyses of problem areas. The Agency recognizes that States may not typically determine PM_{10} emissions for sources in areas where control strategies are not prepared. It is the Agency's intent to require reporting of annual PM_{10} emissions only for facilities and emission points that will be included within the emission inventories needed to prepare State implementation plans for the PM_{10} NAAQS. The criteria for determining which sources are subject to reporting would be the same emission levels as for particulate matter emissions. These are: facilities emitting over 90.7 metric tons (100 tons) of PM_{10} and emission points of over 22.7 metric tons (25 tons) of PM_{10}.

H. Section 51.323, Reportable Emissions Data and Information

The proposed revisions to this section would require that PM_{10} emissions data be reported to EPA's Hazardous and Trace Emissions System (HATREMS). This would be necessary because NEDS has a capability limited to storing emissions data for particulate matter (i.e., *total* particulate matter emissions), sulfur dioxide, carbon monoxide, volatile organic compounds, and nitrogen dioxide. In order to minimize reporting burdens associated with PM_{10} emissions reporting, only four data items would have to be reported for any facility or emission point: the NEDS identification code, the annual PM_{10} emissions (expressed as tons per year), the estimation method, and the year of record. All other information on PM_{10} sources will be updated routinely through the annual reports on sources of particulate matter submitted to NEDS.

I. Revisions to Appendix L

Appendix L to Part 51 contains example air pollution episode levels and contingency plans for the purpose of preventing air pollution from reaching the significant harm levels prescribed in Section 51.151. To conform with the proposed revisions to the significant harm level for particulate matter, certain changes to Appendix L are required. EPA proposes the following revisions to the example episode levels for particulate matter:

(1) That the indicator particulate matter episode levels be changed from TSP to PM_{10}, as is proposed for the significant harm level;

(2) That the combined particulate matter/sulfur dioxide episode levels be deleted;

(3) That the example alert level for particulate matter be changed to 350 $\mu g/m^3$, 24-hour average;

(4) That the example warning level for particulate matter be changed to 420 $\mu g/m^3$ 24-hour average; and

(5) That the example emergency level be changed to 500 $\mu g/m^3$, 24-hour average.

The basis for changing the indicator for particulate matter and for deleting the combined particulate matter/sulfur dioxide episode levels is the same basis as discussed above for the revisions to Section 51.151. With respect to example episode levels, the proposed alert level reflects the upper bound of the range of interest in the staff paper. The staff paper concludes that at or above 350 $\mu g/m^3$ health effects are likely to occur in certan sensitive population groups. Therefore, it would be appropriate under the episode criteria to initiate first stage control action when this ambient level of particulate matter occurs. The proposed warning and emergency levels are set at approximately equal increments between the proposed alert level and the proposed significant harm level. This approach would provide some opportunity for the control actions associated with each episode level to take effect before the next stage is triggered and additional control actions become necessary.

J. Revisions to Appendix S

Appendix S is proposed to be revised by changing the existing significant emissions rate for particulate matter in paragraph II.A.10(i) to indicate that the specified rate of 25 TPY applies with respect to "particulate matter emissions." Also in paragraph II.A.10(i), a new significant emissions rate for particulate matter, in the form of PM_{10} is proposed to be added which would be expressed in terms of "PM_{10} emissions." In paragraph III.A., the table of significant ambient impact levels is proposed to be revised by deleting the 24-hour level for TSP, and by adding the pollutant "PM_{10}" and significant levels for PM_{10} with respect to the annual and 24-hour averaging periods. Thus, for particulate matter, there would be significant emissions rates and significant ambient impact levels for both regulated forms, i.e., TSP and PM_{10}.

VIII. Revisions to Part 52, Approval and Promulgation of Implementation Plans [38]

A. Section 52.01, Definitions

The proposed amendments to this section are the same as those proposed for § 51.100.

B. Section 52.21, Prevention of Significant Deterioration of Air Quality

The amendments for the Part 52 PSD regulations in § 52.21 include the amendments proposed for § 51.24 concerning (1) the significant emission rate for particulate matter, (2) the ambient increments for particulate matter, and (3) the significant ambient concentrations for particulate matter, lead, beryllium and hydrogen sulfide. Also, in paragraph (i)(4) new provisions are being proposed to grandfather certain applicants from additional PSD review resulting from new PM_{10} requirements where prescribed criteria have been met by the applicant. In paragraphs (i)(11) and (m)(1) (vii) and

[38] The revisions described in this section and proposed at the end of this notice are illustrative of the regulatory consequences of one of several choices of implementing the revised NAAQS.

(viii), new transition provisions for preconstruction monitoring have been proposed which would exclude applicants from PM_{10} monitoring methods depending on when a complete application is submitted relative to the promulgation date of the PM_{10} NAAQS. Finally, paragraph (w)(2) is proposed to be changed to replace the date "June 28, 1978," with the date "August 7, 1980," which is the latest date on which PSD requirements under this section were issued.

IX. Revisions to Part 81, Designation of Areas for Air Quality Planning Purposes [39]

Part 81 is proposed to be revised to remove the area designations for the primary particulate matter NAAQS since section 107 would not apply to the PM_{10} NAAQS. The designations for the secondary particulate matter NAAQS will be retained only if EPA decides that section 107 and Part D of the Act would still apply to the revised secondary NAAQS.

On August 27, 1979, EPA noted in the **Federal Register** (44 FR 50098) that for the original particulate matter nonattainment designations, for areas in which both primary and secondary NAAQS were being violated only the column for the primary NAAQS was marked, rather than both primary and secondary NAAQS columns being marked. The notice pointed out that if an area is nonattainment for the primary particulate matter NAAQS, it is assumed nonattainment for the secondary NAAQS also, even though the secondary NAAQS column is not marked. Since this caused confusion, EPA began marking the secondary NAAQS columns where appropriate on an individual (by State) basis as **Federal Register** notices revising designations were published. Today's proposal completes the process of marking the secondary NAAQS columns and then deletes the columns for the primary NAAQS.

Regulatory and Environmental Impacts

I. Regulatory Impact Analysis

Under Executive Order (EO) 12291, EPA must determine whether a regulation is a "major rule" for which a Regulatory Impact Analysis (RIA) is required. The Agency has determined the particulate matter NAAQS proposal of March 20, 1984, to be a major action, and has prepared a draft RIA which is discussed in that notice (49 FR 10421). The regulations proposed herein have been determined by the Agency not to be a major action in and of themselves. This action addresses the implementation of the proposed NAAQS and does not itself result in the economic effects set forth in Section I of the Order as grounds for finding a regulation to be a major rule.

[39] The revisions described in this section and proposed at the end of this notice are illustrative of the regulatory consequences of one of several choices of implementing the revised NAAQS.

II. Impact on Small Entities

The Regulatory Flexibility Act requires that all Federal agencies consider the impacts of final regulations on small entities, which are defined to be small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601 et seq.). EPA has considered the potential impacts of today's action in combination with the March 20, 1984, proposals on small entity groups and included a detailed discussion of that effort in the March 20, 1984, notice (page 10422). The reader is referred to that discussion for further details.

III. Impact on Reporting Requirements

The proposed revisions to Parts 51 and 52 were submitted to the Office of Management and Budget (OMB) for review as required by EO 12291. The reporting and record keeping provisions addressed in this notice, however, have been submitted separately for review by OMB under Section 3504(b) of the Paperwork Reduction Act of 1980, U.S.C. 3501 et seq. OMB comments and EPA responses to those comments are available for public inspection in the docket for this action.

Authority: This rulemaking is promulgated under authority of Sections 101(b)(1), 110, 160–169, 171–178, and 301(a) of the Clean Air Act, 42 U.S.C. 7401(b)(1), 7410, 7570–7579, 7501–7508, and 7601(a).

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Hydrocarbons, Ozone, Carbon monoxide, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, State implementation plans.

40 CFR Parts 50 and 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Carbon monoxide, Hydrocarbons, Particulate matter.

40 CFR Part 53

Administrative practice and procedure.

40 CFR Part 58

Reporting and recordkeeping requirements, Pollutants standard index, Ambient air quality monitoring system.

40 CFR Part 81

National parks and wilderness areas.

Dated: March 20, 1985.

Lee M. Thomas,

Administrator.

References

DHEW [U.S. Department of Health, Education, and Welfare] (1969). Air Quality Criteria for Particulate Matter. U.S. Government Printing Office, Washington, D.C., AP–49.

EPA [U.S. Environmental Protection Agency] (1982). Review of the National Ambient Air Quality Standards for Particulate Matter: Assessment of Scientific and Technical Information—OAQPS Staff Paper. Office of Air Quality Planning and Standards, Research Triangle Park, N.C. EPA–450–82001, NTIS No. PBB2–177874.

Hawkins, David G. [Assistant Administrator for Air and Waste Management] (1977). Model Letter Regarding State Designation of Attainment States. Memorandum to Regional Administrators. October 7, 1977.

Tuerk, Edward F. [Acting Assistant Administrator for Air Waste Management] (1977). Guidance on SIP Development and New Source Review in Areas Impacted by Fugitive Dust. Memorandum to Regional Administrators. August 16, 1977.

Powell, Roger D., U.S. EPA, Plans Guidelines Section (1984). Analysis of Current vs. Revised PM NAAQS. Memorandum to Joseph J. Sableski. April 25, 1984.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

For the reasons set out in the preamble, Part 51 of Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

1. In § 51.18, the fourth line in the list in paragraph (j)(1)(x) and paragraph (k) are revised. As amended, § 51.18 reads as follows:

§ 51.18 Review of new sources and modifications.

* * * * *

(j) * * *

(1) * * *

(x) * * *

Particulate matter: 25 TPY of particulate matter emissions.

* * * * *

(k)(1) Each plan shall include a preconstruction review permit program or its equivalent to satisfy the requirements of section 110(a)(2)(D)(i) of the Act for any new major stationary

source or major modification as defined in paragraphs (j)(1) (iv) and (v) of this section. Such a program shall apply to any such source or modification that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to section 107 of the Act, when it would cause or contribute to a violation of any national ambient air quality standard.

(2) A major source or major modification will be considered to cause or contribute to a violation of a national standard when such source or modification would exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

	Annual	Averaging time (hours)			
		24	8	3	1
Pollutant					
SO_2	1.0 μg/m³	5 μg/m³		25 μg/m³	
TSP	1.0 μg/m³				
PM_{10}	1.0 μg/m³	5 μg/m³			
NO_2	1.0 μg/m³				
CO			0.5 mg/m³		2 mg/m³

(3) The requirements of paragraph (k) of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the Act.

2. In § 51.24, paragraph (a)(6)(i) is revised, the fourth line in the list in paragraph (b)(23)(i) is revised, the entries under the headings "Particulate matter" in the tables in paragraphs (c) and (p)(4) are revised, paragraphs (i)(8)(i)(*c*), (*f*), (*h*), and (*l*) are revised, and new paragraph (i)(10) is added as follows:

§ 51.24 Prevention of significant deterioration of air quality.

* * * * *

(a) * * *

(6) *Amendments.* (i) Any State required to revise its implementation plan by reason of an amendment to this section, including any amendment adopted simultaneously with this paragraph, shall adopt and submit such plan revision to the Administrator for approval before [date 9 months after promulgation].

* * * * *

(b) *Definitions.*

* * * * *

(23)(i) * * *

Particulate matter: 25 tpy of particulate matter emissions 15 tpy of PM_{10} emissions.

* * * * *

(c) * * *

Maximum allowable increases [Micrograms per cubic meter].

Class I

Pollutant

Particulate matter:

TSP, annual geometric mean 5

TSP, 24-hr maximum 10

* * * * *

Class II

Particulate matter:

TSP, annual geometric mean 19

TSP, 24-hr maximum 37

* * * * *

Class III

Particulate matter:

TSP, annual geometric mean 37

TSP, 24-hr maximum 75

* * * * *

(i) * * *

(8) * * *

(i) * * *

(*c*) Particulate matter—10 ug/m ^{3} TSP, 24-hour average, 10ug/m ^{3} of PM_{10}, 24-hour average:

* * * * *

(*f*) Lead 0.1 μg/m ^{3}, 3-month average;

* * * * *

(*h*) Beryllium—0.001 μg/m ^{3}, 24-hour average;

* * * * *

(*l*) Hydrogen sulfide—0.2 μg/m ^{3}, 1-hour average;

* * * * *

(10) If EPA approves a plan revision under § 51.24 as in effect before [date of publication of Final Rule], any subsequent revision which meets the requirements of this section may contain transition provisions which parallel the transition provisions of § 52.21 (i)(11)(i)–(iii), and (m)(1)(vii) and (viii) of this chapter as in effect on that date, these provisions being related to monitoring requirements for particulate matter. Any such subsequent revision may not contain any transition provision which in the context of the revision would operate any less stringently than would its counterpart in § 52.21 of this chapter.

* * * * *

(p) * * *

(4) * * *

Particulate matter:

TSP, annual geometric mean 19

TSP, 24-hr maximum 37

* * * * *

3. In § 51.100, as proposed on October 11, 1983 (48 FR 46152), paragraphs (ff), (gg), (hh), (ii), and (jj) are added to read as follows:

§ 51.100 Definitions.

* * * * *

(ff) "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than a few hundred micrometers.

(gg) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method, specified in this chapter, or by a test method specified in an approved State implementation plan.

(hh) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of Part 50 of this chapter and designated in accordance with Part 53 of this chapter or by an equivalent method designated in accordance with Part 53 of this chapter.

(ii) "PM_{10} emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in this chapter or by a test method specified in an approved State implementation plan.

(jj) "Total suspended particulate (TSP)" means particulate matter as measured by the method described in Appendix B of Part 50 of this chapter.

4. In § 51.151, as proposed on October 11, 1983 (48 FR 46152), the third unnumbered subdivision beginning "sulfur dioxide and particulate matter combined" is deleted and the second unnumbered subdivision beginning "particulate matter" is revised to read as follows:

§ 51.151 Significant harm levels.

* * * * *

PM_{10}—600 micrograms/cubic meter, 24-hour average.

* * * * *

5. In § 51.322, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 51.322 Source subject to emissions reporting.

* * * * *

(1) For particulate matter, sulfur oxides, hydrocarbons, nitrogen oxides, and PM_{10} emissions, any facility that actually emits a total of 90.7 metric tons (100 tons) per year or more of any one pollutant.

* * * * *

(b) * * *

(1) For particulate matter, sulfur oxides, hydrocarbons, nitrogen oxides, and PM_{10} emissions, 22.7 metric tons (25 tons) per year or more.

6. In § 51.323, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 51.323 Reportable emissions data and information.

(a) * * *

(1) Emissions of particulate matter, sulfur dioxide, carbon monoxide, nitrogen oxides, and hydrocarbons, as specified by AEROS Users Manual, Vol. II (EPA–450/2–76–029, OAQPS No. 1.2–039) to be coded into the National Emissions Data System (NEDS) point source coding forms, and

(2) PM_{10} emissions and emissions of lead or lead compounds measured as elemental lead as specified by AEROS Users Manual, Vol. II (EPA–450/2–76–029, OAQPS No. 1.2–039) to be coded into the Hazardous and Trace Emissions System (HATREMS) point source coding forms.

* * * * *

7. In Appendix L, paragraphs (b), (c), and (d) are amended by removing the unnumbered subdivisions beginning "SO_2 and particulate combined"and by revising the unnumbered subdivisions beginning "Particulate" to read as follows:

Appendix L—Example Regulations for Prevention of Air Pollution Emergency Episodes

* * * * *

(b) * * *

PM_{10}—350 $\mu g/m^3$, 24-hour average.

(c) * * *

PM_{10}—420 $\mu g/m^3$, 24-hour average.

(d) * * *

PM_{10}—500 $\mu g/m^3$, 24-hour average.

* * * * *

8. In Appendix S, the fourth line beginning "Particulate matter" in the list in Section II.A.10(i) and the table in Section III.A. are revised to read as follows:

Appendix S—Emission Offset Interpretative Ruling

* * * * *

II. * * *

10(i) * * *

Particulate matter: 25 tpy of particulate matter emissions 15 tpy of PM_{10} emissions.

* * * * *

III. * * *

A. * * *

	Annual	Average time (hours)			
		24	8	3	1
Pollutant: SO_2	1.0 $\mu g/m^3$	5 $\mu g/m^3$		25 $\mu g/m^3$	
TSP	1.0 $\mu g/m^3$				
PM_{10}	1.0 $\mu g/m^3$	5 $\mu g/m^3$			
NO_2	1.0 $\mu g/m^3$				
CO			0.5 mg/m^3		2 mg/m^3

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

For the reasons set out in the preamble, Part 52 of Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

1. In § 52.01, paragraphs (i), (j), (k), (l), and (m) are added to read as follows:

§ 52.01 Definitions.

* * * * *

(i) "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than a few hundred micrometers.

(j) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method, specified in this chapter, or by a test method specified in an approved State implementation plan.

(k) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of Part 50 of this chapter and designated in accordance with Part 53 of this chapter or by an equivalent method designated in accordance with Part 53 of this chapter.

(l) "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in this chapter or by a test method specified in an approved State implementation plan.

(m) "Total suspended particulate (TSP)" means particulate matter as measured by the method described in Appendix B of Part 50 of this chapter.

2. In § 52.21, the fourth item in the list in paragraph (b)(23)(i) is revised; the entries under the headings "Particulate matter" in the tables in paragraphs (c) and (p)(4) are revised; paragraphs (i)(4)(ix) and (x) are added; the third, sixth, eighth, and twelfth items in the list in paragraph (i)(8)(i) are revised; paragraph (i)(11) is added; paragraphs (m)(1)(vii) and (viii) are added, and paragraph (w)(2) is revised as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) *Definitions.* * * *

(23)(i) * * *

Particulate matter: 25 tpy of particulate matter emissions, 15 tpy of PM_{10} emissions.

* * * * *

(c) * * *

Class I

Pollutant

Particulate matter:

TSP, annual geometric mean 5

TSP, 24-hr maximum 10

* * * * *

Class II

Particulate matter:

TSP, annual geometric mean 19

TSP, 24-hr maximum 37

* * * * *

Class III

Particulate matter:

TSP, annual geometric mean 37

TSP, 24-hr maximum 75

* * * * *

(i) * * *

(4) * * *

(ix) The source or modification was not subject to § 52.21 as in effect on August 7, 1980, and the owner or operator:

(*a*) Obtained all final Federal, State, and local preconstruction approvals or permits necessary under the applicable State implementation plan before [date of publication of Final Rule];

(*b*) Commenced construction within 18 months from [date of publication of Final Rule], or any earlier time required under the State implementation plan; and

(*c*) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time;

(x) The source or modification was subject to 40 CFR 52.21 as in effect on August 7, 1980, and the owner or operator submitted an application for a permit under this section on or before [date of publication of Final Rule], and the Administrator subsequently determines that the application as submitted before that date was complete with respect to the requirements of this section as is effect on August 7, 1980.

* * * * *

(8) * * *

(i) * * *

Particulate matter—10 $\mu g/m^3$ of TSP, 24-hour average, PM_{10}, 24-hour average;

* * * * *

Lead—0.1 $\mu g/m^3$, 24-hour average;

* * * * *

Beryllium—0.001 $\mu g/m^3$, 24-hour average;

* * * * *

Hydrogen sulfide—0.2 $\mu g/m^3$, 1-hour average;

* * * * *

(11)(i) At the discretion of the Administrator, the requirements for air quality monitoring of PM_{10} in paragraphs (m)(1)(i)–(iv) of this section may not apply to a particular source or modification when the owner or operator of the source or modification submits an application for a permit under this section on or before [date 10 months after publication of Final Rule] and the Administrator subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in paragraphs (m)(1)(i)–(iv).

(ii) The requirements for air quality monitoring of PM_{10} in paragraphs (m)(1)(iii) and (iv) and (m)(3) of this section shall apply to a particular source or modification if the owner or operator of the source or modification submits an application for a permit under this section between [date 10 months after publication of the Final Rule] and [date 16 months after promulgation]. The data shall have been gathered over at least the period from [date 6 months after publication of the Final Rule] to the date the application becomes otherwise complete in accordance with the provisions set forth under paragraph (m)(1)(viii) of this section, except that if the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that paragraph (m)(1)(iii) requires shall have been gathered over that shorter period.

* * * * *

(m) *Air quality analysis.* (1) * * *

(vii) For any application that becomes complete, except as to the requirements of paragraph (m)(1)(iii) and (iv) pertaining to PM_{10}, between [date 16 months after publication of the Final Rule] and [date 24 months after publication of the Final Rule], the data that paragraph (m)(1)(iii) requires shall have been gathered over at least the period from [date 12 months after publication of the Final Rule] to the date the application becomes otherwise complete, except that the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that paragraph (m)(1)(iii) requires shall have been gathered over that shorter period.

(viii) With respect to any requirements for air quality monitoring PM_{10} under paragraphs (i)(11)(i) and (ii) of this section, the owner or operator of the source or modification shall use a monitoring method approved by the Administrator and shall estimate the ambient concentrations of PM_{10} using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Administrator.

* * * * *

(p) * * *

(4) * * *

Particulate matter:	
TSP, annual geometric mean	19
TSP, 24-hr maximum	37

* * * * *

(w) *Permit rescission.* * * *

(2) Any owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under § 52.21 as in effect on August 7, 1980, or any earlier version of this section, may request that the Administrator rescind the permit or a particular portion of the permit.

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

For the reasons set out in the preamble, Part 81 of Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

§§ 81.301–81.356 [Amended]

In §§ 81.301 through 81.356, for each table entitled "(State name)—TSP":

1. Any "X" in the second column entitled "Does not meet primary standards" is transferred to the third column entitled "Does not meet secondary standards," unless a corresponding "X" already appears in the third column.

2. The second column entitled "Does not meet primary standards" is removed.

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